

# Federal Torts Claim Act

## Torts II

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## Overview

- Sovereign immunity prevents suits against the U.S. government.
- The FTCA is a limited waiver of sovereign immunity.
- The FTCA is a comprehensive scheme of procedural and substantive law.
- Tort suits against the U.S. must be prosecuted under the terms of the FTCA.

## Procedure

- Plaintiffs must first file an administrative claim with the appropriate agency specifying a sum certain of damages.
- The agency has six months to allow or deny the claim.
- If denied, a plaintiff may sue in federal district court under the FTCA.

## Substance

- The tort liability of the the U.S. is judged with reference to the tort law of the relevant state.
- If, under state law, a private actor would have a duty in negligence, then the U.S. has such a duty for negligence purposes.
  - This is true even if the action performed by the U.S. would be highly unusual or unlikely for a private person.
- The tortious action must have been committed by a federal employee acting within the scope of his or her employment.
  - Contractors' actions cannot create federal liability, except in rare circumstances where they were so closely controlled, they were functionally employees.
- The FTCA provides many liability exemptions that trump state tort law.

## 28 U.S.C. § 1346(b)(1)

the district courts ... shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages ... for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

## Exemptions

Based on the nature of the conduct

- Discretionary function or duty
- Combatant actions of the military
- Claims arising in a foreign country

## 28 U.S.C. § 2680(a)

[These waivers, including § 1346(b) shall not apply to—]

Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

## 28 U.S.C. § 2680 (j) & (k)

[These waivers, including § 1346(b) shall not apply to—]

- (j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.
- (k) Any claim arising in a foreign country.

## Exemptions

### Based on the cause of action

- Assault, battery
- False imprisonment, false arrest
- Malicious prosecution, abuse of process
- Defamation
- Misrepresentation, deceit
- Interference with contract rights
- No suit can proceed under strict liability.
  - Negligence must be proved.

## 28 U.S.C. § 2680(h)

[These waivers, including § 1346(b) shall not apply to—]  
Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights: Provided, That, with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346 (b) of this title shall apply to any claim arising ... out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this subsection, “investigative or law enforcement officer” means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

## 28 U.S.C. § 1346(b)(2)

No person convicted of a felony who is incarcerated while awaiting sentencing or while serving a sentence may bring a civil action against the United States or an agency, officer, or employee of the Government, for mental or emotional injury suffered while in custody without a prior showing of physical injury.