TORT IMMUNITY ACT
2017 UPDATE
Illinois Local Government and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, et. seq.

- **Purpose**: to protect municipalities from liability arising from the operation of government.

- **Rationale**: to prevent the diversion of public funds from their intended purpose to the payment of damage claims and to allow public employees to exercise their judgment without the fear that a mistake made in good faith might subject them to a lawsuit.

*See Vill. of Bloomingdale v. CDG Enters. Inc.*, 196 Ill. 2d 484, 489 (2001); *Fender v. Town of Cicero*, 347 Ill. App. 3d 46, 48 (1st Dist. 2004).*
ARTICLE 1: GENERAL PROVISIONS & DEFINITIONS
Nothing in this Act affects the right to obtain relief other than damages against a local public entity or public employee. Nothing in this Act affects the liability, if any, of a local public entity or public employee, based on:

- a. contract;
- b. operation as a common carrier;
- c. the Workers’ Compensation Act.
Salvi v. Village of Lake Zurich, 2016 IL App(2d) 150249
- Count for breach of contract and count for writ of mandamus not barred by Tort Immunity Act.

Mulvey v. Carl Sandburg High Sch., 2016 IL App (1st) 151615
- The “hortatory” language in the school handbook and athletic handbook did not create a contract between the students/parents and the public school.
Issue: Whether the Tort Immunity Act applied to civil actions under the Illinois Human Rights Act where the plaintiff seeks damages, reasonable attorney fees and costs?

Holding: Claims under the Illinois Human Rights Act are constitutionally derived. ¶111. The Tort Immunity Act applies to actions under the Illionis Human Rights Act. Therefore, the City could assert immunity with respect to the plaintiff employee’s request for damages (actual damages, emotional damages and other compensatory damages), but not with respect to the plaintiff employee’s request for equitable relief (back pay, front pay, lost benefits and reinstatement). ¶¶97, 109.
Old Rule in the Second District: The Tort Immunity Act applies only to tort actions and does not apply to:

- Civil rights actions under federal or state constitution or § 1983 claims (*Firestone v. Fritz*, 119 Ill.App.3d 685, 689 (2nd Dist. 1983))
- Claims for unconstitutional taking/ eminent domain proceedings (*Streeter v. County of Winnebago*, 44 Ill.App.3d 392, 394-95 (2nd Dist. 1976)).


- “We do not adopt or approve the appellate court’s reasoning that the Tort Immunity Act categorically excludes actions that do not sound in tort.”
Plaintiff tripped and fell at Brookfield Zoo.

Chicago Zoological Society asserted the one-year statute of limitations in the Tort Immunity Act.

Sole question on appeal was whether the Society was a public entity under §1-206.

§1-206 lists what is included in “local public entity”: “as any not-for-profit corporation organized for the purpose of conducting public business.”
Court ruled that the Society was not a public entity because the District did not exercise sufficient control over the Society’s operations.
“Willful and wanton conduct” as used in this Act means a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property.
§ 1-210 – WILLFUL & WANTON CONDUCT

- Barr v. Cunningham, 2016 IL App (1st) 150437
- Lorenc v. Forest Preserve Dist., 2016 IL App (3d) 150424
- Mack Industries v. Vill. of Dolton, 2015 IL App (1st) 133620
ARTICLE 2
PART 1: PUBLIC ENTITIES
Plaintiff alleged that the Village did not comply with the provisions of a County storm water ordinance and an agreement to which Plaintiff was purportedly the 3rd party beneficiary.
§ 2-103: “A local public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.”

§ 2-104 & 2-206: “an injury caused by the issuance, denial, suspension or revocation of...any permit, license, certificate, approval, order or similar authorization…”

§ 3-105(a): “an injury caused by the effect of weather conditions as such on the use of streets, highways, alleys, sidewalks or other public ways, or places, or the ways adjoining any of the foregoing, or the signals, signs, markings, traffic or pedestrian control devices, equipment or structures on or near any of the foregoing or the ways adjoining any of the foregoing.”
ARTICLE 2
PART 2: EMPLOYEES
§ 2-201 & § 2-109: DISCRETIONARY IMMUNITY

745 ILCS 10/2-201

Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused.

745 ILCS 10/2-109

A local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable.
Two Part *Harinek* Test

1. An employee may qualify for immunity if he holds *either* a position involving the determination of policy or a position involving the exercise of discretion.

2. If the employee satisfies #1, then employee must show he engaged in both the determination of policy and the exercise of discretion when performing the act or omission from which the plaintiff’s injuries resulted.

*Harinek v. 161 N. Clark Street Ltd.*, 181 Ill.2d 335 (1998).
Large storm event caused flooding of 5% of City residents.

Plaintiffs alleged that City failed to maintain its system.

City filed a motion for summary judgment based on discretionary immunity, § 2-201.

City cited to affidavits and letters from the mayor and aldermen which outlined the City’s efforts to improve the sewer system prior to the flood.
Court held that § 2-201 applied.

“a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused.”

Court found the letter and affidavits demonstrated that the City had a plan which it was implementing in a staggered fashion because of budgetary concerns.

Although the City had a duty to maintain its sewers, how it maintained them was a discretionary decision.
Construction worker injured on City job site. Filed suit against City for failure to supervise.

Court held that § 2-201 was applicable (did not discuss § 3-108).

Contract authorized the City to reject or require modifications of any procedure, method, structure or equipment. Thus, the City’s supervision was discretionary.
Anti-bullying policy set forth in the school handbook.

