

## Officer Liability Practice Exam

1. Nelson was arrested for drunk driving and taken to the police station. While there, he got into a verbal dispute with Franks, a police officer on duty. When Nelson referred to Franks as a “Nazi,” Officer Franks, suddenly punched Nelson one time and broke Nelson’s nose. Nelson was handcuffed during this entire encounter. A second officer, Connelly, was present when this happened but failed to stop Officer Franks from punching Nelson. Nelson sued Connelly, alleging that Connelly had failed to intervene to protect him from Franks’ attack. According to the law, should Connelly be held liable for his failure to take action in this instance?

- a. Yes, because a law enforcement officer always has a duty to intervene when he sees another officer violating a person’s constitutional rights.
- b. Yes, because the actions of Franks are automatically imputed to Connelly, another law enforcement officer, who was present and observed the constitutional violation.
- c. No, because a law enforcement officer may only be held liable where he personally violated a person’s constitutional rights.
- d. No, because Connelly did not have any realistic opportunity to intervene and prevent Franks’ attack on Nelson.

### Answer to question 1:

- a. Yes, because a law enforcement officer has a duty to intervene when he sees another officer violating a person’s constitutional rights.

**INCORRECT:** A law enforcement officer has an affirmative duty to intercede on the behalf of a citizen whose constitutional rights are being violated in his presence by other officers. This includes situations in which excessive force is being alleged. However, in order to hold a law enforcement officer liable under this theory, the officer must have had a realistic opportunity to intervene in the encounter. Here, the blow was struck so rapidly that Connelly had no realistic opportunity to intervene. In other words, this was not an episode of sufficient duration to support a conclusion that Connelly, who stood by without trying to assist Nelson, was a tacit collaborator with Franks.

- b. Yes, because the actions of Franks are automatically imputed to Connelly, another law enforcement officer, who was present and observed the constitutional violation.

**INCORRECT:** While a law enforcement officer may be held liable for failing to intervene to stop another officer from violating a person’s constitutional rights in his presence, there must be a realistic opportunity to intervene. Here, there was no such opportunity. Connelly cannot be held liable merely because of his presence and knowledge.

- c. No, because a law enforcement officer may only be held liable where he personally violated a person’s constitutional rights.

**INCORRECT:** It is not necessary that a police officer actually participate in the use of excessive force in order to be held civilly liable. Rather, an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer’s use of excessive force can be held liable for his nonfeasance. An officer given a badge of authority may not ignore the duty imposed by his office and fail to stop other officers who mistreat a third person in his presence or otherwise within his knowledge.

- d. No, because Connelly did not have any realistic opportunity to intervene and prevent Franks’ attack on Nelson.

**CORRECT:** While a law enforcement officer may be held liable for failing to intervene to stop another officer from violating a person’s constitutional rights in his presence, there must be a realistic opportunity to intervene. Here, the blow was struck so rapidly that Connelly had no realistic opportunity to intervene.

2. While on patrol, Officer Morris saw a female screaming for help near an alleyway. When he approached her, he noticed her face was red, and that she had blood on her cheek. When asked what had happened, she told Morris she had been beaten by her boyfriend, Hearn. She also stated the assault had just occurred, and gave Morris a full description of Hearn and a bar where Hearn liked to hang out. Officer Morris went to the bar, found Hearn, and arrested him for assault. Ultimately, charges were dropped when the girlfriend failed to show up to testify at the preliminary hearing. Hearn then sued Officer Morris for false arrest, claiming that (a) there was no probable cause for his arrest; and (b) the fact that charges were dropped was proof that the arrest should not have been made. According to the law, can Morris be held liable for false arrest?

- a. Yes, because Morris did not have probable cause to arrest Hearn for the assault on his girlfriend.
- b. Yes, because the fact Hearn was never convicted of the assault was conclusive proof that Hearn should not have been arrested for it.
- c. No, because the information provided by the girlfriend was sufficient to establish probable cause for the arrest of Hearn.
- d. No, because Hearn did not object to the arrest at the time it occurred.

**Answer to question 2:**

- a. Yes, because Morris did not have probable cause to arrest Hearn for the assault on his girlfriend.

