

The seal of the State of Texas is visible in the background, featuring a five-pointed star in the center, surrounded by a circular border with the words "STATE OF TEXAS" and "1845".

Happy Days Are Here Again (sort of)

Texas Police Chiefs Association Legal Advisors Track

April 12-13

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Overview



Overview

- **Emergency Exception**
- **Official Immunity**
- **Tangible Personal Property Waiver**
- **Motor Vehicle Waiver**
- **Election of Remedies**
- **Tim Cole Act**
- **Qualified Immunity in Texas Courts**



Emergency Exception



City of San Antonio v. Maspero

- **Motor vehicle pursuit**
- **Collision between suspect and 3rd party**
- **Fact issue on siren**
- **Plaintiff has burden to overcome**
- **Violation of laws collapses with recklessness per 546.005**
- **Violation of policy not violation of laws**



City of San Antonio v. Maspero

- **546.003 not violated if siren use required under policy**
- **Use of siren must be when doing things specified in 546.001**
 - **Running red light**
 - **Exceeding speed limit**
 - **Disregarding movement or turning in specified directions**
- **“Causal nexus” between violation of laws and injury**
- **No opinion on “arises from”**



City of San Antonio v. Maspero

- **Recklessness analysis borrowed from criminal**
- **“tread lightly”**
- **Speeding and swerving part and parcel; not inherently reckless**
- **Actions must pose an extreme risk beyond that which is inherent in pursuits**
- **“Actions demonstrate some degree of risk assessment”**



Intermediate Court Decisions

***TXDPS v. Escobar*—Corpus**

- **Traffic stop**
- **Activated lights**
- **Siren intermittent**
- **Slowed/checked cross-traffic**
- **Entered on red**
- **Yielding traffic obstructed view**
- **Not reckless**

***COH v. Green*—Houston [14th]**

- **Code 2 call for service**
- **Activated lights**
- **Siren intermittent**
- **Came to complete stop/check cross-traffic**
- **Entered on red**
- **Yielding traffic obstructed view**
- **Fact issue on Reckless**



Intermediate Court Decisions

- ***City of Killeen v. Terry*—Austin**
 - **Emergency call**
 - **Lights and siren + air horn 3x**
 - **Slowed from 72 to 54**
 - **Entered on red**
 - **Yielding emergency vehicles obstructed view**
 - **Fact issue on recklessness**
 - **Pet. filed 3/10**



Official Immunity



City of San Antonio v. Riojas

- **Officer activated emergency lights to warn of slow-down**
- **“Routine traffic management”**



City of San Antonio v. Riojas

- ***Telthorster* controls any non-emergency situation**
- **Even if it involves operation of motor-vehicle**
- **Court of appeals should avoid “aggressive expansion” of good faith jurisprudence**



City of San Antonio v. Riojas

- **No magic words:**

“At the time I activated my emergency overhead lights, ... I was operating my SAPD vehicle in a safe manner with concern for the safety of other motorists which is consistent with my training and experience with SAPD in responding to traffic events such as the sudden traffic slowdown that took place on February 17, 2017.”



City of San Antonio v. Riojas

- **n.13**

- **Arises from motor-vehicle use**
- **Injuries are proximate cause of the negligence**
- **Separate and independent requirements**



Intermediate Court Decisions

COH v. Nicolai—Houston [1st]

- **Transport of drunk girl**
- **Discretionary function**
- **Construe function broadly**
- **Failure to seat-belt not the correct analysis**

Hulick v. COH—Houston [14th]

- **Looking for suspect**
- **Ministerial**
- **“performing investigation” had nothing to do with making a turn**
- **Urgent vs. emergent?**
- ***Wadewitz* or *Telthorster*?**



Intermediate Court Decisions

- ***TXDPS v. Salinas*—San Antonio**
 - **Execution of warrant**
 - **Moving vehicle to secure perimeter**
 - **“general rule” driving on non-emergency is ministerial**
 - **“special circumstances” existed**



Intermediate Court Decisions

- ***City of Dallas v. Ross*—Dallas**
 - **Officer assist freeway crash**
 - **Lights siren + air horn**
 - **Other vehicles yielded**
 - **Needed to respond immediately**
 - **Imminent danger to motorists & officers**
 - **No controverting evidence**



Tangible Personal Property Waiver



Chavez v. Alvarado—S.D.Tex.

- **Tasers, beanbags, firearms**
- **Governmental unit itself must be the user**
- **Government is not the user merely by furnishing property to employees or generally authorizing use**
- **Government must furnish AND contemporaneously authorize or order use**



Motor Vehicle Waiver



Intermediate Court Decisions

Galveston County v. Leach— Houston [14th]

- **Fact issue as to whether officer exercised such control as to be considered the operator or user of the motor vehicle**
- **Pet. filed**
- **Response requested**

Pena v. City of Garland— Dallas

- **governmental employee directing traffic generally is not sufficient**
- **Waiving hand is not use or operation**



TTCA Election of Remedies



Intermediate Court Decisions

- ***Hung v. Davis*—Houston [1st]**
 - 91a OK vehicle for interlocutory appeal
 - Election can't be cured by amendment
- ***Roades v. Henderson*—Corpus**
 - Volunteer firefighter on way home from fire was not “employee” for purposes of election of remedies scheme



Tim Cole Act



Tim Cole Act

- A person who receives compensation under this chapter **may not bring any action** involving the same subject matter, including an action involving the person's arrest, conviction, or length of confinement, against any governmental unit or an employee of any governmental unit.
 - **Tex. Civ. Prac. & Rem. Code Ann. § 103.153(b)**



Tim Cole Act

- **Alfred Brown—Tex. 2022**
 - **Filed suit in 2017**
 - **State compensation 2020**
 - **5th Circuit Certified**



Qualified Immunity in TX



Qualified Immunity in Texas

Plaintiff's burden

- **Eastland**
- **Corpus Christi**

Defendant's burden

- **Houston 1st**
- **Houston 14th**

