

State & Local Government Immunity

Public Law for the Public's Lawyers

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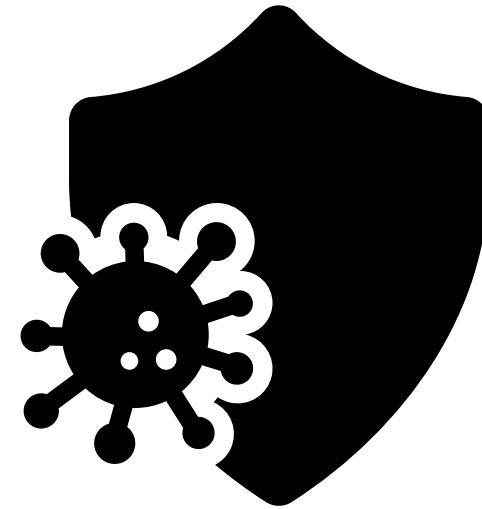
"The expense and trouble of lawsuits are unavoidable costs of doing a [government's] work. The challenge for [] governments is not the impossible task of eliminating all lawsuits; rather, it is providing services while minimizing the cost and disruption that lawsuits bring. The first step in accomplishing that task is learning the basic legal principles that control the liability of [] governments and their public servants."

KRISTI NICKODEM

"CHAPTER 6: CIVIL LIABILITY AND IMMUNITY OF LOCAL
GOVERNMENTS, PUBLIC OFFICIALS, AND PUBLIC EMPLOYEES,"
COUNTY & MUNICIPAL GOVERNMENT IN NORTH CAROLINA
(2025).

Types of Immunity

- Sovereign immunity
- Governmental immunity
- Public official immunity
- Legislative immunity
- Judicial/quasi-judicial immunity



Sovereign Immunity

STATE & FEDERAL GOVERNMENT IMMUNITY

- “The King can do no wrong”
- Bars *tort* claims based upon negligence and intentional wrongdoing of its officers, employees, or agents against federal and state government



What's a Tort?

COMMON LAW

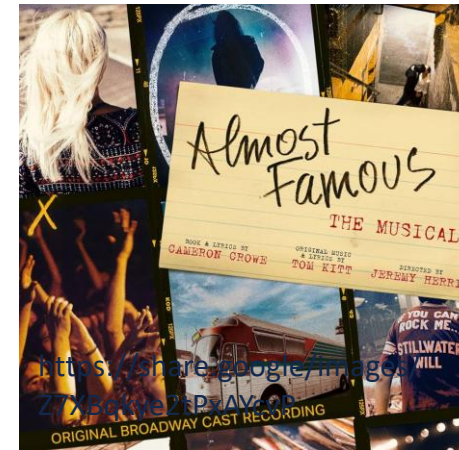
- Wrongful act or omission (other than a criminal act or breach of contract) that causes some form of harm or injury and for which courts will provide a remedy (typically in the form of monetary damages)



Intentional Tort Claims

COMMON EXAMPLES

- *Assault*: Placing another person in reasonable apprehension of immediate harm or offensive contact
- *Battery*: Touching or striking another person without consent or legal authorization
- *False Imprisonment*: Restraining the movement of another without permission or legal authorization
- *Defamation*: False written or oral communication to a third party that injures the individual's reputation



Unintentional Tort Claims

COMMON EXAMPLES

- *Negligence*: Failure to exercise reasonable care in performance of a legal duty owed to another under the circumstances
- *Negligent hiring, supervision, retention*:
 - Specific tortious act by employee
 - Employee's incompetence or unfitness
 - Employer's actual or constructive notice of the same
 - Injury resulting from the employee's incompetence or unfitness



Other Torts

NUISANCE & INVERSE CONDEMNATION

- *Nuisance*: Substantial and unreasonable interference with use and enjoyment of someone else's land



- *Inverse Condemnation*: Where the government's activities permanently and substantially reduce the value of land, a court may hold that the government has in effect "taken" the property and must compensate the property owner



