

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **IMMUNITY - MASSACHUSETTS**

### **Berry v. Commerce Insurance Company**

**Supreme Judicial Court of Massachusetts, Bristol - October 25, 2021 - N.E.3d - 2021 WL 4944557**

Police officer, who sustained severe injuries to his leg when it was pinned between picnic table and personal vehicle of fellow police officer, who was firearms training instructor, during paid lunch break from firearms certification training at firing range on town-owned property, brought action against instructor's automobile insurer seeking declaratory judgment that immunity provision of Tort Claims Act provided no defense to coverage.

On cross-motions for summary judgment, the Superior Court Department entered judgment in favor of police officer. Insurer appealed, and the Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

The Supreme Judicial Court held that instructor was not acting within scope of his employment as police officer when his personal vehicle pinned leg of fellow police officer.

Firearms training instructor was not acting within scope of his employment as police officer when his personal vehicle pinned leg of fellow police officer against picnic table during lunch break from all-day firearms certification training at firing range, and thus, instructor's automobile insurer could not deny coverage for injured officer's damages on ground that instructor was immune from liability under Tort Claims Act, although instructor conducted training as part of his position with police department, lunch break was paid, and range was on town-owned property; instructor's unsafe driving, including approaching range too fast and proceeding towards picnic tables while spinning tires, braking, and causing vehicle to slide, was not motivated by any purpose to serve police department.