

Top 10 Things to Know About Liability

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This is Exciting Stuff!

- Too much to cover in detail
- 10,000 foot descriptions
- Bottom line on all of it is. . . You'd better go look it up first

Introduction



- Dewey Suem
- Local resident who works for Pepsco Bottle Company
- Hates Cocum Bottling Company and has sued them on several occasions
- Considers himself an expert on being a professional plaintiff

Imaga N. Suem

- Dewey's younger sister
- Has grudge against the City of Deep Pockets, Texas
- Often asks her brother for advise on how to sue the City



Suing a city is very different than suing a
company



Rule #1 – The Rules are Different

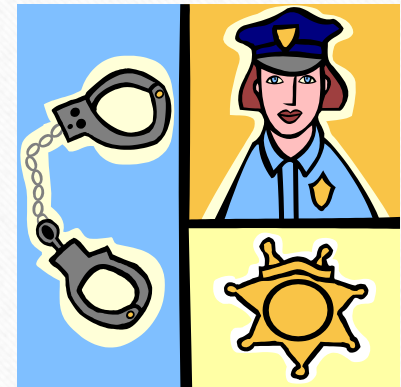
- Forget what you learned in law school
- Public purpose of having the rules different
- Some claims cannot be brought against governmental entity
- Some claims can only be brought against such an entity

Rule #2 Sovereign Immunity

- The King can do no wrong
- Default – Immunity from suit and liability
- Example – Dewey's defamation claim vs. Imaga's defamation claim

Rule #3 Individual Immunity

- Individual Immunity (judicial, legislative, prosecutorial)
- Official = state; Qualified = federal
- Absolute v Good Faith (objective standards)
- Public Policy
- Dewey's Trespass v Imaga's Arrest



Rule #4 Waiver

- Legislative Prerogative
- Clear and Unambiguous Waiver (Tex. Gov't Code Ann. § 311.034 (West 2013)).
- Texas Tort Claims Act
 - use of publicly owned vehicles,
 - premise defects, and
 - injuries arising from conditions or use of property. (Civ. Prac. & Rem. Code Chapter 101).

Rule #5 Contracts

- Loc. Gov't Code Chapter 271, subchapter I
- Goods and Service
- Written contract with essential terms (no implied or verbal contracts)
- Properly authorized
- No consequential damages
- Dewey's contract v Imaga's contracts (headstand for bottles)

Rule #6 Vicarious Liability

- Texas Tort Claims Act and Official Immunity (fire arm discharge)
- TTCA – election of claims (Sec. 101.106)
- Sec. 1983 – constitutional claims
- Conflict of Interest
- Imaga's excessive force claims (Dewey's excessive force claims?)

Rule #7 Constitutional Violations

- Applies only to governmental entities
- *Monell v. Department of Social Services*, 436 U.S. 658 (1978).
- Texas Constitutional claims
 - No monetary damages
 - “Takings” claims

Rule #8 Supremacy Clause

- Tex. Const. Art. XI, § 5 – home rule Cities
- Suits to hold City ordinances invalid and void
- Express Preemption
- Implied Preemption
 - Tex. Alcohol and Bev. Code

Rule #9 Acts of Legislative Body

- Imaga's summer home
- Too tall and footprint too large
- Mayor's second cousin who is the building inspector issued a permit (ah crud)
- *City of White Settlement v. Super Wash, Inc.*, 198 S.W.3d 770 (Tex. 2006).

Rule # 10 Declaratory Judgment

- Declaration of rights under written instrument or ordinance
 - Procedural device only (do not confuse with a cause of action)
- Waives sovereign immunity for some claims but not all
 - Imaga's overcharging for rent claim
- Must be a challenge to a City ordinance as being invalid (*Tex. DOT v. Sefzik*, 355 S.W.3d 618, 622 (Tex. 2011))
- Ultra-vires claims against officials
 - *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 n.6 (Tex. 2009)

Honorable Mention

- Interlocutory appeal under Tex. Civ. Prac. & Rem. Code sec. 51.0014.
- Normally, only final orders are appealable
- Denial of Plea to the Jurisdiction is appealable
- Denial of official/qualified immunity is appealable
- Freezes everything below until issue is resolved

The End