State Tort Claims Act

SOVEREIGN IMMUNITY

- Partial waiver of immunity to tort claims
 - Industrial Commission has exclusive jurisdiction over claims
 - Limit of \$1 million for harm caused to an individual in a single incident
 - Large cities (population of 500,000 or more) may waive *governmental* immunity by resolution
- Common claims:
 - School bus (and other motor vehicle) accidents
 - Medical malpractice
 - Wrongful death
 - "Slip and falls"



Governmental Immunity

LOCAL GOVERNMENT IMMUNITY

- Protects *local* government in carrying out **governmental functions**
 - *not while carrying out proprietary functions*
- Includes employees and officials acting **within scope of their duties**
- Does not apply to individual sued in individual capacity



Within Scope of Duties

I.E. YOUR JOB DESCRIPTION



- Acting in furtherance of the government's business "for the purpose of accomplishing the duties of [his or her] employment"
- Includes those formally prescribed as well as actual or customary duties
- Does not include actions for wholly personal reasons

Beyond Scope of Duties

PRIVATE USE OF PUBLIC VEHICLE

- State and local government vehicles can only be used for public purposes or for going between work and home
- If something happens when you are using a public vehicle outside of your duties, you may be responsible



“[A] *governmental function* is an activity that is discretionary, political, legislative, or public in nature and performed for the public good [on] behalf of the State rather than for itself, while a *proprietary function* is one that is commercial or chiefly for the private advantage of the compact community.”

PROVIDENCE VOLUNTEER FIRE DEP'T, INC. V. TOWN OF WEDDINGTON, 382 N.C. 199 (2022).

Governmental vs Proprietary Functions

GOVERNMENTAL IMMUNITY

1. If legislature designates function as governmental or proprietary
2. Whether undertaking is one in which only a government agency could engage
3. Other factors, such as whether the activity is
 - Traditionally provided by government (governmental)
 - Substantial fee involved (proprietary)
 - Intended to raise revenue (proprietary)

Governmental vs Proprietary Examples

GOVERNMENTAL IMMUNITY

- Collecting taxes and fines ✓
- Land use and affordable housing ✓
- Operating arena, airport, golf course, or hospital ✗
- Law enforcement and emergency services ✓
- Public library ✓
- Operating water system that sells water to public ✗
- City streets ?
- Public, mental health, and social services ✓

Case Study

GOVERNMENTAL IMMUNITY?

- 24-year-old died after playing pick-up basketball at county-operated gymnasium during summer
- No air conditioning (only fans) in gym
- Decedent's estate sued county alleging negligent operation and supervision of gym
- County claimed governmental immunity



Waiver of Immunity

GOVERNMENTAL IMMUNITY

- Purchasing liability insurance, to the extent of coverage
- Joining a risk pool
- Adopting a resolution to create funded reserve
- Entering into a contract



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Claims *not* barred

BY SOVEREIGN OR GOVERNMENTAL IMMUNITY



Contract claims



Constitutional claims



Claims arising under state and federal statutes



Claims alleging a city's negligent maintenance of streets and sidewalks



Certain declaratory judgment actions

Statutory Award of Attorney's Fees

Successful challenge to local government action that exceeds “unambiguous limits” on its authority (G.S. 6-21.7)



Compelling the disclosure of public records (G.S. 132-9(c))



Prevailing party in a dispute alleging a violation of the open meetings law (G.S. 143-318.16B)

Liability under Federal Law

SECTION 1983

- 11th Amendment generally bars federal lawsuits against states
- Local governments (and its employees and officials) may be sued for federal constitutional violations attributable to their "official policies or customs"
- Available for certain statutory violations too
- Common constitutional claims:
 - First Amendment: freedoms of speech, association, religion, etc.
 - Fourth Amendment: freedom from unreasonable search and seizure
 - Fourteenth Amendment: right to due process

Public Official Immunity

INDIVIDUAL IMMUNITIES

- Bars tort claims against a **public official** acting within the **course and scope** of their duties *unless malicious or corrupt*
- Does *not* protect public *employees*



Public Officials vs Public Employees

PUBLIC OFFICIAL IMMUNITY

Public Officials

- Position created by constitution or statute
- Exercises portion of State's sovereign power
- Exercises discretion
 - Often requires oath of office
- *Examples:* elected official, police chief, county/city manager, superintendent and principal, medical examiner, chief building inspector, director of social services & health department, coroner, notary

