

Unit Goal: Civil law procedures, consequences associated with law enforcement duties, and vocabulary associated with civil law action.

14.1. Identify possible imposed liabilities for improper acts by the officer and the outcomes occurring in that course of action.

Because of the responsibility a peace officer has in protecting society, the chance for misapplication of law or procedure can result in damages or harm to those served. This may lead to civil action against the officer and employing agency. To reduce this potential, officers must understand the responsibility they have, have a thorough knowledge of the laws of the State, and the application of Constitutional restraints on them and processes due citizens. Failing to do so increases liability potentials, which could result in settlements being paid out, embarrassment for the agency and profession, personal civil responsibility, and alienation of the law enforcement profession from those served. In terms of liability potential:

- A level of government may be held liable in an action including the state, county, municipality, or special district.
- An agency may be held liable whether the agency was created through actions of a legislative body, adoption of an ordinance or mandate of the state constitution.
- An individual peace officer employed in the service of any level of law enforcement agency may be held liable in their individual capacity.

Comprehensive Scenario #1: Civil Process and Liability (Related Sources include Texas Civil Practices and Remedies Code and Texas Penal Code)

The call goes out of an aggravated robbery in progress, shots having been fired. As the patrol unit pulls into the parking lot a man comes out of the liquor store, sees the unit, and fires several times hitting the car's windshield. The officer on the passenger side opens the door and begins returning fire. A total of twelve rounds are fired and the suspect collapses. After checking the suspect, who is killed in the exchange, officers find two people inside the store have been hit by the officer's gunfire. One is an elderly woman and the other a young man. Both are in critical condition. In addition, the front window of the store has been hit several times. On her way to the hospital, the elderly woman dies.

In this scenario, the student will:

- Evaluate the officer's potential for personal civil liability.
- Evaluate the potential for the agency's civil liability.
- Examine the situation in light of the provisions of TPC 9.05 and 9.06

Comprehensive Scenario #2: Civil Liability (Related Sources include Texas Civil Practices and Remedies Code and Texas Penal Code)

The agency's policy requires that anytime an officer makes an arrest, the suspect shall be placed in the back seat of the patrol unit in handcuffs and restrained with the seatbelt. Until the officer is ready to transport the suspect to the station or jail, the officer shall maintain constant observation of the suspect either through the window or by opening the rear door.

Following a lengthy struggle to handcuff a suspect, two officers are finally able to place the suspect in the rear seat and secure him with the seatbelt, per policy. Now that the fight is over, the two officers leave the patrol unit and quickly go inside the convenience store where the incident happened for a soda. They come out to the car, chat with another unit that arrived and

finally check on their prisoner. He is dead in the back seat from an apparent heart attack. Even after calling EMS and transporting the prisoner to the hospital, he is not revived.

Issues of liability for this incident could include policy violation, potential criminal charges, and civil liabilities. Discuss depths of civil liability and who could be held liable.

In this scenario, the student will:

- Evaluate potential liability for the agency and its policy.
- Evaluate the officer's potential liability for the conduct in light of policy and practice.
- Evaluate the officer's potential for criminal liability in light of Chapter 19 TPC

Process:

