# Administrative Law – Richards

# Study Guide – Bivens, Federal and Louisiana Tort Claims Acts and 702 of the Flood Control Act of 1928

# Evaluation Questions

# Federal sovereign immunity

## What is federal sovereign immunity?

## How is sovereign immunity expressed in the U.S. constitution?

## Prior to the FTCA, what did you have to do to get compensation for a tort by a federal government employee?

## What damage claims does the constitution itself allow?

# *Bivens*

## How does *Bivens* plug a hole in the original FTCA? (What actions does it cover that were excluded in the original FTCA?)

## What are the defenses in a *Bivens* case?

## How was the FTCA amended after *Bivens*?

## How does qualified immunity differ from DFE?

# FTCA

## Causes of actions

### What sort of actions does the FTCA cover?

### Where do we look for the law to determine the government’s liability for a given claim?

### What types of torts are excluded under the FTCA?

### Can you collect pre-judgment interest or punitive damages under the FTCA? (Forget about the section on death cases.)

## Filing an FTCA claim

### What is the procedural prerequisite before going to court under the FTCA?

### What is the prescription/statute of limitations period for an FTCA claim?

### When can you go to court after filing your claim under the FTCA?

### What is the legal effect if you go to court without exhausting these requirements?

## What is the discretionary function exception?

### Why is the discretionary function exception necessary to protect the other political and judicial controls on agencies?

### What would be the consequences for agency political control if the only defenses were those ordinarily available in state tort claims, i.e., standard of care rather than the discretionary function defense?

### What if the government knowingly and intentionally injures people, as with the *Allen* case?

### How does the shift from ordinary negligence to discretionary function potentially confuse plaintiffs' attorneys, i.e., why is showing the defendant acted knowingly a problem in FTCA claims but great in most private tort claims?

## What were the lessons of *Berkowitz* and *Varig Airlines*?

### On following regulations and statutes?

### On drafting regulations to allow flexibility?

# Louisiana sovereign immunity

## How is sovereign immunity different in Louisiana from the federal model?

## How does the LA-FCA modify this rule?

## How does this difference affect the construction of the federal versus state tort claims act, i.e., how is a statute in dereliction of immunity construed differently from a statute creating immunity?

### Key construction canon – when possible, construe statutes as consistently with the constitutional purpose as possible.

## How does the discretionary function defense in the LA-TCA compare to that in the FTCA?

## How does the procedure for filing an LA tort claim different from filing under the FTCA?

## What if the state refuses to pay an LATCA verdict?

# Flood law and cases

## What is the immunity provision of the Flood Control Act of 1928 (FCA), i.e., how broad is it?

### Is it broader than the discretionary authority defense?

### What if the Corps is negligent in designing or building a levee?

### What if the Corps does not follow statutory standards in building a levee?

### Why is this immunity necessary?

### What are the risks of giving the Corps this level of immunity?

### Does the Flood Control Act provide for a cause of action - what law gives you jurisdiction to bring a claim against the Corps?

### How might abolishing the Flood Control Act immunity and only allowing the discretionary authority defense affect the Corps decisions about flood control projects?

## *Graci*

### Why did the court find that FCA immunity did not apply in *Graci*?

### Why did the government win anyway on remand?

## *Central Green*

### What did the *Central Green* court find was the key question in establishing whether FCA immunity applies in a case?

### How does this potentially limit the holding in the 5th Cir. ruling in *Graci*?

## In re Katrina Levee Litigation

### Why were the 17th Street levee cases dismissed?

### How did the district court avoid FCA immunity in the MRGO case?

### What was the battleship theory?

### What negligence did the district court point to in defeating the Corps’ claim of discretionary immunity?

### Why did the 5th Circuit eventually say that the Corps was entitled to the DFE defense, thus ending the levee breach cases?

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