

Table of Contents

CHAPTER 1

INTRODUCTION: SOVEREIGN, GOVERNMENTAL, AND DISCRETIONARY IMMUNITIES

by Corey F. Finkelmeyer

- I. Historical Development [§ 1.1]
- II. Procedural Nature of the Immunities [§ 1.2]
- III. Contractual Matters [§ 1.3]

CHAPTER 2

ABSOLUTE AND QUALIFIED IMMUNITY

by Jennifer Sloan Lattis

- I. Introduction [§ 2.1]
- II. Absolute Immunity [§ 2.2]
 - A. In General [§ 2.3]
 - B. Judicial Immunity [§ 2.4]
 - 1. Nature [§ 2.5]
 - 2. Purpose [§ 2.6]
 - 3. 42 U.S.C. § 1983 [§ 2.7]
 - 4. Examples [§ 2.8]
 - C. Legislative Immunity [§ 2.9]
 - 1. Nature [§ 2.10]
 - 2. Scope [§ 2.11]
 - D. Prosecutorial Immunity [§ 2.12]
 - E. Quasi-Judicial Immunity [§ 2.13]
 - F. Other Forms of Absolute Immunity [§ 2.14]
- III. Qualified Immunity [§ 2.15]
 - A. Nature of the Doctrine [§ 2.16]
 - B. The Benefit Conferred by Qualified Immunity [§ 2.17]
 - C. The Acts for Which Qualified Immunity Is Available [§ 2.18]

- D. Analysis of Qualified Immunity [§ 2.19]
 - 1. The Nature of the Court’s Inquiry [§ 2.20]
 - 2. The Meaning of “Clearly Established” for Purposes of Qualified Immunity [§ 2.21]
- E. Litigating Qualified Immunity [§ 2.22]
 - 1. Trial Court Process [§ 2.23]
 - 2. Appealing the Denial of Qualified Immunity [§ 2.24]

CHAPTER 3

LOCAL GOVERNMENTAL IMMUNITIES

by MaryNell Regan

- I. Overview: Claims Against Local Governmental Entities [§ 3.1]**
 - A. In General [§ 3.2]
 - B. History [§ 3.3]
- II. Damages Limitations [§ 3.4]**
 - A. Statutory Provision [§ 3.5]
 - B. Notes on Application [§ 3.6]
 - C. Exceptions to Damages Cap [§ 3.7]
 - D. Municipal Liability for Motor Vehicle Accidents (Wis. Stat. § 345.05) [§ 3.8]
- III. Immunity for Intentional Acts [§ 3.9]**
- IV. Discretionary Immunity for Wisconsin Municipalities and Their Employees [§ 3.10]**
 - A. History and Nature of Immunity [§ 3.11]
 - B. Purpose of Immunity for Wisconsin Municipalities and Their Employees [§ 3.12]
 - C. Application of Discretionary Immunity [§ 3.13]
 - D. Limitations to Discretionary Immunity [§ 3.14]
 - 1. Exceptions to Discretionary Immunity [§ 3.15]
 - 2. Highway-Defects Exception [§ 3.16]
 - 3. Medical-Decisions Exception [§ 3.17]

CHAPTER 4

RECREATIONAL IMMUNITIES

by David G. Ress

I. Legislative Intent [§ 4.1]

- A. Purpose [§ 4.2]
- B. Construction [§ 4.3]

II. Application [§ 4.4]

- A. Considerations in Applying the Statute [§ 4.5]
- B. Activities Covered [§ 4.6]
 - 1. In General [§ 4.7]
 - 2. Intent [§ 4.8]
 - 3. Substantially Similar Activities [§ 4.9]
 - 4. Organized Team Sports Exception [§ 4.10]
 - 5. No Good-Samaritan Exception [§ 4.11]
- C. Municipal Roadways and Sidewalks [§ 4.12]
- D. Definition of Owner [§ 4.13]
- E. Definition of Property [§ 4.14]

