

Common Liability Issues
Submitted by Thomas R. Greer

Common Liability Issues

- Excessive Force
 - Pursuit
 - Wrongful (False) Arrest and False Imprisonment
 - Malicious Prosecution
 - Shooting Incidents
 - Automobile Incidents
 - Detainee and Prisoner Suicides
 - Off Duty Activities
 - Municipal Liability
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A. Excessive Force

Elements:

- Excessive force claims are derived from the Fourth Amendment right to be free from unreasonable seizures. A Fourth Amendment seizure occurs “when there is a governmental termination of freedom of movement through means intentionally applied.” Brower v. County of Inyo, 489 U.S. 593, 596-597 (1989).
- A citizen has the right to be free from unreasonable force when being arrested or detained by a law enforcement officer. The test is whether the amount of force used was objectively reasonable under the particular circumstances by using a “reasonable officer” standard. Graham v. Connor, 490 U.S. 386, 395 (1989).
- The use of any force by officers simply because a suspect is argumentative, contentious, or vituperative is illegal. Force can only be used to overcome physical resistance or threatened force, and a lack of provocation or need to use force would make any use of force excessive. The use of more force than is necessary or of force for an improper purpose is illegal. Bauer v. Norris, 713 F.2d 408, 412 (8th Cir. 1983), Agee v. Hickman, 490 F.2d 210, 212 (8th Cir. 1974); Feemster v. Dehtjter, 661 F.2d at 89; United States v. Harrison, 671 F.2d 1159 (8th Cir. 1982).
- Tennessee law is substantially similar. “An officer may use the force that is reasonably necessary to make the arrest.” T.P.I.—Civil 8.06, 7th Edition.

- To assess the gravity of a particular intrusion on Fourth Amendment rights, the factfinder must evaluate the type and amount of force inflicted. In weighing the governmental interests involved the following should be taken into account: (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. The most important single element of the three specified factors is whether the suspect poses an immediate threat to the safety of the officers or others. STEPHEN YAGMAN, POLICE MISCONDUCT AND CIVIL RIGHTS: FEDERAL JURY PRACTICE AND INSTRUCTIONS No. 1 3.48 (2d ed. 2002).
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B. Pursuit

Elements:

- The use of force in pursuit cases, like any other use of force case, is dependent on the factual circumstances is governed by objectively reasonable officer standard. Graham v. Connor, 490 U.S. 386, 395 (1989). See supra, part A.
- An automobile has been determined to be a “deadly weapon” when used inappropriately.

Notable Cases:

Scott v. Harris, 550 U.S. 372 (2007)

- The Supreme Court ruled that deadly force may not be unreasonable in situations where persons involved in high speed car chases are acting in a manner that poses a threat to the officers or others in the community.
- Deputy Timothy Scott terminated a high speed pursuit by applying a push bumper maneuver to the rear of Victor Harris car, the accident rendered Mr. Harris a quadriplegic. Mr. Harris filed suit pursuant to 42 U.S.C. § 1983 alleging the use of excessive force resulting in an unreasonable seizure under the Fourth Amendment.
- The district court denied Scott’s summary judgment motion based upon qualified immunity. The Eleventh Circuit confirmed on an interlocutory appeal concluding that viewing the evidence in a light most favorable to the plaintiff, Scott’s actions could constitute unreasonable deadly force.
- The Supreme Court in Scott disagreed with the 11th Circuit and held that because the car chase that Harris initiated posed a substantial and immediate risk of serious physical injury to others, Scott’s attempt to terminate the chase by forcing respondent off road was reasonable and Scott is entitled to summary judgment. The Court’s decision was largely based on watching the video of the pursuit.

Smith v. Freland, 954 F.2d 343 (6th Cir. 1992)

- The Court ruled there was no Fourth Amendment violation when an officer shot a fleeing suspect who presented a risk to others.
- In Smith, the officer and suspect engaged in a chase, which appeared to be at an end when the officer cornered the suspect at the back of a dead end residential street. The suspect then freed his car and began speeding down the street. At that point, the officer fired a shot, which killed the suspect.
- The Court held the officer's decision was reasonable and thus did not violate the Fourth Amendment. The Court noted that the suspect, "had proven he would do most anything to avoid capture" and he posed a major threat to, among others, the officers at the end of the street.

Innocent Bystanders

- High speed police chases with no intent to harm do not give rise to a claim under 42 U.S.C. §1983, even if the officer was reckless and indifferent to the lives of others. County of Sacramento v. Lewis, 523 U.S. 833 (1998).
- Tennessee Code Ann. § 29-20-205 removes immunity for negligent acts of employees within the scope of their employment. Therefore, cases where a bystander is injured or killed in a pursuit should be brought under the Tennessee Governmental Tort Liability Act. See e.g. Hill v. Germantown, 31 S.W.3d 234 (2000).

