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SECTION 1983 LITIGATION: PRACTICAL CONSIDERATIONS

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Section 1983:

HISTORICAL CONTEXT

Historical background

- Enacted by the 42nd Congress pursuant to Section 5 of the Fourteenth Amendment, and codified in 1874.
- "The very purpose of s 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, whether that action be executive, legislative, or judicial." *Mitchum v. Foster*, 407 U.S. 225, 242 (1972)

“Constitutional Torts”

- Section 1983 is “is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred.” *Graham v. Connor*, 490 U.S. 386, 393–94 (1989)
- Court “looks to the common law for guidance in determining the scope of the immunities available in a § 1983 action.” *Rehberg v. Paulk*, 566 U.S. 356, 362–63 (2012).
- Section 1983 is the exclusive remedy for alleged constitutional violations by state and local officials. *See Mungai v. Univ. of Minnesota*, No. 24-1894, 2025 WL 1775374, at *4 (8th Cir. June 26, 2025).

Section 1983:

TEXT AND APPLICATION

42 U.S.C. Section 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

“Every person”

- Persons:
  - State and local public officials in individual capacities.
  - Municipalities and other local government units, if plaintiff is injured by a “official policy or custom.” *See Monell v. Department of Social Services of City of New York* 436 U.S. 658, 98 (1978).
- NOT persons:
  - Private parties not acting under color of law (generally).
  - State, state agency, or state official in “official capacity.” *Will v. Michigan Dept. of State Police,* 491 U.S. 58 (1989).

Distinguishing individual and official capacity

- Usually, complaint will specify: “John Smith, in his individual and official capacity.”
- If not specified in complaint, court uses the “course of proceedings” test: “The fundamental question is whether the course of proceedings has put the defendant on notice that she was being sued in her individual capacity and that her personal liability was at stake.” *SAA v. Geisler*, 127 F.4th 1133 (8th Cir. 2025) (*en banc*).
- Relevant factors include: how early plaintiff specified capacity; prayer for punitive damages; whether defendant raised qualified immunity.

“Under color of [law]”

- Closely related to Fourteenth Amendment “state action” analysis. Sheldon Nahmod, *Civil Rights & Civil Liberties Litigation: The Law of Section 1983,* Section 2.11
- **Ask**: Was the official acting pursuant to the power the official possessed by virtue of state authority, or as a private individual? *See Monroe v. Pape*, 365 U.S. 167, 184 (1961).
- Examples:
  - Law enforcement officer
  - Doctor who contracts with correctional facility

Example

A doctor has his own private practice and also contracts with the state prison to provide orthopedic services. The contract requires the doctor to staff an in-prison clinic twice a week and perform occasional surgeries. Plaintiff inmate suffers an Achilles tendon injury in prison and is treated by the doctor. The inmate sues the doctor, alleging that the doctor was deliberately indifferent to a serious medical need.

Is the doctor acting under "color of law" for purposes of Section 1983?

Yes, because he was acting with power possessed by virtue of contract with the government. *West v. Atkins*, 487 U.S. 42 (1988)

Secured by the Constitution *and laws*

- Constitution (e.g. Fourth, Eighth, Fourteenth Amendments)
- Federal statutes, if:

  1. The statute creates an individually enforceable right in the class of beneficiaries to which the plaintiff belongs.

  2. Section 1983 remedy is consistent with express or implied intent of Congress.

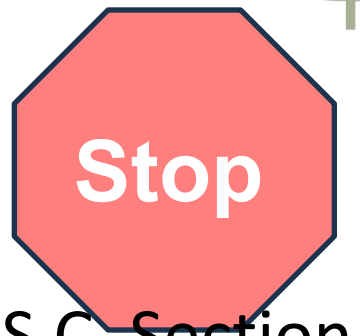
  - Note: Spending Clause legislation generally does not create individually enforceable rights. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 280 (2002)

State of mind

- No specific “state of mind” required for Section 1983 action. *Parratt v. Taylor*, 451 U.S. 527 (1981).
- Some constitutional amendments have “state of mind” requirements. Example: Eighth Amendment claims require “malicious and sadistic” conduct for “use of force” claims and “deliberate indifference” for other claims.
- Generally, negligence is not enough.

“Redress”

- Retrospective (think: tort damages)
  - Compensatory (out-of-pocket losses, medical, emotional, wage loss, etc.)
  - Nominal
  - Punitive
- Prospective
  - Injunctive relief
- Attorney fees (per 42 U.S.C. Section 1988)



Section 1983:

DEFENSES AND IMMUNITIES

Defenses

- Statute of limitations (borrowed from state statute of limitations)
- Res judicata, collateral estoppel, and other preclusion doctrines
- Abstention
- Immunities
  - Sovereign
  - Absolute
  - Qualified

Sovereign immunity

- State is not a "person" for purposes of Section 1983. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989).
- Generally, 11th Amendment bars claims for damages against nonconsenting state, absent waiver or valid abrogation of sovereign immunity. *See Allen v. Cooper*, 140 S. Ct. 994, 1000 (2020).
- *Ex Parte Young* exception: 11th Amendment does not bar injunctive relief, but federal court may not order relief "measured in terms of a monetary loss resulting from a past breach of a legal duty on the part of the defendant state officials." *Edelman v. Jordan*, 415 U.S. 651, 668 (1974)

Absolute Immunities: “Functional approach”

“Under that approach, we examine the nature of the functions with which a particular official or class of officials has been lawfully entrusted, and we seek to evaluate the effect that exposure to particular forms of liability would likely have on the appropriate exercise of those functions.”

