Civil Rights.

Hoffman v. Holden, 268F 2d 280 2d 280, 289.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects or causes to be subjected, any citizen of the United States or other person to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, equity, or other proper proceeding for redress.

42 U.S.C. 1963.

Title 42, Section 1983 has been held to provide a civil action to protect persons against misuse of power possessed by virtue of state law. "Was clothed with the authority of the state." Davis v. Johnson, 1955 DC Ill. 138 F.Sup., 572; Jobson v. Henne, 1966 Ca. 2 NY 355 F. 2d 139.

That an officer or employee of a state or one of its subdivisions is deemed to be acting under "color of law" as to those deprivations of right committed in the fulfillment of the tasks and obligations assigned to him. Monroe v. Pape, 1961, 365 U.S. 167.

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It has been stated that there is no convincing proof that the Congress is responsible for the Civil Rights Act ever intended to immunize any state or territorial officials or employees, and that it is more likely that the congress intended to do away with whatever common-law immunities existed. Congressional Globe, 42 D Congo 1st Sess., 365-6, 268, 385 (1871).

Judges are not immune from criminal sanctions under the Civil Rights Act. ex parte Virginia (1879), 100 U.S. 339.

The Civil Rights Acts in general, and 1963 in particular, are cast in terms so broad as to suggest that in suits brought under these sections, common law doctrines of immunity can never be a bar. It should be equally clear that both the language and the purpose of the Civil Rights Acts are inconsistent with the, application of common law notions of official immunity in all suits brought under these provisions. Jacobsen V. Henne, 1966, Ca. 2 NY 355, F. 2d 129, 133-4; Anderson v. Nosser, 1971, Ca. 5, Miss., 428 F.2d 183, 01 MCD on other grounds 456 F.2d 835.

By the great weight of authority it is acknowledged that generally "public officials" are not immune from suit when they allegedly violate the civil rights of citizens, and that a "public official's" defense of immunity is to be sparingly applied in these kinds of cases. James v. Ogilvie, 1970, DC Ill., 310 F. Sup. 661, 663.

The court of appeals for the Sixth Circuit has reaffirmed its view that a judge loses all immunity when he acts in absence of all jurisdiction, and has held a referee of a juvenile court responsible in a section 1983 action for abuse of a child. Lucarell v. McNair, 1972, Ca. 6, Ohio"453 F.2d 389.

The Seventh Circuit Court of Appeals has held that a public official does not have immunity simply because he operates in a discretionary manner. It indicated that public servants are to be held liable when they abused their discretion or acted in a way that was arbitrary, fanciful, or clearly unreasonable. Littleton v. Berling, 1972, CA Ill., 468 F.2d 389.

Discussing further the debates in congress relating to the passage of that is now 42:1983, the Yale Law Journal, continues on page 328: "On three occasions during the debates, legislators explicitly stated that judge would be liable under the act. (Congressional Globe, 42nd Congress, 1st Session 385, (1871) No one denied the statements." Bauers v. Heisel, 361 F.2d 581, (3rd Cir. 1966).

Three separate reasons, however, may be discerned from the opinion. The first of these is that a judges decision is appealable and therefore, the party need not sue the judicial officer to vindicate his rights. (See Jennings, Note 11, at 272; E. Jennings, tort Liability of Administrative Officers, 21 Minn. L. Rev.)

An appeal is not always a satisfactory remedy. The court itself has recognized that a citizen's rights way be seriously violated even if he is not ultimately convicted. Dombrowiski v. Pfister, 380 U.S. 479 (1965). A plaintiff need not pursue his state remedies before instituting a 1983 action. Monroe v. Pape, 365 u.S. 167 (1961), which would seem to recognize that appealability imply is not sufficient protection.

