APPENDIX – RESTATEMENT (SECOND) OF TORTS [1]

| Case Name | Rest. Section | Rest. Section Language | Adopted? | Rule/Holding: |
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| **Division 1 – Intentional Harms To Persons, Land, And Chattels** | | | | |
| **Section 1** | | | | |
| Plain v. Plain, 307 Minn. 399, 402, 240 N.W.2d 330, 332 (Minn. 1976) | § 1 cmt. d Interest (2nd) | The word "interest" is used throughout the Restatement of this Subject to denote the object of any human desire. | Cited in support | Husband could not recover damages from his wife for loss of consortium nor children recover damages from their mother for loss of maternal services resulting from her alleged negligence, and that husband could not recover from his wife medical expenses which she incurred as result of her alleged negligence. |
| **Section 8A** | | | | |
| Victor v. Sell, 301 Minn. 309, 313, 222 N.W.2d 337, 340 (Minn. 1974) | § 8A Intent (2nd) | The word "intent" is used throughout the Restatement of this Subject to denote that the actor desires to cause consequences of his act, or that he believes that the consequences are substantially certain to result from it. | Adopted | The plaintiff sued to recover damages for personal injuries sustained when he fell from a ladder, which was leaning against his own house, onto a radiator discarded by his neighbor which was allegedly on the plaintiff's property. In affirming a judgment for the defendant, the court held that the jury charge was sufficient to convey the idea that an intentional placing of the radiator on the plaintiff's property would constitute a trespass and that since the jury found that there was no trespass, the trial court did not commit reversible error in explaining contributory negligence and assumption of risk to the jury, even though these were not defenses to the plaintiff's action. |
| Kaluza v. Home Ins. Co., 403 N.W.2d 230, 233 (Minn. 1987) | § 8A (2nd) | See above. | Yes | An employee sued a workers' compensation insurer in federal district court for attempting to terminate his disability benefits by making false and unfounded charges. The district court certified to this court the question of whether the Minnesota workers' compensation statute created a remedy for the conduct alleged by the plaintiff. Answering in the affirmative, this court stated that the statute |

[1] Compiled by Michael Steenson and Ryan Wahlund. Current as of May 2009.

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| | | | | imposed liability on one "intentionally obstructing" an employee seeking workers' compensation benefits, and held that documentary evidence showed that the defendant intended to put the plaintiff in a position where he would be forced to settle his claims. The court noted that the word "intent," as used in the statute, denoted that the actor desired to cause consequences of his act or that he believed that the consequences were substantially certain to result from it. |
| Rath v. Plath, 402 N.W.2d 577, 579 (Minn. Ct. App. 1987) | § 8A Intent | See above. | Cited in support | A wife was injured by her husband. Nearly six years later she sued her husband on alternative grounds of negligent and/or intentional assault. The trial court found that the contact constituted a battery and therefore was barred by the two-year statute of limitations. This court reversed and remanded, holding that the husband's action constituted negligence, rather than the intentional tort of battery. The court reasoned that battery required an intent to create an offensive contact and that the husband's conduct did not manifest the existence of such intent. |
| **Section 10** | | | | |
| Carradine v. State, 511 N.W.2d 733, 738 (Minn. 1994) | § 10 Privilege (2nd) | (1) The word "privilege" is used throughout the Restatement of this Subject to denote the fact that conduct which, under ordinary circumstances, would subject the actor to liability, under particular circumstances does not subject him to such liability.<br><br>(2) A privilege may be based upon<br>(a) the consent of the other affected by the actor's conduct, or<br>(b) the fact that its exercise is necessary for the protection of some interest of the actor or of the public which is of such importance as to justify the harm caused or threatened by its exercise, or | Cited in dissent | Motorist sued arresting officer for defamation, inter alia, after defendant stated in his police report and to a reporter that plaintiff's conduct involved speeding, reckless driving, fleeing an officer, and impersonating an officer. The trial court denied in part defendant's motion for summary judgment, and the intermediate appellate court affirmed. Affirming in part, reversing in part, and remanding, this court held that defendant had absolute immunity from civil suit for allegedly defamatory statements about plaintiff in arrest report but had only qualified immunity from suit for any statements made to reporter that differed significantly from statements made in written report. Arguing that the claim should be dismissed because the evidence did not establish actual malice on the part of defendant, the dissent commented |

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| | | (c) the fact that the actor is performing a function for the proper performance of which freedom of action is essential. | | that the term "privilege," rather than the term "immunity," should be used in the context of defamation cases, since immunity was from suit, while privilege related to liability. |
| **Section 11** | | | | |
| Frerichs Constr. Co., Inc. v. Minnesota Counties Ins. Trust, 666 N.W.2d 398, 402 (Minn. Ct. App. 2003) | § 11 Reasonably Believes (2nd) | The words "reasonably believes" are used throughout the Restatement of this Subject to denote the fact that the actor believes that a given fact or combination of facts exists, and that the circumstances which he knows, or should know, are such as to cause a reasonable man so to believe. | Adopted | After general contractor for office-building construction project sued property owner for breach of contract, owner counterclaimed for breach of the contractual obligation to report the presence of asbestos pursuant to a provision requiring general contractor to stop excavating if it encountered material "reasonably believed to be asbestos" and notify owner. The trial court granted summary judgment for general contractor on the counterclaim. Affirming, this court held, inter alia, that there was insufficient evidence in the record to create a fact issue as to whether general contractor had a basis to reasonably believe that there was asbestos at the site prior to the discovery there of asbestos by a state pollution-control-agency worker. |
| **Section 18** | | | | |
| Schumann v. McGinn, 307 Minn. 446, 452, 240 N.W.2d 525, 529 (Minn. 1976) | § 18 Battery: Offensive Contact (2nd) | (1) An actor is subject to liability to another for battery if<br>(a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and<br>(b) an offensive contact with the person of the other directly or indirectly results.<br><br>(2) An act which is not done with the intention stated in Subsection (1, a) does not make the actor liable to the other for a mere offensive contact with the other's person although the act involves an unreasonable risk of | Adopted | Plaintiff, a child who was shot by a police officer while fleeing from a car which he had stolen, brought this action against the officer and the city alleging negligence and battery in the officer's shooting of the plaintiff. The lower court dismissed the action against the city, and after a judgment in favor of the officer, the plaintiff appealed. On appeal, the court reversed and remanded, holding that the trial court erred in instructing the jury and framing the issues in terms of negligence, rather than battery, and in its instructions regarding the officer's privilege in using his firearm. The court stated that the jury's confusion of these issues was clear from its answers to interrogatories submitted by the court below. The court also stated that the burden was on the defendant officer to show that the use of his firearm was within the scope of his |

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| | | inflicting it and, therefore, would be negligent or reckless if the risk threatened bodily harm. | | privilege. Over a vigorous dissent, the court also held that an officer is privileged to use reasonable force to effect an arrest of a person if the officer has probable cause to believe that the person is a felon, and that this includes the use of his firearm if the officer reasonably believes that he could not effect the arrest without the use of the firearm. |
| State Farm Fire and Cas. Co. v. Williams, 355 N.W.2d 421, 424 (Minn. 1984) | § 18 Battery: Offensive Contact | See above. | Cited in discussion - not essential to holding | An insurer sought to avoid its duties of defense and indemnity under a homeowner's insurance policy in an action against the insured for intentional nonconsensual assault. The insurer argued that, although the conduct alleged in the main action was an offensive contact battery, rather than a battery resulting in physical injury, the intent to do the act brought it within the policy's exclusion for bodily injury that the insured intended. Reversing the trial court, the court held that intention to inflict bodily harm within the meaning of the exclusion is inferred as a matter of law from the character of the act. Therefore, the insurer did not have a duty to indemnify, defend the main action, or pay the insured's attorney fees in defending the declaratory judgment action. |
| **Section 35** | | | | |
| Blaz v. Molin Concrete Products Co., 309 Minn. 382, 385, 244 N.W.2d 277, 279 (Minn. 1976) | § 35 False Imprisonment (2nd) | (1) An actor is subject to liability to another for false imprisonment if<br>(a) he acts intending to confine the other or a third person within boundaries fixed by the actor, and<br>(b) his act directly or indirectly results in such a confinement of the other, and<br>(c) the other is conscious of the confinement or is harmed by it.<br><br>(2) An act which is not done with the intention stated in Subsection (1, a) does not make the actor liable to the other for a merely transitory or | Adopted, cited in footnote 2 | Plaintiffs brought separate tort actions against corporate and individual defendants for false imprisonment. The court, in affirming judgment for defendants in both actions, noted that in the first action the evidence was conflicting as to the elements of false imprisonment: words or acts intended to confine, actual confinement, and awareness by plaintiff that he is confined. The court found the evidence sufficient to sustain the jury verdict. As for the second action, the court noted that although the element of confinement was satisfied in that plaintiff was compelled to go where he did not wish to go plaintiffs cited no authority recognizing compulsion when the threat is to an unrelated person. |

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| | | otherwise harmless confinement, although the act involves an unreasonable risk of imposing it and therefore would be negligent or reckless if the risk threatened bodily harm. | | |
| **Section 36** | | | | |
| Peterson v. Sorlien, 299 N.W.2d 123, 128 (Minn. 1980), cert. denied, 450 U.S. 1031 (1981). | § 36 cmt. a. What Constitutes Confinement (2nd) | (1) To make the actor liable for false imprisonment, the other's confinement within the boundaries fixed by the actor must be complete.<br><br>(2) The confinement is complete although there is a reasonable means of escape, unless the other knows of it.<br><br>(3) The actor does not become liable for false imprisonment by intentionally preventing another from going in a particular direction in which he has a right or privilege to go. | Cited in support | If one is aware of a reasonable means of escape that does not present a danger of bodily or material harm, a restriction is not total and complete and does not constitute unlawful imprisonment. Damages may not be assessed for any period of detention to which one freely consents. |
| **Section 40A** | | | | |
| Blaz v. Molin Concrete Products Co., 309 Minn. 382, 385–86, 244 N.W.2d 277, 279 (Minn. 1976) | § 40A cmt. a, illus. 1. Confinement by Other Duress (2nd) | The confinement may be by submission to duress other than threats of physical force, where such duress is sufficient to make the consent given ineffective to bar the action. | Adopted | Plaintiff may be so compelled by threat of harm to a member of his family. |
| **Section 45A** | | | | |
| Smits v. Wal-Mart Stores, Inc., 525 N.W.2d 554, 558 (Minn. Ct. App. 1994) | § 45A cmt. c. Instigating or Participating in False Imprisonment (2nd) | One who instigates or participates in the unlawful confinement of another is subject to liability to the other for false imprisonment. | Adopted | A party is not liable for false imprisonment for conveying information about suspected criminal activity unless that party directly persuades or commands the police to detain the suspect. |
| **Section 46** | | | | |
| Haagenson v. Nat. Farmers Union Prop. & Cas., 277 N.W.2d 648, | § 46 cmt. d. Outrageous Conduct Causing Severe Emotional Distress (2nd) | (1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional | Cited in footnote 3; adopted | In jurisdictions where recovery is permitted for the independent tort of intentional infliction of emotional distress, the type of actionable conduct |

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| 652 n.3 (Minn. 1979) | | distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.<br><br>(2) Where such conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress<br>(a) to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm, or<br>(b) to any other person who is present at the time, if such distress results in bodily harm. | | must be extreme and outrageous, so atrocious that it passes the boundaries of decency and is utterly intolerable to the civilized community. |
| Hubbard v. United Press Int'l, Inc., 330 N.W.2d 428, 437 (Minn. 1983) | § 46(1) cmt. d, cmt. j, (2). Outrageous Conduct Causing Severe Emotional Distress (2nd) | See above. | Adopted | A discharged employee brought an action against his former employer, claiming that he suffered emotional distress which was intentionally inflicted by his supervisors. The plaintiff also asserted that he was discriminated against because of his alcoholism and that he was discharged in retaliation for filing complaints. The jury returned a verdict in the plaintiff's favor on his emotional distress claim and determined, in an advisory capacity, that the defendant had discriminated against the plaintiff on the basis of an alcoholism disability. The trial court held that the employer was liable for retaliation, adopted the jury's advisory findings, and entered judgment for the plaintiff on all his claims. On appeal, this court for the first time recognized the independent tort of intentional infliction of emotional distress, and, having determined that the Restatement sufficiently narrowed the possibilities for recovery, adopted the Restatement definition set forth in s 46(1). The court ruled that the plaintiff's evidence failed to satisfy any of the tort's elements, particularly the requirements for extreme and outrageous conduct and for severe emotional distress. The supervisors' acts, even when |