- Liability for Refusal or Neglect in Performance of Official Duties – 7.001 TCPRC - (a) A clerk, sheriff, or other officer who neglects or refuses to perform a duty required under the Texas Rules of Civil Procedure or under a provision of this code derived from those rules is liable for actual damages only in a suit brought by a person injured by the officer's neglect or refusal.
(b) The officer may be punished for contempt of court for neglect or refusal in the performance of those duties. The court shall set the fine at not less than \$10 or more than \$100, with costs. The officer must be given 10 days' notice of the motion.
(c) This section does not create a cause of action for an action that can otherwise be brought under Chapter [34](#). A party may seek actual damages under this section or Chapter [34](#), or the party may seek contempt sanctions, but the party may not seek both damages and contempt.
(d) An action or motion brought under this section must comply with and is subject to the provisions in Sections [34.068](#), [34.069](#), [34.070](#), and [34.074](#), except that a motion brought under Subsection (b) need not comply with Section [34.068](#)(b).
- Liability regarding execution of writs – 7.003 TCPRC - (a) Except as provided by Section [34.061](#), an officer is not liable for damages resulting from the execution of a writ issued by a court of this state if the officer in good faith executes or attempts to execute the writ as provided by law and by the Texas Rules of Civil Procedure.
(b) An officer shall execute a writ issued by a court of this state without requiring that bond be posted for the indemnification of the officer.
(c) An officer shows that the officer acted in good faith when the officer shows that a reasonably prudent officer, under the same or similar circumstances, could have believed that the officer's conduct was justified based on the information the officer possessed when the conduct occurred.
- Execution of process; penalty by sheriff – 85.021 LGC - (a) The sheriff shall execute all process and precepts directed to the sheriff by legal authority and shall return the process or precept to the proper court on or before the date the process or precept is returnable.
(b) The sheriff commits an offense if the sheriff:
 - (1) fails to return a process or precept as required by Subsection (a); or
 - (2) makes a false return.

(c) An offense under this section is punishable by the court to which the process is returnable, as for contempt, by a fine of not more than \$100. A fine collected under this section shall be deposited in the county treasury.

(d) The sheriff is liable for all damages sustained by a person by reason of an offense committed by the sheriff under this section.

- Failure to execute process by constable – 86.024 LGC - (a) If a constable fails or refuses to execute and return according to law a process, warrant, or precept that is lawfully directed and delivered to the constable, the constable shall be fined for contempt before the court that issued the process, warrant, or precept on the motion of the person injured by the failure or refusal. This section does not apply to actions brought under or that could have been brought under Chapter [34](#), Civil Practice and Remedies Code.

(b) The fine shall be set at not less than \$10 or more than \$100, with costs. The fine shall be for the benefit of the injured person. The constable must be given 10 days' notice of the motion.

14.2. Describe the difference between civil and criminal law.

Criminal Law: Under the authority of the 10th Amendment of the U.S. Constitution states have reserved, or police powers. These powers allow states to regulate the conduct of people within its borders. Criminal laws are enacted by the state legislature and define what is considered a violation of law. Referred to as a crime, a particular conduct is identified as being unacceptable and if a person engages in the defined conduct a penalty may be prescribed. When a crime is committed in Texas, it is done so “Against the Peace and dignity of the State.” The conducts and penalties are identified in the Penal Code. Based on the mandates of the U.S. Constitution, the state’s constitution, and the Code of Criminal Procedures, when a person is charged with a crime that person is protected by the due process requirements, but once these have been followed and the person is found guilty, a penalty may be prescribed. There are three types of penalty: fine, imprisonment, or execution. The standard required in a criminal case for conviction is proof beyond a reasonable doubt. (TPC Sec. 2.01)

Civil Law: involves legal actions between two individual parties that may include individuals, corporations, associations, or levels of government. In a civil action, one party is alleging some type of harm, or tort that has been inflicted as a result of the action(s) of another individual party. What is sought is a remedy that may come in the form of an injunction, to stop a continued action, or compensation used to restore the harmed party back to whole status. Civil actions fall into several different categories and include Tort Law, Family Law, Real Estate Law, Business and Employment Law. While civil actions are between individual parties, the state is involved by establishing a court system with the capacity to hear and decide on civil matters. Both the U.S. Constitution and state law recognize civil actions. The state has created a body of laws and procedures to address the rights of persons to initiate a civil action when there is allegation of a harm being inflicted. The standard required in a civil action for determining responsibility and the awarding of civil remedies is a preponderance of the evidence.

The legal and procedural processes are contained in the state's Texas Civil Practices and Remedies Code.

