# Administrative Law – Richards

# Study Guide – Federal and State Tort Claims Acts

# Learning Objectives

## Learn how the Federal Tort Claims Act (FTCA) creates a limited exception to sovereign immunity to allow administrative compensation for tort claims.

## Learn the rationale for the exemptions to the FTCA.

## Learn how the discretionary function defense fits with judicial deference to agencies and the Mathews case.

## Learn what steps must be satisfied to get jurisdiction to appeal of an administrative determination under the FTCA.

## Learn how the absence of sovereign immunity in Louisiana changes the nature of the LA-TCA.

## Learn how the courts construe the LA-TCA in light of the FTCA.

# Readings

## FTCA Reader and Text

## *Gregor v. Argenot Great Central Insurance Co.*, 851 So.2d 959 (La. 2003)

# 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?

## 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?

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

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

#### 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?

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