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| | | | | considered altogether, failed to rise to the requisite level of outrage, and despite the plaintiff's allegations of injury, he never missed work or saw a physician. Finally, the defendant's ample evidence of its prior, long-standing dissatisfaction with the plaintiff's managerial abilities both precluded the plaintiff from establishing a prima facie discrimination claim and successfully rebutted the plaintiff's prima facie retaliation claim. Reversed. |
| Pikop v. Burlington N. R. R. Co., 390 N.W.2d 743, 750 (Minn. 1986), cert. denied, 480 U.S. 951 (1987). | § 46. Outrageous Conduct Causing Severe Emotional Distress (2nd) | See above. | Cited in support, refers to an earlier adoption in *Haagenson*. | Premised on the tort-law principle that citizens of our state must be protected from conduct "so atrocious that it passes the boundaries of decency and is utterly intolerable to the civilized community." |
| Johnson v. Morris, 453 N.W.2d 31, 41 (Minn. 1990) | § 46 cmt. j. Outrageous Conduct Causing Severe Emotional Distress (2nd) | See above. | Cited in support | "Signs and symptoms of depression" fall far short of being that type of distress which "no reasonable man could be expected to endure |
| Dornfield v. Oberg, 491 N.W.2d 297, 299–300 (Minn. Ct. App. 1992) | § 46 (1), (2), cmt. j. Outrageous Conduct Causing Severe Emotional Distress (2nd) | See above. | Cited in support | Automobile passenger who was present when her husband, while changing a flat tire, was struck and killed by a car operated by a drunk driver sued her underinsured motorist carrier and the driver for intentional infliction of emotional distress, inter alia. Affirming the trial court's entry of judgment on a jury verdict awarding plaintiff damages, this court held that, although plaintiff did not suffer physical injury, she could recover for emotional distress because she was within the zone of danger. The court stated that the jury apparently rejected defendants' argument that plaintiff could not recover because she was particularly susceptible to emotional distress and found instead that plaintiff's recovery was warranted because she experienced severe emotional distress as a result of defendant driver's conduct. |
| Dornfeld v. Oberg, 503 N.W.2d 115, 116 (Minn. | § 46 (1), (2), cmt. d, cmt. j, cmt. l. Outrageous Conduct | See above. | Cited in support | A wife whose husband was killed when struck by a car while changing a flat tire sued the motorist and |

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| 1993) | Causing Severe Emotional Distress | | | the underinsured motorist carrier, seeking damages for intentional and negligent infliction of emotional distress. The court of appeals affirmed the trial court's entry of judgment on a jury verdict for the wife; reversing, this court held that the motorist's reckless driving was not intentionally directed at the husband or any other third person as needed to state a claim for reckless or intentional infliction of emotional distress. Furthermore, the motorist was not aware of the wife's presence, as she was sitting inside the car at the time of the collision. The court stated that mere reckless driving was directed, if at all, only at the driving community generally rather than at a particular individual. |
| Eklund v. Vincent Brass and Aluminum Co., 351 N.W.2d 371, 378–79 (Minn. Ct. App. 1984) | § 46. Outrageous Conduct Causing Severe Emotional Distress (2nd) | See above. | Cited in support | The president of the defendant corporation and the plaintiff agreed on an employment arrangement that the parties intended to be permanent, so long as the plaintiff performed his duties satisfactorily, until retirement. Four years after the plaintiff began work, the defendant fired him. The plaintiff sued for wrongful termination of employment and claimed intentional infliction of emotional distress. This court affirmed the trial court's dismissal of this claim, reasoning that the emotional distress that the plaintiff suffered was not sufficiently severe to sustain this tort action. |
| Venes v. Prof'l Serv. Bureau, Inc., 353 N.W.2d 671, 674 (Minn. Ct. App. 1984) | § 46 cmt. e. Outrageous Conduct Causing Severe Emotional Distress (2nd) | See above. | Cited in support | The trial court awarded debtors damages against a collection agency for emotional distress suffered as a result of statutory violations. This court affirmed, holding that the debtors sustained their burden of proving the elements necessary to recover for infliction of severe emotional distress. Evidence that the agency made abusive telephone calls to the debtor and attempted to collect interest on the debtors' account when the agency was not authorized to do so and after it received notice that the principal amount was paid in full was sufficient to justify the jury's findings that the conduct was extreme and outrageous and that the agency |

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| | | | | exceeded its legal rights and recklessly or intentionally inflicted severe emotional distress on the debtors. |
| Cafferty v. Garcia's of Scottsdale, Inc., 375 N.W.2d 850, 853 (Minn. Ct. App. 1985) | § 46(1) cmt. f, cmt. j. Outrageous Conduct Causing Severe Emotional Distress (2nd) | See above. | Adopted | An employee sued his employer for intentional infliction of emotional distress after being terminated for allegedly exercising poor judgment that led to a theft of cash from his office. The trial court entered judgment for the employer, and the court of appeals affirmed. The court held, inter alia, that the employer was not liable for intentional infliction of emotional distress arising out of the employee's termination even though the employee suffered severe emotional distress, because the employee's distress was exaggerated in comparison to that which a reasonable man would have experienced under the circumstances. The court stated that the employer would not be liable for such exaggerated distress unless it resulted from a peculiar susceptibility to such distress of which the employer had knowledge. |
| Quill v. Trans World Airlines, Inc. 361 N.W.2d 438, 442 (Minn. Ct. App. 1985) | § 46(1) Outragous Conduct Causing Severe Emotional Distress (2nd) | See above. | Cited in discussion | Passenger sued airline for negligent infliction of emotional distress after an airliner dove 34,000 feet in an uncontrolled tailspin. Plaintiff alleged that as a result of the incident he experienced anxiety on flights, which manifested itself as adrenaline surges, sweaty hands, and elevated pulse and blood pressure. Defendant appealed a jury verdict for plaintiff. This court affirmed. It rejected defendant's argument that a plaintiff under a negligent infliction of emotional distress theory must meet the intentional infliction of emotional distress burden of proving severe emotional distress. The court held that plaintiff had satisfied the physical injury or symptom requirement, which was imposed as an obstacle to false claims. The court reasoned that the unusually disturbing experience plaintiff endured combined with his physical symptoms assured that his claim was real. |

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| Bohdan v. Alltool Mfg. Co., 411 N.W.2d 902, 908 (Minn. Ct. App. 1987) | § 46 cmt. d, cmt. j. Outrageous Conduct Causing Severe Emotional Distress (2nd) | See above. | Cited in support | A former employee sued his former employer, officers, shareholders, and other employees, alleging inter alia, intentional infliction of emotional distress arising mainly from verbal abuse that stated or implied that his sexual preference was other than heterosexual. The trial court granted summary judgment for the defendants and dismissed the complaint. Affirming in part, reversing in part, and remanding, this court held, inter alia, that summary judgment was properly granted on the claim of intentional infliction of emotional distress. The court discussed the extreme nature of the conduct and the severity of the consequent mental distress that are required to prove a claim for intentional infliction of emotional distress and concluded that summary judgment was properly granted because the plaintiff did not prove that his paranoid disorder was caused by the alleged harassment |
| Strauss v. Thorne, 490 N.W.2d 908, 913 (Minn. Ct. App 1992) | § 46 cmt. j. Outrageous Conduct Causing Severe Emotional Distress (2nd) | See above. | Cited in support | Patient's wife sued doctor and clinic, alleging, inter alia, intentional infliction of emotional distress arising from doctor's notations on patient's medical charts regarding possible child abuse by patient's wife; the notations caused the couple's health insurance application to be denied and the wife to suffer anxiety. The trial court granted defendants summary judgment, finding that doctor's conduct could not be considered outrageous and that wife failed to show severe emotional distress. Affirming on the claim of intentional infliction of emotional distress but reversing and remanding on claims of defamation and negligent infliction of emotional distress, this court held that, while wife's allegations might have supported a finding of malice, they did not amount to extreme or outrageous conduct, and that her embarrassment and anxiety were not in themselves a sufficient basis for a claim of intentional infliction of emotional distress. |
| Kelly v. City of | § 46 cmt. b, cmt. j. | See above. | Quoted in support | Arrestees brought action for, in part, intentional |

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| Minneapolis, 598 N.W.2d 657, 663 (Minn. 1999) | Outrageous Conduct Causing Severe Emotional Distress (2nd) | | | infliction of emotional distress against arresting officers, among others. The trial court entered judgment for defendants; the court of appeals reversed in part. Reversing, this court held, inter alia, that jury's findings that defendants engaged in intentional infliction of emotional distress during brawl leading to arrests but acted without malice were not inconsistent, and that, in absence of malice, defendants were entitled to official immunity. The dissent argued that a new trial was necessary because the jury's findings were inconsistent. |
| Langeslag v. KYMN Inc., 664 N.W.2d 860, 864–65 (Minn. 2003) | § 46(1) cmt. d, cmt. e, cmt. j. Outrageous Conduct Causing Severe Emotional Distress (2nd) | See above. | Cited in support | Intentional infliction of emotional distress consists of four distinct elements:<br><br>(1) the conduct must be extreme and outrageous; (2) the conduct must be intentional or reckless; (3) it must cause emotional distress; and (4) the distress must be severe.<br>Comment e describes a situation where extreme and outrageous conduct arises because the actor is in a position of authority. |
| Iacona v. Schrupp, 521 N.W.2d 70, 73 (Minn. Ct. App. 1994) | § 46 cmt. j. Outrageous Conduct Causing Severe Emotional Distress (2nd) | See above. | Cited in support | Emotional distress is severe if "no reasonable [person] could be expected to endure it." |
| Stead-Bowers v. Langley, 636 N.W.2d 334, 343 (Minn. Ct. App. 2001) | § 46 cmt. j. Outrageous Conduct Causing Severe Emotional Distress (2nd) | See above. | Quoted in support | The emotional distress must be "so severe that no reasonable man could be expected to endure it." |
| Larson v. Wasemiller, 738 N.W.2d 300, 306 (Minn. 2007) | § 46(1). Outrageous Conduct Causing Severe Emotional Distress (2nd) | See above. | Adopted | In this case in which this court recognized the tort of negligent credentialing against a hospital, relying, in part, on the tort of negligent selection of an independent contractor, as outlined in Restatement Second of Torts § 411, the court cited Restatement Second of Torts § 46(1) for the proposition that it had frequently relied on the Restatements of Torts to guide its development of |

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| | | | | tort law in areas that it had not previously had an opportunity to address. |
| Wenigar v. Johnson, 712 N.W.2d 190, 207–08 (Minn. Ct. App. 2006) | § 46 cmt. j. Outrageous Conduct Causing Severe Emotional Distress (2nd) | See above. | Cited in support | Emotional distress is severe if "no reasonable [person] could be expected to endure it." |
| **Section 65** | | | | |
| State v. Baker, 280 Minn. 518, 524, 160 N.W.2d 240, 243 (Minn. 1968) | § 65. Self-Defense By Force Threatening Death or Serious Bodily Harm (2nd) | (1) Subject to the statement in Subsection (3), an actor is privileged to defend himself against another by force intended or likely to cause death or serious bodily harm, when he reasonably believes that<br>(a) the other is about to inflict upon him an intentional contact or other bodily harm, and that<br>(b) he is thereby put in peril of death or serious bodily harm or ravishment, which can safely be prevented only by the immediate use of such force.<br><br>(2) The privilege stated in Subsection (1) exists although the actor correctly or reasonably believes that he can safely avoid the necessity of so defending himself by<br>(a) retreating if he is attacked within his dwelling place, which is not also the dwelling place of the other, or<br>(b) permitting the other to intrude upon or dispossess him of his dwelling place, or<br>(c) abandoning an attempt to effect a lawful arrest.<br><br>(3) The privilege stated in Subsection (1) does not exist if the actor correctly or reasonably believes that he can with complete safety avoid the necessity of so defending himself by | Cited in support | "The revenge in this case was disproportionate to the injury, and outrageous and barbarous in its nature, and therefore cannot in any legal sense be said to have been provoked by the acts of the deceased.<br>Where the party has not retreated from or attempted to shun the combat, but has as in this case unnecessarily entered into it, his act is not one of self-defense." |

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| | | (a) retreating if attacked in any place other than his dwelling place, or in a place which is also the dwelling of the other, or<br>(b) relinquishing the exercise of any right or privilege other than his privilege to prevent intrusion upon or dispossession of his dwelling place or to effect a lawful arrest. | | |
| **Section 118** | | | | |
| Hyatt v. Anoka Police Dep't., 691 N.W.2d 824, 829 (Minn. 2005) | § 118. General Principle (2nd) | The use of force against another for the purpose of effecting his arrest and the arrest thereby effected are privileged if all the conditions stated in §§ 119-132, in so far as they are applicable, exist. | Quoted in support | Generally, tort law recognizes that the use of force that would otherwise result in actionable assault, battery, or false imprisonment is "privileged" if it is reasonable and it is used for the purpose of effecting a lawful arrest. |
| **Section 131** | | | | |
| Schumann v. McGinn, 307 Minn. 446, 461, 240 N.W.2d 525, 533–534 (Minn. 1976) | § 131. Use of Force Intended or Likely to Cause Death (2nd) | The actor's use of force against another, for the purpose of effecting a privileged arrest of the other, by means intended or likely to cause death is privileged if<br>(a) the arrest is made under a warrant which charges the person named in it with the commission of treason or a felony, or if the arrest is made without a warrant for treason or for a felony which has been committed, and<br>(b) the other is the person named in the warrant if the arrest is under a warrant, or the actor reasonably believes the offense was committed by the other if the arrest is made without a warrant, and<br>(c) the actor reasonably believes that the arrest cannot otherwise be effected. | Cited in discussion | Plaintiff, a child who was shot by a police officer while fleeing from a car which he had stolen, brought this action against the officer and the city alleging negligence and battery in the officer's shooting of the plaintiff. The lower court dismissed the action against the city, and after a judgment in favor of the officer, the plaintiff appealed. On appeal, the court reversed and remanded, holding that the trial court erred in instructing the jury and framing the issues in terms of negligence, rather than battery, and in its instructions regarding the officer's privilege in using his firearm. The court stated that the jury's confusion on these issues was clear from its answers to interrogatories submitted by the court below. The court also stated that the burden was on the defendant officer to show that the use of his firearm was within the scope of his privilege. Over a vigorous dissent, the court also held that an officer is privileged to use reasonable force to effect an arrest of a person if the officer has probable cause to believe that the person is a felon, |

