IMMUNITIES

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QUALIFIED IMMUNITY

1. Protects officers sued in their individual capacity from liability on federal claims.
2. Applies to officers acting within the scope of their discretionary authority.
3. May be raised in a Motion to Dismiss; as an affirmative defense to a Motion on the Pleadings; in a Motion for Summary Judgment; and at trial.

RIGHT OF IMMEDIATE REVIEW

This right applies only to individual capacity claims.

The municipality does not have a right of immediate review for a denial of Motion to Dismiss or Motion for Summary Judgment.

Thus, the municipality may be forced to proceed to trial on a case where the officer is granted immunity.

A party must typically wait until the final disposition of a case to appeal a trial court ruling. However, the United States Supreme Court held in *Mitchell v. Forsyth* that issues surrounding the legal sufficiency of a trial court's denial of qualified immunity are immediately appealable. 472 U.S. 511, 526-527 (1985). Failure to timely appeal a denial of qualified immunity serves as a waiver of the defense at that stage of the process.

QUALIFIED IMMUNITY BURDEN SHIFTING ANALYSIS

Defendant must prove that the officer was acting within the scope of his discretionary authority. Burden then shifts to the Plaintiff to show that the officer violated his constitutional rights.

"Only if Plaintiff can show a constitutional violation does the court then proceed to the final step in the qualified immunity determination—whether that right was clearly established." *Wood v. Kessler*, 323 F.3d 872, 877-78 (11th Cir. 2003).

SAUCIER V. KATZ RIGID SEQUENCE OF ANALYSIS

In *Saucier v. Katz*, the United States Supreme Court laid out the sequence of analysis for courts reviewing an officer's entitlement to qualified immunity. The Court set forth its "instructions to the district courts and courts of appeals to concentrate at the outset on the definition of the constitutional right and to determine whether on the facts alleged, a constitutional violation could be found…" Only upon finding a constitutional violation should the court determine whether the right was clearly established.

SAUCIER'S MANDATORY SEQUENCE OF ANALYSIS

Pros

1. Helped developed the constitutional law and provide officers with clear guidance on what acts violated the constitution.
2. Without deciding the threshold constitutional question, the law would remain unclear.

Cons

Required lower courts to decide complex constitutional issues when the qualified immunity issue could be decided with relative ease.

PEARSON V. CALLAHAN: ELIMINATING THE *SAUCIER* SEQUENCE OF ANALYSIS

In its decision in *Pearson*, the United States Supreme Court:

1. Eliminated the rigid sequence of analysis set forth in *Saucier*. This allowed lower courts to skip the first prong of the qualified immunity analysis (i.e., whether a constitutional violation existed) and to first analysis the second prong (whether the officer violated clearly established law).
2. Highlighted the importance of the sequence of analysis set forth in *Saucier*, but made clear that it is no longer mandated.

Harlow v. Fitzgerald

1. The United States Supreme Court decision holding that a public official performing within the scope of his discretionary authority is entitled to qualified immunity in a civil case as long as the official does not "violate clearly established statutory or constitutional rights of which a reasonable person would have known."
2. Allowed qualified immunity in "extraordinary circumstances" in which the individual violates clearly established law.

"EXTRAORDINARY CIRCUMSTANCES"

