

Monell Liability – Standards and Trends

1. Is “Deliberate Indifference” a Workable Standard of Conduct for Municipal Liability?
 - What is “deliberate indifference” and where did it come from? Studying *Estelle v. Gamble*, 429 U.S. 97 (1976) and *Farmer v. Brennan*, 511 U.S. 825 (1994), and contrast with *Davidson v. Cannon*, 474 U.S. 344 (1994) and *Kingsley v. Hendrickson*, 135 S.Ct. 2466 (2015).
 - Studying *City of Canton v. Harris*, 489 U.S. 378 (1989), which established “deliberate indifference” as the standard to be applied to municipal liability claims under *Monell v. New York Dep’t of Social Servs.*, 436 U.S. 658 (1978), and cases post-*Canton* trying to apply this “individual” standard of conduct to the “collective” conscience of the municipality. For example, see *Bd. of Comm’rs of Bryan County v. Brown*, 520 U.S. 397 (1997); *Connick v. Thompson*, 563 U.S. 51 (2011); *Kingsley v. Hendrickson*, 135 S.Ct. 2466 (2015)
2. Can there be “Single Incident *Monell* Liability” as Referred to in *Canton, supra*; *Bryan County, supra*; and *Connick, supra*? If so, Does it Allow Imposition of Strict Liability in 42 U.S.C. § 1983 Litigation?
 - Exploring *Monell, supra*. What is *Monell Liability*? Liability of the municipality. Liability of a “supervisor”. No *respondeat superior* liability. No liability if no underlying constitutional torts, but see below.
 - *Oklahoma v. Tuttle*, 471 U.S. 808, 823 (1985) says if there is no policy, practice, custom or usage there can be no *Monell* liability. Warns against situation in which there is no requirement for establishing policy, practice custom or usage, then a claimant can now point back to something [via expert testimony or otherwise] the municipality *should have done* or *could have done* to prevent the constitutional injury. See also *Canton, supra* at 392.
 - Circuit Court Split
 - Can expert evidence / testimony / opinion be used to “substitute” for the previously required showing of a pattern, practice, policy, custom or usage?
 - Is there such a thing as an actionable “lack of policy” or a “no policy” liability? What about a *de facto* policy of not requiring a certain thing? See, e.g., [Richko Petition Provided – pending withdrawal due to settlement.](#)
 - *COLA v. Castro Petition* – Denied January 23, 2017. [Petition provided.](#)
3. Does *Los Angeles v. Heller*, 475 U.S. 796 (1986) really mean that if there is no individual constitutional violation on the part of the municipality’s employees, then there can be no “municipal liability” under the applicable constitutional standard?
 - Circuit Court split on this issue.

- Stems from the concept of imposing “municipal” liability without a finding of individual constitutional liability.
 - If there is no “constitutional tort” committed by the employee / official, how can the municipality be liable? Surprisingly, some Courts (including the Sixth Circuit) have concluded liability can still be imposed.
 - In the context of qualified immunity claims.
 - Eight amendment / Fourteenth Amendment claims.
4. How does the 14th Amendment “substitute” for the Eighth Amendment in pre-trial detainee claims against municipalities for failure to protect and conditions of confinement litigation in correctional facilities / jails, etc.?
- 42 U.S.C. § 1983 does not create its own cause of action. Traditionally 42 U.S.C. § 1983 litigation has required that the constitutional violation be tethered to a “bill of rights” violation, first, fourth, eighth amendment, which have built in standards; 14th amendment is not such a “right” in and of itself.
 - State tort law usually serves as the anchor points, i.e., fourth amendment claims of excessive force or unreasonable search and seizure (assault and battery; false imprisonment; malicious prosecution). For the 14th amendment claim has no such state law analogue, therefore no “tether” to 42 U.S.C. § 1983. So, where’s the tort?
 - Individual standards are changing and seem to be in flux, or outright disarray, see Chief Justice Roberts’ statement in *Kingsley*, *supra*.
 - What about subjective / objective after *Kingsley* – see *COLA v. Castro*
 - Fourth Amendment or Fourteenth – failure to protect / excessive force claims and the problem with imposing liability in the correctional environment.
5. Takeaways
- What is a “clearly established” right, duty, or law for purposes of the qualified immunity analysis? Confusion abounds still. But, see *White v. Pauley*. Opinion provided.
 - Seems to be no end in sight to claims against municipalities under 42 U.S.C. § 1983 for jail / correctional facilities incidents. Expert evidence being used to create the ideal correctional environment.
 - Municipal jails cannot serve as surrogates for mental health treatment facilities – there are not enough resources, trained staff, and facilities. Study provided.
 - Privatization adds extra wrinkle because of the “state actor” issue (especially in prisoner / detainee transportation scenarios where the underlying “tort” may depend on the state in which the incident occurred, even though a constitutional claim is being brought under 42 U.S.C. § 1983.

