

AIRPORT LIABILITY FOR MISCONDUCT OF POLICE OFFICERS

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- Police officers generally have broad powers to carry out their duties. Police are immune from liability for the performance of their jobs, unless unreasonable or willful conduct is demonstrated.
- Mere negligence in the performance of their official duties, which is the failure to exercise due care, is typically not enough to create liability.
- Most police misconduct claims result from allegations of excessive force, unreasonable searches or unreasonable seizures.

UNREASONABLE SEIZURE?



State Law Tort Claims

- Typical state law claims that would be asserted against a police officer for police misconduct are intentional torts, such as assault, battery, intentional infliction of emotional distress and false imprisonment.
- Is the Airport Authority liable for the police misconduct?
 - Is the police officer an employee of the Airport Authority? (is there vicarious liability for intentional conduct under state law?)
 - Is there a statutory, or contractual obligation (union contract), to indemnify the police officer on the part of the Airport Authority?

Defenses to State Law Tort Claims

- Immunity of the police officer (official immunity, which protects discretionary acts)
- Immunity of the Airport Authority (governmental or statutory immunity)
- State law caps on liability of municipalities or other political subdivisions (such as the Airport Authority)

Violation of Civil Rights

- 42 U.S.C. § 1983
- Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress,.....

Civil rights lawsuits

- A lawsuit under section 1983 is the type police officers most often face for police misconduct. The statute was created to give citizens a remedy for redressing violations of civil rights. Section 1983 does not create any substantive rights, but is a mechanism for enforcing rights that are granted by the United States Constitution or by federal statute. In order to establish a 1983 claim, a plaintiff must establish that a violation of the Constitution or some federally established right has occurred as a result of some action that was taken under color of state law.
- 42 U.S.C. § 1988 allows the court to award the prevailing party a reasonable attorney's fee as part of the costs. In some section 1983 civil rights lawsuits the amount of the attorney's fee awarded will exceed the amount of compensatory damages, sometimes by a substantial amount.

Attorney's Fees

- The Real Reason for Civil Rights Cases:



Fourth Amendment Claims Are Most Common

- **Amendment 4 - Search and Seizure**
- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
- Excessive force claims, unreasonable search claims and unreasonable seizure claims are 4th Amendment violations in 1983 lawsuits.

Qualified Immunity of the Police Officer

- In determining whether qualified immunity applies, Courts examine whether the defendant violated a constitutional right and if that right was clearly established. Pearson v. Callahan, 129 S. Ct. *08, 815-16 (2009). While the Supreme Court's recent holding in Pearson provides lower courts with discretion to address these questions in either order, the Supreme Court has noted that it is "often beneficial" to first address the question of whether a constitutional right was violated. Id. at 818-22.

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No Vicarious Liability in 1983 Lawsuits

- *Monell v City of New York Dept. of Social Services*, 436 U.S. 658 (1978).
- Local governing bodies such as an Airport Authority can be sued directly under § 1983 where the action that is alleged to be unconstitutional implements a policy officially adopted. In addition, local governments, like every other § 1983 "person," may be sued for constitutional deprivations visited pursuant to governmental "custom" even though not officially adopted.
- The Supreme Court held that a local government cannot be held liable solely because it employs a tortfeasor -- in other words, a local government cannot be held liable under § 1983 on a *respondeat superior* theory.

Indemnity in Civil Rights Cases?

- Is there a legal or contractual obligation to indemnify the police officer?
- Is there any insurance coverage available to indemnify the police officer or the airport authority?

Immunity for Reports of Suspected Terrorist Activity or Suspicious Behavior and Response

- 6 U.S.C. § 1104
 - Any authorized official who observes, or receives a report of, covered activity and takes reasonable action in good faith to respond to such activity shall have qualified immunity from civil liability for such action, consistent with the applicable law in the relevant jurisdiction.
 - Shqeirrat et al v. U.S. Airways Group et al
 - Held this merely codifies traditional qualified immunity for law enforcement officers.