Comprehensive Scenario #3: Identify the major differences between civil and criminal law (Related Sources include Texas Civil Practices and Remedies Code and Texas Penal Code)

In the following scenarios, the student will:

- Evaluate the situation in light of the provisions of the contract agreement.
- Determine whom the parties shall be referred to if a contract violation exists.
- Assess the potential for criminal action under Chapter 28 TPC

An officer is dispatched to a civil call involving property damage. The officer is met by a man who reports that his property has sustained extensive damage as a result of flooding. The man shows the officer a contract for the use of an irrigation system managed by a local water authority. According to the contract, there are four property owners on this section with irrigation rights. Each owner has a scheduled date for irrigating. They are individually responsible for setting the water gates to divert water onto their property. The man shows the officer that his neighbor opened the wrong gate resulting in his property being flooded and damaging several rows of newly planted pecan trees. In addition, the person who opened the gates is not even scheduled for irrigation until two days from now. The property owner wants something done both criminally and civilly.

- Discuss the options the officer should advise the property owner of for possible civil action.
- Explain what options are available to the owner criminally in light of possible Chapter 28 (TPC) violations.

14.3. Describe the differences and penalties between general contempt of court and constructive contempt of court.

In general, contempt is conduct that obstructs the proper administration of justice. It may be conduct that tends to bring the authority and administration of the law into disrespect or disregard; interferes with or harms parties or witnesses during litigation; or otherwise tends to impede, embarrass, or obstruct the court in discharge of its duties. Objectionable behavior that occurs outside the presence of the court is called constructive (or indirect) contempt. The judge has no personal knowledge of the act(s), and so it is necessary for the judge to conduct a hearing to consider evidence. The alleged contemnor—the person accused of contempt of court—is entitled to formal notice of the allegation of contempt and must be afforded a hearing; oral notice is insufficient.

Section 21.002, Government Code Contempt of Court

(a) Except as provided by Subsection (g), a court may punish for contempt.

(b) The punishment for contempt of a court other than a justice court or municipal court is a fine of not more than \$500 or confinement in the county jail for not more than six months, or both such a fine and confinement in jail.

(c) The punishment for contempt of a justice court or municipal court is a fine of not more than \$100 or confinement in the county or city jail for not more than three days, or both such a fine and confinement in jail.

(d) An officer of a court who is held in contempt by a trial court shall, on proper motion filed in the offended court, be released on his own personal recognizance pending a determination of his guilt or innocence. The presiding judge of the administrative judicial region in which the alleged contempt occurred shall assign a judge who is subject to assignment by the presiding judge other than the judge of the offended court to determine the guilt or innocence of the officer of the court.

(e) Except as provided by Subsection (h), this section does not affect a court's power to confine a contemner to compel the contemner to obey a court order.

(f) Article 42.033, Code of Criminal Procedure, and Chapter 157, Family Code, apply when a person is punished by confinement for contempt of court for disobedience of a court order to make periodic payments for the support of a child. Subsection (h) does not apply to that person.

(g) A court may not punish by contempt an employee or an agency or institution of this state for failure to initiate any program or to perform a statutory duty related to that program:

- (1) if the legislature has not specifically and adequately funded the program; or
- (2) until a reasonable time has passed to allow implementation of a program specifically and adequately funded by the legislature.

(h) Notwithstanding any other law, a person may not be confined for contempt of court longer than:

- (1) 18 months, including three or more periods of confinement for contempt arising out of the same matter that equal a cumulative total of 18 months, if the confinement is for criminal contempt; or
- (2) the lesser of 18 months or the period from the date of confinement to the date the person complies with the court order that was the basis of the finding of contempt, if the confinement is for civil contempt.

Unit Goal: Identify how courts are established and their jurisdictions.

14.4. Identify the constitutionally, and legislatively created courts of Texas.

Courts in Texas are created by one of three sources of authority. A court may be created under the authority of the state's constitution and are referred to as constitutional courts. Courts may be created by acts of the state legislature and are referred to as courts at law. A court may be created by the acts of the governing body of a chartered municipality. These courts are referred to as municipal courts.