This section is relatively new, and may not have been used as yet. The change in this law was approved March 16, 1974."Section 2680 (H) of Title 28, is amended by striking out the period at the end thereof and inserting in lieu thereof a colon owing: '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 2346 (b) of this title shall apply to any claim arising on or after the date of the enactment of this proviso, 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 0 make arrests for violations of federal law.'" (Approved March 16, 1974.)

The above same new law (Par. 163) also amends 28 U.S.C.A. 2680(h); allow individuals to sue the federal government for injuries or damages caused by unauthorized acts or omissions of investigative or law enforcement officers of the U.S. government. So in deciding what

congress meant when it referred to every person in 42 USC 1983, it is significant that congress had earlier rejected specifically absolute judicial immunity by passing the Civil Rights Act of 1866. Littleton v. Berbler, 468 F. wd 389 (1972).

Legislative history makes evident that congress clearly conceived that it was altering the relationship between the states and the nation with respect to the protection of federally created rights; it was concerned that state instrumentalities could not protect those rights; it realized that state officers might, in fact, antipathetic to the vindication of those rights; and it believed that these failings extended to state courts. Mitchum v. Foster, 401 U.S. 225, 242.

Congress possessed the power to wipe it out (absolute immunity). We think that the conclusion is irrestible that congress by enacting the Civil Rights Act subjudice intended to abrogate the privilege to the extent indicated by that act and in fact did so. Section 1 of the third civil rights act explicitly applied to "any person." We can imagine no broader definition. The statute must be deemed to include members of the state, judiciary of the several states…but the policy involved is for congress and not for the courts. Littleton v. Berbler, 468, F. 2d 389 (1912).

42 USC 1985. (2) ...If two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any state or territory, with the intent to deny any citizen the equal protection of the laws, or to injure him or his property

for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to equal person except judges." See u.S. 29 L.Ed. 619, 91 S.ct., Bivens v. Six unknown named agents of the Federal Bureau of Narcotics.

42 USC 1985, (3) ...In any case of conspiracy set forth in this section, if one or more persons engaged herein do, or cause conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United states, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against anyone or more of the conspirators.

42 USC 1986 provides: Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section (1985 of Title 42) are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful act, neglect, or refusal, may be joined as defendants in the action.

Judicial definition that misuse of power possessed by virtue of state law and made possible only because wrong-doer is clothed with authority of state law is action taken under color of state

law within this section is applicable to judge. Duke v. state of Texas, DC Tex. 1971, 327 F.Sup- 1218.

As long as defendant who abridges a plaintiffs constitutional right acts pursuant to a statute or local law which empowers him to commit the wrongful act, an action under this subchapter (1983) is established. Laverne v. Corning, DC NY 1970, 316 F.Sup. 629.

Defendants can be held in actions under 42 USC 1983, even though they did not act willfully. Even though they did not have a specific intent to deprive the plaintiff of a federal right, such defendants can be held to civil responsibility. Monroe v. Pape, 365 U.S. 167, 1961.

An conspiracy is actionable under 42 USC 1985, when there has been an "actual of denial of due process." Jennings v. Nester (1954, Ca. 7 Ill.) 217, F.2d 153, CERT DEN 349 U.S. 958, 99 L.Ed. 1281, 75 S.ct. 888.

The decisions have, indeed, always imposed a limitation upon the immunity that the official's act must have been within the scope of his powers; since they exist only for the public good, never cover occasions where the public good is not their aim, and hence that to exercise a power dishonestly is necessarily to overstep its bounds. Gregoire v. Biddle, 177 F.2d 579, 581 (Ca. 2, 1949).

Pro se petitioners --In determining whether such constitutional rights were denied, we are governed by the substance of things, not by mere form. Louisville 'N.R. Co. v. Schmidt, 177 U.S. 23 S.Ct. 620.

The Seventh Circuit of Appeals has held that a public official does not have immunity simply because he operates in a discretionary situation. It indicated that public servants are to be held liable when they abused their discretion or acted in a way that is arbitrary, fanciful, or clearly unreasonable. (Civil Rights) Littleton v. Berbling (1972, Ca. 7 Ill.), 468 F.2d 389.

