



# Deem, Farney & López Law Offices

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## CIVIL RIGHTS OVERVIEW

### *I. Scenarios:*

- A. Student Tasered by police at political rally in Florida
- B. Police dumping disabled man out of wheelchair in Louisiana
- C. Police searching Millersville college students' home
- D. Smoketown Six political demonstration
- E. Lancaster prison strip searches/class action

### *II. History of Civil Rights Statutes in the U.S*

**A. Before the Civil War and Reconstruction**, the Bill of Rights was not applicable to the states. State courts were the guardians against governmental invasions of life, liberty and property but rarely were federal courts involved.

**B. Between 1866 and 1870, three constitutional amendments passed:**

- (1) 13<sup>th</sup> (abolition of slavery);
- (2) 14<sup>th</sup> (Due process and equal protection clauses, privileges and immunities clause); and
- (3) 15<sup>th</sup> (right to be free from racial discrimination in voting).
- (4) Each amendment gave Congress the power to legislate to enforce the amendment.
- (5) In 1866, to enforce the 13<sup>th</sup> Amendment, Congress enacted a civil rights statute that guaranteed to African American citizens the same rights as white citizens (§ 1981 included the right to contract, to give evidence, & to hold property).
- (6) In 1867, the *Habeas Corpus* statute gave those held under state authority the ability to go to federal court to challenge the constitutionality of their detention.

### C. Civil rights generally enforced by Section 1983 today (42 U.S.C. § 1983).

- (1) Able to sue state and local government and officials who violate the constitution and federal statutes.
- (2) Other statutes cover private conduct (e.g. Title VII, discrimination in employment)

**D. § 1983 was enacted in 1871 as part of the Ku Klux Klan Act.** Enabled victims of unconstitutional state action to sue the wrongdoing “person:”

Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State..., subjects, or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured...

**E. Section 1983 came at the end of this new wave of civil rights legislation,** and was designed to open up the federal courts by giving litigants a direct federal cause of action against those who act “under color of” law to deprive persons of their constitutional rights.

- (1) Section 1983 was enacted as part of the KKK act, which originally purported to reach private conspiracies that deny persons equal protection of the laws (much held unconstitutional, but not § 1983).
- (2) Section 1983 was Congress’ response to widespread resistance to reconstruction in the south by private people, state and local law enforcement, legislatures and courts. It provided a direct federal cause of action without going through state court or using state law.
- (3) Not used a lot at first (2 dozen times in first 50 years): perhaps because the Bill of Rights remained inapplicable to the states until the 50s and 60s (Warren Court through the 14<sup>th</sup> Amendment DP clause). It also may have been unclear whether actions of public officials that were not formally sanctioned by state law amounted to “state action”. Then came *Pape*...

***Monroe v Pape***, 365 U.S. 806 (1961) (governmental actors could be personally liable for damages to redress an unconstitutional police break-in of a private home).

- (4) A plaintiff does not generally have to exhaust any available remedies under state tort law or administratively (some exceptions: e.g., not prisoners/prison conditions). *Pape, supra*.
- (5) Police officers’ action was under color of law within § 1983 even though it also happened to be in violation of state law (In *Pape*, police broke into home in early morning, routed plaintiff and family from bed, made plaintiff stand naked in living room, ransacked house, plaintiff arrested and taken to police station for 10 hours, not allowed to call a lawyer, not promptly arraigned, not prosecuted).
- (6) § 1983 reaches abuse of power by those who are the repositories of state power *even if the wrong committed by the official is not itself authorized by state law* if the commission of the

wrong is itself rendered possible or is aided by the statutory authority lodged in the wrongdoer. *Pape, supra*.

(7) Merely provides a cause of action for enforcing underlying constitutional or statutory guarantees. Section 1983 is a means, not a source, of substantive rights conferred by the U.S. Constitution or by federal statute. *Graham v. Connor*, 490 U.S. 386 (1989).

(8) No independent state of mind requirement only the one needed for the underlying violation: e.g., 4<sup>th</sup> Amendment bars searches and seizures that are “objectively unreasonable”; 8<sup>th</sup> Amendment ban on cruel and unusual punishment requires intentional acts taken with “deliberate indifference” to the rights of prisoners. *See Daniels v. Williams*, 474 U.S. 327 (1986).

#### **F. Who is a state actor?**

Attorney general, district attorney

Law enforcement – local police, sheriff, state police officers

Zoning board members/ board itself

Legislator/mayor/ borough council/county commissioner

CYS caseworker

Park rangers

Security guard

Prison warden/prison guard/corrections officer

Probation officer

Judge

Teacher

School bus driver

**G. Standard:** Section 1983 applies when a: (1) defendant has acted “under color of” law, and (2) defendant’s action deprived the plaintiff of some right, privilege or immunity secured by the Constitution or federal law.

(1) The threshold inquiry under §1983 is whether the conduct in question was committed by a person acting under color of state law. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982); *West v. Atkins*, 487 U.S. 42 (1988); *Barna v. City of Perth Amboy*, 42 F.3d 809 (3d Cir. 1994).

(2) Not every action undertaken by a state actor leads to the conclusion that the act is committed under color of state law. Only when the alleged wrongdoer is *acting by virtue of his state authority* will the action give rise to a possible §1983 cause of action. Actor must be cloaked with state authority. *See Boykin v. Bloomsburg University*, 893 F. Supp. 409 (M.D.Pa. 1995), *aff’d without opinion*, 91 F.3d 122 (3<sup>rd</sup> Cir. 1996).

(3) Generally doesn’t apply to private actors (unless acting in concert; willful participants in joint activity). State action – public function, symbiotic relationship, nexus test. *See Dennis v. Sparks*, 449 U.S. 24, 28 (1980).

## **H. Municipal liability: Policy or custom**

(1) Failure to train; acquiescence in constitutional violation; knowledge of conduct; deliberate indifference. *See, e.g., City of Canton v. Harris*, 489 U.S. 378 (1989); *Monell v. Department of Social Servs.*, 436 U.S. 658 (1978); *Sample v. Diecks*, 885 F.2d 1099 (3d Cir. 1989).

## **I. Immunity**

(1) Sovereign; *see, e.g., Alden v. Maine*, 527 U.S. 706 (1999)(states enjoy inherent 11<sup>th</sup> Amendment immunity from suit absent abrogation by Congress);

(2) Absolute; *Pierson v. Ray*, 386 U.S. 547 (1967)(judges for judicial acts within their jurisdiction):

(3) Qualified (acts reasonably and in good faith: not immune if right clearly established, official should have known of the right and that the conduct violated the right). *See, e.g., Hope v. Pelzer*, 536 U.S. 730 (2002); *Anderson v. Creighton*, 483 U.S. 635 (1987).

## **J. §1983 provides for recovery of reasonable attorney fees for prevailing parties.**