Dismissed willful and wanton claim because the implantation of the disciplinary policy involves more than a ministerial task.

- The point system did not provide a ministerial application of the policy, because the School District had to determine whether a student committed a violation and what the consequence of the violation was before the “point value” was assigned.

- The discretionary determinations required the school district to balance the various interests which compete for the time and resources of the school and school safety.
§ 2-202: “A public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct.”

Appellate Court held there was no evidence that the officer’s conduct was willful and wanton.

Appellate Court held that based on the special interrogatory, § 2-202 applied.
ARTICLE 3: PUBLIC PROPERTY
§ 3-102: MAINTAIN PROPERTY

745 ILCS 10/3-102

(a) Except as otherwise provided in this Article, a local public entity has a duty to exercise ordinary care to maintain its property in a reasonably safe condition for the use in the exercise of ordinary care of people whom the entity intended and permitted to use the property in a manner in which and at such times as it was reasonably foreseeable that it would be used, and shall not be liable for injury unless it is proven that it has actual or constructive notice of the existence of such a condition that is not reasonably safe in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition.
¾ to 1 ½ inch height differential was *de minimis*.

City had immunity under § 3-102(a) because the injured plaintiff failed to meet his burden to provide facts regarding constructive notice.

City used § 3-104 to dismiss allegations for failure to warn.

- § 3-104 – Neither a public entity or employee are liable for injuries caused by their initial failure to provide “distinctive roadway marking or any other traffic regulating or warning sign, device or marking, signs...”

Open and Obvious – the sensory titles, by design, are open and obvious to reasonable people as well as visually impaired people because of the different color and consistency.
Neither a local public entity nor a public employee is liable for an injury where the liability is based on the existence of a condition of any public property intended or permitted to be used for recreational purposes, including but not limited to parks, playgrounds, open areas, buildings or other enclosed recreational facilities, unless such local entity or public employee is guilty of willful and wanton conduct proximately causing such injury.
Plaintiff was severely injured after two men illegally set off fireworks that exploded next to her at a Chicago Park District park.

Court held:

- § 3-106 does not apply because lighting fireworks is a dangerous activity, not a condition.
- § 3-108(a) does not apply because Plaintiff alleged that the District failed to supervise the men, not that they did so inadequately.
- § 3-109 does not apply because the District did not “conduct,” sanction, or license the hazardous activity, but instead forbade it.

Court found that there was no duty to supervise the men.
Issue 1 – Whether the tree at issue was a condition of the property intended for recreational purposes under § 3-106 when the tree’s base is 7 ½ feet from the edge of a bike path with a limb that overhangs the width of the path and breaks off hitting a bicyclist on the path.

§ 3-106 immunity applied, because the character of the property as a whole was recreational.

- Determine what is the “property.”
- Determine whether property is recreational.
Issue 2 – Whether the same tree was a condition of the riding trail under § 3-107(b).
- Bike path was a trail under § 3-107.

The tree was not a condition of the riding trail and § 3-107 immunity did not apply.
- Is the property unsafe or is the activity on the property unsafe?
  - If a tree limb was on the path and biker hit the tree limb, then the tree is a condition of the path and defendant would be immune from liability. See Goodwin v. Carbondale Park District, 268 Ill.App.3d 489 (1994).
- Condition causing injury must be on the trail.
Neither a local public entity nor a public employee is liable for an injury caused by a condition of: (a) Any road which provided access to fishing, hunting or primitive camping, recreational or scenic areas and which is not a … [government street]…(b) Any hiking, riding, fishing or hunting trail.
Issue: Whether the bike path was a “trail” under § 3-107.

Court reversed the trial court’s summary judgment in favor of the municipal defendants after finding that the area at issue was not a trail.

ARTICLE 4: POLICE ACTIVITIES
Coleman v. East Joliet Fire Prot. Dist., 2016 IL 117952

- Abolished the public duty rule and its special duty exception, finding it inconsistent with the limited statutory immunity under the Tort Immunity Act.
Court affirmed that § 4-102 codified the common law public duty rule as it applies to police protection.

Applied § 4-102:
Neither a local public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection service or, if police protection service is provided, for failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals.
ARTICLE 6: MEDICAL, HOSPITAL & PUBLIC HEALTH ACTIVITIES
Neither a local public entity nor a public employee acting within the scope of his employment is liable for injury caused by the failure to make a physical or mental examination, or to make an adequate physical or mental examination of any person for the purpose of determining condition that would constitute a hazard to the health or safety of himself or others.

(a) Neither a local public entity nor a public employee acting within the scope of his employment is liable for injury resulting for diagnosing or failing to diagnose that a person is afflicted with mental or physical illness or addiction or from failing to prescribe for mental or physical illness or addiction.

(b) Neither a local public entity nor a public employee acting within the scope of his employment is liable for administering with due care the treatment prescribed for mental or physical illness or addiction.
Court upheld summary judgment in favor of doctor and Stroger, Jr. Hospital and rejected plaintiff’s attempt to turn a failure to diagnose claim into a negligent/inadequate treatment claim.

Court found doctor/hospital had no duty to act in a courteous manner regarding claim for negligent infliction of emotion distress claim. ¶71.

Court held Emergency Medical Treatment and Active Labor Act (EMTALA) is federal law that preempts the Tort Immunity Act. ¶78
QUESTIONS?

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