

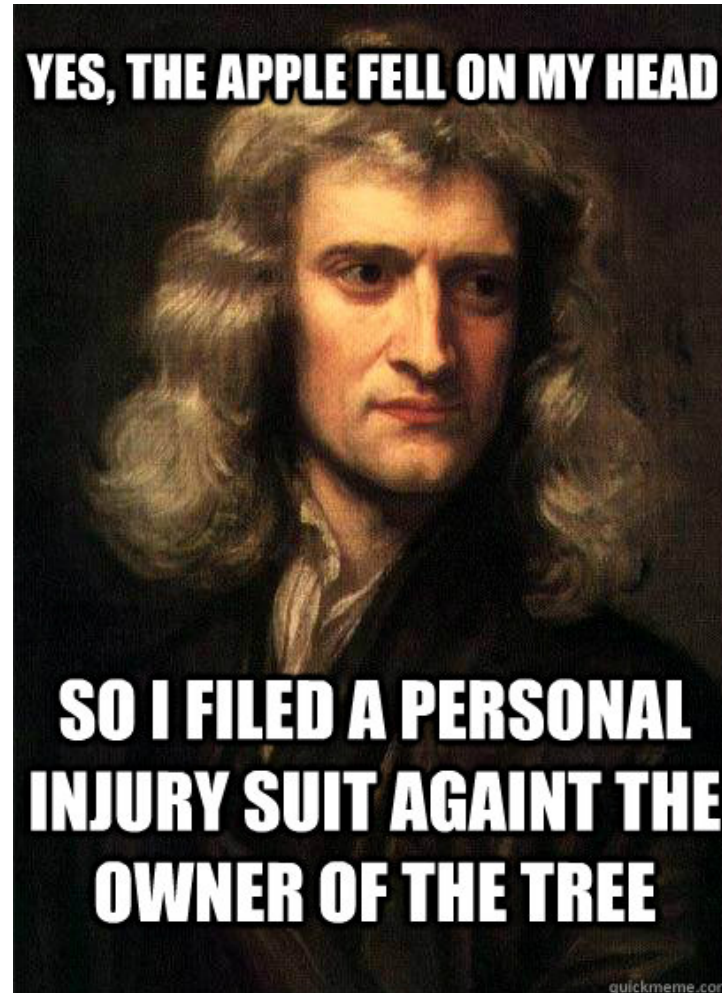
Suing and Defending Governmental Entities

State Bar of Texas: Personal Injury Law

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Associate



Top 10 Things to Know When Suing a Governmental Entity



Top 10 Things to Know When Suing a Governmental Entity

#1: Proprietary v. Governmental Functions

NOT IMMUNE:

Proprietary Functions

USUALLY IMMUNE:

Governmental Functions



Top 10 Things to Know When Suing a Governmental Entity

#1, continued

A Governmental Entity IS liable for limited damages arising from governmental functions that are *enjoined on a municipality and given to the state*.



- Police, health and sanitation services; street maintenance; jails; sewers; airports; parks and zoos; museums

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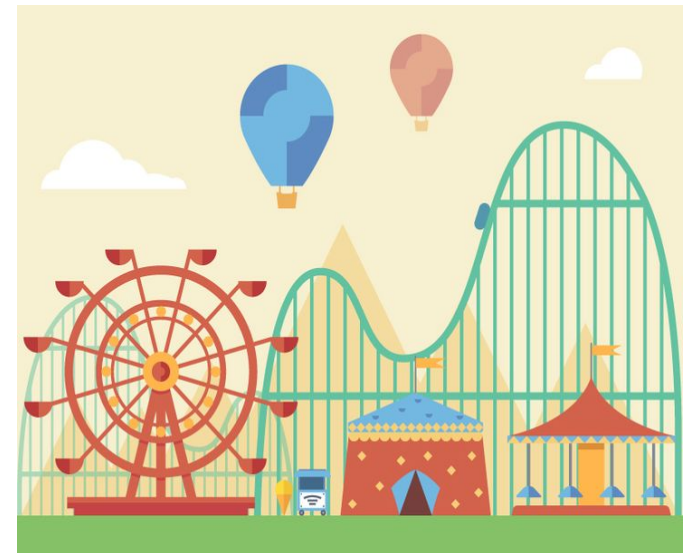
#1, continued

Proprietary Functions:

(1) The operation and maintenance of a public utility

(2) Amusements owned and operated by the municipality

(3) Abnormally dangerous or ultra-hazardous activity under 101.0215(b)



Top 10 Things to Know When Suing a Governmental Entity

#2: Recreational Use

§ 75.002 of the Texas Civil Practices and Remedies Code



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#2: Recreational Use, continued

What does recreation mean?



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#2: Recreational Use, continued

Does Recreational Use Apply?

Yes: When activity is “tangential” to the recreation.

City of Corpus Christi v. Ferguson, No. 13-12-00679-CV, 2018 WL 495146 (Tex. App.—Corpus Christi Feb. 6, 2018) (mem. op.

No: when “spectating.”