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| | | | | and that this includes the use of his firearm if the officer reasonably believes that he could not effect the arrest without the use of the firearm. |
| **Section 137** | | | | |
| Hyatt v. Anoka Police Dep't., 691 N.W.2d 824, 829 (Minn. 2005) | § 137 cmt. c. Harm to Innocent Third Persons (2nd) | Liability for the invasion of any of another's interests of personality, by the exercise of the privilege of effecting the arrest or recapture, or of maintaining custody of a third person, is determined by the rules stated in §§ 74 and 75. | Adopted | "The use of force against another for the purpose of effecting his arrest and the arrest thereby effected are privileged if [several applicable] conditions exist"). And, in that context, the privilege extends to harm to an innocent bystander caused by force directed toward the arrestee, unless under the circumstances it was "unreasonable for [the actor] to take the chance of causing grave harm to bystanders." |
| **Section 138** | | | | |
| Hyatt v. Anoka Police Dep't, 691 N.W.2d 824, 829 (Minn. 2005) | § 138. Privilege against (2nd) | Where another by his conduct knowingly causes the actor reasonably to believe that he is intentionally impeding the privileged arrest or recapture of a third person, or is attempting his rescue or assisting him in resisting arrest or escaping therefrom, the actor is privileged to use such force against the other as he would be privileged to use against the third person if he resisted or attempted to escape. | Cited in support | The common law also recognizes that, in addition to the privilege to direct reasonable force toward the arrestee, police are also privileged to direct reasonable force toward a third person who attempts to impede a lawful arrest. |
| **Section 147** | | | | |
| Balts v. Balts, 273 Minn. 419, 426 n.9, 142 N.W.2d 66, 71 (Minn. 1966) | § 147. General Principle-Privilege to Discipline Children (2nd) | (1) A parent is privileged to apply such reasonable force or to impose such reasonable confinement upon his child as he reasonably believes to be necessary for its proper control, training, or education.<br><br>(2) One other than a parent who has been given by law or has voluntarily assumed in whole or in part the | Cited in footnote 9 in support | The plaintiff mother sought damages for injuries which she received in a Wisconsin automobile accident, against her minor son domiciled in the same Minnesota household. The court affirmed plaintiff's motion to strike the defense of parent-child tort immunity after holding the Minnesota state law would govern the immunity question since both parties lived in Minnesota at the time of the accident, and this was the most significant relationship in determining their tort rights and |

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| | | function of controlling, training, or educating a child, is privileged to apply such reasonable force or to impose such reasonable confinement as he reasonably believes to be necessary for its proper control, training, or education, except in so far as the parent has restricted the privilege of one to whom he has entrusted the child. | | liabilities. |
| **Section 150** | | | | |
| Balts v. Balts, 273 Minn. 419, 426 n.9, 142 N.W.2d 66, 71 (Minn. 1966) | § 150. Factors involved in determining reasonableness of punishment (2nd) | In determining whether force or confinement is reasonable for the control, training, or education of a child, the following factors are to be considered:<br>(a) whether the actor is a parent;<br>(b) the age, sex, and physical and mental condition of the child;<br>(c) the nature of his offense and his apparent motive;<br>(d) the influence of his example upon other children of the same family or group;<br>(e) whether the force or confinement is reasonably necessary and appropriate to compel obedience to a proper command;<br>(f) whether it is disproportionate to the offense, unnecessarily degrading, or likely to cause serious or permanent harm. | Cited in support | See above. |
| **Section 158** | | | | |
| Victor v. Sell, 301 Minn. 309, 313, 222 N.W.2d 337, 340 (Minn. 1974) | § 158. Liability for Intentional Intrusions on Land (2nd) | One is subject to liability to another for trespass, irrespective of whether he thereby causes harm to any legally protected interest of the other, if he intentionally(a) enters land in the | Cited in discussion | The plaintiff sued to recover damages for personal injuries sustained when he fell from a ladder, which was leaning against his own house, onto a radiator discarded by his neighbor which was allegedly on the plaintiff's property. In affirming a judgment for |

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| | | possession of the other, or causes a thing or a third person to do so, or(b) remains on the land, or(c) fails to remove from the land a thing which he is under a duty to remove.' | | the defendant, the court held that the jury charge was sufficient to convey the idea that an intentional placing of the radiator on the plaintiff's property would constitute a trespass and that since the jury found that there was no trespass, the trial court did not commit reversible error in explaining contributory negligence and assumption of risk to the jury, even though these were not defenses to the plaintiff's action. |
| **Section 160** | | | | |
| Victor v. Sell, 301 Minn. 309, 313, 222 N.W.2d 337, 340 (Minn. 1974) | § 160. Failure to Remove Thing Placed on land Pursuant to License or Other Privilege (2nd) | A trespass may be committed by the continued presence on the land of a structure, chattel, or other thing which the actor or his predecessor in legal interest has placed on the land<br>(a) with the consent of the person then in possession of the land, if the actor fails to remove it after the consent has been effectively terminated, or<br>(b) pursuant to a privilege conferred on the actor irrespective of the possessor's consent, if the actor fails to remove it after the privilege has been terminated, by the accomplishment of its purpose or otherwise. | Cited in discussion | See above. |
| **Section 161** | | | | |
| Victor v. Sell, 301 Minn. 309, 313, 222 N.W.2d 337, 340 (Minn. 1974) | § 161. Failure to Remove Thing Tortiously Placed on Land (2nd) | (1) A trespass may be committed by the continued presence on the land of a structure, chattel, or other thing which the actor has tortiously placed there, whether or not the actor has the ability to remove it.<br><br>(2) A trespass may be committed by the continued presence on the land of a structure, chattel, or other thing which the actor's predecessor in legal | Cited in discussion | If there were no initial tortious trespass, there could be no trespass by failure to remove a chattel tortiously placed on the land under s 161. |

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| | | interest therein has tortiously placed there, if the actor, having acquired his legal interest in the thing with knowledge of such tortious conduct or having thereafter learned of it, fails to remove the thing. | | |
| **Section 190** | | | | |
| Brom v. Kalmes, 304 Minn. 244, 250, 230 N.W.2d 69, 74 n.9 (Minn. 1975) | § 190. Entry to Build or Repair Wall Or Division Fence (2nd) | A duty or privilege to build or repair a party wall or division fence between land in the possession of the actor and land in the possession of another, confers on the actor a privilege to enter the other's land, at reasonable times and in a reasonable manner, in order to build or repair such party wall or division fence. | Cited in discussion but distinguished | The plaintiff, a property owner who built a fence along the boundary line of his property, brought an action against the defendant neighboring property owner to recover costs as apportioned by the fence viewers. The defendant counterclaimed for trespass and destruction of a number of trees. In answer to the counterclaim, the plaintiff argued that it was privileged to enter upon the defendant's lands at reasonable times, and in a reasonable manner, in order to build or repair the partition fence. The jury had awarded damages to the defendant on his counterclaim, and the plaintiff appealed. The court held that since neither party's land was improved, the plaintiff could not bring his construction of the fence within the ambit of the state statute permitting the builder to burden his neighbor with part of the cost. Since the defendant was not obligated to share the cost, the fence was a division, rather than a partition, fence, and no privilege existed for the plaintiff to enter upon the defendant's land to build it. |
| **Section 196** | | | | |
| Wegner v. Milwaukee Mut. Ins. Co., 479 N.W.2d 38, 42 (Minn. 1991) | § 196 cmt. h. Public Necessity (2nd) | One is privileged to enter land in the possession of another if it is, or if the actor reasonably believes it to be, necessary for the purpose of averting an imminent public disaster. | Adopted | We believe the better rule, in situations where an innocent third party's property is taken, damaged or destroyed by the police in the course of apprehending a suspect, is for the municipality to compensate the innocent party for the resulting damages. The policy considerations in this case center around the basic notions of fairness and justice. At its most basic level, the issue is whether it is fair to allocate the entire risk of loss to an |

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| | | | | innocent homeowner for the good of the public. We do not believe the imposition of such a burden on the innocent citizens of this state would square with the underlying principles of our system of justice. Therefore, the City must reimburse Wegner for the losses sustained. |
| **Section 197** | | | | |
| State v. Rein, 477 N.W.2d 716, 719 (Minn. Ct. App. 1991) | § 197. Private Necessity (2nd) | (1) One is privileged to enter or remain on land in the possession of another if it is or reasonably appears to be necessary to prevent serious harm to<br>(a) the actor, or his land or chattels, or<br>(b) the other or a third person, or the land or chattels of either, unless the actor knows or has reason to know that the one for whose benefit he enters is unwilling that he shall take such action.<br><br>(2) Where the entry is for the benefit of the actor or a third person, he is subject to liability for any harm done in the exercise of the privilege stated in Subsection (1) to any legally protected interest of the possessor in the land or connected with it, except where the threat of harm to avert which the entry is made is caused by the tortious conduct or contributory negligence of the possessor. | Cited in discussion | Several abortion protesters who were convicted of trespass after blocking a clinic entrance alleged that they were erroneously denied the opportunity to establish their necessity defense and to prove the merits of their claim of right to enter upon the clinic's property when the trial court restricted testimony concerning their motivations. Affirming the convictions, this court held that the defense of necessity was not available to the protesters, nor was a claim of right defense based on a private arrest statute when no evidence was offered that private arrests were made or attempted by the protesters. Moreover, the court stated that the protesters' evidence establishing their beliefs regarding abortion to explain their motives was properly viewed by the trial judge as cumulative and beyond the broad parameters of testimony permitted to explain conduct. |
| **Section 211** | | | | |
| Thompson v. First State Bank of Fertile, 709 N.W.2d 307, 312 (Minn. Ct. App. 2006) | § 211. Entry Pursuant To Legislative Duty or Authority (2nd) | A duty or authority imposed or created by legislative enactment carries with it the privilege to enter land in the possession of another for the purpose of performing or exercising such duty or authority in so far as the entry is | Adopted | When this restatement principle is applied to Minn.Stat. § 336.9-609(b)(2), a secured party's authority to take possession of collateral after default carries with it the privilege to enter another's land for the purpose of taking possession of the collateral if the entry is reasonably necessary |

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| | | reasonably necessary to such performance or exercise, if, but only if, all the requirements of the enactment are fulfilled. | | in order to take possession. And if the secured party has a privilege to enter another's land to take possession of collateral after default, the entry is not a trespass because "a trespasser is 'one who enters or remains on the [premises] without the express or implied consent of the possessor of land.' |
| **Section 222** | | | | |
| Herrmann v. Fossum, 270 N.W.2d 18 , 20–21 (Minn. 1978) | § 222 Liability for Dispossession (2nd) | One who dispossesses another of a chattel is subject to liability in trespass for the damage done. If the dispossession seriously interferes with the right of the other to control the chattel, the actor may also be subject to liability for conversion. | Adopted | Husband and wife brought an action against a city arising from the action of city officers in forcibly cleaning out the plaintiffs' home after receiving complaints from the plaintiffs' neighbors regarding the condition of the plaintiffs' property. The plaintiffs sought to recover damages for wrongful trespass and conversion. The lower court entered summary judgment for the city, and the plaintiffs appealed. The court held, inter alia, that the charges in the plaintiffs' complaint which alleged that city officers had intentionally removed over 250 items of personal property from the possession of the plaintiffs and had failed to advise the plaintiffs where the property was located, stated a cause of action for trespass and conversion of chattels, which are intentional torts. Accordingly, the court found that the entry of summary judgment for the city on the ground that the plaintiffs' action was barred by the statute of limitations was error, since the causes of action alleged fall within the intentional tort exception of the statute. The judgment of the lower court was reversed, and the case was remanded. |
| Christensen v. Milbank Ins. Co., 658 N.W.2d 580, 586 (Minn. 2003) | § 222 cmt. c. Liability for Dispossession (2nd) | See above. | Quoted in support | "We find the Restatement instructive. A wrongful intent to appropriate chattel for one's own purposes is the essence of the 'conversion or theft' exception. To hold that conversion requires an intentional destruction of the vehicle unnecessarily narrows the meaning of 'conversion.'" |
| **Section 222A** | | | | |
| Inland Constr. Corp. v. | § 222A. What Constitutes | (1) Conversion is an intentional | Cited in support | "It is unnecessary for us to decide the first of these |

