

**LOCAL GOVERNMENT LIABILITY**

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Local Government Law Essentials for Judges

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**Liability under federal law**

- § 1983
- State government has sovereign immunity, local government may be liable
- Government liability based on policy, custom or inadequate training
- Individual official's liability based on whether knew act was unconstitutional

 

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1. Is it a governmental or proprietary function?  
Governmental = Immunity  
Proprietary = Liability

2. Has the county waived immunity?  
Purchase of insurance = Waiver

 

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**P. Governmental Liability Limitation —**  
By accepting coverage under this policy, neither the insured nor States waive any of the insured's statutory or common law immunities and limits of liability and/or monetary damages (including what are commonly referred to as liability damages caps), and States shall not be liable for any claim or damages in excess of such immunities and/or limits . . . .



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**P. Governmental Liability Limitation —**  
By accepting coverage under this policy, neither the *insured* nor States waive any of the *insured's* statutory or common law immunities and limits of liability and/or monetary damages (including what are commonly referred to as liability damages caps), and States shall not be liable for any *claim* or *damages* in excess of such immunities and/or limits . . . .



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**Public Duty Doctrine**

- Duty is owed to public, not to individual
- For local government, the doctrine applies only to law enforcement
  - Is the defendant performing a local function or serving as an agent of the state?
- Public duty doctrine immunity is waived by actual promise to protect



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Is the defendant a public official or a public employee?

Public official = qualified immunity  
Public employee = no immunity



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- Local government can be sued for breach of contract
- Local government liability for tort depends on:
  - Was the employee acting in the scope of employment?
  - Was it a governmental or proprietary function?
  - If it was a governmental function, has the entity waived immunity by purchasing insurance?
  - Does the public duty doctrine apply?
- A public official or employee may be sued individually as well
  - A public official has qualified immunity
  - A public employee has no immunity



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