**INCORRECT:** Probable cause may be established in a variety of ways, including information provided by victims of the crime. As a general rule, when police officers obtain information from a victim establishing the elements of a crime, the information is almost always sufficient to provide probable cause for an arrest in the absence of evidence that the information, or the person providing it, is not credible. Here, the information from the girlfriend, combined with Morris' own direct observations of her injuries, was sufficient to establish probable cause for Hearn's arrest.

- b. Yes, because the fact Hearn was never convicted of the assault was conclusive proof that Hearn should not have been arrested for it.

**INCORRECT:** Because the standard for arrest is probable cause, not proof beyond a reasonable doubt, evidence that may prove insufficient to establish guilt at trial may still be sufficient to support an arrest. Thus, whether a suspect is actually found guilty or innocent of the crime for which he was arrested has no bearing on the validity of the arrest. Neither does the fact that charges in a case are not ultimately pursued.

- c. No, because the information provided by the girlfriend was sufficient to establish probable cause for the arrest of Hearn.

**CORRECT:** Probable cause existed to arrest Hearn, based upon the victim's statements and Officer Morris' observations of her physical injuries. When the facts known to the officer at the time of arrest are sufficient to convince a reasonable officer that he had probable cause to arrest, the arrest is valid. This is true whether or not the arrested individual is ultimately convicted.

- d. No, because Hearn did not object to the arrest at the time it occurred.

**INCORRECT:** Hearn's failure to object or resist the arrest is irrelevant for determining whether probable cause existed.

3. Which of the following statements regarding a failure to intervene is **TRUE**?
- a. A law enforcement officer has an affirmative duty to intervene and protect citizens from crimes committed by third parties.
  - b. A law enforcement officer must actually participate in an excessive use of force in order to be sued under *Bivens*.
  - c. A law enforcement officer must have a realistic opportunity to stop the harm in order to be held liable under *Bivens* for failure to intervene.
  - d. A law enforcement officer cannot be held liable for failure to intervene where the illegal act is being committed by a superior officer.

**Answer to question 3:**

- a. A law enforcement officer has an affirmative duty to intervene and protect citizens from crimes committed by third parties.  
**INCORRECT:** A law enforcement officer generally has no affirmative duty to intervene and protect citizens from crimes committed by third parties. As one court has noted: This rule recognizes the simple reality that law enforcement officers cannot prevent every criminal act that is committed. Imposing liability on a municipality for failing to accomplish this impossible task would overload an already stretched legal system.
- b. A law enforcement officer must actually participate in an excessive use of force in order to be sued under *Bivens*.  
**INCORRECT:** It is not necessary that a police officer actually participate in the use of excessive force in order to be held civilly liable. Rather, an officer who is present at the scene, and who fails to take reasonable steps to protect the victim of another officer's use of excessive force, can be held liable for his nonfeasance.
- c. A law enforcement officer must have a realistic opportunity to stop the harm in order to be held liable under *Bivens* for failure to intervene.  
**CORRECT:** While a law enforcement officer may be held liable for failing to intervene to stop another officer from violating a person's constitutional rights in his presence, there must be a realistic opportunity to intervene and prevent the harm.
- d. A law enforcement officer cannot be held liable for failure to intervene where the illegal act is being committed by a superior officer.  
**INCORRECT:** The rule regarding an officer's failure to intervene applies to all officers, regardless of rank, and includes those situations where the excessive force is actually being employed by a superior.

4. In a *Bivens* action, a plaintiff must allege which of the following elements:
- a. A federal law enforcement officer violated a Constitutional right while acting as a private citizen.
  - b. A federal law enforcement officer violated a Constitutional right while acting under color of law.
  - c. A state law enforcement officer violated a Constitutional right while acting as a private citizen.
  - d. A state law enforcement officer violated a Constitutional right while acting under color of law.

**Answer to question 4:**

- a. A federal law enforcement officer violated a Constitutional right while acting as a private citizen.

**INCORRECT:** A *Bivens* action is only appropriate if a Constitutional violation was committed by a person acting under color of federal law. Not every action undertaken by a person who happens to be a police officer is attributable to the state. So, a law enforcement officer's purely private conduct, no matter how wrongful that conduct might be, is excluded. As a general rule, a law enforcement officer is acting under color of law when his conduct occurs in the course of performing an actual or apparent duty of his office, or in a situation where the officer's conduct is such that he could not have behaved in that way but for the authority of his office.