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| Continental Cas. Co., 258 N.W.2d 881, 884 (Minn. 1977) | Conversion (2nd) | exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.<br><br>(2) In determining the seriousness of the interference and the justice of requiring the actor to pay the full value, the following factors are important:<br>(a) the extent and duration of the actor's exercise of dominion or control;<br>(b) the actor's intent to assert a right in fact inconsistent with the other's right of control;<br>(c) the actor's good faith;<br>(d) the extent and duration of the resulting interference with the other's right of control;<br>(e) the harm done to the chattel;<br>(f) the inconvenience and expense caused to the other. | | questions for, regardless of whether the tort of conversion can ever be caused by accident, we conclude that Inland was not entitled to a defense because of the absence of 'property damage.' Professor Prosser has described the 'gist of conversion' as an interference with the plaintiff's right to control his property." |
| Hermann v. Fossum, 270 N.W.2d 18, 21 (Minn. 1978) | § 222A(1). What Constitutes Conversion (2nd) | See above. | Adopted | See above. |
| Wangen v. Swanson Meats, Inc., 541 N.W.2d 1, 3 (Minn. Ct. App. 1995) | § 222A(1). What Constitutes Conversion (2nd) | See above. | Adopted | Conversion is defined as the "intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel." |
| Bates v. Armstrong, 603 N.W.2d 679, 682 (Minn. Ct. App. 2000) | § 222A cmt. c. What Constitutes Conversion (2nd) | See above. | Cited in support | Because the measure of damages in conversion actions is the full value of the chattel at the time of the tort, conversion is "properly limited to those serious, major, and important interferences with the right to control the chattel which justify |

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| **Section 223** | | | | |
| Christensen v. Milbank Ins. Co., 658 N.W.2d 580, 585–86 (Minn. 2003) | § 223. Ways of Committing Conversion (2nd) | A conversion may be committed by intentionally<br>(a) dispossessing another of a chattel as stated in §§ 221 and 222;<br>(b) destroying or altering a chattel as stated in § 226;<br>(c) using a chattel as stated in §§ 227 and 228;<br>(d) receiving a chattel as stated in §§ 229 and 231;<br>(e) disposing of a chattel as stated in § 233;<br>(f) misdelivering a chattel as stated in §§ 234 and 235;<br>(g) refusing to surrender a chattel as stated in §§ 237-241. | Adopted | The Restatement defines conversion as "an intentional exercise of dominion or control over the chattel." |
| **Section 266** | | | | |
| Johnson v. Fossum, 280 Minn. 386, 390, 159 N.W.2d 791, 794 (Minn. 1968) | § 266. Privilege to Act Pursuant to Court Order (2nd) | One is privileged to commit acts which would otherwise be a trespass to a chattel or a conversion when he acts pursuant to a court order which is valid or fair on its face. | Cited in Support | Plaintiff was the owner of a house which had been ordered destroyed by the fire marshall. Plaintiff failed to destroy the house as he was obligated to do, and the fire department notified plaintiff of its intention to destroy the buildings. Plaintiff failed to remove his belongings, and defendant destroyed the building. Before setting fire to the building defendant had inspected and failed to find anything of value. Plaintiff sued for the destruction of personal belongings, and defendant won. On appeal, the court affirmed. The court held that defendant was only performing his job, and had no duty to inspect the premises, as plaintiff had been warned that the building was condemned. |
| **Division 2 - Negligence** | | | | |
| **Section 281** | | | | |
| Jam v. Indep. School Dist. No. 709, 413 | § 281. Statement of the Elements of a Cause of Action | The actor is liable for an invasion of an interest of another, if: | Adopted | An actor is liable in negligence if his or her conduct is negligent with respect to a class of persons of |

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| N.W.2d 165, 169 (Minn. Ct. App. 1987) | for Negligence (2nd) | (a) the interest invaded is protected against unintentional invasion, and<br>(b) the conduct of the actor is negligent with respect to the other, or a class of persons within which he is included, and<br>(c) the actor's conduct is a legal cause of the invasion, and<br>(d) the other has not so conducted himself as to disable himself from bringing an action for such invasion. | | which the plaintiff is a member. Whether conduct is negligent as to a particular plaintiff, and thus whether the actor owes the plaintiff a "duty" for negligence purposes, depends on whether the actor could reasonably have anticipated injury to that person as a result of his conduct. |
| R.A.P. v. B.J.P., 428 N.W.2d 103, 106 (Minn. Ct. App. 1988) | § 281. Statement of the Elements of a Cause of Action for Negligence (2nd) | See above. | Adopted | The essential elements of negligence are:<br>1) That the defendant owed the plaintiff a legal duty to avoid injuring the plaintiff;<br>2) That the defendant breached this duty;<br>3) That the breach of duty was the proximate cause of injury to the plaintiff; and<br>4) That the plaintiff suffered damages. |
| **Section 283A** | | | | |
| Dellwo v. Pearson, 259 Minn. 452, 459, 107 N.W.2d 859, 863 n.15 (Minn. 1961) | § 283A. Children (2nd) | If the actor is a child, the standard of conduct to which he must conform to avoid being negligent is that of a reasonable person of like age, intelligence, and experience under like circumstances. | Cited in discussion | The latest tentative revision of the Restatement of Torts proposes an even broader rule that would hold a child to adult standards whenever he engages 'in an activity which is normally undertaken only by adults, and for which adult qualifications are required.' However, it is unnecessary to this case to adopt a rule in such broad from, and, therefore, we expressly leave open the question whether or not that rule should be adopted in this state. For the present it is sufficient to say that no reasonable grounds for differentiating between automobiles, airplanes, and powerboats appears, and that a rule requiring a single standard of care in the operation of such vehicles, regardless of the age of the operator, appears to us to be required by the circumstances of contemporary life. |
| **Section 284** | | | | |
| Foss v. Kincade, 746 | § 284. Negligent Conduct; | "Negligent conduct may be either: | Adopted | A negligence claim may be premised on either a |

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| N.W.2d 912, 915 (Minn. Ct. App. 2008) | Act or Failure to Act (2nd) | (a) an act which the actor as a reasonable man should recognize as involving an unreasonable risk of causing an invasion of an interest of another, or<br>(b) a failure to do an act which is necessary for the protection or assistance of another and which the actor is under a duty to do." | | person's acts or failure to act. See Restatement (Second) Torts § 284. But negligence arises from a person's failure to act only when that person owes a duty to the injured party. Id. There is generally no duty to act for the protection of others. Id. § 314. Such a duty may be found to exist, however, based on the relationship between the parties and the foreseeability of harm. |
| **Section 285** | | | | |
| Bruegger v. Faribault County Sheriff's Dep't, 497 N.W.2d 260, 262 (Minn. 1993) | § 285 cmt. b. How Standard of Conduct is Determined (2nd) | The standard of conduct of a reasonable man may be<br>(a) established by a legislative enactment or administrative regulation which so provides, or<br>(b) adopted by the court from a legislative enactment or an administrative regulation which does not so provide, or<br>(c) established by judicial decision, or<br>(d) applied to the facts of the case by the trial judge or the jury, if there is no such enactment, regulation, or decision. | Cited in support | Sexual abuse victim's parents were denied their claim for compensation for economic losses resulting from their injuries, under the Crime Victims Reparations Act (CVRA), because it was filed after the statutory deadline. Parents sued sheriff's department, alleging negligence for failing to inform plaintiffs of CVRA. Intermediate appellate court affirmed trial court's grant of summary judgment for defendant. Affirming, this court held that there was no private cause of action against law enforcement agencies under the CVRA for failure to inform crime victims of the CVRA because there was no common law cause of action for negligence and because the legislature failed to expressly or impliedly create a statutory cause of action. The court stated that judicial restraint principles precluded it from creating a new statutory cause of action that did not exist at common law where the legislature had not expressly or impliedly provided for civil tort liability. |
| Mervin v. Magney Constr. Co., 399 N.W.2d 579, 582 (Minn. Ct. App. 1987) | § 285. How Standard of Conduct is Determined (2nd) | See above. | Cited in support | The Restatement (Second) of Torts provides that courts may adopt the requirements of legislative enactments or administrative regulations as defining the standard of care, the violation of which is negligence per se. |
| **Section 286** | | | | |
| Kronzer v. First Nat'l | § 286. When Standard of | The court may adopt as the standard of | Adopted | Not all penal statutes establish a tort duty of care |

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| Bank, 305 Minn. 415, 423–24, 235 N.W.2d 187, 193 (Minn. 1975) | Conduct Defined by Legislation or Regulation Will Be Adopted (2nd) | conduct of a reasonable man the requirements of a legislative enactment or an administrative regulation whose purpose is found to be exclusively or in part<br>(a) to protect a class of persons which includes the one whose interest is invaded, and<br>(b) to protect the particular interest which is invaded, and<br>(c) to protect that interest against the kind of harm which has resulted, and<br>(d) to protect that interest against the particular hazard from which the harm results. | | under all circumstances. We have long followed the criteria set forth by the American Law Institute in Restatement, Torts 2d, in determining which statutes give rise to a civil duty. |
| Lorshbough v. Twp of Buzzle, 258 N.W.2d 96, 98 (Minn. 1977) | § 286. When Standard of Conduct Defined by Legislation or Regulation Will Be Adopted (2nd) | See above. | Cited in support | Part of the determination that the statute supplies a standard of care involves an analysis whether the plaintiff belongs to the class of persons the legislature intended to protect by enacting the statute. |
| Scott v. Indep. School Dist. No. 709, 256 N.W.2d 485, 488 (Minn. 1977) | § 286. When Standard of Conduct Defined by Legislation or Regulation Will Be Adopted (2nd) | See above. | Cited in support | Plaintiffs, a father and son, brought an action against defendant school district to recover damages for injuries to the son's eye sustained during a junior high school industrial arts class. The court affirmed a judgment for the plaintiffs, holding, inter alia, that the school district's failure to properly supervise and enforce the wearing of protective goggles, in violation of a statute, constituted negligence per se, that in enacting the statute the legislature did not intend to preclude consideration of contributory negligence on the part of the student, and that the evidence supported the trial court's decision to direct a verdict against the defendant, but to allow the issue of contributory negligence to go to the jury. |
| Johnson v. Farmers & Merchants State Bank, 320 N.W.2d 892, 897 | § 286. When Standard of Conduct Defined by Legislation or Regulation Will | See above. | Cited in support | We have held that a violation of a legislative enactment can be evidence of negligence if (1) the intent of the statute is to protect a class of which |

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| (Minn. 1982) | Be Adopted (2nd) | | | plaintiff is a member, but only if (2) the plaintiff's injury involves an invasion of the particular interest protected by the statute, (3) was caused by the particular hazard or form of harm against which the enactment was designed to give protection and (4) it was proximately caused by its violation. |
| Mervin v. Magney Constr. Co. 416 N.W.2d 121, 124 (Minn. 1987) | § 286. When Standard of Conduct Defined by Legislation or Regulation Will Be Adopted (2nd) | See above. | Adopted | As the trial court recognized, Minnesota has long followed the standard of care criteria set out at Restatement (Second) of Torts § 286 (1965) |
| Bruegger v. Faribault County Sheriff's Dep't, 497 N.W.2d 260, 261 n.2 (Minn. 1993) | § 286. When Standard of Conduct Defined by Legislation or Regulation Will Be Adopted (2nd) | See above. | Cited in discussion | Sexual abuse victim's parents were denied their claim for compensation for economic losses resulting from their injuries, under the Crime Victims Reparations Act (CVRA), because it was filed after the statutory deadline. Parents sued sheriff's department, alleging negligence for failing to inform plaintiffs of CVRA. Intermediate appellate court affirmed trial court's grant of summary judgment for defendant. Affirming, this court held that there was no private cause of action against law enforcement agencies under the CVRA for failure to inform crime victims of the CVRA because there was no common law cause of action for negligence and because the legislature failed to expressly or impliedly create a statutory cause of action. Accordingly, the court declined to consider plaintiffs' argument that a factor in determining whether CVRA supplied a standard of care was whether plaintiffs were members of a class of persons intended to be protected by the statute. |
| Jam v. Indep. School Dist. No. 709, 413 N.W.2d 165, 170 (Minn. Ct. App. 1987) | § 286. When Standard of Conduct Defined by Legislation or Regulation Will Be Adopted (2nd) | See above. | Cited in support | In this case the statutes and rules requiring safety features on school buses are clearly intended for the protection of all school children who ride the buses, since they are not limited to those who live outside a two-mile radius of the school. Cory thus falls within the class of persons intended to be protected by those statutes. Moreover, the statutes were intended to protect against precisely the type |