14.5. Identify the general court jurisdiction of Texas.

- The jurisdiction of a court is recognized as the power of a court to hear a case.
- The jurisdiction in a criminal case is determined by the severity of the offense charged as specified in the Texas Penal Code. An offense may be any of the five levels of felony offense or any of the three levels of misdemeanor offense.

- In a civil case, jurisdiction will be determined by the amount of compensation sought or may be determined by the area of law under which the civil action is initiated.
- Courts may be designated as appellate courts. This means the court has the power to hear a case, civil or criminal, for which a decision has been rendered by a court of competent jurisdiction, but for which a situation or condition has resulted in the filing of an appeal, or subsequent hearing based on the legal issue. Appeals must always be heard by a court with superior jurisdiction so that a prior court's decision may, upon finding, reverse the previous decision.

Comprehensive Scenario #4: General Court Jurisdiction of Texas (Related Sources Include Texas Constitution, Texas Civil Practices and Remedies Code and Texas Penal Code)

In the following scenario, the student will:

- Evaluate the document to determine if the court has jurisdiction.
- Evaluate the authority of the deputy to execute the provisions of the order.
- Consider potential consequences of contempt or criminal charges against the property owner.

Officers are dispatched to a request for assistance call. Sheriff's deputies have gone out to a house to seize property pursuant to a court order. When they arrive, the deputy shows them a court order issued by a district court ordering the seizure of property totaling \$125,000.00 to satisfy a judgment. The defendant in the case has met the deputies at the entrance to his property and blocked their entry. Examination of the order shows it is current and issued by a state district court. The name of the defendant is evident, and the property owner is positively identified. The deputies are directing the officers to assist with apprehending the property owner if he continues to block their attempts to take the property. The owner tells the deputies and officers that he will do everything in his power to prevent them from coming on the property and taking anything of his regardless of what the order says.

14.6. Describe civil actions, procedures, and process.

Instructor Note: The following narrative should be considered to address the provisions of 14.5.1, 14.5.2, 14.5.3 and 14.5.4. Note that underlined terms are key vocabulary in the study of civil process. Unless enrolled in an intermediate or advanced civil process course, the following should be adequate to orient the peace officer trainee to civil action.

Based on the student's understanding of civil law, as described in this material, the following description for the associated process(es) for a civil action should be used.

- "A civil action is initiated when an aggrieved party makes a claim of a tort, or legal harm, civil complaint, referred to as a petition, detailing out the facts of the tort and the expected remedy. With the completion, and filing of the petition with the court clerk, the aggrieved party is referred to as the plaintiff."
- "The party alleged to have committed the tort action is referred to as the defendant. Once the petition has been filed, the defendant shall receive legal notice of the civil action with the service of a citation. Service is usually done in a direct, face to face action. When authorized service may be done through an agent or representative for the defendant.

When a defendant is uncooperative or attempts to avoid service, at the direction of the court alternate service may be used. The citation, an instrument of the court, lets the defendant know the facts of the action and the demand of the plaintiff as compensation.”

- “A failure of the defendant to respond to the action could result in a default judgment. This is a decision by the court rendered in favor of the plaintiff for the defendant’s failure to respond to or appear before the court to answer the demands of the plaintiff.”
- “A defendant files an answer with the court as an official response to the demands from the plaintiff. An answer may deny the charge, accept the demand, or allege some other explanation or recourse.”
- “Should the parties, plaintiff and defendant, not be able to reach a settlement, a trial before a court of competent jurisdiction may be heard. Based on the testimony and evidence presented, the court will render a decision and a judgment may be issued. A judgment represents the decision of the court and instructs the named party on the actions that shall be undertaken. A judgment is enforceable and when a named party fails to comply, the judgment may be enforced using the civil enforcement capacity of the Sheriff’s or Constable’s Office for that jurisdiction.”