- b. A federal law enforcement officer violated a Constitutional right while acting under color of law.

**CORRECT:** In a *Bivens* action, the plaintiff must allege two elements: (1) A violation of a Constitutional right, (2) by a person acting under color of federal law. Where no Constitutional violation has occurred, and/or the officer being sued was not acting under color of federal law, a *Bivens* action is not possible. In limited situations, a private citizen acting in concert with law enforcement officers can be considering acting under "color of law."

- c. A state law enforcement officer violated a Constitutional right while acting as a private citizen.

**INCORRECT:** A state law enforcement officer cannot be sued in a *Bivens* action for violating a person's Constitutional or federal legal rights, but may be sued under Title 42 U.S.C. Section 1983. Section 1983 applies to *state* actors acting under color of *state* law. Further, not every action undertaken by a person who happens to be a police officer is attributable to the state. So, a law enforcement officer's purely private conduct, no matter how wrongful that conduct might be, is excluded.

- d. A state law enforcement officer violated a Constitutional right while acting under color of law.

**INCORRECT:** A state law enforcement officer cannot be sued in a *Bivens* action for violating a person's Constitutional or federal legal rights. However, the officer may be sued under Title 42 U.S.C. Section 1983. Section 1983 applies to *state* actors acting under color of *state* law. A *Bivens* action would not be available to a plaintiff in the above situation.

5. During a search of Carson's home pursuant to a warrant to look for stolen credit cards, Thompson, a police officer, found five small, white rocks that resembled crack cocaine. He seized the items and took them back to the station. A preliminary field test indicated the items were not, in fact, cocaine. Nevertheless, Thompson sent the items for testing at the laboratory. Convinced that Carson was a drug dealer, and that the laboratory would confirm his suspicions about the rocks, Thompson decided to go ahead and obtain an arrest warrant. In the affidavit he submitted to the judge, Thompson stated: "A field test of the rocks in question indicated they each had properties consistent with cocaine. Based on Carson's possession of a controlled substance, I request an arrest warrant be issued." There was no other information presented to justify issuing the arrest warrant. Based on this, the judge issued the warrant and Carson was arrested. When the laboratory report confirmed the substance was a vitamin supplement, not cocaine, all charges were dropped and Carson was released. Carson sued Thompson, alleging that he had intentionally lied to the judge to obtain the arrest warrant. According to the law, can Thompson be held liable for his actions?

- a. Yes, because he knowingly and intentionally made a false statement in obtaining the arrest warrant.
- b. Yes, because any time a false statement is found in an affidavit, an officer can be held liable.
- c. No, because the false information presented in the affidavit was not essential to establishing probable cause to support issuance of the warrant.
- d. No, because Thompson's motivation in requesting the warrant was honorable, rather than malicious.

**Answer to question 5:**

a. Yes, because he knowingly and intentionally made a false statement in obtaining the arrest warrant.

**CORRECT:** The Fourth Amendment requires a truthful factual showing in an affidavit used to establish probable cause. Thus, a complaint that an officer knowingly filed a false affidavit to secure an arrest warrant can be the basis for a lawsuit. In order to succeed on such a claim, the plaintiff must show (1) a false statement knowingly and intentionally, or with reckless disregard for the truth, was included in the affidavit; and (2) the false statement was material, or necessary, to the finding of probable cause. Here, the statement regarding the field test was clearly false. Further, this statement was essential to the finding of probable cause, because there was no other information present to the judge. Thus, Thompson can be held liable.

b. Yes, because any time a false statement is found in an affidavit, an officer can be held liable.

**INCORRECT:** The Supreme Court does not require that all statements in an affidavit be completely accurate. Instead, the Court simply requires that the statements be reasonably believed or appropriately accepted by the affiant as true. Misstatements resulting from negligence or good faith mistakes will not open up an officer to liability under Franks v. Delaware. Additionally, in order for a misstatement to result in liability, it must be material to the finding of probable cause. Disputed issues are not material if, after crossing out any allegedly false information, the "corrected affidavit" would establish probable cause.

c. No, because the false information presented in the affidavit was not essential to establishing probable cause to support issuance of the warrant.

**INCORRECT:** Here, the statement regarding the field test was clearly false. Additionally, this statement was essential to the finding of probable cause, because there was no other information presented to the judge on the issue. Information is essential to a finding of probable cause when, if it were disregarded, the remainder of the affidavit would not support a probable cause determination. That is the case here.

d. No, because Thompson's motivation in requesting the warrant was honorable, rather than malicious.