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| Mervin v. Magney Constr. Co., 399 N.W.2d 579, 582 (Minn. Ct. App. 1987) | § 286. When Standard of Conduct Defined by Legislation or Regulation Will Be Adopted (2nd) | See above. | Cited in support | An inspector for a government construction project sued a construction company for negligence as a result of injuries he sustained in a fall from a ladder that was not secured to the ground in violation of provisions of a federal safety manual. The trial court entered judgment in favor of the inspector, holding that an unexcused violation of the manual was negligence per se. Reversing in part, this court held that the trial court erred in giving a negligence per se instruction based on the manual, because the manual was not a statute or ordinance from which a standard of care could be adopted. |
| Bruegger v. Faribault County Sheriff's Dep't, 486 N.W.2d 463, 465 (Minn. Ct. App. 1992) | § 286. When Standard of Conduct Defined by Legislation or Regulation Will Be Adopted (2nd) | See above. | Cited in support | Minn.Stat. § 611A.66 invites application of the Restatement standard. The purpose of the Act-to protect crime victims-would be served by applying the Restatement standard. |
| Doe v. Brainerd Int'l Raceway, Inc., 514 N.W.2d 811, 816 (Minn. Ct. App. 1994) | § 286. When Standard of Conduct Defined by Legislation or Regulation Will Be Adopted (2nd) | See above. | Cited in support | Not all penal statutes establish a tort duty of care under all circumstances. We have long followed the criteria set forth by the American Law Institute in Restatement, Torts 2d, in determining which statutes give rise to a civil duty. |
| Bills v. Willow Run I Apartments, 534 N.W.2d 286, 289 (Minn. Ct. App. 1995) | § 286. When Standard of Conduct Defined by Legislation or Regulation Will Be Adopted (2nd) | See above. | Cited in support | A tenant who fell on the exterior landing when he was leaving his apartment during a sleet and ice storm sued the landlord for negligence per se, claiming that the landing and handrails did not comply with the building code. Trial court granted landlord a directed verdict. This court reversed and remanded for a new trial, holding, inter alia, that landlord's code violations constituted negligence per se, because tenant's accident was the type that the code was intended to prevent, and the code did not provide that a violation was only prima facie evidence of negligence. |
| **Section 288** | | | | |

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| Kronzer v. First Nat'l Bank of Minneapolis, 305 Minn. 415, 425 235 N.W.2d 187, 193 (Minn. 1975) | § 288. When Standard of Conduct Defined by Legislation Or Regulation Will Not Be Adopted (2nd) | The court will not adopt as the standard of conduct of a reasonable man the requirements of a legislative enactment or an administrative regulation whose purpose is found to be exclusively<br>(a) to protect the interests of the state or any subdivision of it as such, or<br>(b) to secure to individuals the enjoyment of rights or privileges to which they are entitled only as members of the public, or<br>(c) to impose upon the actor the performance of a service which the state or any subdivision of it undertakes to give the public, or<br>(d) to protect a class of persons other than the one whose interests are invaded, or<br>(e) to protect another interest than the one invaded, or<br>(f) to protect against other harm than that which has resulted, or<br>(g) to protect against any other hazards than that from which the harm has resulted. | Adopted | Under these standards, whether Minn.St. 481.02 provides a standard of care applicable in this case is questionable. First, it might be argued that the statute is designed to protect the public at large rather than a particular class of individuals. If that was the intent of the legislature, then the statute should not be adopted as a duty of care here. Second, the legislature may have intended the statute to protect only persons in privity with unauthorized practitioners and not third persons injured by unauthorized practice. Third, the statute may be intended to protect only against the unskilled practice of law by untrained persons, in which case proof of actual negligence would be a prerequisite to plaintiffs' recovery. |
| Lorshbough v. Twp of Buzzle, 258 N.W.2d 96, 99 (Minn. 1977) | § 288. When Standard of Conduct Defined by Legislation Or Regulation Will Not Be Adopted (2nd) | See above. | Cited in support | No liability attaches if the statute exclusively "secure(s) to individuals the enjoyment of rights or privileges to which they are entitled only as members of the public" |
| Carcraft v. City of St. Louis Park, 279 N.W.2d 801, 805 (Minn. 1979) | § 288. When Standard of Conduct Defined by Legislation Or Regulation Will Not Be Adopted (2nd) | See above. | Cited in support | Because the ordinances are designed to protect the municipality's own interests, rather than the interests of a particular class of individuals, only a "public" duty to inspect is created. It is a basic principle of negligence law that public duties created by statute cannot be the basis of a negligence action even against private tortfeasors. |
| Hage v. Stade, 304 | § 288. When Standard of | See above. | Cited in dissenting | The Cracraft court's misapplication of the |

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| N.W.2d 283, 291 (Minn. 1981) | Conduct Defined by Legislation Or Regulation Will Not Be Adopted (2nd) | | opinion | Restatement (Second) of Torts s 288 (1965) continues to be followed by the majority opinion in the instant case. Three of the Cracraft factors actual knowledge, reliance, and aggravation of harm have never had any bearing on statutory duty cases. Only the third Cracraft factor whether a statute or ordinance was enacted for the protection of a particular class of persons rather than for the protection of the public generally bears any resemblance to the statutory duty analysis contained in cases such as Osborne and Dart. Our Section 288 cases decided prior to Cracraft followed the traditional statutory duty analysis. |
| Jam v. Indep. School Dist. No. 709, 413 N.W.2d 165, 170 (Minn. Ct. App. 1987) | § 288. When Standard of Conduct Defined by Legislation Or Regulation Will Not Be Adopted (2nd) | See above. | Cited in support | In this case the statutes and rules requiring safety features on school buses are clearly intended for the protection of all school children who ride the buses, since they are not limited to those who live outside a two-mile radius of the school. Cory thus falls within the class of persons intended to be protected by those statutes. Moreover, the statutes were intended to protect against precisely the type of harm that Cory suffered. Restatement (Second) of Torts §§ 286, 288. The school district's failure to comply with those rules would result in liability for Cory's injury if the school district could reasonably have anticipated that fare-paying school children could be injured after exiting the bus on their way home from school. |
| **Section 288A** | | | | |
| Hodder v. Goodyear Tire & Rubber Co., 426 N.W.2d 826, 834 (Minn. 1988), cert. denied 926 U.S. 492 (1989) | § 288A. Excused Violations (2nd) | (1) An excused violation of a legislative enactment or an administrative regulation is not negligence.<br>(2) Unless the enactment or regulation is construed not to permit such excuse, its violation is excused when<br>(a) the violation is reasonable because of the actor's incapacity;<br>(b) he neither knows nor should know of the occasion for compliance; | Cited in support | Hodder may or may not have changed a flat tire mounted on a K-rim, depending on which version of the accident the jury accepted. See footnote 1, supra. If the K-rim was on the outer, nonflat dual, there was evidence (fresh hammer marks on the rim) indicating Hodder had improperly hammered the rim to return the wheel to the axle. If the K-rim was on the flat inner dual, there was evidence Hodder had improperly serviced the rim. In either event, Remer Oil's negligence in training Hodder |

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| | | (c) he is unable after reasonable diligence or care to comply;<br>(d) he is confronted by an emergency not due to his own misconduct;<br>(e) compliance would involve a greater risk of harm to the actor or to others. | | was a fact issue. The trial court also instructed the jury, over Goodyear's objection, that Remer Oil's possible OSHA violations were excused if Remer had justification for being unaware of the regulations. This was not error. |
| **Section 288B** | | | | |
| Larson v. Montpetit, 275 Minn. 394, 396 147 N.W.2d 580, 582 n.2 (Minn. 1966) | § 288B. Effect of Violation (2nd) | (1) The unexcused violation of a legislative enactment or an administrative regulation which is adopted by the court as defining the standard of conduct of a reasonable man, is negligence in itself.<br><br>(2) The unexcused violation of an enactment or regulation which is not so adopted may be relevant evidence bearing on the issue of negligent conduct. | Cited in footnote 2 in support | The only justification Montpetit advanced for having parked on the traveled portion of the street was that about 5 minutes before the collision he had backed his car out of Belisle's private driveway to accommodate the driver of another car who, like himself, had been a guest during the course of the evening at the Belisle home. His intention was to leave also as soon as his wife came from the house to the car. Although he had expected her to come out immediately, she did not. After waiting for several minutes, defendant left his car parked in the manner described and was in the process of walking back to the host's home in search of his wife when the accident happened. There was no reason for leaving the car illegally parked rather than pulling it back into the driveway where it had been before. In our judgment Montpetit's attempted justification for the improper parking was inadequate as a matter of law. |
| Holmquist v. Miller, 352 N.W.2d 47, 51 (Minn. Ct. App. 1984) reversed 367 N.W.2d 468 (1985) | § 288B. Effect of Violation (2nd) | See above. | Cited in support | The violation of a criminal statute may be negligence per se. |
| Mervin v. Magney Constr. Co., 399 N.W.2d 579, 582 (Minn. Ct. App. 1987) | § 288B. Effect of Violation (2nd) | See above. | Cited in support | The Restatement (Second) of Torts provides that courts may adopt the requirements of legislative enactments or administrative regulations as defining the standard of care, the violation of which is negligence per se. See Restatement (Second) of Torts §§ 285-86, 288B (1965). |

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| **Section 295A** | | | | |
| Sandvik v. Jammes, 281 Minn. 85, 88–89, 160 N.W.2d 700, 703 (Minn. 1968) | § 295A. Custom (2nd) | In determining whether conduct is negligent, the customs of the community, or of others under like circumstances, are factors to be taken into account, but are not controlling where a reasonable man would not follow them. | Adopted | The plaintiff and the defendant were moving the latter' 500-pound freezer from his first floor to his basement. According to a prearranged plan, the defendant was positioned below the freezer as the parties moved it down the stairs on a dolly. On one of the steps, the freezer suddenly slipped forward and, to avoid any danger to the defendant, the plaintiff threw all of his weight into holding back the dolly and seriously injured his back. The order denying the defendant's motion for a judgment n.o.v. in the subsequent negligence suit against him was affirmed, the court holding that the defendant's allowing the freezer to slip forward violated the reasonable standard of conduct or expectation of what he would do, established by the past practices of the parties in the operation. |
| **Section 296** | | | | |
| Toestschinger v. Ihnot, 312 Minn. 59, 76, 250 N.W.2d 204, 214 (Minn. 1977) | § 296. Emergency (2nd) | (1) In determining whether conduct is negligent toward another, the fact that the actor is confronted with a sudden emergency which requires rapid decision is a factor in determining the reasonable character of his choice of action. (2) The fact that the actor is not negligent after the emergency has arisen does not preclude his liability for his tortious conduct which has produced the emergency. | Cited in dissenting opinion | The standard phrasing of the emergency rule is found in Restatement, Torts 2d, s 296. Fundamental to the application of this rule, however, is the finding that the emergency in which the conduct has its genesis is not of the actor's own making. |
| **Section 298** | | | | |
| Jacobs v. Draper, 274 Minn. 110, 117, 142 N.W.2d 628, 633 (Minn. 1966) | § 298. Want of Reasonable Care (2nd) | When an act is negligent only if done without reasonable care, the care which the actor is required to exercise to avoid being negligent in the doing of the act is that which a reasonable man in his position, with his information and competence, would recognize as necessary to prevent the | Cited in support | The plaintiff trustee sought to recover for the wrongful death of his three-and-a-half year old son from the defendant-owner of an ice cream truck and the defendant-motorist whose car struck the child as he darted into the street from behind the ice cream truck. The court affirmed a verdict only against the defendant-ice cream truck owner on the grounds that his negligence was the proximate |

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| | | act from creating an unreasonable risk of harm to another. | | cause of the accident, even though no evidence was presented to show that the defendant knew of the presence of the child until after the accident, since the defendant had originally created the risk of harm in inducing people to purchase his ice cream. |
| Olson v. Ische, 343 N.W.2d 284, 287 (Minn. 1984) | § 298. Want of Reasonable Care (2nd) | See above. | Cited in discussion | Plaintiff was injured in an automobile accident and brought suit against the passenger in the other car. The trial court's summary judgment for the defendant was affirmed. The court held that the passenger had no legal duty to restrain the drunk driver and no new legal duty should be created on these facts. The court also held that the relationship between driver and passenger was not a special relationship creating a duty to control the conduct of a third party to prevent him from causing harm to another. In addition, the court refused to allow recovery on a theory of "joint concerted tortious conduct" because there was no evidence that driver and passenger were acting in concert to achieve a particular result. The dissent argued that summary judgment on this issue was premature. |
| Lind v. Slowinski, 450 N.W.2d 353, 356 (Minn. Ct. App. 1990) | § 298. Want of Reasonable Care (2nd) | See above. | Cited in discussion | A passenger in an automobile sued the driver for negligence after she sustained a severe cervical spine injury when the allegedly intoxicated defendant failed to negotiate a turn, causing the car to roll over. The defendant filed a third-party complaint against another passenger, alleging that he was negligent for directing the plaintiff to sit on his lap in the front seat and preventing her from sitting in the rear seat where seat belts were available. The trial court entered judgment on a jury verdict finding the defendant and the third-party defendant negligent. Affirming in part and reversing and remanding in part, this court held that the trial court erred in submitting the liability of the third-party defendant to the jury, since he did not owe the injured plaintiff a duty as a matter of law. |

