

Federal Tort Claims Procedure



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- What is a tort and why is it important?
- What is the federal law regarding tort claims against the federal government.
- Is this law constitutional?

One of the reasons I like answering questions is they prompt me to look at things I hadn't thought about before. Take for example the recent request I had to review the Federal Tort Claims Procedure. While I review lawsuits regularly here, I'd never taken the time to look at this particular legislation.

What is a tort?

Let's start with defining the term "tort."

In law, any wrong or injury. Torts are injuries done to the person or property of another, as trespass, assault and battery, defamation and the like.

[Tort – Webster's 1828 Dictionary](#)

A tort is a wrong or injury; a grievance you might say. Hopefully, that comparison should remind you of the First Amendment.

Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances.

[U.S. Constitution, Amendment I](#)

Tort, technically, is the wrong or injury, while a tort claim refers to the seeking of redress of that grievance. The Federal Tort Claims Procedure is the statutory law Congress passed to regulate tort claims against the federal government. The procedures used for federal tort claims are contained in Chapter 171 of Title 28 of the United States Code.

- 2672. Administrative adjustment of claims

After the definitions, the law starts with what are called “administrative adjustments.”

The head of each Federal agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States 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 agency 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:

[28 USC §2672. Administrative adjustment of claims](#)

Section 2672 basically says that the head of each federal agency can settle claims for money damages against the United States for injury, loss, or even death. That means if you have a tort, a claim of injury, against the United States, the head of the agency responsible can negotiate and settle rather than going to court. Of course, they can only settle if you agree to the settlement.

Let’s talk about the line “under circumstances where the United States, if a private person, would be liable.” Under the law you have “natural” and “artificial” persons. You and I are natural persons, while corporations are artificial. Under this law, the United States is just as liable as a natural person would be. If you could sue your neighbor for a tort,

you can sue the United States for the same tort.

Any award, compromise, or settlement in an amount of \$2,500 or less made pursuant to this section shall be paid by the head of the Federal agency concerned out of appropriations available to that agency. Payment of any award, compromise, or settlement in an amount in excess of \$2,500 made pursuant to this section or made by the Attorney General in any amount pursuant to section 2677 of this title shall be paid in a manner similar to judgments and compromises in like causes and appropriations or funds available for the payment of such judgments and compromises are hereby made available for the payment of awards, compromises, or settlements under this chapter.

[28 USC §2672. Administrative adjustment of claims](#)

Another stipulation in this section of the code is how payments are made based on their size. \$2,500 or less and the agency pays directly. More than \$2,500, or if the award is to be made by the Attorney General, it's handled the same way any other legal settlement would be paid.

▪ 2673. Reports to Congress

The head of each federal agency shall report annually to Congress all claims paid by it under section 2672 of this title, stating the name of each claimant, the amount claimed, the amount awarded, and a brief description of the claim.

[28 USC §2673. Reports to Congress](#)

Congress holds the power of the purse. Or, as Article I, Section 9 states:

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

[U.S. Constitution, Article I, Section 9, Clause 7](#)

Even though an agency head may pay a claim of \$2,500 or less out of its existing appropriations, they still have to report to Congress on the expenditure, so they can be properly published.

▪ 2674. Liability of United States

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

[28 USC §2674. Liability of United States](#)

As stated before, the United States is just as liable to tort claims as a private individual. However, it cannot be liable for interest prior to judgment. Considering that civil cases against the United States can take years to be decided, this said interest could add up to a lot of money. What this means is that the United States pays no price for delaying or otherwise slowing down the judicial process. I wonder if the reciprocal law is in effect? If the United States sues you, are you liable for interest prior to judgment?

If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof.

[28 USC §2674. Liability of United States](#)

If the claim involves a wrongful death, where the injury

happened matters. Even if that location only allows punitive (injury) damages, the United States shall still be liable for the actual or compensatory (replacement) damages. Those damages are to be measured by the pecuniary (monetary) injuries resulting from the death.

With respect to any claim under this chapter, the United States shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available to the employee of the United States whose act or omission gave rise to the claim, as well as any other defenses to which the United States is entitled.

[28 USC §2674. Liability of United States](#)

The United States is entitled to assert any defense based on judicial or legislative immunity available to an employee of the United States. Legislative immunity comes from Article I, Section 6.

The Senators and Representatives ... for any Speech or Debate in either House, they shall not be questioned in any other Place.

[U.S. Constitution, Article 1, Section 6](#), Clause 1

You cannot sue a Senator or Representative for what they say in either house. Similarly, judicial immunity protects judges from suit for their judicial acts. There is just one problem with this section of the law: There is no constitutional authority for judicial immunity, and legislative immunity is limited to Senators and Representatives speech and debate. So the United States does not have legislative or judicial immunity, and neither do any of its employees.

Speaking of constitutional issues:

With respect to any claim to which this section applies, the Tennessee Valley Authority shall be entitled to assert any defense which otherwise would have been available to the

employee based upon judicial or legislative immunity, which otherwise would have been available to the employee of the Tennessee Valley Authority whose act or omission gave rise to the claim as well as any other defenses to which the Tennessee Valley Authority is entitled under this chapter.

[28 USC §2674. Liability of United States](#)

The Tennessee Valley Authority (TVA) is an unconstitutional, federally owned power corporation. It should surprise no one that Congress tries to protect its illegal creation with such language.

- 2675. Disposition by federal agency as prerequisite; evidence

Before a person takes the United States to court, Congress wants them to at least attempt to resolve the issue with the offending agency directly.

(a) An action shall not be instituted upon a claim 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, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

- [2675. Disposition by federal agency as prerequisite; evidence](#)

First, a person has to present their claim to the appropriate federal agency. As one might expect, the agency may find reason to delay their response to some of these claims. That's why there's a six month time limit before a de facto denial takes effect.

- [2680. Exceptions](#)

What would legislation about holding government actors accountable be, without a series of exceptions.

The provisions of this chapter and section 1346(b) of this title shall not apply to—

(a) 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.

- [2680. Exceptions](#)

So a government actor who's executing an invalid law cannot sue under this act? On the one hand, if the government employee has been told what they're doing is legal I can understand this. Still, don't government employees have a duty to support the Constitution? Shouldn't they be held accountable for any unconstitutional acts, even if the law says it's OK?

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

- [2680. Exceptions](#)

You cannot sue the United States for the failures of the Postal Service.

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer, except that the provisions of this chapter and section 1346(b) of this title apply to any claim based on injury or loss of goods, merchandise, or other property, while in the possession of any officer of customs or excise or any other law enforcement officer,

- [2680. Exceptions](#)

Neither can you sue based on the assessment or collection of any taxes, to the detention, or confiscation, of any goods or merchandise. There is a long list of specific exceptions for property in the possession of law enforcement officers; I won't bore you with the legalese. To summarize, property seized under forfeiture, interest on claims, claims against the operation of the Treasury or military forces, and the Tennessee Valley Authority or Panama Canal Company are all exempted from claims under this act.

Conclusion

What conclusions can I draw from this review of the Federal Tort Claims Procedures Act? Most of it appears to be cut and dry legalese designed to show a level of accountability without exposing the federal government to tort claims for the more serious constitutional violations. The exceptions listed in §2680 does seem to violate the Petitions Clause of the First Amendment.

Congress shall make no law ... abridging ... the right of the people ... to petition the Government for a redress of grievances.

[U.S. Constitution, Amendment I](#)

After all, it lists situations where people cannot sue, even

though they have a tort, an injury, or a wrong. That said, I don't believe this act even approaches the worst violations of the Constitution that Congress has passed.

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