**INCORRECT:** Thompson's motivation for misleading the judge is irrelevant to the inquiry here. Just as "evil" intentions do not make a Fourth Amendment violation out of a reasonable act, an officer's "good" intentions do not make a Fourth Amendment violation constitutional.

6. Which of the following statements regarding “qualified immunity” is **TRUE**?
- a. An officer is entitled to “qualified immunity” in a situation where the Constitutional right violated was not clearly established at the time of the incident.
  - b. An officer is not entitled to “qualified immunity” if he is shown to have violated a plaintiff’s Constitutional rights.
  - c. An officer is not entitled to “qualified immunity” even in situations where no Constitutional violation has occurred.
  - d. Where an officer acted in good faith, he is automatically entitled to “qualified immunity.”

**Answer to question 6:**

- a. An officer is entitled to “qualified immunity” in a situation where the Constitutional right violated was not clearly established at the time of the incident.

**CORRECT:** Law enforcement officers are entitled to qualified immunity where their actions do not violate a clearly established statutory or constitutional right that a reasonable person would have known existed. Stated differently, where law enforcement officers reasonably, albeit mistakenly, violate a person’s constitutional rights, those officials - like other officials who act in ways they reasonably believe to be lawful - should not be held personally liable.

- b. An officer is not entitled to “qualified immunity” if he is shown to have violated a plaintiff’s Constitutional rights.

**INCORRECT:** Whether a Constitutional right has been violated is only one part of the “qualified immunity” analysis. If, under the plaintiff’s version of the facts, a constitutional violation occurred, the court must then decide whether the right was “clearly established” at the time of the violation. Even in situations where a Constitutional violation has occurred, an officer is entitled to “qualified immunity” if the right violated was not clearly established at the time of the incident.

- c. An officer is not entitled to “qualified immunity” even in situations where no Constitutional violation has occurred.

**INCORRECT:** In deciding whether to grant officer qualified immunity, courts use a two-part analysis. The first part of the analysis requires a court to determine whether, under the plaintiff’s version of the facts, a constitutional violation occurred. If no violation has occurred, that ends the inquiry, and the officer is entitled to “qualified immunity.” As noted by the Supreme Court in Saucier v. Katz: “If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity.”

- d. Where an officer acted in good faith, he is automatically entitled to “qualified immunity.”

**INCORRECT:** “Qualified immunity” is not a “good faith” defense. Stated differently, the subjective state of mind of the officer involved in the incident is irrelevant. Instead, his or her actions must be assessed objectively, using an objective reasonableness standard.

7. Which of the following statements regarding a false arrest claim is **TRUE**?
- a. A plaintiff's claim of false arrest is based upon the Fifth Amendment right to due process of law.
  - b. The existence of probable cause is a complete defense to a claim of false arrest.
  - c. Where a plaintiff is acquitted of the charge(s) for which he was arrested, a false arrest claim is conclusively proven and the officer is automatically liable.
  - d. An officer is entitled to qualified immunity on a false arrest claim **only** where probable cause for the arrest actually existed.

**Answer to question 7:**

- a. A plaintiff's claim of false arrest is based upon the Fifth Amendment right to due process of law.  
**INCORRECT:** A plaintiff's claim of false arrest is based upon the Fourth Amendment's right to be free from unreasonable seizures. More specifically, a person has a Fourth Amendment right to be arrested only upon a showing of probable cause. Where this right is violated, a lawsuit for false arrest is possible.
- b. The existence of probable cause is a complete defense to a claim of false arrest.  
**CORRECT:** A law enforcement officer is entitled to qualified immunity on a false arrest claim where probable cause existed for the arrest. Probable cause to arrest constitutes justification and is a complete defense to an action for false arrest. Stated differently, in order for a wrongful arrest claim to succeed under either *Bivens* or Section 1983, a plaintiff must prove the police lacked probable cause for the arrest.
- c. Where a plaintiff is acquitted of the charge(s) for which he was arrested, a false arrest claim is conclusively proven and the officer is automatically liable.  
**INCORRECT:** Whether a suspect is actually found guilty or innocent of the crime for which he was arrested has no bearing on the validity of the arrest. Because a conviction requires a higher standard of proof than an arrest, it is possible that evidence that is insufficient to establish guilt may still meet the lower standard of probable cause for an arrest. Thus, an arrest based upon probable cause is not invalidated if the suspect is later acquitted of the charges, nor is it in cases where charges are not ultimately pursued.
- d. An officer is entitled to qualified immunity on a false arrest claim **only** where probable cause for the arrest actually existed.  
**INCORRECT:** It is not necessary that "actual" probable cause exist in order for an arrest to be objectively reasonable. Instead, the issue for immunity purposes is not probable cause in fact, but "arguable" probable cause. To say that probable cause is "arguable" means that it is possible for officers of reasonable competence to fairly disagree over whether probable cause exists. In other words, where reasonable officers in the same circumstances and possessing the same knowledge as the defendant's could have believed that probable cause existed to arrest, "arguable" probable cause is present.

