

QUALIFIED IMMUNITY

WHAT IS QUALIFIED IMMUNITY?

➤ Harlowe v. Fitzgerald, 457 U.S. 800, 818 (1982)

- “We therefore hold that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”

➤ Mitchell v. Forsyth, 472 U.S. 511, 526 (1985)

- “An immunity from suit rather than mere defense to liability.”

WHY DOES THIS IMMUNITY EXIST?

➤ *Mitchell v. Forsyth*, 472 U.S. 511, 525-26 (1985)

- Limit liability for damage.
- General costs that would arise without immunity.

Distraction of officials from their governmental duties.

Inhibition of discretionary action.

Deterrence of able people from public service.

➤ *Harlowe v. Fitzgerald*, 457 U.S. 800, 814 (1982)

- “Dampen the ardor of all but the most resolute, or the most irresponsible [public officials], in the unflinching discharge of their duties”

WHEN QUALIFIED IMMUNITY APPLIES

➤ *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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

WHEN QUALIFIED IMMUNITY APPLIES

➤ Constitutional Violations:

1st Amendment: Free Speech

4th Amendment: Excessive Force / Search and Seizure / Probably Cause

8th Amendment: Prisoner medical needs

14th Amendment: Due Process / Pre-trial detainee medical needs.

WHEN QUALIFIED IMMUNITY APPLIES

➤ *42 U.S.C. § 1983*

- **NO:** Monell v. Dep't of Soc. Servs. Of City of New York, 426 U.S. 658 (1978)

Municipality /

Official capacity: Policy or Custom and Failure to Train

- **YES:** For Individual Capacity Claims

- **NO:** Ministerial Acts

WHEN QUALIFIED IMMUNITY APPLIES

➤ *State Law Claims*

➤ Witzke v. City of Bismarck, 2006 ND 160, 718 N.W.2d 586

➤ N.D.C.C. 32-12.1-03(4) No Employee Liability

➤ Exception: Reckless or grossly negligent conduct or willful or wanton misconduct

➤ N.D.C.C. 32-12.1-03(3) Immunities

➤ Discretionary Immunity / Public Duty

NOT ABSOLUTE

➤ *Prosecutorial*

➤ Administrative / Investigation

➤ *Witness*

➤ *Judicial*

WHEN IS IMMUNITY ADVANCED?

- *Legal Question for Court to Decide*
- *Resolved as early as possible – long before trial*
 - Discovery is likely needed
- *Fact questions – Jury may need to weigh in to allow Judge to decide*

TWO PRONG TEST

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- *Two Prong Test – Saucier v. Katz, 533 U.S. 194, 201-02 (2001).*
 1. Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional or statutory right?
 2. If a violation could be made out on a favorable view of the parties' submissions, the next, sequential step is to ask whether the right was clearly established, which is to determine whether it would be clear to a reasonable officer his conduct was unlawful in the situation he encountered.

- *Start with Either Prong – Pearson v. Callahan, 555 U.S. 223, 236 (2009)*
 - Judge can decide which of 2 prongs are addressed first

TWO PRONG TEST

- *Violation of Constitutional or Statutory Right – Merits Of The Case*
 - ▶ 1st Amendment: Retaliation / Speech-Forum

TWO PRONG TEST

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- *Violation of Constitutional or Statutory Right – Merits Of The Case*
 - 4th Amendment: Excessive Force / Illegal Search and Seizure / Probable Cause
 - Force Permitted:
 1. Was it unreasonable or excessive
 2. Facts & circumstances
 3. Not 20/20 hindsight
 4. 2021 Minnesota statute change for deadly force
 - Seizure = Use of force with intent to restrain but not accidental force. Torres v. Madrid, 141 S. Ct. 989, 998 (2021)
 - Probable Cause or Arguable Probable Cause

TWO PRONG TEST

- *Violation of Constitutional or Statutory Right – Merits Of The Case*
 - 8th-14th Amendment: Medical needs
 - Deliberate indifference to serious medical need.
 - Deliberately disregard medical need = akin to criminal recklessness

TWO PRONG TEST

➤ *Violation of Constitutional or Statutory Right*

- Intended to provide meaningful contribution to constitutional law development
- Courts hesitate to analyze this prong – as recognized in Pearson case:

Fact intensive so provide little guidance for future cases

Lower court decision has little value if higher court decides constitutional issue

Decision may rest on interpretation of state law – value only for that state.

Departs from general rule of constitutional avoidance

TWO PRONG TEST

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- *Constitutional or Statutory Right Clearly Established*

- Clear to a reasonable officer his conduct was unlawful in the situation he encountered.

- Kisela v. Hughes, ___ U.S. ___, 138 S. Ct. 1148 (2018)

- Fair notice that conduct was unlawful– judged by law at time of conduct

- Does not require case directly on point

- Caveat: In excessive force case entitled to QI unless precedent “squarely governs”

- “Precedent must have placed statutory or constitutional question beyond debate”

- Why: “Immunity protects all but the plainly incompetent or those who knowingly violate the law.”

- Plaintiff’s burden to prove right was clearly established

TWO PRONG TEST

➤ *Constitutional or Statutory Right Clearly Established*

➤ How demonstrate right clearly established

L.G. through M.G. v. Columbia Pub. Sch., 990 F.3d 1145, 1147-48 (8th Cir. 2021):

1. Existing circuit precedent with sufficiently similar facts.
2. “A robust consensus of cases of persuasive authority.”
3. “In rare instances, that a general constitutional rule applies with ‘obvious clarity.’”

➤ Why:

Immunity protects all but the plainly incompetent or those who knowingly violate the law

Liability only for transgressing bright lines, not for making bad guesses in gray areas.

QUALIFIED IMMUNITY APPEAL

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- *Entitled to immediate appeal if denied QI by trial court.*
 - Exception: Genuine Issue of Material Fact (Scott v. Harris, 550 U.S. 372, 380 (2007))
 - Facts must be viewed in the light most favorable to the nonmoving party – the Plaintiff
 - Plaintiff must present more than some metaphysical doubt as to the material facts.
 - Some factual dispute not enough – must be genuine issue of material fact
 - Two stories, and one blatantly contradicted by record, so no reasonable jury could believe it, that version of facts should not be adopted.
- *Stay of case pending appeal.*

WHAT IS NEXT

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➤ *Statutory changes*

- Federal
- States – Minnesota

➤ *Types of cases*

- Justice Thomas statement in denying cert in Hoggard v. Rhodes, 141 S. Ct. 2421, 2422 (2021)

1. Test not located in text of 42 U.S.C. § 1983
2. A one size fits all doctrine:

Applies to police officer who make split-second decisions in dangerous settings

Applies to other governmental officials who have time to make calculated choices