

LOCAL GOVERNMENT LIABILITY

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Local Government Law Essentials for Judges

December 2, 2011



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



1. Is it a governmental or proprietary function?
Governmental = Immunity
Proprietary = Liability
2. Has the county waived immunity?
Purchase of insurance = Waiver



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



- 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