8. Two City police officers beat a handcuffed prisoner until he identified his drug supplier. After the prisoner was convicted of drug possession, he sued the two officers for injuries suffered during his beating. The lawsuit is legally recognized under:

- a. the Federal Tort Claims Act
- b. the Good Samaritan Act
- c. Bivens
- d. 42 U.S.C. 1983

**Answer to question 8:**

- a. the Federal Tort Claims Act

**INCORRECT:** The FTCA is a law which allows the United States to be sued for the actions of federal employees committed within the scope of their employment. It does not apply to state or local police officers.

- b. the Good Samaritan Act

**INCORRECT:** The federal Good Samaritan Act defines additional circumstances under which a federal officer might be determined to be in the scope of their employment. It does not apply to state or local police officers.

- c. Bivens

**INCORRECT:** This would be correct if the two officers were federal agents, but Bivens does not authorize lawsuits against state or local officers.

- d. 42 U.S.C. 1983

**CORRECT:** This statute authorizes civil lawsuits against state and local officials who violate federally protected rights.

9. Two federal agents were serving a search warrant at a home for stolen property. Instead of wasting time going through the large home looking for the property, they agreed to simply beat the suspect until he told them where the stolen property was. The United States Attorney General directed that both agents be prosecuted under:

a. 18 U.S.C. 241

b. The Federal Tort Claims Act

c. Bivens

d. 42 U.S.C. 1983

**Answer to question 9:**

a. 18 U.S.C. 241

**CORRECT:** This is the federal criminal conspiracy against rights statute. When two or more agents conspire to deprive a citizen of constitutional rights, this is the appropriate statute to bring a criminal prosecution.

b. The Federal Tort Claims Act

**INCORRECT:** This is the federal statute authorizing civil claims against the government for negligence and for intentional torts committed by law enforcement personnel while in the scope of their duty. This statute is not a proper basis for criminal prosecution.

c. Bivens

**INCORRECT:** This would be correct if the question asked what the agents could be sued under, but Bivens does not authorize criminal prosecution. It is an analogy to 42 U.S.C. 1983 for civil lawsuits.

d. 42 U.S.C. 1983

**INCORRECT:** This statute authorizes civil lawsuits against state and local officials who violate federally protected rights. It does not create a criminal charge.

10. Dick Smith was a respected federal agent who was authorized to drive a government vehicle 24 hours a day because of his duties. On the way home from work one day, he spotted a flock of geese that had been digging up his fancy landscaping. Attempting to scare the geese away from his lawn, he accelerated and flashed his lights and siren. In his excitement, he sideswiped his neighbor's mailbox and knocked it off the post. The neighbor can bring a successful lawsuit under which of the following:

- a. Against Smith personally under Bivens
- b. Against the U.S. Government under the FTCA
- c. Against the U.S. Government under 42 U.S.C. 1983
- d. Against Smith personally for negligence

**Answer to question 10:**

- a. Against Smith personally under Bivens

**INCORRECT:** Bivens allows a lawsuit against individual federal officers for constitutional torts (a violation of 4<sup>th</sup>, 5<sup>th</sup>, or 8<sup>th</sup> Amendment rights). Although Smith was clearly negligent, the neighbor does not have a constitutional right to be free from negligence. Therefore, negligence can never be the basis for a proper Bivens claim.

