

# LAWSUITS HAPPEN - ARE YOU IMMUNE?

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# What type of case is it?

- ▶ Contract
- ▶ Tort
- ▶ Constitutional

# Contract Case

- ▶ Immunity from suit of each governmental entity is waived as to any contractual obligation. Utah Code Ann. § 63G-7-301(1)(a).

# Tort Case Immunity

- ▶ Except as otherwise provided in the Governmental Immunity Act of Utah, each governmental entity and each employee of a governmental entity are immune from suit for any injury that results from the exercise of a governmental function. Utah Code Ann. § 63G-7-201(1).
  - ▶ We must ask the question, “Whether the activity under consideration is of such a unique nature that it can only be performed by a governmental agency or that it is essential to the core of governmental activity.”

# Tort Case Immunity

- ▶ “A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury if the injury arises out of or in connection with, or results from a latent dangerous or latent defective condition” Utah Code Ann. § 63G-7-201(3)
  - ▶ Defined as “A defect which reasonably careful inspection will not reveal.”  
Generally a question of fact

# Tort Case

## Immunity

- ▶ “A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment, if the injury arises out of or in connection with, or results from:” Utah Code Ann. § 63G-7-201(4).
  - ▶ (a) the exercise or performance, or the failure to exercise or perform, a discretionary function, whether or not the discretion is abused;
    - ▶ “The Utah Supreme Court has recently stated that, in comparison to the ancient doctrine of sovereign immunity, discretionary function immunity is a distinct, more limited form of immunity [that] should be applied only when a plaintiff is challenging a governmental decision that involves a basic policy-making function.” Trujillo v. Utah Dep’t of Transp., 1999 UT App 227, ¶ 21, 986 P.2d 752, 758 (citing Nelson v. Salt Lake City, 919 P.2d 568, 575 (Utah 1996)).
    - ▶ [d]iscretionary acts are those “characterized by a high degree of discretion and judgment involved in weighing alternatives and making choices with respect to public policy and planning. Governmental decisions that are the

# Tort Case

## Immunity Exception

- ▶ A plaintiff may not bring or pursue any civil action or proceeding based upon the same subject matter against the employee or the estate of the employee whose act or omission gave rise to the claim, unless (Utah Code Ann. § 63G-7-202(3)(c):
  - ▶ (I) Fraud or Willful Misconduct
  - ▶ (II) Driving Under the Influence
  - ▶ (III) Impaired from Drugs or Alcohol
  - ▶ (IV) False Testimony Under Oath
  - ▶ (V) Intentionally or Knowingly Fabricated Evidence

# Tort Case

## Immunity Waiver

- ▶ Immunity from suit of each governmental entity is waived: (Utah Code Ann. § 63G-7-301(2)):
  - ▶ Any action brought to recover, obtain possession or, or quiet title to real or personal property;
  - ▶ Any action to foreclose mortgages or other liens on real property . . . ;
  - ▶ Any action based on negligent destruction, damage, or loss of goods, merchandise, or other property while it is in the possession of any governmental entity or employee . . . ;

# Constitutional (1983) Case

- ▶ “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.”

# Case Study: *Doyle v. Lehi City, et al.*

- ▶ To prove that a governmental official violates clearly established law does not “require a case directly on point, but existing precedent must have placed the... constitutional question beyond debate.”
- ▶ “It is well established that ... the State may not condition public employment on conditions that infringe on a public employee’s right to free speech.”
- ▶ Therefore would it “be clear to a reasonable government official that his conduct was unlawful” under these circumstances?

# What if you are Served?

- ▶ Get a copy of the summons and complaint to the City Attorney within 10 days.
- ▶ There are certain requirements a claimant must follow in filing a written notice of claim with the municipality as a condition precedent to filing suit.
  - ▶ Statute of limitations - 1 year from the date person knew or should have known had a claim
  - ▶ File notice of claim with the governmental entity and serve it on the city or town clerk.
  - ▶ If no full-time attorney on staff, notify your insurance carrier right away of the claim or lawsuit so that they can retain appropriate counsel

# UGIA Savings Statute

## Utah Code Ann 63G-7-403 (3)(a)

- ▶ (a) As used in this Subsection (3), "claimant" includes a representative of an individual:
  - ▶ (i) who dies before an action is begun under this section; and
  - ▶ (ii) whose cause of action survives the individual's death.
- ▶ (b) A claimant may commence an action after the time limit described in Subsection (2)(b) if:
  - ▶ (i) the claimant had commenced a previous action within the time limit of Subsection (2)(b);
  - ▶ (ii) the previous action failed or was dismissed for a reason other than on the merits; and
  - ▶ (iii) the claimant commences the new action within one year after the previous action failed or was dismissed.
- ▶ (c) A claimant may commence a new action under Subsection (3)(b) only once.

# Undertaking v. Savings Statute

- ▶ Tort suit under Governmental Immunity Act - complaint timely filed, but did not submit a bond as required by statute. The Case was dismissed and refiled beyond the statute of limitations. Claimant sought to sustain timeliness of the suit invoking the Savings Statute. Utah Supreme Court found the Savings Statute did not extend to cases within the Governmental Immunity Act. *Craig v. Provo City*, 2016 UT 40. *See Also Zemlicka v. West Jordan City (appeal pending)*.

# Questions?

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