Public Employees

- Perform ministerial/administrative tasks
- *Examples:* street sweeper, EMT, public school teacher, environmental health specialist, child and family services program administrator, parole case analyst, prison physician

Case Study

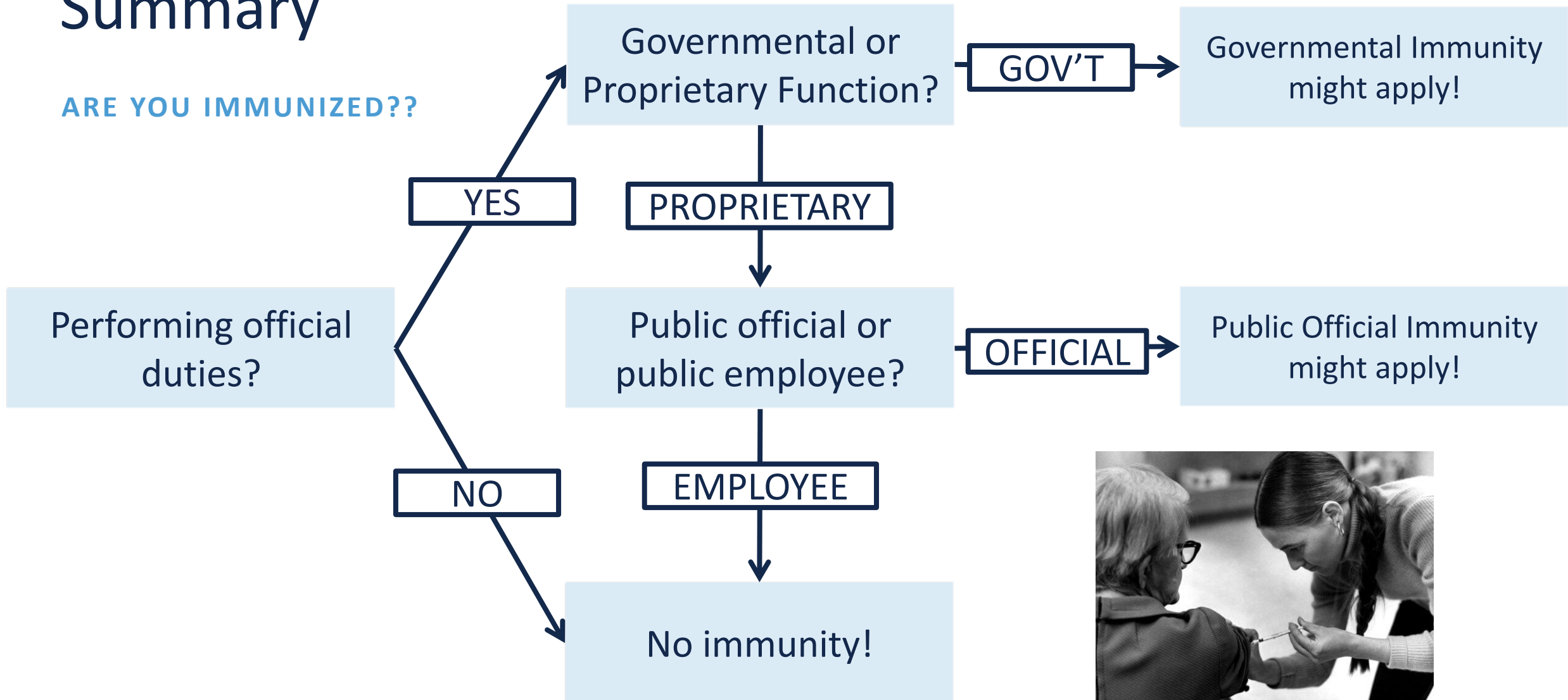
PUBLIC OFFICIAL IMMUNITY?

- Burn unit surgeon resigned because of medical director's "relentless harassment" and creation of hostile work environment
- Coworkers throw "going away" party
- Surgeon sued his supervisor and university after complaint of unprofessional and "sexually offensive" conduct against him
- Supervisor asserts public official immunity



Summary

ARE YOU IMMUNIZED??



