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The year 2020 has been an extremely difficult year for many people in many ways and has created change across different aspects of society. The COVID-19 pandemic has affected the whole world, and in the middle of the year, cities across the country erupted in protest in response to the unjustified and horrific killing of George Floyd by a police officer. The event was one of many such killings in recent years that has been caught on camera and sparked public outrage. Now more than ever, there are demands across the country for police officers to be held accountable for their actions, as in situations similar to the George Floyd murder where a citizen dies at the hands of the police, these officers often receive little to no penalty. Some people believe that the law is analyzed to allow police officers, who are supposed to help and serve citizens, escape events of misconduct with little to no consequences and an unjust lack of repercussions. The demand for police/public employer accountability points to certain laws that relate to government immunity, and cases in the commonwealth of Massachusetts such as *Dudley vs. Massachusetts State Police*, *Auddette vs. Commonwealth*, and *Serrell vs. Franklin County*. These cases and the laws that determined their outcome are incredibly relevant to society and will have a significant impact on future generations.

One law and its sections that are the center of all the cases discussed is General Law Chapter 258, Section 10 (b) and (j). Section 10 (b) states liability should not be applied because of “any claim based upon the exercise or performance or the failure to exercise or perform a

discretionary function or duty on the part of a public employer or public employee, acting within the scope of his office or employment, whether or not the discretion involved is abused” (malegislature.gov). This means that a public employer cannot be held liable for injuries or consequences if the actions that caused them are for the purpose of performing an employee’s duties. The section also includes if the employee is helping their employer function how they are supposed to then they cannot be held liable for repercussions. Section 10 (j) states that liability should not be applied because of, “any claim based on an act or failure to act to prevent or diminish the harmful consequences of a condition or situation, including the violent or tortious conduct of a third person, which is not originally caused by the public employer or any other person acting on behalf of the public employer” (malegislature.gov) This means that unless the public employee or employer created the harmful situation that resulted in damages or injuries, they cannot be held liable. These laws frame the interactions between public employees and citizens, and they ensure that both sides are held to a fair standard in terms of who is or is not liable for an injury or unfortunate accident. The laws are important to keep in mind when discussing the following cases, as well as cases that may occur in the future.

One case that is relevant to the issue of public employee accountability, and society as a whole, is the case of Robert Audette vs. Commonwealth. In this case, Randolph police officer Robert Audette was bitten by a police dog when he was standing around a car the dog was inspecting. He was seeking damages for his personal injuries. The dog was never commanded to attack. The Superior Court judge and the Appeals Court granted summary judgement in favor of the Commonwealth based on the fact that the claim was barred by G.L.C 258 and section 10(b) (caselaw.find.com). The Appeals Court disagreed with the fact that section 10 (j) was relevant in granting summary judgement, but still upheld the decision because there was no evidence that

the dog involved in the bite had “vicious propensities” prior to the incident. Rocky, the dog, was annually certified by the New England State Police Administrative Council, trained with State Trooper John Tasker for eight hours a day, lived with Tasker and his three kids, and had never bit or attacked anyone before. These were some of the main reasons why both the superior court and the appeals court agreed that the commonwealth cannot be held liable for Audette’s injuries as unfortunate as they were. This case is an example of a situation where a police officer cannot be held liable for the consequence of a situation since they were unforeseeable and were not caused by anyone in particular. This is just as relevant in 2020 as any case of police misconduct because many people are too quick to blame police officers for accidents and unfortunate situations just because they are police officers. The fair treatment of police officers, while also upholding the rights of people who are injured in a case, is critical to ensure that the police and other public employees can perform their jobs without second guessing themselves. The balance between holding people accountable for their actions and not accountable for things that weren’t their fault is essential to remember in tumultuous times.

