

Qualified Immunity Defense

How Ferguson, Missouri Impacted the Legal Landscape

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Comity v. Sovereign Immunity

- ▶ *Galindo v. City of Flagstaff, Arizona*
 - ▶ Extension of Comity to grant full faith and credit to Arizona notice of claim requirements.
 - ▶ *California Franchise Tax Bd. V. Hyatt*
 - ▶ 11th 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.
 - ▶ 11th Amendment does not apply to municipalities

Qualified Immunity

- ▶ Qualified immunity is a type of immunity government officials can assert when being sued for violating constitutional rights.
 - ▶ Immunity from suit, not just immunity from paying damages.
 - ▶ Originally granted to allow government officials to defend themselves from unnecessary obstructions in their job duties

Early Qualified Immunity

- ▶ Between its Origin in 1967 in *Pierson v. Ray* and the *Harlow v. Fitzgerald* decision in 1982, Qualified Immunity included a two part test:
 - ▶ Included both an objective reasonableness factor and a subjective factor that took an official's malice into account
- ▶ *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)
 - ▶ Eliminated the subjective element
 - ▶ “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.”

Qualified Immunity Post Harlow

- ▶ Post *Harlow*, Court's struggled to consistently apply the defense and sought some middle ground between downright eliminating qualified immunity when malice is alleged and allowing qualified immunity to shun all Section 1983 claims.
- ▶ Supreme Court revisited the issue in 2001 in *Saucier v. Katz*.
 - ▶ Involved a claim against military officers alleging Fourth Amendment violations for use of excessive force to arrest him.
 - ▶ Court stated that inquiries into excessive force and qualified immunity were distinct from one another
 - ▶ Court then set sequential two-step test to decide qualified immunity claims for officers.

Qualified Immunity for Officers

- ▶ *Saucier v. Katz* Court Determined:
 - ▶ First, a court must decide if a constitutional right was infringed upon by the most favorable interpretation of the facts to the Plaintiff.
 - ▶ Then, supposing an infringement occurred, must determine if that right was clearly established law.

Interpreting Qualified Immunity

- ▶ “Qualified immunity shields [government] officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was ‘clearly established’ at the time of the challenged conduct.” *Ashcroft v. al-Kidd*, 131 S. Ct. 2074 (2011).
 - ▶ “A government official’s conduct violates clearly established law when, at the time of the challenged conduct, the 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*, 131 S. Ct. 2074 (2011).
 - ▶ The primary question is “whether it would be clear to a reasonable government official that his conduct was unlawful under the circumstances presented.”

Brown v. City of Ferguson



- ▶ **Aug. 9, 2014** - Ferguson police receive report of retail theft of a local convenience store.





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Brown v. City of Ferguson

- ▶ Suit against the City of Ferguson, former Police Chief Thomas Jackson and former Police Officer Darren Wilson
 - ▶ Failure to Properly hire, train, supervise, retain and conduct a fair and impartial investigation;
 - ▶ Violations of the Equal Protection Clause;
 - ▶ Violations of the Fourteenth Amendment for interference with fundamental rights and liberty interests; and
 - ▶ Declaratory and Injunctive Relief.

Brown v. City of Ferguson

- ▶ No Precedential value from *Brown v. Ferguson*
 - ▶ In response to Motion to Dismiss the Court reiterated
 - ▶ “The official immunity doctrine insulates public officials from suit in their individual capacities when liability arises from discretionary acts or omissions taken by them.
 - ▶ Discretionary Act - requires the exercise of reason in the adaptation of means to an end and discretion in determining how or whether an act should be done or a course pursued.
 - ▶ Ministerial Act - of a clerical nature and is performed in a prescribed manner according to legal mandate without regard to public officials persona judgment or opinion.

Discretionary Acts

- ▶ Official Immunity does not apply if the discretionary acts were done in bad faith or with malice.
 - ▶ Bad faith or malice generally require actual intent to cause injury.
 - ▶ An act is wanton when it is done with a wicked purpose, or when done needlessly, manifesting a reckless indifference to the rights of others.
 - ▶ Bad faith is more than just bad judgment or negligence. It imports a dishonest purpose, moral obliquity, conscious wrongdoing, breach of a known duty through some ulterior motive, or ill will partaking of the nature of fraud

Post Ferguson

- ▶ What has changed?
- ▶ Strongly held opinions on both sides of the issue
- ▶ High Court's position is clear
 - ▶ No indication it will change anytime soon
 - ▶ Case Law highlights
- ▶ Limits to any efforts to reform the doctrine

Case Law Highlights

- ▶ *Mullenix v. Luna* - 2015
 - ▶ State trooper who fatally shot motorist in attempting to disable the vehicle that motorist was using to flee from arrest did not violate clearly established law regarding excessive force under Fourth Amendment, and thus, trooper was entitled to **qualified immunity** in [§ 1983](#) action brought by motorist's estate; motorist reportedly was intoxicated, he had led police on 25-mile chase at speeds of between 85 and 110 miles per hour on interstate freeway. Twice during his flight he threatened to shoot **police officers** if they did not abandon their pursuit, and he was approaching an officer who was manning spike strips that had been placed on freeway, thereby posing a risk to that officer.
 - ▶ **Qualified immunity** protects actions by **police officers** in the hazy border between excessive force and acceptable force.

Case Law Highlights

▶ *Plumhoff v. Rickard* - May 2014

- ▶ Donald Rickard led police officers on a high-speed car chase that came to a temporary halt when Rickard spun out into a parking lot. The chase exceeded 100 miles per hour and lasted for over five minutes, suspect passed more than 24 vehicles, several of which were forced to alter course. Rickard resumed maneuvering his car, and as he continued to use the accelerator even though his bumper was flush against a patrol car, an officer fired three shots into Rickard's car. Rickard managed to drive away, almost hitting an officer in the process. Officers fired 12 more shots as Rickard sped away, striking him and his passenger, both of whom died from some combination of gunshot [wounds](#) and injuries suffered when the car eventually crashed.
- ▶ Found that Use of force was reasonable and officers were entitled to qualified immunity.

Case Law Highlights

- ▶ *Pauly v. White*- 2016
 - ▶ Shooting victim's estate filed § 1983 action alleging that state **police officers** used excessive force when they shot victim through window of his home while investigating earlier road rage incident involving his brother. The United States District Court for the District of New Mexico denied officers' motion for summary judgment, and they filed interlocutory appeal.
 - ▶ Today, it is again necessary to reiterate the longstanding principle that “clearly established law” should not be defined “at a high level of generality.” [*Ashcroft v. al-Kidd*, 563 U.S. 731, 742 \(2011\)](#). As this Court explained decades ago, the clearly established law must be “particularized” to the facts of the case. [*Anderson v. Creighton*, 483 U.S. 635, 640 \(1987\)](#). Otherwise, “[p]laintiffs would be able to convert the rule of qualified immunity ... into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights.”

Questions?

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