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ILLINOIS LAW MANUAL

CHAPTER VI
OTHER CAUSES OF ACTION

H. GOVERNMENTAL LIABILITY AND IMMUNITIES

Most governmental entities enjoy some form of immunity from suit. In Illinois, lawsuits against the State of Illinois itself are governed by the provisions of the Court of Claims Act and the State Lawsuit Immunity Act. Suits against "local public entities," including counties, townships, municipalities, municipal corporations, school districts, park districts, fire protection districts, and sanitary districts, fall under the purview of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, et seq.

1.a Lawsuits Against the State

The Court of Claims Act, 705 ILCS 505/1, et seq., provides that most lawsuits against the State of Illinois shall be under the exclusive jurisdiction of the Court of Claims. Such lawsuits include "all claims against the State for damages in cases sounding in tort, if like cause of action would lie against a private person or corporation." Id. at Section 505/8(d). More specifically, the Court of Claims, which consists of seven judges appointed by the governor, has jurisdiction to hear the following types of cases, among others:

- cases arising under the Workers' Compensation Act as regarding State employees;
- cases based upon contracts with the State; and
- tort cases against the State of Illinois, including any claims for contribution.

The maximum recovery in tort under the Court of Claims Act is $100,000, unless the incident complained of involves the operation of a state-owned motor vehicle by a state employee. The State of Illinois is entitled to a setoff against that maximum recovery in the amount any other tortfeasor has paid or later pays to the claimant. In such cases, the $100,000 limit does not apply. The Court of Claims Act also has a notice requirement of one year. If notice of the filing of a lawsuit is not given within one year after the date of injury, the suit will be dismissed.

Although the State of Illinois is immune from lawsuits that do not fall within the purview of the Court of Claims Act, as a practical matter, most causes of action fall within the Court of Claims' broad mandate. The most notable features of the Court of Claims Act are the one-year notice requirement and the $100,000 damage limitation. Plaintiffs may attempt to avoid application of the Court of Claims Act for these reasons, which is possible under some circumstances. For example, a lawsuit against a doctor employed by the University of Illinois was held not to fall within the Court of Claims Act, although the doctor was a state employee. Kiersch v. Ogena, 230 Ill. App. 3d 57 (1992). The court held that the doctor owed the plaintiff a professional duty independent of his status of a state employee (the duty to avoid malpractice). Id. See also Johnson v. Halloran, 312 Ill. App. 3d 695 (2000).

The exception to the $100,000 damage limitation is for a case that arises out of the operation of a state-owned vehicle by a state employee. For example, assume a state trooper negligently strikes a pedestrian while on patrol. Such a case would be exempt from the $100,000 damage limitation.

1.b Lawsuits Against Municipalities

The Local Governmental and Local Governmental Employees Tort Immunity Act ("Tort Immunity Act"), 745 ILCS 10/1-101, et seq., provides local governmental units with certain immunities based upon specific government functions. Importantly, the Act does not create new duties, but limits liability with an extensive list of immunities. The distinction between an immunity and a duty is crucial, because only if a duty is found is the issue of whether an immunity or defense is available to the governmental entity considered. Zimmerman v. Village of Skokie, 183 Ill. 2d 30 (1998).

Some immunities granted by the Tort Immunity Act include:

- immunity for adopting or failing to adopt a law or for enforcing or failing to enforce a law, Section 2-103;
- immunity for negligence connected with the administration of licenses or permits, Section 2-104;
- negligence connected with the inspection of property for health and safety hazards, Section 2-105;
- immunity for negligence connected with injuries resulting from unsafe conditions of property if the local governmental entity had no actual or constructive notice of the condition, Section 3-106;
- immunity for the negligent failure to supervise an activity on public property, Section 3-108; or
- negligence connected with injuries resulting from participation in hazardous recreational activities, Section 3-109.

Local governmental entities are also immune from punitive damages under the Tort Immunity Act. George v. Chicago Transit Authority, 58 Ill. App. 3d 692 (1978). The Supreme Court held that the "special duty doctrine," a judicially created exception to the non-liability principles of the Tort Immunity Act, violates the provisions of the Illinois Constitution, governing sovereign immunity and the separation of powers. Harinek v. 161 N. Clark Street, Ltd. Partnership,

181 Ill. 2d 335 (1998); Zimmerman v. Village of Skokie, 183 Ill. 2d 30 (1998); DeSmet v. County of Rock Island, 219 Ill. 2d 497 (2006).

Lawsuits against local public entities often hinge upon whether the entity's (or its agents') acts constituted wilful and wanton misconduct. The Act provides immunity for most cases of ordinary negligence. Wilful and wanton misconduct is "any action that is intended to cause harm or, if not intentional, shows an utter indifference or conscious disregard for the safety of others or their property." 745 ILCS 10/1-210.[1] If a plaintiff pleads sufficient facts to establish wilful and wanton conduct, most immunities under the Tort Immunity Act will not apply. Examples of such cases are: allegations of excessive force used by police in making an arrest (Carter v. Dixon, 718 F. Supp. 1389 (1989)), and allegations that a wave pool owner removed non-slip strips from the bottom of the pool, despite the owner's knowledge that the absence of the strips would cause injury (Benhart v. Rockford Park Dist., 218 Ill. App. 3d 554 (1991) (but see Rooney v. Franklin Park Dist., 256 Ill. App. 3d 1058 (1993) (no wilful and wanton conduct where referee's unsafe placement of gym mats caused plaintiff to trip during park-sponsored hockey game), and J.D. v. Forest Preserve Dist. of Kane County, 313 Ill. App. 3d 919 (2000) (allowing continued growth of tree and failing to construct or create a barrier did not constitute wilful and wanton conduct)).

[1] Such as failure to exercise ordinary care to prevent a known, impending danger. Bernesak v. Catholic Bishop, 87 Ill. App. 3d 681 (1980).