

The Civil Rights Act of 1871

Includes

42 U.S.C. 1983

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 within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in any action at law, suit in equity, or other proceedings.

In recent years an increasing number of court cases seeking monetary damages as well as attorney fees are being filed under 42 U.S.C. 1983 of the federal code. These are cases involving alleged deprivation of individual rights secured either by the Federal Constitution or by federal laws.

Actions filed under 42 U.S.C. are not, strictly speaking, actions in tort, they are usually referred to as actions involving constitutional torts. These cases are likely to continue to increase in higher education, and educators may be liable under civil rights law for decisions made and actions taken if they either knew or reasonably should have known that individual rights were being violated by their decision or action. Colleges and universities are, under section 1983, deemed to be “persons” so they too may be held liable. The United States Supreme Court has further held that this legislation applies to all federal laws and not just civil rights laws and constitutional provisions.

Gehring, D. D., Parker, D. P., (1977), The college student and the courts, 2d edition, College Administration Publications, Asheville, NC

Qualified Immunity

How is qualified immunity defined?

In the seminal qualified immunity case *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), the Supreme Court articulated the oft-quoted legal standard for analyzing a qualified immunity defense: “Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow*, 457 U.S. at 818. In analyzing a claim for qualified immunity, then, a court must deny the claim if the law is clearly established, “since a reasonably competent public official should know the law governing his conduct” unless he can either demonstrate extraordinary circumstances or that he “neither knew nor should have known” about the legal right in question. *Id.* at 818-19.