GOVERNMENTAL IMMUNITIES: QUALIFIED AND SOVEREIGN IMMUNITY

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QUALFIED IMMUNITY: Legal standard

- "We therefore hold that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

- "[I]mmunity protects 'all but the plainly incompetent or those who knowingly violate the law." *White v. Pauly*, 580 U.S. 73, 79 (2017).

QUALIFED IMMUNITY: When might it apply?

- Applies to:
  - Section 1983 individual capacity claims against state or local public officials
  - *Bivens* claims against federal officials

- What Doesn't Get Qualified Immunity?
  - State law constitutional and tort claims
  - Official capacity claims
  - Private parties

QUALIFIED IMMUNITY: Why have it?

- "Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions." *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011).
  - Unlike Minnesota's Tort Claims Act, Section 1983 claims don't limit damages, including punitive damages, and allow attorneys' fees

- Public policy
  - "[N]ecessary to preserve their ability to serve the public good or to ensure that talented candidates were not deterred by the threat of damages suits from entering public service." *Wyatt v. Cole*, 504 U.S. 158, 167 (1992).

QUALIFIED IMMUNITY: How do I brief it?

- Two Questions:
  - (1) "Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" *Saucier v. Katz*, 533 U.S. 194, 201 (2001).
  - (2) Did the conduct "violate clearly established statutory or constitutional rights of which a reasonable person would have known"? *White v. Pauly*, 580 U.S. 73, 78-79 (2017).
- The court can answer either question first. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

QUALIFIED IMMUNITY: Clearly Established?

- "A Government official's conduct violates clearly established law when, at the time of the challenged conduct, '[t]he contours of [a] right [are] sufficiently clear' that every 'reasonable official would have understood that what he is doing violates that right." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

- "We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd,* 563 U.S. 731, 741 (2011).
  - "[T]he clearly established law must be 'particularized' to the facts of the case." *White v. Pauly*, 580 U.S. 731, 741(2017).
  - "[T]he clearly established right must be defined with specificity." *City of Escondido v. Emmons*, 586 U.S. 38, 42 (2019)
  - And the law had to be clearly established at the time of the event. *Brosseau v. Haugen*, 543 U.S. 194, 200 n.4 (2004) (decisions that postdate the conduct "could not have given fair notice to Brosseau and are of no use in the clearly established inquiry").

QUALIFIED IMMUNITY: When facts were known?

- Qualified immunity analysis is limited to what the government official knew at the time the action was taken.
  - *Hernandez v. Mesa*, 582 U.S. 548 (2017):
    - Case about a Border Patrol Agent (physically in the United States) who shot and killed a 15-year-old Mexican national (physically located in Mexico)
    - Court of Appeals relied on the fact that the plaintiff "was 'an alien who had no significant voluntary connection to … the United States.'"
    - Supreme Court noted that the officer did not know the plaintiff's "nationality and the extent of his ties to the United States"
    - "Facts an officer learns after the incident ends—whether those facts would support granting immunity or denying it—are not relevant."

SOVEREIGN IMMUNITY: State Statutory Claims

- State is immune from statutory claims unless immunity is waived"
- "[I]mmunity may be waived only if the state is expressly mentioned in a claim-creating statute or if the legislature's intention to waive the state's sovereign immunity otherwise is plain, clear, and unmistakable." *Nichols v. State*, 842 N.W.2d 20, 24 (Minn. Ct. App. 2014).

- Two Ways To Waive:
  - (1) Was the State named in the text of the statute?
  - (2) If not, did the legislature "plainly, clearly, and unmistakably express[] its intention to waive the state's sovereign immunity so as to 'leave no doubt' that the state is subject to suit under a statute." *Nichols*, 842 N.W.2d at 27.
    - Broad and general language that *could* include the State makes it less likely that the State can be sued. *Nichols*, 842 N.W.2d at 27-28.

SOVEREIGN IMMUNITY: Eleventh Amendment

- "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

SOVEREIGN IMMUNITY: Suit in federal court

- Claims brought in federal court alleging violation of federal law
- Even though the language of the Eleventh Amendment does not include suits against a state by its own citizens, the Supreme Court "has consistently held that an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State." *Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974).
  - "a suit by private parties seeking to impose a liability which must be paid from public funds in the state treasury is barred by the Eleventh Amendment." *Edelman*, 415 U.S. at 663.

SOVEREIGN IMMUNITY: Suit in federal court (cont.)

- But, a state official can be sued in federal court in their official capacity for prospective injunctive relief. *Edelman v. Jordan*, 415 U.S. 651, 665 (1974); *Ex Parte Young*, 209 U.S. 123 (1908).
  - "[A]ncillary effect on the state treasury is a permissible and often an inevitable consequence of the principle announced in Ex Parte Young" *Edelman*, 415 U.S. at 668.