III. Other Recreational Immunity Statutes [§ 4.15]

CHAPTER 5

NOTICE PROCEDURES

by Timothy M. Johnson

I. Introduction [§ 5.1]

II. Wis. Stat. § 893.80 Notice Requirements [§ 5.2]

- A. Filing the Notice and Claim [§ 5.3]
 - 1. In General [§ 5.4]
 - 2. Notice of Injury (Wis. Stat. § 893.80(1d)(a)) [§ 5.5]
 - 3. Continuing Violations Doctrine [§ 5.6]
 - 4. Equitable Estoppel [§ 5.7]
 - 5. Claim for Damages (Wis. Stat. § 893.80(1d)(b)) [§ 5.8]
 - a. In General [§ 5.9]
 - b. Address of the Claimant [§ 5.10]
 - c. Itemized Statement of Relief Sought [§ 5.11]
 - d. Service [§ 5.12]
 - e. “Be Disallowed” [§ 5.13]

- B. Disallowed Claims [§ 5.14]
 - 1. Notice of Disallowance of Claim Under Wis. Stat. § 893.80(1g) [§ 5.15]
 - 2. Substance of Disallowance [§ 5.16]
 - 3. Impact of Claim Disallowance on Statutes of Limitation [§ 5.17]
- C. Application of Wis. Stat. § 893.80(1d) [§ 5.18]
- D. Wis. Stat. § 893.80(1d) Inapplicability [§ 5.19]
 - 1. In General [§ 5.20]
 - 2. Prosecution of Alleged Public Records and Open Meetings Violations [§ 5.21]
 - 3. Claims for Contribution [§ 5.22]
 - 4. Statutorily Authorized Actions for Injunctive Relief [§ 5.23]
 - 5. Civil Rights Actions [§ 5.24]
 - 6. Certiorari [§ 5.25]
 - 7. Appeals from Property Tax Determinations [§ 5.26]
 - 8. Reviews of County Board Determinations [§ 5.27]
 - 9. Contesting the Validity of Annexations [§ 5.28]
 - 10. Direct-Legislation Action [§ 5.29]
 - 11. Appeals from Condemnation Award [§ 5.30]
 - 12. Statutory Exceptions to Notice-of-Claim Requirements [§ 5.31]
 - 13. Medical Malpractice Claims [§ 5.32]
 - 14. Antitrust Actions [§ 5.33]

III. Wis. Stat. § 893.82 Claims Against State Employees [§ 5.34]

- A. In General [§ 5.35]
- B. Notice [§ 5.36]
- C. Claims for Contribution and Indemnification [§ 5.37]

CHAPTER 6

FEDERAL TORT CLAIMS ACT

by John M. Vandlik

I. Overview [§ 6.1]

- A. Waiver of Sovereign Immunity [§ 6.2]
- B. Extent of Liability [§ 6.3]
- C. Administrative Claim [§ 6.4]
- D. Court Action [§ 6.5]
- E. Limitations on Plaintiffs' Attorney Fees [§ 6.6]

II. Discretionary-Function Exception [§ 6.7]

- A. In General [§ 6.8]
- B. *United States v. Gaubert* [§ 6.9]
- C. *Rosebush v. United States* [§ 6.10]
- D. *Figueroa v. United States* [§ 6.11]
- E. *Dwyer v. United States* [§ 6.12]
- F. Seventh Circuit View [§ 6.13]

APPENDICES

**Selected Governmental Immunity Statutes
and Constitutional Provisions**

- Text of Wis. Stat. § 345.05 (annotated)
- Text of Wis. Stat. ch. 775 (annotated)
- Text of Wis. Stat. §§ 893.80–.83 (annotated)
- Text of Wis. Stat. §§ 895.52–.526 (annotated)
- Text of Wis. Const. art. IV, § 27 (annotated)
- Text of 28 U.S.C. § 2401(b)
- Text of 28 U.S.C. §§ 2671–2680

INDEX