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| **Section 299A** | | | | |
| Eveleth v. Ruble, 302 Minn. 249, 253–54, 225 N.W.2d 521, 524–525 n.2 & 3 (Minn. 1974) | § 299A. Undertaking in Profession or Trade (2nd) | Unless he represents that he has greater or less skill or knowledge, one who undertakes to render services in the practice of a profession or trade is required to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities. | Cited in support | One who undertakes to render professional services is under a duty to the person for whom the service is to be performed to exercise such care, skill, and diligence as men in that profession ordinarily exercise under like circumstances. |
| **Section 300** | | | | |
| Eveleth v. Ruble, 302 Minn. 249, 255–56, 225 N.W.2d 521, 526 n.5 (Minn. 1974) | § 300. Want of Preparation | When an act is negligent if done without reasonable preparation, the actor, to avoid being negligent, is required to make the preparation which a reasonable man in his position would recognize as necessary to prevent the act from creating an unreasonable risk of harm to another. | Cited in support | The circumstances to be considered in determining the standard of care, skill, and diligence to be required in this case include the terms of the employment agreement, the nature of the problem which the supplier of the service represented himself as being competent to solve, and the effect reasonably to be anticipated from the proposed remedies upon the balance of the system. |
| **Section 302** | | | | |
| Jacobs v. Draper, 274 Minn. 110, 117, 142 N.W.2d 628, 633 (Minn. 1966) | § 302. Risk of Direct or Indirect Harm (2nd) | A negligent act or omission may be one which involves an unreasonable risk of harm to another through either<br>(a) the continuous operation of a force started or continued by the act or omission, or<br>(b) the foreseeable action of the other, a third person, an animal, or a force of nature. | Cited in support | Under the circumstances it was foreseeable that children would be in the street and that their lives might be endangered by oncoming traffic unless defendant reasonably undertook to guard against injuries to them. It is clear from the evidence that the children were in substance consciously and directly invited into the area where the truck was parked, foreseeably an area of danger, and it therefore would not seem unreasonable to expect of the inviters a proportionately higher degree of foresight than they displayed. It appears to us that if the owner and operator of the ice cream dispensing truck did not as a matter of law violate any duty of care toward the children present, whether they were negligent is at least a fact question. |
| **Section 302B** | | | | |
| Hilligoss v. Cross Co., 304 Minn. 546, 547, 228 | § 302B. Risk of Intentional or Criminal Conduct (2nd) | An act or an omission may be negligent if the actor realizes or should | Cited in support | As a general rule, a criminal act of a third person is an intervening efficient cause sufficient to break the |

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| N.W.2d 585, 586 (Minn. 1975) | | realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such conduct is criminal. | | chain of causation. However, to be a legally sufficient intervening cause, the criminal act itself must not be reasonably foreseeable. |
| **Section 303** | | | | |
| Jacobs v. Draper, 274 Minn. 110, 118, 142 N.W.2d 628, 634 (Minn. 1966) | § 303. Acts Intended or Likely so to Affect the Conduct of the Other, a Third Person, or an Animal as to Involve Unreasonable Risk (2nd) | An act is negligent if the actor intends it to affect, or realizes or should realize that it is likely to affect, the conduct of another, a third person, or an animal in such a manner as to create an unreasonable risk of harm to the other. | Cited in support | Under the circumstances it was foreseeable that children would be in the street and that their lives might be endangered by oncoming traffic unless defendant reasonably undertook to guard against injuries to them. It is clear from the evidence that the children were in substance consciously and directly invited into the area where the truck was parked, foreseeably an area of danger, and it therefore would not seem unreasonable to expect of the inviters a proportionately higher degree of foresight than they displayed. It appears to us that if the owner and operator of the ice cream dispensing truck did not as a matter of law violate any duty of care toward the children present, whether they were negligent is at least a fact question. |
| **Section 308** | | | | |
| Hoffman v. Wiltscheck, 379 N.W.2d 145, 148 (Minn. Ct. App. 1985) | § 308. Permitting Improper Persons to Use Things or Engage in Activities (2nd) | It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others. | Quoted in support | The theory of liability asserted against Robert Tauer, father of Roland and owner of the tractor and wagon used on the hayride, appears to be closest to a negligent entrustment theory. Hoffman's injuries, however, were not caused by any misuse of the farm implements, which were properly entrusted to a sober, adult driver. We believe that any duty owed by Robert Tauer must derive from a continuing duty owed to Hoffman at the Wiltscheck farm. |
| Stepnes v. Adams, 452 N.W.2d 256, 259 (Minn. Ct. App. 1990) | § 308. Permitting Improper Persons to Use Things or Engage in Activities (2nd) | See above. | Cited in discussion | The absence of evidence indicating a special relationship between Sage and Adams and Sage's lack of control over Adams' behavior, precludes liability under Restatement (Second) of Torts §§ 308, 319 and 324A. |

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| **Section 311** | | | | |
| Smith v. Brutger Cos., 569 N.W.2d 408, 413 (Minn. 1997) | § 311. Negligent Misrepresentation Involving Risk of Physical Harm (2nd) | (1) One who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information, where such harm results<br>(a) to the other, or<br>(b) to such third persons as the actor should expect to be put in peril by the action taken.<br><br>(2) Such negligence may consist of failure to exercise reasonable care<br>(a) in ascertaining the accuracy of the information, or<br>(b) in the manner in which it is communicated. | Adoption declined | While we do not foreclose the possibility of recognizing in Minnesota the tort of negligent misrepresentation involving the risk of physical harm, we decline to do so today. This case is not the appropriate vehicle to do so. |
| Flynn v. Am. Home Products Corp., 627 N.W.2d 342, 350–51 (Minn. Ct. App. 2001) | § 311. Negligent Misrepresentation Involving Risk of Physical Harm (2nd) | See above. | Quoted in discussion | Even if appellant were able to prove the elements of duty, reasonable reliance, and proximate cause, the Minnesota Supreme Court has recognized negligent misrepresentation involving damages only for pecuniary loss, and has expressly declined to recognize the tort of negligent misrepresentation involving the risk of physical harm. Accordingly, the district court did not err as a matter of law by granting summary judgment to respondents on this claim. |
| **Section 312** | | | | |
| Dornfield v. Oberg, 503 N.W.2d 115, 119 (Minn. 1993) | § 312. Emotional Distress Intended (2nd) | If the actor intentionally and unreasonably subjects another to emotional distress which he should recognize as likely to result in illness or other bodily harm, he is subject to liability to the other for an illness or other bodily harm of which the distress is a legal cause, | Cited in support | Furthermore, the Restatement defines reckless infliction of emotional distress in the chapter on intentional torts, whereas negligent infliction of emotional distress is defined in the negligence section, thereby further indicating that reckless infliction of emotional distress requires some "intentional" act. Under the facts of this case, it is difficult to construe Oberg's conduct as being |

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| | | (a) although the actor has no intention of inflicting such harm, and<br>(b) irrespective of whether the act is directed against the other or a third person. | | "directed at" any third person. |
| **Section 313** | | | | |
| Dornfield v. Oberg, 503 N.W.2d 115, 119 (Minn. 1993) | § 313. Emotional Distress Unintended (2nd) | (1) If the actor unintentionally causes emotional distress to another, he is subject to liability to the other for resulting illness or bodily harm if the actor<br>(a) should have realized that his conduct involved an unreasonable risk of causing the distress, otherwise than by knowledge of the harm or peril of a third person, and<br>(b) from facts known to him should have realized that the distress, if it were caused, might result in illness or bodily harm.<br><br>(2) The rule stated in Subsection (1) has no application to illness or bodily harm of another which is caused by emotional distress arising solely from harm or peril to a third person, unless the negligence of the actor has otherwise created an unreasonable risk of bodily harm to the other. | Cited in support | Furthermore, the Restatement defines reckless infliction of emotional distress in the chapter on intentional torts, whereas negligent infliction of emotional distress is defined in the negligence section, thereby further indicating that reckless infliction of emotional distress requires some "intentional" act. Under the facts of this case, it is difficult to construe Oberg's conduct as being "directed at" any third person. |
| Carlson v. Illinois Farmers Ins. Co., 520 N.W.2d 534, 536 (Minn. Ct. App. 1994) | § 313. Emotional Distress Unintended (2nd) | See above. | Comment (d) cited in support | Only damages for distress arising from the plaintiff's fear for her own safety are recoverable. |
| Iacona v. Schrupp, 521 N.W.2d 70, 72 (Minn. Ct. App. 1994) | § 313. Emotional Distress Unintended (2nd) | See above. | Comment (d) cited in support | Plaintiffs who fear that another will sustain injury cannot recover for that emotional distress. |

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| Engler v. Illinois Farmers Ins. Co., 706 N.W.2d 764, 771 (Minn. 2005) | § 313. Emotional Distress Unintended (2nd) | See above. | Adopted | In so holding, we find the reasoning of the Restatement (Second) of Torts, explaining the zone of danger approach, persuasive. The Restatement provides that a plaintiff may recover for injury resulting from distress due to witnessing harm or peril to a third party if the defendant's conduct created an unreasonable risk of bodily harm to the plaintiff. |
| **Scope Note for Chapter 12, Topic 7** | | | | |
| Louis v. Louis, 636 N.W.2d 314, 320 n.7 (Minn. 2001) | Scope Note for Chapter 12, Topic 7 (2nd) | None | Cited in support | Recognizing that a duty based on a theory of premises liability is different than a duty based on a special relationship is consistent with the Restatement (Second) of Torts. The Scope Note for Chapter 12, Topic 7 of the Restatement explicitly recognizes that the sections within the topic, including sections 314, 314A, and 315, deal only with a part of the situations in which there is a duty of protective action. Restatement (Second) of Torts, Ch. 12, Topic 7 Scope Note. The Scope Note goes on to state that "[t]he duty of maintaining land and structures thereon in safe condition which is imposed upon the possessor and lessor by virtue of their possession or of a covenant to repair is stated in §§ 328E-379." Id. Therefore, while it is appropriate for this court to apply language consistent with sections 314, 314A, and 315 when it is faced with facts warranting such application, as in Harper, Gilbertson, and the other cases cited by appellant, it would be inappropriate for this court to apply the language of cases that have developed out of this court's adoption of these sections of the Restatement where a plaintiff's claim is based solely on a theory of premises liability. |
| **Section 314** | | | | |
| Delgado v. Lohmar, 289 N.W.2d 479, 483 (Minn. 1979) | § 314. Duty to Act for Protection of Others (2nd) | The fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose | Adopted | The fact that an actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon him a duty to take such action. |

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| | | upon him a duty to take such action. | | |
| Cairl v. State, 323 N.W.2d 20, 25 n.7 (Minn. 1982) | § 314. Duty to Act for Protection of Others (2nd) | See above. | Comment (c) cited in support | In addition, a person owed no duty to warn those endangered by the conduct of another. |
| Stepnes v. Adams, 452 N.W.2d 256, 258 (Minn. Ct. App. 1990) | § 314. Duty to Act for Protection of Others (2nd) | See above. | Cited in discussion | Generally, a person has no duty to act for the protection of others. |
| Johnson v. State, 553 N.W.2d 40, 49 (Minn. 1996) | § 314. Duty to Act for Protection of Others (2nd) | See above. | Cited in support | The fact that an actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon the actor a duty to take such action. |
| N.W. by J.W. v. Anderson, 478 N.W.2d 542, 543 (Minn. Ct. App. 1991) | § 314. Duty to Act for Protection of Others (2nd) | See above. | Cited in support | At common law a person owed no duty to warn those endangered by the conduct of another. |
| Donaldson v. Y.W.C.A. of Duluth, 526 N.W.2d 215, 218 (Minn. Ct. App. 1995) | § 314. Duty to Act for Protection of Others (2nd) | See above. | Cited in discussion | A defendant generally has no duty to aid or protect another person, even if he realizes or should realize that action on his part is necessary. |
| H.B. By and Through Clarke v. Whittemore, 533 N.W.2d 887, 890, reversed 552 N.W.2d 705 (Minn. 1996) | § 314. Duty to Act for Protection of Others (2nd) | See above. | Cited in discussion | Generally, under common law, a person owes no duty to warn or protect others who may be endangered by a third party's conduct. No duty to take action to aid or protect others |
| Funchess v. Cecil Newman Corp., 632 N.W.2d 666, 673 (Minn. 2001) | § 314. Duty to Act for Protection of Others (2nd) | See above. | Cited in discussion | The general common law rule is that a person has no duty to protect another from harm caused by a third party's conduct. |
| Louis v. Louis, 636 N.W.2d 314, 320 n.6 (Minn. 2001) | § 314. Duty to Act for Protection of Others (2nd) | See above. | Cited in support | In *Delgado*, this court adopted the language of the Restatement (Second) of Torts §§ 314, 315 (1965), but did not hold that an affirmative duty to act for the protection of another only arises if a special |

