

## Does HRS §662-15(4) Exceptions to Chapter 662 have *\*any\** meaning?

Date: December 27, 2021

Aloha to the Senate Judiciary Committee,

Statutes that have no meaning and are not enforced are useless. Useless laws hurt the public because citizens are deluded into thinking the government will follow these laws, and justice is often thwarted by that incorrect assumption.

Is HRS §662-15(4) a useless law? If not, who is going to answer the question I keep asking my government:

**What does, “This chapter *shall not apply* to any claim arising out of...libel, slander...”  
REALLY mean?**

That is what [HRS §662-15\(4\)](#) clearly says, but “*shall not apply to,*” is not defined in [HRS §662-1](#) (Definitions) nor any other place I can find.

**§662-15 Exceptions. This chapter shall not apply to:**

(4) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

To any reasonably intelligent person, this would mean that Chapter 662, the State Tort Liability Act, does **not** apply to any claim arising out of defamation. This means the State Attorney General should not be representing individual defendants in cases of defamation (or any of the other illegal offenses listed in HRS §662-15(4)) **EVEN** **THOUGH** §662-16 says the Department of the Attorney can defend State employees in civil cases for acts **while acting within the scope of the employee’s employment.**

**§662-16 Defense of state employees; county lifeguards.** (a) The attorney general may defend any civil action or proceeding brought in any court against any employee of the State for damage to property or for personal injury, including death, resulting from the act or omission of any state employee while acting within the scope of the employee's employment.

This is probably because, as I said in my small claims court [motion](#) (and [memo](#)) to disqualify Attorneys General from representing a State of Hawai‘i employee in a civil suit for defamation,

**“None of these offenses are *ever* part of a State agency’s broad public policy, which would involve discretionary decisions by the State, or part of *any* state employee’s job duties.”**

Prior to submitting my motion, I consulted with a friend who is a Hawai‘i civil rights attorney, and he thought my argument was grounded solidly in the law. However, the small claims court judge did not agree. The judge also refused to tell me what HRS §662-15(4) means, and why these **Exceptions** to Chapter 662 do not mean that the Department of the AG is not authorized to represent defendants in tortious claims for the listed offenses. Judge Bautista (who isn’t even listed online as a First District Judge, per diem or otherwise) said he wasn’t allowed to provide legal advice. While that may be true, I’m **shocked to discover that judges don’t have to explain their rulings or why Exception to the law don’t, in his opinion, apply.** Even the judge admitted I deserve an answer to my question:

*“That’s exactly the kind of question, Ms. Ott, that you are entitled to an answer on, but that’s exactly what I said, what I meant earlier, I can’t answer those questions. I’m not allowed to.”*

**Asking the AG for an opinion on this law is useless. They are the ones breaking the law!** I hope you can see that if this law is ever going to be enforced, the language must be clearer to judges, the Department of the Attorney General and the public what the exceptions to Chapter 622 really mean. That's your job, I assume.

Please tell me, is there anyone in my government who will answer my question?

**What does, "This chapter shall not apply to any claim arising out of...libel, slander..." REALLY mean?**

Mahalo for your assistance,

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Below is a transcript of the Small Claims Court judge's ruling which he refused to explain, justifying his exclusion by saying to do so would be giving legal advice. Plaintiff is submitting a motion to withdraw the case from Small Claims Court and refile in District Court where, if a judge does not explain a ruling in court, Rules 23 and 24 of the State of Hawai'i District Rules of the Court provide for a means to get a written justification.

Start Time	Transcription = First District Small Claims Court Hearing December 8, 2021
<b>Small Claims Court Judge Bautista</b>	
14:21:25	Based on the court's review of the Motion and the Supplemental Memorandum filed by Ms. Ott, in addition the court's review of the Memorandum in Opposition filed by the Attorney General's Office, at this time, the court makes the following findings in connection with the motion
14:21:45	Number 1, the court does find that under HRS 662-16, the Attorney General's Office does have discretion to represent State employees in civil actions. The court also finds, based on the representations in the filings, that the Defendant in this case is a teacher employed by the Hawaii Department of Education, and therefore <i>is</i> a State employee. Again, based on the representations in the filings, the court finds that at the time of the incident that resulted in this claim, the Defendant was acting within her scope of employment by the State of Hawaii. And therefore base on those statutes, the Attorney General <i>is permitted</i> , by discretion to represent the defendant in this matter, again, not in a personal capacity, in her capacity as an employee of the State of Hawaii through the Department of Education.
14:22:52	Now, what I can say to you, Ms. Ott, so given my findings, I am <i>bound</i> to deny your motion to disqualify the Attorney General at this time...
14:23:19	Now, I know you're going to have questions. I'm going to stop you in advance and tell you, I'm not allowed to give legal advice. I would highly recommend that after the fact, not in a public forum in front of everybody now, but I'd highly recommend, you contact Mr. Phillips, after the fact, as a member of the Hawaii Bar and an attorney, and he should be able to answer your legal questions.
14:23:26	My decision is based on the findings I just made, and it is well-grounded in the current law. Okay? And so, at this point, the next step is going to be to set the case for trial if there is no possible settlement. ...
14:29:17	Okay, Ms. Ott, any final questions?
<b>Plaintiff Vanessa Ott</b>	
14:29:21	Yes. I'm sorry your honor, but could you explain to me, in statute 662-15, the one that says it does not apply to defamation, assault. What does that mean that this Chapter "does not apply" in cases of defamation?
<b>Small Claims Court Judge Bautista</b>	
14:29:41	That's exactly the kind of question, Ms. Ott, that you are entitled to an answer on, but that's exactly what I said, what I meant earlier, I can't answer those questions. I'm not allowed to. Okay? So, I just want you to know, it's not that I don't want to help you, or personal, it's just
<b>Plaintiff Vanessa Ott</b>	
14:29:56	I understand, but <i>you</i> ruled on it...
14:29:99	STOP. The file for the next 5 minutes is corrupted. This is where the recordings end. The ensuing exchange is in the 7.2M TRM (proprietary format of "ForTheRecord.com") file Plaintiff received from the court. Apparently that file is corrupted because <i>ForTheRecord.com</i> has been unable to process the audio file as it did the other recordings. As of 12/25/21 a customer support ticket has been filed with <i>ForTheRecord.com</i> .