Forrester v. White, 484 U.S. 219, 224 (1988)

Absolute immunity: Legislative

State and local legislators are absolutely immune from Section 1983 liability for "legitimate legislative activity." *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951).

Absolute immunity: Judicial

Judges are absolutely immune from liability for judicial acts even when accused of acting maliciously or corruptly. *Pierson v. Ray*, 386 U.S. 547 (1967).

Example

Judge was presiding over a child custody matter. The children, who were waiting in the hallway during the hearing, did not like the way the judge ruled, and began to loudly protest when they learned of the judge's ruling. The judge personally escorted the children to jail, waited while they removed their clothes and belongings, and then came back an hour later to release them. Later on in the case, the judge issued an order requiring the children (by then living out of state) to be picked up by law enforcement and placed in a juvenile detention center. The state supreme court later issued a writ effectively nullifying the judge's pick-up order.

Is the judge entitled to immunity for taking the kids to jail?

No. Physically putting people in jail is not a judicial act.

Rockett as next friend of K.R. v. Eighmy, 71 F.4th 665, 672 (8th Cir. 2023)

Is the judge entitled to immunity for issuing the pick-up order?

Yes, because issuing the order was a judicial act in a case in which the judge had jurisdiction. *Id*.

Absolute immunity: Prosecutorial

Prosecutors are generally immune from conduct as an advocate because it is associated with the judicial phase of criminal process. *Imbler v. Pachtman*, 424 U.S. 409, 419 n.13 (1976).

Example

Police investigating "criminal libel" sought and obtained warrant to search residence of plaintiff, a college student who published a blog making fun of local professors. In preparing warrant, police sent the warrant affidavit for review by deputy district attorney, who approved it. Prosecutor's office later declined to press charges.

Is deputy district attorney entitled to absolute immunity for warrant review?

No, because review of affidavit was not related to the judicial process and attorney was not preparing for judicial proceeding by reviewing affidavit.

Mink v. Suthers, 482 F.3d 1244, 1263 (10th Cir. 2007)

Qualified immunity

- Rooted in common law tort immunity for public officials.
- Qualified immunity protects “all but the plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 341, (1986).
- Officials “are not liable for bad guesses in gray areas; they are liable for transgressing bright lines.” *Boudoin v. Harsson* , 962 F.3d 1034, 1040 (8th Cir. 2020)

Two-part inquiry

1. Has the plaintiff alleged/shown a violation of a constitutional right?
2. Was the right clearly established at the time of the incident?

- If answer to either question is “no,” official is entitled to qualified immunity.
- Court may exercise discretion as to which prong to analyze first. *Pearson v. Callahan*, 555 U.S. 223, 244 (2009).

What is clearly established law?

- Contours of the right must be so clearly defined that "every reasonable official would [have understood] that what he is doing violates that right." *Reichle v. Howards*, 566 U.S. 658, 664 (2012).
- Generally, must have case from jurisdiction directly on point, or a robust consensus of persuasive authority. *D.C. v. Wesby*, 138 S. Ct. 577, 589 (2018).
- BUT: it is not necessary to for a case directly on point if constitutional violation would be "obvious" to reasonable official. *Hope v. Pelzer*, 536 U.S. 730, 733-35 (2002).

Novel factual circumstances

- *Hope v. Pelzer*, 536 U.S. 730 (2002): Inmate chained to a hitching post in the sun for hours without regular water or restroom breaks.

- *Taylor v. Riojas*, 592 U.S. 7 (2020): Inmate was confined for six days in one cell with “massive amounts of feces” and then another that was frigid and had only a clogged drain for a toilet.

Example

Program director at a state community college testified in proceeding that led to criminal conviction of another public official. President of college later terminated program director's employment. Program director sued, alleging retaliation in violation of the First Amendment. Courts in two other circuits say program director's firing was unconstitutional under these circumstances. (Assume testimony is protected speech)

Does the president have qualified immunity for
firing the program director?

Yes, because case law in the college's circuit was ambiguous at best.

See Lane v. Franks, 573 U.S. 228, 242 (2014)

Example

Newspaper photographer was covering a protest at a state capitol. Officers issued dispersal orders. Officer thought photographer was a protester who was not obeying orders. Officer grabbed photographer (who identified himself as journalist), pepper sprayed him, tackled him to the ground, ziptied hands, and arrested him.

Is officer entitled to qualified immunity for excessive force?

No, because photojournalist was a nonviolent, nonthreatening misdemeanant who was not actively resisting.

Nieters v. Holtan, 83 F.4th 1099, 1109 (8th Cir. 2023).

Questions?

Further reading

- Sheldon Nahmod, *Civil Rights & Civil Liberties Litigation: The Law of Section 1983* (Westlaw).
- Eighth Circuit Jury Instructions: https://juryinstructions.ca8.uscourts.gov/