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| | | | | relationship exists between the parties. |
| Sandborg v. Blue Earth County, 601 N.W.2d 192, 196 (Minn. Ct. App. 1999) | § 314. Duty to Act for Protection of Others (2nd) | See above. | Cited in discussion | Generally, there is no duty to protect another person, even if protection is reasonably known to be necessary. |
| Bjerke v. Johnson, 727 N.W.2d 183, 189 (Minn. Ct. App. 2007) | § 314. Duty to Act for Protection of Others (2nd) | See above. | Cited in discussion | Generally, a person has no duty to protect another from a third party's criminal acts. |
| Foss v. Kincade, 746 N.W.2d 912, 915 (Minn. Ct. App. 2008) | § 314. Duty to Act for Protection of Others (2nd) | See above. | Cited in discussion | In determining whether the Kincades owed a duty to David in this case, we begin with several basic negligence principles. First, a negligence claim may be premised on either a person's acts or failure to act. See Restatement (Second) Torts § 284. But negligence arises from a person's failure to act only when that person owes a duty to the injured party. Id. There is generally no duty to act for the protection of others. |
| **Section 314A** | | | | |
| Leaon v. Washington County, 397 N.W.2d 867, 873 (Minn. 1986) | § 314A. Special Relations Giving Rise to Duty to Aid or Protect | (1) A common carrier is under a duty to its passengers to take reasonable action<br>(a) to protect them against unreasonable risk of physical harm, and<br>(b) to give them first aid after it knows or has reason to know that they are ill or injured, and to care for them until they can be cared for by others.<br><br>(2) An innkeeper is under a similar duty to his guests.<br><br>(3) A possessor of land who holds it open to the public is under a similar duty to members of the public who enter in response to his invitation. | Cited in discussion | Neither does defendants' status as organizers of the party create a special relationship between them and Leaon requiring them to exercise reasonable care to protect Leaon. |

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| | | (4) One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection is under a similar duty to the other. | | |
| Hille v. Wright County, 400 N.W.2d 744, 747 (Minn. Ct. App. 1987) | § 314A. Special Relations Giving Rise to Duty to Aid or Protect | See above. | Cited in support | There is a general duty to protect a person taken into one's custody. |
| Stepnes v. Adams, 452 N.W.2d 256, 259 (Minn. Ct. App. 1990) | § 314A. Special Relations Giving Rise to Duty to Aid or Protect | See above. | Cited in support | While we agree this is a terrible tragedy, the theories of liability presented by Stepnes do not result in liability because there is no sufficient nexus between Sage's actions and Stepnes' injury. There is inadequate evidence that Sage exercised control over Adams' behavior or her vehicle. Sage is not the owner of Adams' vehicle nor did she have control of the keys to the vehicle. This is not a custodial situation where Adams was completely within Sage's control. |
| Harper v. Herman, 499 N.W.2d 472, 474 (Minn. 1993) | § 314A. Special Relations Giving Rise to Duty to Aid or Protect | See above. | Cited in support | Harper argues that a special relationship requiring Herman to act for his protection was created when Herman, as a social host, allowed an inexperienced diver on his boat. Generally, a special relationship giving rise to a duty to warn is only found on the part of common carriers, innkeepers, possessors of land who hold it open to the public, and persons who have custody of another person under circumstances in which that other person is deprived of normal opportunities of self-protection. Restatement (Second) of Torts § 314A (1965). Under this rule, a special relationship could be found to exist between the parties only if Herman had custody of Harper under circumstances in which Harper was deprived of normal opportunities to protect himself. |

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| Anderson by Anderson v. Shaughnessy, 526 N.W.2d 625, 626 (Minn. 1995) | § 314A. Special Relations Giving Rise to Duty to Aid or Protect | See above. | Comment (c) cited in discussion. | The duty of care with respect to transporting school children has yet to be expanded beyond the safe deposit of the children at their scheduled destinations in a manner designed to allow their safe crossing of streets after disembarkment and we decline to do so here. |
| Donaldson v. Y.W.C.A, 539 N.W.2d 789, 792 (Minn. 1995) | § 314A. Special Relations Giving Rise to Duty to Aid or Protect | See above. | Cited in support | A legal duty to act for the protection of another person arises when a special relationship exists between the parties. |
| H.B. By and Through Clarke v. Whittemore, 552 N.W.2d 705, 708 (Minn. 1996) | § 314A. Special Relations Giving Rise to Duty to Aid or Protect | See above. | Comment (b) cited in support | Instances where a special relationship has created a duty on the part of a defendant to protect a plaintiff typically involve some degree of dependence. |
| Anderson v. Shaughnessy, 519 N.W.2d 229, 234 (Minn. Ct. App. 1994) | § 314A. Special Relations Giving Rise to Duty to Aid or Protect | See above. | Comment (c) cited in concurring in part and dissenting in part opinion | I concur, except as to the reversal of summary judgment for the school district. As to that issue, I respectfully dissent and would affirm the trial court's decision. The school district had no duty to Anderson after she alighted safely from the bus. |
| Donaldson v. Y.W.C.A. of Duluth, 526 N.W.2d 215, 218 (Minn. Ct. App. 1995) reversed 539 N.W.2d 789 (Minn. 1995) | § 314A. Special Relations Giving Rise to Duty to Aid or Protect | See above. | Cited in support | A legal duty to act for the protection of another person arises when a special relationship exists between the parties. |
| Lundman v. McKown, 530 N.W.2d 807, 833, *cert. denied*, 516 U.S. 1092 (1998) | § 314A. Special Relations Giving Rise to Duty to Aid or Protect | See above. | Cited in concurring and dissenting opinion | A special relationship exists where: (1) one party has custody of another under circumstances that deprive the other person of normal opportunities of self-protection |
| Gilbertson v. Leininger, | § 314A. Special Relations | See above. | Cited in discussion | A special relationship giving rise to a duty to |

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| 599 N.W.2d 127, 131 (Minn. 1999) | Giving Rise to Duty to Aid or Protect | | | [protect] is only found on the part of common carriers, innkeepers, possessors of land who hold it open to the public, and persons who have custody of another person under circumstances in which that other person is deprived of normal opportunities of self-protection. |
| Funchess v. Cecil Newman Corp., 632 N.W.2d 666, 673 (Minn. 2001) | § 314A. Special Relations Giving Rise to Duty to Aid or Protect | See above. | Cited in support | There are exceptions to this rule, however, and the general considerations in determining whether one owes a duty to protect another are the relationship of the parties and the foreseeable risk involved. |
| Louis v. Louis, 636 N.W.2d 314, 320 n.7 (Minn. 2001) | § 314A. Special Relations Giving Rise to Duty to Aid or Protect | See above. | Cited in support | Therefore, while it is appropriate for this court to apply language consistent with sections 314, 314A, and 315 when it is faced with facts warranting such application, as in Harper, Gilbertson, and the other cases cited by appellant, it would be inappropriate for this court to apply the language of cases that have developed out of this court's adoption of these sections of the Restatement where a plaintiff's claim is based solely on a theory of premises liability. |
| Yang v. Voyagaire Houseboats, Inc. 701 N.W.2d 783, 791 (Minn. 2005) | § 314A. Special Relations Giving Rise to Duty to Aid or Protect | See above. | Cited in support | Stating that an innkeeper has a duty to its guests to take reasonable action to protect them against unreasonable risk of physical harm). This duty applies regardless of whether the guests are occupying lodge rooms or houseboats. We conclude that as a matter of public policy, Voyagaire cannot circumvent its duty to protect its guests by requiring the guests to sign a rental agreement containing an exculpatory clause that purports to release Voyagaire from liability for the resort's negligence. |
| Becker v. Mayo Found., 737 N.W.2d 200, 212 (Minn. 2007) | § 314A. Special Relations Giving Rise to Duty to Aid or Protect | See above. | Cited in support | [t]ypically, the plaintiff is in some respect particularly vulnerable and dependent on the defendant, who in turn holds considerable power over the plaintiff's welfare. The Restatement recognizes four types of special relationships: (1) common carrier and passenger; (2) innkeeper and guest; (3) possessor of land who holds it open to the |

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| | | | | public and invitee; and (4) where either one who is required by law or one who voluntarily takes custody of another under circumstances such as to deprive the other of his normal opportunities for protection. |
| Bjerke v. Johnson, 742 N.W.2d 660, 665 (Minn. 2007) | § 314A. Special Relations Giving Rise to Duty to Aid or Protect | See above. | Cited in support, also cited in dissenting opinion | Guest at horse farm, who at age 14, with her parent's permission, was an overnight visitor but later resided full-time at the farm until her departure at age 18, sued farm's owner, alleging that owner was negligent in failing to protect her from sexual abuse by owner's boyfriend. The trial court granted partial summary judgment dismissing plaintiff's negligence claims. The court of appeals reversed. This court affirmed, holding, inter alia, that a special relationship existed between plaintiff and owner under Restatement Second of Torts § 314A, since owner took custody of plaintiff when she began residing at farm and plaintiff lacked "normal opportunities for self-protection" because she was a minor child, living apart from her parents. The dissent argued that child was not deprived of normal opportunities for self-protection. |
| Sandborg v. Blue Earth County, 601 N.W.2d 192, 196 (Minn. Ct. App. 1999) | § 314A. Special Relations Giving Rise to Duty to Aid or Protect | See above. | Cited in discussion | stating duty arises when one is required by law to take custody of another "under circumstances such as to deprive the other of his normal opportunities for protection" |
| Bjerke v. Johnson, 727 N.W.2d 183, 189 (Minn. Ct. App. 2007) | § 314A. Special Relations Giving Rise to Duty to Aid or Protect | See above. | Cited in discussion | A special relationship exists under section 314A when a person voluntarily takes "custody of another person under circumstances in which that other person is deprived of normal opportunities for self-protection." Harper v. Herman, 499 N.W.2d 472, 474 (Minn.1993) (citing Restatement (Second) of Torts § 314A). The plaintiff in a section 314A relationship is "typically in some respect particularly vulnerable and dependent upon the defendant who, correspondingly, holds considerable power over the plaintiff's welfare." Id. Johnson voluntarily took custody of Bjerke for purposes of section 314A. |

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| | | | | Bjerke's parents placed her in Johnson's care, and Johnson admits that she agreed to provide Bjerke with room and board and to protect her from injury. But the custodial arrangement did not deprive Bjerke of normal opportunities for self-protection. The self-protection element of the rule is directed toward individuals who are in some way unable to summon help by virtue of the custody arrangement. See Restatement (Second) of Torts § 314A illus. 6-7 (describing duty owed by jailors and teachers to inmates and small children, respectively). Bjerke, who was a teenager when the harm occurred, was not unable to summon help by virtue of the custody arrangement. Unlike a prisoner or a small child, Bjerke had the same opportunities for self-protection under Johnson's custody as she did under her parents' custody. She could just as easily have reported the abuse under Johnson's custody, for example, as she could have done under her parents' custody. A special relationship therefore did not exist under section 314A. |
| **Section 315** | | | | |
| Cracraft v. City of St. Louis Park, 279 N.W.2d 801, 804 (Minn. 1979) | § 315. General Principle (2nd) | There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless<br>(a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or<br>(b) a special relation exists between the actor and the other which gives to the other a right to protection. | Adopted | The common-law rule, of course, is that generally there is no duty to prevent the misconduct of a third person. At the outset then, there is no common-law duty imposed on any individual or any municipality to inspect and correct the fire code violations of a third person unless there is a "special relation" between the parties. |
| Delgado v. Lohmar, 289 N.W.2d 479, 483–84 (Minn. 1979) | § 315. General Principle (2nd) | See above. | Adopted | Such special relationships exist between parents and children, masters and servants, possessors of land and licensees, common carriers and their customers, or people who have custody of a person with dangerous propensities. Restatement (Second) |

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| | | | | of Torts s 315 (1965). Thus, generally, the law imposes no duty on people to protect strangers from being harmed by others. |
| Rum River Lumber Co. v. State, 282 N.W.2d 882, 886 (Minn. 1979) | § 315. General Principle (2nd) | See above. | Adopted | The scope of such a duty is defined in Restatement (Second) Torts, s 315 |
| Hage v. Stade, 304 N.W.2d 283, 295–96 (Minn. 1981) | § 315. General Principle (2nd) | See above. | Cited in dissenting opinion | Thus, if a particular statute is drafted specifically enough to satisfy the Cracraft court's third factor, a duty arises under Restatement (Second) of Torts s 315 (1965). Because the statute in question obviously satisfies the third element of the Cracraft test, the general rule that there is no duty to prevent the misconduct of third persons becomes irrelevant. |
| Cairl v. State, 323 N.W.2d 20, 25 n.7 (Minn. 1982) | § 315. General Principle (2nd) | See above. | Cited in support | As a general rule at common law a person owed no duty to control the conduct of another. See Restatement (Second) of Torts § 315 (1965). |
| Walker v. Kennedy, 338 N.W.2d 254, 255 (Minn. 1983) | § 315. General Principle (2nd) | See above. | Cited in support | There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct |
| Olson v. Ische, 343 N.W.2d 284, 287-88 (Minn. 1984) | § 315. General Principle (2nd) | See above. | Cited in support | there is no duty to control the conduct of a third person to prevent him from causing harm to another unless a “special relation” exists between the actor and the third person. Examples of this “special relation” as given in the Restatement are parent-child, master-servant, land possessor, and custodian of a person with dangerous propensities. |
| Lundgren v. Fultz, 354 N.W.2d 25, 27 (Minn. 1984) | § 315. General Principle (2nd) | See above. | Cited in support | Generally, a defendant has no duty to control the conduct of a third person to prevent that person from causing injury to another. Restatement (Second) of Torts § 315 (1965). Whether a duty |

