

# Tort Immunities

## SUMMARY

This chapter discusses the tort immunities of governmental (sovereign) immunity, immunity of public officers, immunity for children of tender years, and statutes of limitations.

## CHAPTER OUTLINE

### I. SOVEREIGN (GOVERNMENTAL) IMMUNITY

- A. Governments' immunity from liability for torts committed by their employees.
- B. Historical origins:
  1. English and Western European law declared that the king could not be sued by his subjects without his consent.
  2. King (and his agents) were immune from tort liability because the king was given divine right by God to rule. Immunity was originally based upon premise that king could not commit legal wrongs against anybody.
  3. Gradually, common law viewed sovereign immunity as "The king can do no wrong."
- C. American applications:
  1. Sovereign immunity was adopted by American courts as part of English common law at the time of American independence.
  2. The king was replaced by concept of governmental entities.
  3. State, local, and federal governments were immune from tort liability unless they consented to suit through statutes or constitutions.
- D. Early 20th-century cases: American courts began distinguishing between governmental functions that were and were not immune from tort liability (the so-called governmental/proprietary distinction).
- E. Governmental functions:
  1. When governmental employees committed torts against citizens, the government was immune from liability if employees had been engaged in governmental functions.
  2. Governmental functions examples: police, fire, public medical services.
- F. Proprietary functions:
  1. Business-like activities in which governments engage, and for which governments are liable

for their employees' torts committed during the pursuit of these functions. E.g., municipality providing utility services.

2. Fee standard:
  - a. Used by courts to distinguish governmental from property functions.
  - b. If governmental activity charged user fees, then activity was considered proprietary.

### G. Modern trends:

1. Modern courts have abandoned governmental/proprietary distinction in favor of outright abolition of common law sovereign immunity.
2. Legislatures have enacted statutes abolishing most governmental tort immunities.

### H. Excerpts from AM. JUR. 2D *Municipal, School, and State Tort Liability* (1988).

### II. TORT IMMUNITY FOR PUBLIC OFFICERS

- A. Legislators and judges enjoy absolute immunity from tort liability while performing official governmental activities.
- B. Executive branch officers enjoy absolute immunity for administrative officials, performing judicial or legislative functions.
- C. Rationale for immunity: Public officials must be free to perform variety of governmental activities without fear of reprisal by angry citizens disadvantaged by adverse governmental decision making. Such citizens might file endless tort actions against public officials, having a chilling effect on governments' ability to perform necessary public tasks.

### III. TORT IMMUNITY FOR CHILDREN OF TENDER YEARS

- A. Young children enjoy complete, or limited, tort immunity, under common law.
- B. Children of *tender years* defined as young children under age seven.
- C. Absolute immunity for intentional torts: Most states still follow ancient common law that children of tender years are absolutely immune from intentional tort liability because they are too young to understand, and thus form the requisite intent to commit, such torts.
- D. Limited Immunity for negligence:
  1. Under most states' common law, children of tender years may be liable for negligence

actions, depending upon reasonable young child standard.

2. Reasonable person = young child same age and experience as defendant.
3. Minority of states hold that children under age seven cannot commit negligence and are immune from liability. Most states place age lower, at three or four years, for absolute negligence immunity to apply.

#### IV. STATUTES OF LIMITATIONS

Various statutes of limitations apply to tort actions against governmental units. A plaintiff's failure to file within these time periods bars his or her claims. Use examples from your jurisdiction.