The civil rights acts in general, and 1983 in particular, are cast in terms so broad as to suggest that in suits brought under these sections, common law doctrines of immunity can never be a bar... It should be equally clear that both the language and the purpose of the civil rights acts are inconsistent with the application of common law notions of official immunity in all suits brought under these provisions. Jobso v. Henne (1966 Ca. 2 NY) 355 F.2d 129, 133-4, followed in anderson v. Nosser (1971, Ca. 5, Miss.) 428 F.2d 183, 201 MOD on other grounds. 456 F.2d 835.

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When a judge exceeds his jurisdiction and grants or denies that beyond his lawful authority to grant or deny, he has

perpetrated a "non-judicial" action. Yates v. Hoffman Estates (1962, DC Ill.) 209 F.Sup. 757.

It is well established that judges may be enjoyed from interfering with citizens rights. Bramlett v.Peterson (1967) 386 U.S. 547.

A claim under the civil rights act expressly gives the district court jurisdiction, no matter how imperfectly the claim is stated; this is another thing, the style under Rule 8 that poor defendants counsel has been so disturbed about, the judges feelings that the case is probably frivolous does not justify by-passing the right to a hearing on the merits. Harmon v. Superior Court of the States of California, 307 F.2d 796 (Ca. 9, 1962).

Any plaintiff who can allege deprivation of federal right by reason of action under color of law can maintain action under this sub-chapter. Nationwide Amusements, Inc. v. Nattin, DC La. (1971), 325 F.Sup. 95.

Governmental immunity is not defense in suits brought under this section making liable every person who under color or state law deprives another person of his civil rights. Westberry v. Fisher, DC Me., 1970, 309 F.Sup. 95.

Civil action for deprivation of rights: This section making any person who, under color of state law, deprives U.S. citizens of his constitutional rights liable to party injured is to be construed liberally. Nanez v. Rigger, DC. Wis. 1969, 304 F.Sup. 354.

To maintain an action under 1983, it is not necessary to allege or prove that the defendants intended to deprive plaintiff of his constitutional rights, or that they acted willfully, purposely, or in pursuance of a conspiracy…It is sufficient to establish that the deprivation of constitutional rights or privileges was the natural consequences of defendants acting under he color of law, irrespective of whether such consequence was intended. (Civil Rights) Ethridge v. Rhodes (1967 DC Ohio) 268 F.Sup. 83; Whirl v. Kern (1968, Ca. 5 Tex.) 407 F.2d 781.

A complaint may not be dismissed on motion if it states some sort of claim, baseless though it may prove to be and inartistically as the complaint may be drawn. This is particularly true where the plaintiff is not represented by counsel. (Civil Rights) Brooks v. Pennsylvania R. Co., 91 F.Sup. 101 (DC SD NY, 1950) .

In a 42-1983 action, the allegations of the complaint and the inferences to be drawn therefrom, upon a motion to dismiss, must be taken most favorably to the plaintiff. (Civil Rights) Nanez v. Rigger (1969, DC Wis.) 304 F.Sup. 354.

In order to maintain an action under 42 USC 1983, it is not necessary to allege or prove that the defendants intended to deprive plaintiff of his constitutional rights or that they acted willfully, purposely, or in pursuance of a conspiracy. It is sufficient to establish that the deprivation of constitutional rights or privileges was the natural consequences of the actions

of defendants acting under the color of law, irrespective of whether such consequences was intended. (Civil Rights) Ury v. Santee (1969 DC Ill.).

Title 28 U.S.C.A. Section 1342 expressly grants jurisdiction to the federal district courts in civil actions for violations of.civil rights, that is, for any wrongs specified therein. U.S Agnew v. City of Compton, 239 F.2d 226.