Lawson v. City of Diboll, 472 S.W.3d 667 (Tex. 2015)

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#3: Premise Defects



Degree of liability depends on duty owed

Premise Defect: Duty a private person owes to licensee

DOES NOT APPLY to a duty under § 101.060 of the TX. Civil Practices and Remedies Code

Top 10 Things to Know When Suing a Governmental Entity

#3: Premise Defects

Defects do not have to be caused by a governmental employee.

Eldridge v. Brazoria Cnty., No. 01-13-00314-CV, 2018 WL 1267055 (Tex. App.—Houston [1st Dist.] Mar. 27, 2018) (mem. op.)

Liability is not determined by action of a governmental employee, but the safety of the property itself.

Based on: *DeWitt v. Harris Cnty.*, 904 S.W.2d 650, 653 (Tex. 1995).

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#4: Standards of Care (Premise Defects)



Invitee: *City of Hidalgo v. Hodge*, No. 13-16-00695-CV, 2018 WL 460808 (Tex. App.—Corpus Christi Jan. 18, 2018) (mem. op.)

Licensee: TEX. CIV. PRAC. & REM. CODE §101.022.

Trespasser: *Lampasas v. Spring Center, Inc.*, 988 S.W.2d 428 (Tex. App.-Houston [14th Dist.] 1999, no pet.)



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#5: Special Defects

Under § 101.022,
governmental units must
warn of special defects.



When there is a special defect: Same duty that
private landowner owes to an invitee

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#6: Tangible Personal Property

Tangible Personal Property: electrocardiogram, medical records (later overruled in part by *University of Texas Med. Branch at Galveston v. York*), police dogs, and other animals owned by government

NOT Tangible Personal Property: Written statement

Top 10 Things to Know When Suing a Governmental Entity

#7: “Condition” or “Use”

Animals



Police dog bites child:
negligent use of police dog →
immunity waived

Gorilla from zoo attacks
visitors: negligent use →
immunity waived

Police dog bites someone after
a car chase: proper use →
immunity NOT waived

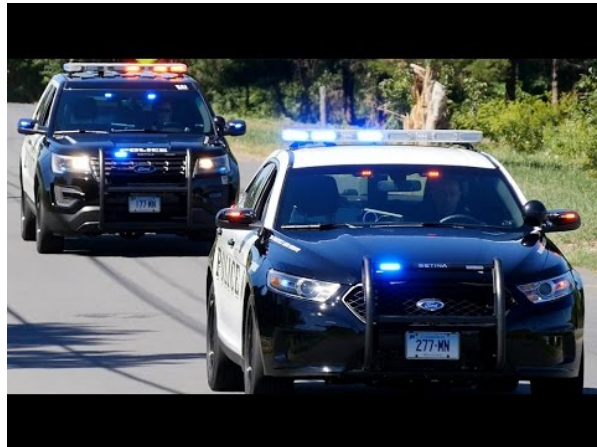
Top 10 Things to Know When Suing a Governmental Entity

#7: “Condition” or “Use” continued

Motor Driven Vehicles

The operation or use of the motor-driven vehicle or motor-driven equipment must cause the injury or property damage.

School Buses v. Police Cars



Top 10 Things to Know When Suing a Governmental Entity

#8: Understanding Immunity

Exceptions to Waiver

Specific Exceptions and Exemptions:

- Discretionary Acts
- Police/Fire Protection
- Intentional Torts
- Traffic Signs and Signals

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#8: Understanding Immunity: Individual Immunity

3-Part test:

(1) the governmental actor was performing a **discretionary act**;

(2) the act was performed in **good faith**; and

(3) it was within the **scope of his official authority**.

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#9: Plea to the Jurisdiction

Harris County v. Sykes, 136 S.W.3d 635, 638 (Tex. 2004).

City of El Paso v. W.E.B. Investments, 950 S.W.2d 166, 169 (Tex. App.—El Paso 1997, pet. denied)

Texas Dept. of Transp. v. Jones, 8 S.W.3d 636, 638 (Tex. 1999)

Texas Dept. of Parks and Wildlife v. Miranda, 133 S.W.3d 217, 227 (Tex. 2004).

City of Bay City v. Gaspard, 13-14-00439-CV, 2015 WL 5646624, (Tex. App.—Corpus Christi Aug. 13, 2015, no pet.)

Top 10 Things to Know When Suing a Governmental Entity

#10: Statutory Limits

Tort Claims Act

State government:

Each person: \$250,000

Bodily Injury or Death: \$500,000

Destruction of Property: \$100,000

Local government, except municipalities

Each person: \$100,000

Bodily Injury or Death: \$300,000

Destruction of Property: \$100,000

Municipalities

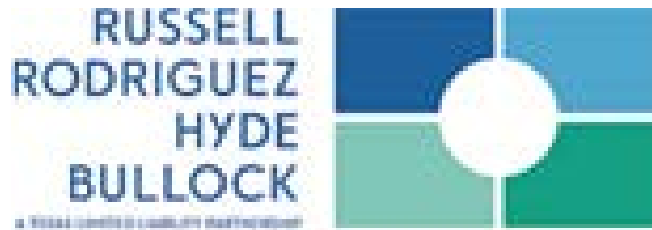
Each person: \$250,000

Bodily Injury or Death: \$500,000

Destruction of Property: \$100,000



Conclusion



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