SOVEREIGN IMMUNITY: State law

- Cannot sue the state, state agency, or state official in federal court for violating state law.
  - *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984): "A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with principles of federalism that underlie the Eleventh Amendment. We conclude that *Young* and *Edelman* are inapplicable in a suit against state officials on the basis of state law."
  - Also includes pendent jurisdiction (*Pennhurst*, 465 U.S. at 120-21)

IMMUNITY: When to raise the defense?

- Question should be resolved as early as possible in the litigation, including by motion to dismiss, if possible.
  - Qualified immunity is more often resolved by summary judgment, although this is not always the case
  - But sovereign immunity issues are often apparent in the complaint

IMMUNITY: Discovery

- Seek early resolution to avoid or limit burdens of discovery
  - Consider a protective order or motion to stay discovery
    - *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982): "Until [the] threshold immunity question is resolved, discovery should not be allowed."
    - *Baker v. Chaplin*, 517 N.W.2d 911, 914 n.3 (Minn. 1994): "Discovery ordinarily should not be allowed until this threshold immunity question is resolved."
- Or consider arguing that discovery should be limited to facts related to the immunity defense.
  - *Anderson v. Creighton*, 483 U.S. 635, 646 n. 6 (1987): "Of course, any such discovery should be tailored specifically to the question of Anderson's qualified immunity."

IMMUNITY:
Interlocutory appeal

- If denial of immunity is a legal question, consider bringing an interlocutory appeal.
  - Federal authority: *Mitchell v. Forsyth*, 472 U.S. 511, 529 (1985).
  - State authority: *Anderson v. City of Hopkins*, 393 N.W.2d 363, 364 (Minn. 1986) (adopting *Mitchell* rule)

- Multiple appeals from a motion to dismiss and summary judgment are at least allowed in federal court. *Behrens v. Pelletier*, 516 U.S. 299, 309 (1996).
  - *Bouley v. Windschitl*, 2008 WL 73297 (Minn. Ct. App.) (unpublished) citation to *Behrens*: "holding that despite a prior appeal, if a party seeks summary judgment on immunity grounds and the court denies the motion, the party can take an immediate interlocutory appeal"

GOVERNMENTAL IMMUNITIES

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Statutory v. Common Law

- **Statutory Examples**: The Minnesota Tort Claim Act. Minn. Stat. § 3.736, subd. 3; The Municipal Tort Liability Act. Minn. Stat. § 466.03

- **Common Law Examples**: Official Immunity; Judicial and Quasi-Judicial Immunity

Official Immunity

Policy: to "protect public officials from the fear of personal liability that might deter independent action and impair effective performance of their duties."
Elwood v. Rice County., 423 N.W.2d 671, 678 (Minn. 1988)

Generally, official immunity is determined by:

1) The conduct at issue;

2) Whether the conduct is discretionary or ministerial and, if ministerial, whether any ministerial duties were violated; and

3) If discretionary, whether the conduct was willful or malicious.

Ministerial Acts

- Official Immunity applies to discretionary, but not ministerial, decisions
  - Concept of "discretion" is broader for official immunity.
- "An official's duty is ministerial when it is absolute, certain and imperative, involving merely execution of a specific duty arising from fixed and designated facts."

Example: following a directive or policy that requires no application of judgment. Policy must be "narrow"

Watson by Hanson v. Metro. Transit Comm'n, 553 N.W.2d 406, 414 (Minn. 1996)

Statutory Discretional Immunity

General Rule

Minn. Stat. § 466.02 (2024)

Every municipality is subject to liability for its torts and those of its officers, employees and agents acting within the scope of their employment duties whether arising out of governmental or propriety function.

Exceptions

Minn. Stat. § 466.03, subd. 6 (2024)

This potential liability does not, however, apply to any claim based upon the performance or failure to exercise or perform a *discretionary* function or duty, whether or not discretion is abused.

Public-Duty Rule

- Under the public-duty rule, a governmental entity is liable only if it owed the plaintiff a duty distinct from that owed to the general public.

***Cracraft* Factors:**

1. Actual knowledge of the dangerous condition
2. Reasonable reliance on governmental representations
3. Mandatory statute/ordinance protecting a specific class (not the public at large)
4. Government action increased the risk of harm

Planning Level Decisions – Protected

- Planning level decisions are those involving questions of balancing public policies, i.e. evaluation of factors such as the financial, political, economic, and social effects of a given plan or policy.

  Fundamental Injury: Whether the decision involves a policy making decision entrusted to the political branches and is, therefore, protected from judicial second-guessing.

  Purpose: Separation of Powers

- Note: Sometimes the implementation of s policy itself requires policymaking decisions.
  - Where there is room for policy judgment and decisions, there is discretion.

    Silver v. City of Minneapolis, 284 Minn. 266, 170 N.W.2d 206 (1996)

Operation Level Decisions – Unprotected

- Operational level decisions involve day-to-day implementation of established policies. Once a policy decision is made, the government must carry it out with reasonable care.
- Professional or scientific judgments that do not involve policy considerations are operational level decisions. *Nusbaum v. Blue Earth County.*, 422 N.W.2d 713, 722 (Minn. 1988).

