

# Governmental Immunity



# Foundations of Governmental Immunity

- *Balancing sovereign immunity against accountability in government.*
- *Allowing governments to be sued creates burdens for taxpayers.*





# General Rules

- *State governmental entities (including municipalities) are immune from suits, except where immunity is statutorily waived or where civil rights are involved.*
- *The legislature has crafted the Governmental Immunity Act (Utah code §§ 63G-7-101 et seq.) to define when immunity is waived.*
- *The requirements of the Governmental Immunity Act must be strictly followed by those seeking to sue.*

# Legal Analysis

*When determining immunity, courts apply a 3-part test:*

- 1. Whether the activity undertaken is a governmental function;*
- 2. Whether governmental immunity was waived for the particular activity; and*
- 3. Whether there is an exception to that waiver.*

*Mariani v. Dep't of Pub. Safety - Driver License Div., 2023 UT App 79, ¶ 6.*



# Step 1: Governmental Function

- *“Each activity, undertaking, or operation performed by a department, agency, employee, agent, or officer of a governmental entity.” Utah Code § 63G-7-102(5).*
- *“Anything the government decides to do.”*  
*Scott v. Utah Cnty., 2015 UT 64, ¶ 19, 356 P.3d 1172.*
- *Almost everything qualifies, triggering the potential for immunity.*



# Step 2: Major Categories of Waived Immunity

1. *Negligent acts of an employee within the scope of employment.*
2. *Fraud or willful misconduct.*
3. *Contracts (breach of contract and equitable relief) – this is necessary to ensure that others will enter contracts with municipal entities.*
4. *Land use (quiet title, takings, challenging regulations).*
5. *Defective, unsafe, or dangerous conditions of public infrastructure.*

*Other categories in Utah Code § 63G-7-301*





# Civil Rights Violations (Section 1983)

- *Alleged civil rights violations are outside the framework of the governmental immunity act altogether and can always be viewed as a waiver of immunity.*
- *The Civil Rights Act of 1871 (codified as 42 U.S.C. § 1983) provides a private right of action to ensure the due process rights on the 14<sup>th</sup> amendment.*
- *Almost always used for police liability cases (wrongful arrest, unlawful search and seizure, excessive force, etc.).*

# Other Claims Outside the Governmental Immunity Statute



- *Claims for declaratory (non-monetary) relief. Utah Code § 63G-7-102(2) limits the statute to demands for “money or damages.”*
- *Claims to recover personal property (not damages for taking – although immunity is also waived for this).*
- *State constitutional claims (civil rights) – Jensen v. Cunningham, 2011 UT 17, 250 P.3d 465.*



# Step 3: Exceptions to Waiver (Retained Immunity)



- *Latent dangerous or defective condition of roads, crosswalks, and sidewalks (and other infrastructure)*
- *Discretionary function*
- *Civil rights violations (under state law only)*
- *Most intentional torts (assault, battery, libel, interference with contract, infliction of mental anguish)*
- *Issuing or failing to issue licenses or permits*
- *Misrepresentation by an employee*
- *Natural condition on publicly owned or controlled land*
- *Management of flood waters, earthquakes, or natural disasters*
- *The construction, repair, or operation of flood or storm systems*
- *Operation of an emergency vehicle being driven in accordance with state law*
- *Providing emergency assistance*
- ***Many more exceptions in Utah Code § 63G-7-201***

# Discretionary Function (Retained Immunity)

- *Narrowly construed (very limited applicability)*
- *Look at where there is policy evaluation, judgment, and expertise*
- *Rule of thumb: designing something vs. fixing something*
- *Operational decisions are not a discretionary function (e.g. when to fix uneven sidewalks)*
- *Allocating finite governmental resources often is part of discretionary function*
- *Design, capacity, and construction of flood control system is a discretionary function*
- *Placement of traffic safety devices (lights, signals, railroad crossing) is a discretionary function*

# Limitation on Employee Liability

- *Even where the government waives immunity, employees cannot be sued personally where the employee acts or fails to act:*
  - *During the performance of the employee's duties;*
  - *Within the scope of employment; or*
  - *Under color of law.*
- *This does not cover allegations of "willful misconduct."*
- *This limitation does not extend to civil rights claims.*

# Notice of Claim



- *Plaintiffs must strictly comply with the notice of claim requirements.*
- *Must be made within one year after the claim arises (knew or should have known about it).*
- *A lawsuit can't be filed until 60 days after the notice of claim is filed.*
- *A lawsuit must be filed within two years after the claim arises (with a \$300 undertaking).*
- *The lawsuit has to be brought in district court, not small claims court.*
- *Exceptions: contracts, takings, employment actions for protected employees, and claims outside Governmental Immunity Act.*

# Notice of Claim (continued)

- *Notice of claim must contain:*
  1. *Brief statement of facts;*
  2. *Nature of claim asserted;*
  3. *Damages incurred, so far as they are known; and*
  4. *Where against an employee individually, the employee's name.*
- *Must be sent to the city clerk or the designated agent in the UGIA database.*
  - *Emailed claims must copy the city attorney.*
  - *Good faith exception if sent to an elected official or executive officer and other requirements are met.*

# Limitations on Damages

- *Punitive damages are not allowed!*
- *2023 tort cap limits:*
  - *\$827,000 for personal injury per person.*
  - *\$3,329,100 for personal injury per occurrence.*
  - *\$326,200 for property damages (excluding takings).*

*These limits are found in Utah Admin. Code R37-4-2 and are increased every 2 years (due for 2024 update very soon).*



# Policy Considerations

- *Municipalities may have other considerations besides just liability.*
- *Should we provide instruction/assistance to those who want to sue us?*
- *How do we balance our duties to safeguard public funds with the desire to be accountable for errors?*



# Questions?