Another case that relates to the issue of police accountability in Massachusetts is Richard Dudley Jr. vs. Massachusetts State Police. To summarize the case, Mr. Dudley was bit by a state police dog while he was in a parking lot, and the dog was chasing down a suspected criminal. Dudley was simply an innocent bystander who had to be transported by ambulance to the hospital due to his injuries. Dudley then filed a civil action against the police department. The Superior Court judge that originally determined the case ruled in favor of the police. Essentially, the judge said that the state police were immune from being sued in this situation because they were a government entity (Boston Herald). This reenforces a general trend that has happened in the country after an occurrence of police misconduct; that they will not be held responsible

simply because they are police officers. In response, Dudley and his lawyers appealed the Superior Court judge's decision. The appellate court then determined that summary judgement could not be granted on this case and that Dudley had the right to sue. The court said that the original decision was based on the "ground of sovereign immunity under the Massachusetts Tort Claims Act G.L.c. 258, where the allegedly tortious conduct of the State police trooper, who was the canine handler, in commanding and releasing the dog to apprehend a criminal suspect (not the plaintiff) in a moderate to heavily occupied commuter parking lot did not involve discretionary activity of the planning or policy-making type that is immunized under the discretionary function exemption to liability under section 10(b) of the act; and where section 10(j) of the act did not preclude suit, given that the trooper created the harmful condition that resulted in the plaintiff's injury" (Mass Cases). The Boston Herald reported, "But appellate justices disagreed with Sullivan, contending in a nine-page decision today that the department lost its immunity privilege when one of its troopers caused 'the harmful condition that resulted in injury to the plaintiff' (Boston Herald). The precedent that was set in the original decision by the judge is dangerous to society as it would have allowed the officer off the hook for creating a situation that resulted in injury or harm to a citizen. Granted, if a police officer has no control over a situation or does something for his own protection when in danger, he or she should and would not be liable for injuries or harm to citizens. This can be seen in the Audette case as well as the Serrell case discussed later on. In this case however, State Trooper Blackwell releasing his dog, Jager, in a crowded parking lot full of innocent bystanders was incredibly negligent and he should have been able to see how one of these people may be hurt. The appeals court acknowledging that the police "caused the harmful condition that resulted in injury," so that Dudley has the right to sue

is a good thing for society as a whole and shows how to hold police officers, public employees, and public employers responsible for their actions.

One more case that is relevant to the issue discussed and society today is the case of Penny Serrell vs. Franklin County. This case came about when Serrell claimed that negligence occurred when correctional officers trying to subdue another inmate pushed an iron gate against Serrell and she was injured. G.L.c. 258, sections 10 (b) and (j) were once again the center of the decision. The Superior Court judge originally granted summary judgment that the county could not be held liable for Serrell's injuries due to the immunities provided in these sections (Mass Cases). However, the appeals court reversed this judgment because they did not believe that the county was protected by sections 10 (j) since Serrell "produced evidence to substantiate her allegation that the correctional officers' intervention was carried out in a negligent manner which increased her risk of harm to her" (Mass Cases). The appeals court continued to say that it needed to be up to the jury whether the correctional officers could have done something else to subdue the inmate that would not have pushed the iron gate against Serrell. This essentially means that the officers may have created the harmful situation because they could have acted in another manner while still doing their job. It may have been possible for the correctional officers to remove the inmate's girlfriend, who he was yelling at, to solve the situation. The appeals court decision to overturn this case is an example of at least analyzing if employees could have done something else that would not have injured an innocent bystander while performing their jobs. This logic could be applied to police officers, or any state employee, as well to make sure that they take every course of action to prevent injuries to innocent bystanders or even people involved in crimes while still doing their job.

All three of the cases discussed; *Dudley vs. Massachusetts State Police*, *Audette vs. Commonwealth*, and *Serrell vs. Franklin County*, have major implications to society as whole because they involve holding state employees accountable for their actions. This has become a major issue in 2020 as state employees such as police officers not being held accountable for their actions has led to widespread protests and riots. This has also allowed repeated events of negligence to occur. It is important that the decisions of these cases are analyzed and looked at as example of how to handle cases related to negligence and liability of someone entrusted to serve the community they work in.

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