Examples - Planning v. Operational

- Training & Supervision→ Planning

Watson by Hanson v. Metro. Transit Commn., 553 N.W.2d 406, 414 (Minn. 1996)

- Deployment of police/fire forces→ Planning

Silver v. City of Minneapolis, 284 Minn. 266, 170 N.W.2d 206 (1996)

- Maintain facility in safe condition/warn of hazards → Operational

Marlow v. City of Columbia Heights, 284 N.W.2d 389, 392 (1979)

- Decision to release individual from state institution → Planning

Cairl v. State, 323 N.W.2d 20, 24 (Minn.1982)

- Community health center's decision not to treat a patient → Operational

Terwilliger v. Hennepin County, 561 N.W.2d 909 (1997)

Limits on Statutory Discretionary Immunity

- Does not apply to claims under the Minnesota Whistleblower Act. *Janklow v. Minnesota Bd. of Examiners for Nursing Home Adm'rs*, 552 N.W.2d 711, 718 (Minn. 1996)
- Does not apply to claims under the Minnesota Human Rights Act. *Davis v. Hennepin Cnty.*, 559 N.W.2d 117, 122 (Minn. Ct. App. 1997)
- Does not shield municipalities from liability for constitutional violations. *Owen v. City of Indep., Mo.*, 445 U.S. 622 (1980)
- Government entities cannot use tort immunity defenses to avoid breach-of-contract liability.

Minn. Stat. § 466.03 Exceptions

- Tax Claims
- Accumulations of Snow & Ice
- Execution of Statute
- Discretionary Acts
- Motor Vehicle Custody & Care
- Unimproved Property
- Water Access Sites
- Licensing of Providers
- Parks & Rec Areas
- Beach or Pool Equipment
- Recreational Use of School Property and Facilities
- School Building Security
- Personal Injury or Death
- Welfare Benefits
- Usual Care & Treatment
- Loss by Municipal Patient or Inmate
- Unimproved Realty – Old Mines
- Emergency Medical Dispatch
- Use of Land
- GIS Data
- Highway Right-of-Way
- Used Public Safety Equipment
- Surplus Equipment Donated

Recreational Use Immunity

Minn. Stat. § 466.03, Subd. 6e

Parks and recreation areas. Any claim based upon the construction, operation, or maintenance of any property owned or leased by the municipality that is intended or permitted to be used as a park, as an open area for recreational purposes, or for the provision of recreational services, or from any claim based on the clearing of land, removal of refuse, and creation of trails or paths without artificial surfaces, if the claim arises from a loss incurred by a user of park and recreation property or services. Nothing in this subdivision limits the liability of a municipality for conduct that would entitle a trespasser to damages against a private person, except as provided in subdivision 23.

Ariola v. City of Stillwater (2014)

Issues:

- What Duty of Care Was Owed by the City
- Whether the City Created an Artificial Condition
- Whether the Public-Duty Rule Applies

Duty of Care

Restatement (Second) of Torts § 335

A land possessor is liable to trespassers for injury caused by an artificial condition if:

1. The possessor knows trespassers frequently intrude on a limited area;
2. The condition is created or maintained by the possessor;
3. The possessor knows it is likely to cause death or serious bodily harm;
4. The condition is such that trespassers are unlikely to discover it; and
5. The possessor fails to exercise reasonable care to warn of the condition and risk.

***Trespasser-level duty of care applies**

Artificial Condition

- An artificial condition is a condition on land created or maintained by the landowner that poses a danger to trespassers.
- However, a condition is not considered artificial if it merely duplicates a natural condition commonly found in nature.
- Courts focus on the specific feature alleged to be dangerous, not the broader recreational facility as a whole.
- Natural terrain features (such as slopes, hills, or trees) generally remain natural conditions even if modified or incorporated into recreational land use.
- Artificial conditions typically involve man-made hazards resembling traps, such as dangerous electrical wires or concealed mechanical dangers.

Martin v. Spirit Mountain Recreation Area Auth., 566 N.W.2d 719 (Minn. 1997); *Johnson v. Washington County*, 518 N.W.2d 594 (Minn. 1994).

Lloyd v. City of St. Paul (1995)

- Plaintiff was injured when a negligent city employee operating a paddleboat concession in a public park caused the boat to flip.
- Claim involved negligent conduct, not a dangerous condition of the land, thus, the trespasser standard did not apply.
- Court applied recreational-use immunity for negligent operation of park recreational services under Minn. Stat. § 466.03, subd. 6e.
- Plaintiffs argued immunity should not apply because they paid to use the paddleboat, but the court rejected this argument.
- **Rule:** Municipalities are immune from liability for negligent acts occurring during the operation of park recreational services.

538 N.W.2d 921 (Minn. App. 1995)