C. Wrongful Arrest

Elements:

- An officer must see an objective violation of the law, or have reasonable suspicion that a crime is about to occur or has occurred, before an officer may detain an individual. Whren v. United States, 517 U.S. 806 (1996).
- Therefore, an officer's subjective belief that the law has been violated will not shield him or her from liability. In context of 42 U.S.C. § 1983, the imprisonment would not be unlawful if there was probable cause to make the arrest.

Notable Case:

Sorrell v. McGuigan, 38 Fed.Appx. 970, 973 (4th Cir.2002)

- Plaintiff was arrested after an officer discovered a knife during a pat down. The officer believed that possession of the knife constituted a crime and the plaintiff was arrested.

The knife fell under the “pen knife” exception of Maryland law and therefore, it was not illegal for the plaintiff to possess the knife.

- The court noted that the state statute made the plaintiff’s concealed carrying of the weapon legal. The court found that, although “[q]ualified immunity protects law enforcement officers from bad guesses in gray areas,” the fact that the plaintiff’s actions were clearly permissible under the statute meant that the officer “was not in a gray area.”
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D. Malicious Prosecution

Elements:

- Under common law malicious prosecution requires that: 1) The defendant started or caused someone else to start the criminal proceeding against the plaintiff; 2) The defendant acted with malice; 3) The defendant acted without probable cause in starting or causing someone else to start the criminal proceeding against the plaintiff; and 4) The case against the plaintiff ended in the plaintiff’s favor. T.P.I.—8.21, Seventh Ed.
 - In Sykes v. Anderson, 625 F.3d 294, 308-09 (6th Cir. 2010), the Sixth Circuit listed four requirements for a § 1983 Fourth Amendment malicious prosecution claim: (1) initiation of a criminal prosecution against the plaintiff that was made, influenced or participated in by the defendant; (2) a lack of probable cause; (3) the plaintiff must have consequently suffered a deprivation of liberty apart from the initial seizure; and (4) the criminal proceeding must have been resolved in favor of the plaintiff.
 - There is a split in the Circuits over whether malice is required. Sykes held that malice is not required. Some Circuits have also held that no claim for malicious prosecution can be brought under § 1983 when a state law remedy exists. See Parish v. City of Chicago, 594 F.3d 551, 552 (7th Cir. 2009).
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E. Shooting Incidents

Elements:

- The test is whether the amount of force used was objectively reasonable under the particular circumstances by using a “reasonable officer” standard. Graham v. Connor, 490 U.S. 386, 395 (1989).
- In all shooting cases, the Court focuses on the facts and circumstances that the officer observes immediately before making the decision to use deadly force. This is often referred to as “segmenting.”

Notable Cases

Tennessee v. Garner, 471 U.S. 1 (1985)

- Tennessee enacted a statute that authorized law enforcement officer to use deadly force against “fleeing felons.”
- U.S. Supreme Court held that:
 - “The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are a little slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, nondangerous suspect by shooting him dead.”

Bouggess vs. Mattingly, 482 F.3d 886 (6th Cir. 2007)

- This shooting case demonstrates the 6th Circuit’s use of what is known as “segmenting,” where the Court will “carve up the incident into segments and judge each on its own terms to see if the officer was reasonable at each stage.” Dickerson v. McClellan, 101 F.3d 1151, 1161 (6th Cir. 1996).
- In Bouggess, the Court noted that after the suspect broke away and began to run from officer, the threat level de-escalated. The Court indicated that shooting suspect may have been constitutionally reasonable when the two men were struggling, but after the suspect broke free and ran, it was constitutionally unreasonable to shoot him three times in his back as he ran away.

F. Automobile Incidents

Elements:

- Tennessee Code Ann. § 29-20-205 removes immunity for negligent acts of employees acting within the scope of their employment. This would apply to auto accidents involving officers acting in the course and scope of their employment.
- Pursuit cases where an innocent bystander is injured or killed should be brought under the Tennessee Governmental Tort Liability Act. See e.g. Hill v. Germantown, 31 S.W.3d 234 (2000).

G. Detainee and Prisoner Suicides

Elements:

- A detainee's constitutional rights under the Eighth and Fourteenth Amendments are denied by deliberate indifference to serious medical needs just as such indifference denies the corresponding rights of a convicted prisoner. Anderson v. City of Atlanta, 778 F.2d 678, 686-87 (11th Cir.1985); Garcia v. Salt Lake County, 768 F.2d 303, 307 (10th Cir.1985).
- Deliberate indifference is the conscious or reckless disregard of the consequences of one's acts or omissions. It entails more than mere negligence, but is less than intending to cause harm.

Notable Cases:

Estelle v. Gamble, 429 US 97 (1976)

- Although not a custodial suicide case, this landmark case did recognize providing medical services to an inmate related to the Eighth Amendment ban on cruel and unusual punishment. The inmate did not prevail on his claim, but the case did set the framework for § 1983 cases pertaining to inmate medical issues, including suicide.