Legislative Immunity

INDIVIDUAL IMMUNITIES



- Officials enjoy immunity from personal liability for claims arising from their performance of legitimate legislative function, unless actions were illegal, malicious, corrupt or outside the scope of official duties
- Adoption of zoning ordinance, for example, is legislative activity
- Does not cover *administrative* actions, such as whether to hire or fire employee

Judicial/Quasi-Immunity

INDIVIDUAL IMMUNITIES

- Judicial officials enjoy *absolute* immunity from personal liability for civil claims arising from the exercise of their judicial functions
- Applies to local government officials engaged in quasi-judicial functions (planning board, board of adjustment, etc.)
- Quasi-judicial proceedings on special use permits and variances, for example



Possible Immunities Available to Different Defendants

SIDE-BY-SIDE COMPARISON

Defendant	Type of Claim	
	Tort Claim (e.g., Negligence)	Section 1983 Claim
Unit of Local Government	Governmental immunity, unless waived by the unit of local government.	None.
Public Official in Individual Capacity	Public official immunity, unless official acted corruptly, with malice, or outside the scope of their official duties. Legislative, judicial, or quasi-judicial immunity may also be available depending on the act at issue.	Qualified immunity, unless the conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known.
Public Employee in Individual Capacity	None, unless a statutory immunity applies.	Qualified immunity, unless the conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known.
Public Official or Employee Engaged in Legislative Activity	Legislative immunity for legislative activity, unless actions were illegal, malicious, corrupt or outside the scope of official duties.	Absolute immunity for legislative activity, but not for illegal acts or acts taken in an administrative or enforcement capacity.
Judicial Official Engaged in Performance of Judicial Acts	Absolute immunity, unless acting in a nonjudicial capacity or acting in the complete absence of all jurisdiction.	Absolute immunity, unless acting in a nonjudicial capacity or acting in the complete absence of all jurisdiction.

Other Defenses

THERE'S MORE?

- Statutes of Limitations
- Emergency Management Act (EMA):
 - Exempts local governments from liability for deaths, injuries, or property damage resulting from performance of emergency management functions
- Qualified immunity to federal claims:
 - Protects individual government employees and officials from personal liability for violation of individual's rights under federal law



Public Duty Doctrine

OTHER DEFENSES



No legal duty to prevent harm to specific individual even when a government has undertaken to protect public at large



Limited in scope: liability for harm by third-parties, not harm caused directly



Broadly applicable to state agencies, only for law enforcement agencies (and functional equivalents) in local government



Exceptions: where law enforcement has made actual promise to protect an individual or special relationship (i.e. witness or informant)

Local Government Defense, Judgments, and Settlements

Defense: authorized (but not required) to provide for the defense of any civil or criminal action brought against current or former employees or officials



Judgments: authorized (but not required) to pay all or part of any settlements or judgments in lawsuits against employees or officials



Settlements: broad authority to settle and under what terms but must be consistent

Risk Mitigation

YOU CAN'T PREVENT A LAWSUIT FROM BEING FILED BUT YOU CAN...

- Adopt and implement policies to mitigate against legal exposure
- Engage in routine training and consultation with supervisors and legal counsel
- Form a basic understanding of litigation process and liability/immunity framework(s)
- Hold one another accountable



Act Fast

THREATENED OR PENDING LAWSUIT

- Immediately notify supervisor and agency attorney
- Ensure insurance carrier has been notified
- Follow internal protocols
- Preserve and collect any documentation which may be relevant to claims



Liability Resources

Kristi A. Nickodem, “Chapter 6: Civil Liability and Immunity of Local Governments, Public Officials, and Public Employees,” *County & Municipal Government in North Carolina* (2025).



Trey Allen, *Local Government Immunity to Lawsuits in North Carolina* (2018).



<https://canons.sog.unc.edu/category/liability-immunity/>

Litigation Resources

[A Guide to Civil Litigation for Non-Attorneys in Local Government](#)



<https://canons.sog.unc.edu/2025/09/court-is-in-session-advice-about-litigation-from-local-government-lawyers/>



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