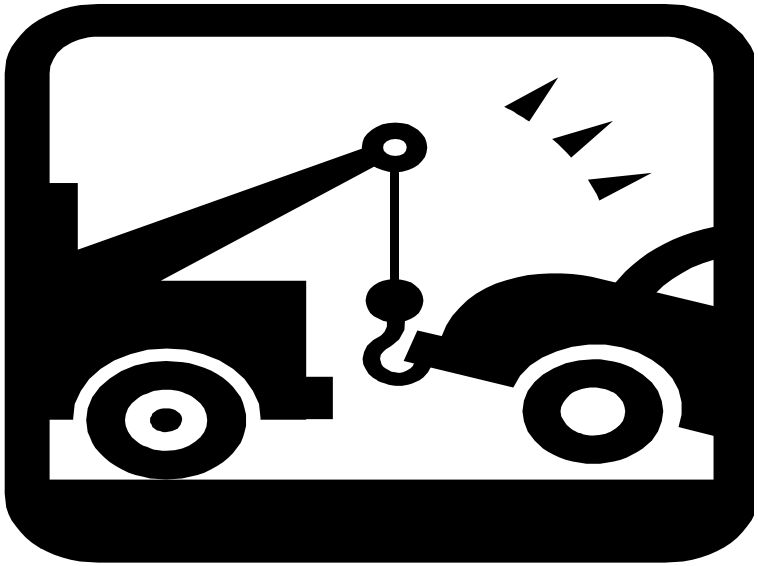
"Extraordinary circumstances" may apply when relying on advice of counsel or a statute, ordinance or regulation that is presumptively constitutional. However, these factors are NOT determinative.

Lawrence v. Reed

Sheriff relied on a local ordinance that allowed him to remove junk cars from private property.

Consulted with the City Attorney to determine how to properly remove cars in light of vehicle removal ordinance.

The 10th Circuit denied Sheriff qualified immunity because it found that he should still have known that removal of cars from private property violated Plaintiff's due process rights.



WHAT IS CLEARLY ESTABLISHED LAW?

Determined by the precedent set by:

- United States Supreme Court
- Circuit Court (i.e., the Eleventh Circuit)
- Highest State Supreme Court

It is not enough that "clearly established law" sets forth what is reasonable. It must also inform an officer of what is "unreasonable" in order for the officer to be on notice.

CLEARLY ESTABLISHED LAW

The United States Supreme Court has focused on the second prong of the analysis in recent decisions:

1. San Francisco v. Sheehan, 135 S.Ct. 1765 (2015) – Fourth Amendment does not "clearly establish" that entering the room of mentally ill patient threatening to kill people to prevent escape or prevent her from gathering additional weapons violates Fourth Amendment.
2. Carroll v. Carman, 135 S.Ct. 348 (2014) –Fourth Amendment does not "clearly establish" that the "knock and talk" doctrine requires officers to begin their encounter at the front door.
3. Taylor v. Barkes, 135 S.Ct. 2042 (2015 (per curium) – No clearly established "right to the proper implementation of adequate suicide prevention protocol."

PRACTICAL IMPACT OF THE COURTS' FOCUS ON THE "CLEARLY ESTABLISHED LAW" COMPONENT OF THE QUALIFIED IMMUNITY ANALYSIS

STATE IMMUNITY STATUTES

- Some states have immunity statutes applicable to state law claims.
- The standard applicable to a state immunity statute may be different from the federal immunity standard.
- The grant of qualified immunity, therefore, may not necessarily result in the dismissal or grant of summary judgment of claims arising under state law.

GEORGIA IMMUNITY STATUTE

O.C.G.A. §36-33-4 provides that an officer:

"may be liable for injuries and damages caused by the negligent performance of, or negligent failure to perform, their ministerial functions and may be liable for injuries and damages if they act with actual malice or with actual intent to cause injury in the performance of their official functions."

WHAT IS ACTUAL MALICE?

Actual malice requires an intent to injure. Does not include “implied malice” or reckless disregard

MARYLAND IMMUNITY

Maryland Tort Claims Act, State Government Article, Sec. 12-105 Courts & Judicial Proc. Article, Sec. 5-522

- All "State personnel" are immune from liability in tort for acts or omissions committed in the scope of their duties and without malice or gross negligence.
- The State's sovereign immunity is waived for this purpose.

MARYLAND IMMUNITY

State Common Law Immunity
(applies to officials of local gov'ts & municipalities)

- Public officials are immune from liability arising out of the performance of discretionary acts without malice or gross negligence. Principally applies to claims of negligence.
- Does not apply to intentional torts or State constitutional violations.
- Federal constitutional standards applied to State constitutional counterparts – read *in pari materia*.