- b. Against the U.S. Government under the FTCA

**INCORRECT:** The U.S. Government is liable under the FTCA for negligence if the federal employee was acting within the scope of employment. There is no federal job that allows agents to chase geese with a federal vehicle simply for digging up an the agent's lawn. Therefore, Smith was not in the scope of employment, and the U.S. Government will not be a proper defendant.

- c. Against the U.S. Government under 42 U.S.C. 1983

**INCORRECT:** This statute authorizes civil lawsuits against state and local officials who violate federally protected rights. Smith is a federal agent, and cannot be sued under this statute.

- d. Against Smith personally for negligence

**CORRECT:** Since Smith was negligent, and not acting within the scope of his employment, the neighbor can always file suit against Smith in his individual capacity in state court.

11. Federal Officer Jones was driving her government car on the way to interview a witness to a crime under investigation. Because she was being inattentive in her driving, she accidentally bumped into the car in front of her causing both damage to the car and minor injuries to the driver. The driver of the other car decides to sue for the property damage and personal injury. How will this case be tried, who will the defendant be, and if the plaintiff wins, who will pay the judgment?

- a. Jones will be the defendant in Federal court, and if the plaintiff wins, Jones will pay the judgment.
- b. Jones will be the defendant in Federal Court, but if the plaintiff wins, the United States will pay the judgment.
- c. The United States will be the defendant in State court, and if the plaintiff wins, the United States will pay the judgment.
- d. The United States will be the defendant in Federal court, and if the plaintiff wins, the United States will pay the judgment.

**Answer to question 11:**

a. Jones will be the defendant in Federal court, and if the plaintiff wins, Jones will pay the judgment.

**INCORRECT:** See answer D.

b. Jones will be the defendant in Federal Court, but if the plaintiff wins, the United States will pay the judgment.

**INCORRECT:** See answer D.

c. The United States will be the defendant in State court, and if the plaintiff wins, the United States will pay the judgment.

**INCORRECT:** See answer D.

d. The United States will be the defendant in Federal court, and if the plaintiff wins, the United States will pay the judgment.

**CORRECT:** With these facts, Jones was acting within the scope of her employment and her act was negligent. This brings the lawsuit under the protection of the Federal Tort Claims Act. The United States will be substituted as the defendant, and if the plaintiff wins, the United States will pay the judgment. The Federal Tort Claims Act, which operates as a partial waiver of sovereign immunity, also provides that the case will be tried in Federal District Court, without a jury (judge alone), and there is a two year statute of limitations. If the plaintiff initially brought the lawsuit in State Court, the case would be “removed” to Federal court.

12. Agent Rogers was assisting in the execution of an arrest warrant on Johnson. As Rogers approached Johnson, Johnson ran. Rogers chased Johnson and tackled him. Johnson got up and continued to be noncompliant, so Rogers used OC pepper spray to get Johnson under control so the arrest could be safely completed. Johnson wants to bring a lawsuit for the injuries he suffered during the arrest. How will this lawsuit proceed?

- a. Under the Federal Tort Claims Act.
- b. As a tort suit against Rogers personally because the Federal Tort Claims Act only protects Federal employees for their negligent, and not intentional, acts committed in the scope of their employment.
- c. As a tort suit against Rogers personally because Rogers was not in the scope of his employment at the time of his actions.
- d. As a criminal case against Rogers personally.

**Answer to question 12:**

- a. Under the Federal Tort Claims Act.

**CORRECT:** The FTCA is available to protect a Federal investigative or law enforcement officer for both negligent *and* intentional acts committed in the scope of the officer's employment. An investigative or law enforcement officer is defined as one who has the authority to arrest, execute searches, or seize evidence. The Federal Tort Claims Act protects Federal employees who are *not* Federal investigative or law enforcement officer *only* for their negligent, and not their intentional, acts.

- b. As a tort suit against Rogers personally because the Federal Tort Claims Act only protects Federal employees for their negligent, and not intentional, acts committed in the scope of their employment.

**INCORRECT:** Were Rogers not a Federal investigative or law enforcement officer, this answer would be correct. Look at distractor A above.

- c. As a tort suit against Rogers personally because Rogers was not in the scope of his employment at the time of his actions.

**INCORRECT:** Rogers was in the scope of his employment.

- d. As a criminal case against Rogers personally

**INCORRECT:** By definition, a lawsuit is not a criminal case.