Purpose: Generally, this section further protects civil action for deprivation of rights protects constitutional rights from invasion by persons acting under state or federal authority. Weise v. Reisner, DC Wis. 1970, 318 F.Sup. 580, quoted from U.S.C.A. 1972 pocketpart, P. 40 Title 42, Sec. 1983, Note Paragraph 8.

This section was passed to enforce U.S.C.A. Constitution Amendment 14 and to protect form interference the rights secured thereby, as well as other constitutional rights; it is directed against conspiracies of private persons; and there is no requirement that conspiracy be under color of law. U.S.C.A. 1972 Pocket P. 1675, Title 42, Sec. 1995, Note 2.

IRS letter rulings cannot be shielded from the public. (Civil Rights) U.S. Court of Appeals for district of Columbia U.S. v. IRS, 8-19-74, 43 LW 1039.

"Liability in damages for unconstitutional or otherwise illegal conduct has the very desirable effect of deterring such conduct. Indeed, this was precisely the proposition upon which 42 USC

Section 1983 was enacted. "Judges may be punished criminally for willful deprivations of constitutional right on the strength of 18 USC Section 242." (Imbler vs Pachtman, U.S. 47 L.Ed. 2nd 128, 96 S.Ct.)

"Government immunity violates the common law maxim that everyone shall have a remedy for an injury done to his person or property." (Civil Rights) (Firemens Ins Co of Newark, N.J. vs Washington County. 2 Wisc 2d 214; 85 N.W.2d 840 1957.)

"Immunity fosters neglect and breeds irresponsibility while liability promotes care and caution, which caution and care is owed by the government to its people." (Rabon vs Rowen Memorial Hospital, Inc. 269 N.S. 1, 152 SE 1 d 485, 493 1967.)

"Herein...Ohio's Doctrine of Governmental Immunity was held unconstitutional and others to numerous to mention." (Civil Rights) (Krause vs Ohio, app 2d 1 L.N.W. 2d 321 1971.) Reich vs State Highway Dept. 336, Mich 617: 194 N.W. 2d 700 1972.)

"The only elements which need to be present in order to establish claim for damages under the civil rights acts are that defendants have deprived plaintiff of a constitutional right, and that defendants conduct was under color of state law. (D. C. 1974 Thoren vs Jenkins 374 F.Sup. 134.)

"Employees of a city or state are not immune from suit under statute relating civil rights for deprivations of rights on ground that officials

were acting within the scope of their ground that officials were acting within the Scope of their responsibilities of performing a discretionary act." (Bunch vs Barnett 376 F.Sup. 23.)

"Title 28 Section 1391, this section makes it possible to bring actions against government officials and agencies in district court outside D.C." (Norton vs Mcshane 14 L.Ed. 2d 274.)

"Complaint may not be dismissed for failure to state a claim if there is a possibility that plaintiff could obtain some relief on the facts stated, even though plaintiff may not have prayed for the appropriate relief." (Civil Rights) (12B:34, U.S. vs White County Bridge Commission, 2 Fr serv 2d 107, 275 F.2d 529 Ca 07 1950)

"A complaint will not be dismissed for failure to state a claim, even though inartistically drawn and lacking in allegations of essential facts, it cannot be said that under no circumstances will the party be able to recover." (12b:34 Fr Serv 29, 19 Fd 511 DCED Pa 1958.)

"Counterclaims will not be dismissed for failure to state a claim, even though inartistically drawn and lacking in allegations of essential facts, it cannot be said that under no circumstances will the party be able to recover." (12B:34 Lynn vs Valentine vs Levy, 23 Fr 46, 19 FDR, DSCDNY 1956.)

A suit in detinue or replevin in personam should lie to gain possession of property seized by the state. Stephen, Pleading (3rd Am ed) p. 47, 52, 69, 74; Ames Lectures on legal history, p. 64, 71; Wilkins v. Despard, 5 Term Rep- 112; Roberts v. Withered, % Mod. 193, 12 Mod. 92.