

County Law: LIABILITY

Understanding the Questions

Presenter

KIRK FJELSTUL

Georgia Regional Transportation Authority

State Law Liability

- Personal liability of employees and elected officials
- Government liability
- Immunity:
 - Discretionary immunity (personal)
 - Legislative immunity (personal)
 - Judicial immunity (personal)
 - Official/governmental immunity (government)

Personal Liability

Negligence: Injury resulting from unreasonable acts.

- Was the action reasonable?

Denial of rights: Injury from violation of state law created right.

- Was a state created right violated?

Government Liability

Employer responsible for negligent acts of employee done in the scope of employment (respondeat superior).

- Was he/she doing the government's business at the time?

Test

- Car wreck on the job
- Car wreck going to the job
- Lunch
- Loaf of bread



County Government Immunity

- Immunity to counties, except as waived by the state law or by the State Tort Claims Act.
- County waivers:
 - Purchase of automobile liability insurance
 - Waiver to certain amount in auto cases
(City immunity waived by purchase of any insurance)

Is this an auto case and is there auto liability insurance?

Minimum Waiver Amounts (§ 36-92-2)

Effective Date	Bodily Injury/Death (one person)	Bodily Injury/Death (two persons)	Property Damage	Total Potential Liability
Jan. 1, 2008	\$500,000	\$700,000	\$50,000	\$750,000

Immunity from Personal Liability

- Judicial immunity: No liability for acts as judge acts.
- Legislative immunity: No liability for legislative acts.

Were you acting as legislator?

Immunity from Personal Liability

- Discretionary immunity: Immunity for discretionary functions as long as not malicious, corrupt, or without authority of law.
 - Discretionary act (immunity): Personal deliberation and judgment.
 - Ministerial act (no immunity): Specific, defined, required action. Little or no judgment.

Test

- Public works employee Red, while driving a city/county truck and leaving site of pot hole repair, pulls out in front of oncoming car and causes wreck.



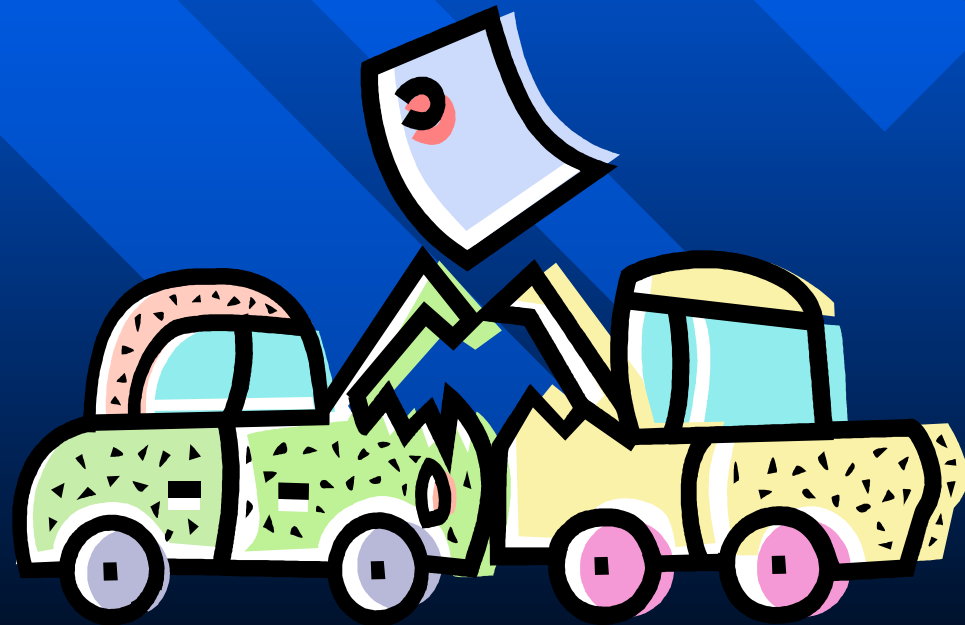
Test

- Officer Good, while heading to a possible robbery, runs a red light and hits Aunt Bee.



Test

- Mayor/Commission Chair Well Intention happens upon a traffic accident and directs traffic, but motions 2 cars to hit head on.
- Police officer.



Federal Law Examples

- Police
- Jail
- Land use and permitting
- First Amendment

Federal Law Liability

- Personal liability of employees and elected officials
- Government liability
- Immunity:
 - ~~Discretionary~~ Qualified immunity (personal)
 - Legislative immunity (personal)
 - Judicial immunity (personal)
 - ~~Official/governmental immunity~~ (government)

Personal Liability

Violation of federally protected rights: Injury from violation of federally protected rights by persons acting under “color of law”. (42 U.S.C. Section 1983).

Don't forget attorney's fees if you lose! (42 U.S.C. Section 1985)

Were federal rights violated?

Government Liability

~~Employer responsible for negligent acts of employee done in the scope of employment (respondeat superior).~~

County responsible only when “policy, custom, or practice” directly results in violation of federally protected right.

- Did a policy, custom, or practice result in a violation of the rights?

Federal Law Immunity

- ~~Discretionary~~ Qualified immunity (personal)
- Legislative immunity (personal)
- Judicial immunity (personal)
- ~~Official/governmental immunity~~ (government)

Immunity from Personal Liability

- Qualified immunity: Immunity for discretionary acts to the extent conduct does not violate clearly established statutory or constitutional rights which a reasonable person would have known.
- Would reasonable person have know he/she was violating federal rights at the time?

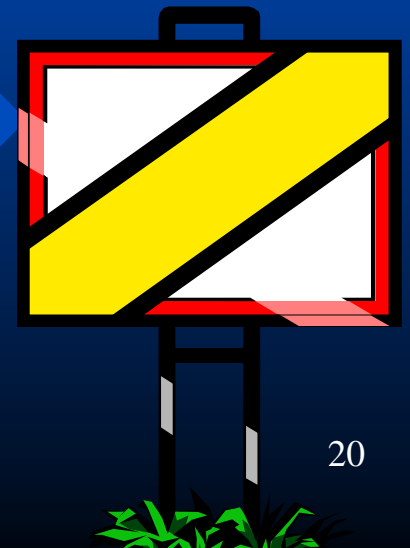
Test

- Council/Commission votes to fire dispatcher who writes editorial critical of funding for the police department.



Test

- Government of Politically Correct passes ordinance banning signs that are in opposition to abortion.
- City/County manager tears down political signs for candidates challenging her council.



Test

- Council/Commissioner takes bribe from developer Sleaze in exchange for denying a zoning that would prevent his competitor from developing a strip mall across the street.