Frake v. City of Chicago, 210 F.3d 779 (7th Cir. 2000)

- The court found the City of Chicago was not deliberately indifferent to the welfare of a pretrial detainee, even though the city had continued to place detainees in cells containing horizontal metal bars, despite past suicides or attempted suicides by detainees using such bars because the detention facility used a thorough screening process and took precautions to protect detainees from the risk of suicide because the facility personnel received suicide awareness training, the cells were checked every 15 minutes, and dangerous items were removed from the detainee's possession, and in addition, the cell construction was authorized by state standards, and there was no evidence that anyone had knowledge that the detainee was suicidal.

H. Off Duty Activities

Elements:

- Section 1983 has two basic requirements: (1) state action (one who acts under color of state law) which (2) deprives an individual of federal statutory or constitutional rights. Flint v. Ky. Dept. of Corrections, 270 F.3d 340, 351 (6th Cir. 2001).
- A public official acts under color of state law when he has "exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." West v. Atkins, 487 U.S. 42, 49 (1988).

- "Section 1983 is generally not implicated unless a state actor's conduct is such that the actor could not have behaved as he did without the authority of his office." Waters v. City of Morristown, Ten., 242 F.3d 353, 359 (6th Cir. 2001)
 - Action of a purely personal, private nature is not state action and is not actionable under § 1983. Stengel v. Belcher, 522 F.2d 438 (6th Cir. 1975).
 - The fact that a police officer is on or off duty, or in or out of uniform is not controlling. It is nature of the act performed, not the clothing of the actor or even the status of being on duty, or off duty, which determines whether the officer has acted under color of law. Stengel v. Belcher, 522 F.2d 438, 441 (6th Cir. 1975).
 - "[T]he test for whether an officer acted under color of state law is not what the victim knew about the officer at the time of the incident, but rather what actions did the officer take to assert his authority under color of state law." Harmon v. Grizzel, 2005 WL 1106975 (S.D. Ohio 2005).
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I. Municipal Liability

Elements:

- There is no respondeat superior liability under § 1983. Monell v. Dep't of Soc. Serv., 436 U.S. 658, 694 (1978)
- Municipalities face liability under § 1983 when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflict the injury. Pineda v. Houston, 291 F.3d 325, 328 (5th Cir. 2002).
- Proof of municipal liability requires: 1) an official policy or custom of which, 2) a final policy maker can be charged with actual or constructive knowledge, and 3) the policy is the "moving force" behind the actual constitutional violation. Id.
- Liability of supervisors requires a showing that the supervisors either encouraged the behavior involved in the incident or in some manner participated in it. At a minimum, the plaintiff must show that the supervisor implicitly authorized, approved or knowingly acquiesced in the unconstitutional conduct of the supervised officers. Comstock vs. McCrary, 273 F.3d 693, 712-713 (6th Cir. 2001).

Examples:

Policy or Custom

- An implicit or unwritten municipal policy can be found in “a widespread practice that, although not authorized by written law or express municipal policy, is ‘so permanent and well settled as to constitute ‘custom or usage’ with the force of law.’” City of St. Louis v. Praprotnik, 485 U.S. 112, 127, (1988).

Failure in Hiring

- A municipality incurs liability under § 1983 for failing to screen the background of a job applicant only when the “plainly obvious consequence of the [hiring] decision” is that the employee is likely to deprive citizens of specific federal rights. Board of the County Comm. V. Brown, 117 S. Ct. 1382 (1997).

Failure in Training

- The inadequacy of police training may serve as the basis for § 1983 liability where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact. City of Canton v. Harris, 489 U.S. 378, 388 (1989).
- The Canton court indicated at least two types of situations that would justify a conclusion of deliberate indifference in the failure to train police officers.
 - First, failure to provide adequate training in light of foreseeable consequences that could result from the lack of instruction. For example, the Court indicated that lack of instruction in the use of firearms or in the use of deadly force could constitute "deliberate indifference."
 - Second, failure to act in response to repeated complaints of constitutional violations by officers.

Failure in Discipline

- An absence of a strictly enforced disciplinary system may lead officers to believe they are above the law and would not be sanctioned for their misconduct. Bordanaro v. McLeod, 871 F.2d 1151, 1162 (1st Cir. 1989).
- The failure to implement policies that “were such that officers knew they must report any confrontations, that others could call the... Department to report complaints to the department, and that the department would investigate the complaints” may amount to deliberate indifference to the constitutional rights of the Plaintiff when “the purpose of such policies...is to stop the use of gratuitous force.” Vineyard v. County of Murray, Ga., 990 F.2d 1207, 1212 (11th Cir. 1993).

- Refusing seriously to investigate an incident or to discipline the involved officers may constitute a pattern of conduct that ratified bad conduct as may recklessly ignoring evidence that government employees had violated Plaintiff's constitutional rights in attempting to secure their malicious prosecution. Gentile v. Suffolk County, 926 F.2d 142, 146 (2d. Cir. 1991).