

## TORT LIABILITY

What follows is a brief discussion of Texas law regarding tort claims against state agencies and institutions.

## SOVEREIGN IMMUNITY

Sovereign immunity is a concept which dates back to the days when monarchies ruled, and is based on the concept that kings or queens were divinely chosen to lead their people, and were therefore incapable of an improper act. Texas courts, and most judges, continue to recognize the common law concept of sovereign immunity, and the legislature has adopted its concepts into statutory provision as well.

The legislature, apparently recognizing the need for some sort of responsibility by governmental actors, enacted a statute in 1969 which became known as the Tort Claims Act, which is found in the Texas Civil Practices and Remedies Code at Section 101.001 et seq. The act provides as follows:

A governmental unit in the state is liable for:

1. Property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if:
  - a) the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and
  - b) the employee would be personally liable to the claimant according to Texas law; and
2. Personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law.

Under the limited circumstances set forth above, the state may be sued like any other party (sovereign immunity is waived). There are also "damage caps" which limit the amount of liability to the state or a governmental unit thereof may incur. Those caps are as follows:

I.	Personal Injury and Death	\$250,000 per person \$500,000 per occurrence
II.	Property Damage	\$100,000 per occurrence

Again, these immunities and damage caps apply to actions brought against the state, not individual employees. Those provisions are discussed below.

## OFFICIAL IMMUNITY

The doctrine of official immunity protects public officials and employees from personal liability for monetary damages when sued in their personal capacities. It exists so government officials may remain free to exercise their duties without fear of damage suits. Such suits would consume their time and energy and the threat of such suits might appreciably inhibit the fearless, vigorous, and effective

administration of government policies. The statute addressing official immunity is found in the Texas Civil Practices and Remedies Code at Section 104.001 et seq.

System employees enjoy immunity for actions when:

- I. The conduct was in the course and scope of the employment or appointment of the individual.
- II. The act was performed in good faith, i.e., a reasonable individual in the same position could have believed that the conduct was justified under the law with the information possessed.
- III. The conduct involves a matter about which the individual has discretion or must make a judgment.

Determination of a person's good faith and whether or not the incident in question arose out of the course and scope of employment are fact-sensitive matters, but here are a few of examples.

- I. A person driving from home to work in the morning would not qualify for immunity should they meet with an accident. Such a person would not be acting within the scope and scope of their employment at that time.
- II. A person driving from campus to Austin for a meeting on state business would be covered.
- III. A person driving directly from home to Austin for such a meeting would probably be covered so long as the accident did not occur on a detour for personal benefit.
- IV. A person who intentionally causes a co-worker to be injured would not enjoy immunity in a civil action.