

Public Liability



Torts, Claims, Civil Rights
and Immunities



You've Been Sued!

- What should you do first?
- Who should be informed?
- Is there any “official” action you should take?
- Should you be concerned about your personal well-being? Buy insurance?
- Should you retain a lawyer?



Sources of Public Liability

- Idaho Tort Claims Act – allows suits against Idaho local governments/public officials – end sovereign immunity
- Civil Rights Act of 1871 - allows damage suits to enforce constitutional and statutory rights
- Other *Federal* statutes may allow damage remedies



Idaho Tort Claims Act

- Claims Against Public Entity, Elected Officials, Employees, Volunteers
- Within course and scope of employment
- Seeking money damages
- Employer provides defense
- Employer pays damages – maximum of \$500,000 or amount of insurance



Damage Exposures

- Responsible only for *pro rata* share of damages
- Public agency not responsible for private conduct – constitutional limits
- Be wary of contract provisions trying to shift liability or risk of loss
- Damages - \$500,000 or amount of insurance, whichever is greater



Exceptions to Liability

- Discretionary Function
- Quarantine
- Assault, battery, false imprisonment, libel, slander, etc.
- Arises out of riots, demonstrations, mob violence, etc.
- Collection of unlawful tax or fee
- Work release inmate
- Detained goods
- Issue or deny permit
- Inspection of property
- Jail medical care



Procedural Requirements

- File claim w/in 180 days – minors longer
- Claim must describe circumstances
- No suit for 90 days
- Must file suit w/in 2 years of date
- Punitive damages forbidden
- Purchase insurance/ levy taxes



42 USC 1983

- Civil Rights Act of 1871
- Vindicate Federal constitutional or statutory rights
- Post Civil War history
- Defining “person”
- Alternative to Idaho Tort Claims Act



Key Components

- Actions under color of state law
- Deny rights under Constitution or Federal statute
- “Policy” or “practice” of entity
- Who is “policymaker”?
- State is different - no \$\$ remedy



Section 1983 Characteristics

- Attorneys Fees – Always a threat
- Special notice not required
- Limitations period – 2 years
- Unlimited damages
- Qualified immunity – good faith, acting to follow the law.