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| | | | | exists depends on two factors: (1) whether a "special relationship" existed between the defendant and the third person and (2) the foreseeability of the harm. |
| Andrade v. Ellefson, 391 N.W.2d 836, 841 (Minn. 1986) | § 315. General Principle (2nd) | See above. | Cited in discussion | Generally, unless there is some kind of "special relation," a person has no common law duty to prevent a third person from injuring another. |
| Stepnes v. Adams, 452 N.W.2d 256, 258 (Minn. Ct. App. 1990) | § 315. General Principle (2nd) | See above. | Cited in support | In particular, a defendant has no general duty to control the conduct of a third person so as to prevent injury to another. |
| Semrad v. Edina Realty, Inc., 493 N.W.2d 528, 534 (Minn. 1992) | § 315. General Principle (2nd) | See above. | Cited in discussion | The placement of section 317 in the Restatement and the language of sections 315 and 317 unambiguously limit the scope of section 317 to a duty to prevent an employee from inflicting personal injury upon a third person on the master's premises or to prevent the infliction of bodily harm by use or misuse of the employer's chattels. |
| Allstate Ins. Co. v. S.F., 518 N.W.2d 37, 41 (Minn. 1994) | § 315. General Principle (2nd) | See above. | Cited in discussion | Even if the "abandonment" might be isolated, a negligence claim would only arise if defendant owed a duty to complainant to use reasonable care to protect her from harm others might inflict. For such a duty to arise there must be a "special relationship" between complainant and the insured. |
| H.B. By and Through Clark v. Whittemore, 552 N.W.2d 705, 710 (Minn. 1996) | § 315. General Principle (2nd) | See above. | Cited in dissenting opinion | The general rule, as properly noted by the majority, is that a person does not have a duty to warn or protect others of danger caused by the conduct of a third party. |
| Johnson v. State, 553 N.W.2d 40, 49 (Minn. 1996) | § 315. General Principle (2nd) | See above. | Cited in support | Under fundamental principles of tort law, there is no duty so to control conduct of third person as to prevent him from causing physical harm to another unless special relation exists between actor and third person which imposes duty upon actor to control third person's conduct, or special relation exists between actor and the other which gives rise |

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| | | | | to right to protection. |
| Silberstein v. Cordie, 474 N.W.2d 850, 855 (Minn. Ct. App. 1991) | § 315. General Principle (2nd) | See above. | Cited in support | Generally, a defendant has no duty to control a third person's conduct to prevent harm to another. |
| Boop v. City of Lino Lakes, 502 N.W.2d 409, 411 (Minn. Ct. App. 1993) | § 315. General Principle (2nd) | See above. | Cited in discussion | The city, as any person, has no common law duty to prevent a third person from injuring another, see Olson v. Ische, 343 N.W.2d 284, 288 (Minn.1984), unless "a special relation exists which imposes a duty to control the third person's conduct." See Restatement (Second) of Torts, § 315 (1965). |
| Does 1-22 v. Roman Catholic Bishop of Fall River, 509 N.W.2d 598, 601 (Minn. Ct. App. 1993) | § 315. General Principle (2nd) | See above. | Cited in support | Under section 315, although there is generally no duty to control another's conduct to prevent harm, a special relationship may create such a duty. |
| Spitzak v. Hylands, Ltd., 500 N.W.2d 154, 156 (Minn. Ct. App. 1993) | § 315. General Principle (2nd) | See above. | Cited in support | In the absence of a special relationship, there is no duty to control the conduct of a third person to prevent him from causing physical harm to another. |
| Donaldson v. Y.W.C.A. of Duluth, 526 N.W.2d 215, 218 (Minn. Ct. App. 1995) | § 315. General Principle (2nd) | See above. | Cited in support | Control is also an important consideration, particularly in cases involving a duty to protect. |
| Johnson v. State, 536 N.W.2d 328, 335 (Minn. Ct. App. 1995), reversed 553 N.W.2d 40 (Minn. 1996) | § 315. General Principle (2nd) | See above. | Cited in discussion | Generally, person has no duty to control the conduct of another person to prevent that person from causing physical injury to others, absent special relationship. |
| United Prods. Corp. of Am., Inc. v. Atlas Auto Parts, 529 N.W.2d 401, 403 (Minn. Ct. App. 1995) | § 315. General Principle (2nd) | See above. | Cited in support | Generally, a defendant has no duty to control a third person in order to prevent that person from harming another. |

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| Louis v. Louis, 636 N.W.2d 314, 320 nn.6 & 7(Minn. 2001) | § 315. General Principle (2nd) | See above. | Cited in discussion | In *Delgado*, this court adopted the language of the Restatement (Second) of Torts §§ 314, 315 (1965), but did not hold that an affirmative duty to act for the protection of another only arises if a special relationship exists between the parties. |
| Bjerke v. Johnson, 742 N.W.2d 660, 665 (Minn. 2007) | § 315. General Principle (2nd) | See above. | Cited in discussion | The first prerequisite to a finding of a duty to protect another from harm is the existence of a special relationship between the parties. A special relationship can be found to exist under any one of three distinct scenarios. The first arises from the status of the parties, such as "parents and children, masters and servants, possessors of land and licensees, [and] common carriers and their customers." |
| Stuedemann v. Nose, 713 N.W.2d 79, 83-84 (Minn. Ct. App. 2006) | § 315. General Principle (2nd) | See above. | Cited in discussion | There is no general duty to control the conduct of a third person to prevent him from causing physical harm to others. |
| Bjerke v. Johnson, 727 N.W.2d 183, 189 (Minn. Ct. App. 2007) | § 315. General Principle (2nd) | See above. | Cited in discussion | Generally, a person has no duty to protect another from a third party's criminal acts. |
| **Section 316** | | | | |
| Republic Vanguard Ins. Co. v. Buehl, 295 Minn. 327, 330, 204 N.W.2d 426, 428 n.2 (Minn. 1973) | § 316. Duty of Parent to Control Conduct of Child (2nd) | A parent is under a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent<br>(a) knows or has reason to know that he has the ability to control his child, and<br>(b) knows or should know of the necessity and opportunity for exercising such control. | Cited in support | Although parents under the common law are generally not held liable in damages for the torts of their minor children solely because of that relationship, where the parents cause the tort to occur through their own negligence, they may be held liable for the damages. |
| Silberstein v. Cordie, 474 N.W.2d 850, 855 (Minn. | § 316. Duty of Parent to Control Conduct of Child | See above. | Adopted | One exception to the general rule of no duty to control others is based on a parent/child |

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| Ct. App. 1991) | (2nd) | | | relationship. This duty is narrow; at the very most, the duty arises when the parent has both the opportunity and the ability to control the child. |
| **Section 317** | | | | |
| Meany v. Newell, 367 N.W.2d 472, 475 (Minn. 1985) | § 317. Duty of Master to Control Conduct of Servant (2nd) | A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if<br>(a) the servant<br>(i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or<br>(ii) is using a chattel of the master, and<br>(b) the master<br>(i) knows or has reason to know that he has the ability to control his servant, and<br>(ii) knows or should know of the necessity and opportunity for exercising such control. | Cited in discussion but distinguished | Section 317 has typically been used when the employee is acting negligently on the work premises, albeit during off-duty hours, such that the employer could control the employee's action. The difficulty in discerning when the employer's duty to control ends, leads us to reject extending that duty to off-premises actions. Since Cortright was neither on the premises nor using the employer's chattels, we reject the applicability of the Restatement to this case. |
| Meany v. Newell, 352 N.W.2d 779, 782 (Minn. Ct. App. 1984) | § 317. Duty of Master to Control Conduct of Servant (2nd) | See above. | Cited in support | A master has a duty, the court recognized, to exercise reasonable care to control his servant while acting outside the scope of his employment to prevent him from intentionally harming others or from acting in such a way as to create an unreasonable risk of bodily harm to others. |
| Semrad v. Edina Realty, Inc., 493 N.W.2d 528, 529, 533–37 (Minn. 1992) | § 317. Duty of Master to Control Conduct of Servant (2nd) | See above. | Cited in discussion by not applied | We are of the opinion, however, that to apply Restatement (Second) of Torts § 317 under the circumstances of this case is to extend section 317 far beyond its intended scope. |
| Semrad v. Edina Realty, | § 317. Duty of Master to | See above. | Cited in support | Under the rationale of Restatement (Second) of |

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| Inc. 470 N.W.2d 135, 137, 145–47 (Minn. Ct. App. 1991) | Control Conduct of Servant (2nd) | | | Torts § 317 (1965), a principal's duty to supervise extends to an agent's acts on premises not owned by the principal if the agent has access to such premises because of his position as the principal's agent. |
| Bruchas v. Preventative Care, Inc., 553 N.W.2d 440, 443 (Minn. Ct. App. 1996) | § 317. Duty of Master to Control Conduct of Servant (2nd) | See above. | Cited in discussion | The supreme court indicated in Semrad that some form of physical injury is required to recover under a claim of negligent supervision. See id. at 534 (to apply the Restatement (Second) of Torts § 317 in a case involving economic loss only is to extend section 317 far beyond its intended scope). The language of the Restatement "unambiguously limit[s] the scope of section 317 to a duty to prevent an employee from inflicting personal injury upon a third person" or to "prevent the infliction of bodily harm by use or misuse of the employer's chattels." |
| Johnson v. Peterson, 734 N.W.2d 275, 277 (Minn. Ct. App. 2007) | § 317. Duty of Master to Control Conduct of Servant (2nd) | See above. | Cited in support | Negligent-supervision claims are premised on an employer's duty to control employees and prevent them from intentionally or negligently inflicting personal injury. The Restatement "unambiguously" limits an employer's duty to the prevention of bodily harm. |
| **Section 318** | | | | |
| Leaon v. Washington County, 397 N.W.2d 867, 873 (Minn. 1986) | § 318. Duty of Possessor of Land or Chattels to Control Conduct of Licensee (2nd) | If the actor permits a third person to use land or chattels in his possession otherwise than as a servant, he is, if present, under a duty to exercise reasonable care so to control the conduct of the third person as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if the actor<br>(a) knows or has reason to know that he has the ability to control the third person, and | Adopted | Finally, a possessor of land may have a duty to protect, but this duty arises only if the possessor "(a) knows or has reason to know that he has the ability to control the third person, and (b) knows or should know of the necessity and opportunity for exercising such control." Id. § 318. Ordinarily, this is a question of fact, but nothing in the record indicates that these two requirements for imposition of section 318 liability might exist. |

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| | | (b) knows or should know of the necessity and opportunity for exercising such control. | | |
| Pearson v. Henkemeyer, 503 N.W.2d 504, 507 (Minn. Ct. App. 1993) | § 318. Duty of Possessor of Land or Chattels to Control Conduct of Licensee (2nd) | See above. | Cited in support | A land-owner, however, may have a duty to protect against harm caused by third-party entrants on their land if the owner<br><br>(a) knows or has reason to know that he has the ability to control the third person, and<br><br>(b) knows or should know of the necessity and opportunity for exercising such control. |
| **Section 319** | | | | |
| Rum River Lumber Co. v. State, 282 N.W.2d 882, 885 n.4, 886 (Minn. 1979) | § 319. Duty of Those in Charge of Person Having Dangerous Propensities (2nd) | One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm. | Cited in discussion | "One who voluntarily takes charge of a third person whom he knows or should know is likely to cause bodily harm to others if not controlled is under a duty so to exercise his control as to prevent the third person from doing such harm." This section appears essentially unchanged in Restatement, Torts (2d), s 319. |
| Walker v. Kennedy, 338 N.W.2d 254, 255 nn.1 & 2 (Minn. 1983) | § 319. Duty of Those in Charge of Person Having Dangerous Propensities (2nd) | See above. | Cited in discussion | Plaintiff's argument fails because in the cases in which this court has imposed liability for negligent failure to control the conduct of a third person, the injury was caused by the third person. In the present case, it was the conduct of a party with whom defendant did not have a special relationship that caused the injury. |
| Lundgren v. Fultz, 354 N.W.2d 25, 27 (Minn. 1984) | § 319. Duty of Those in Charge of Person Having Dangerous Propensities (2nd) | See above. | Cited in support | In law, we are not our brother's keeper unless "a special relationship exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct." Id. Implicit in the duty to control is the ability to control. Id. at § 319 comments and illustrations. Viewing the evidence in the light most favorable to the plaintiff, a reasonable juror could conclude that Dr. Cline possessed some ability to control Rick Fultz' access |

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| | | | | to handguns. |
| Stepnes v. Adams, 452 N.W.2d 256, 259 (Minn. Ct. App. 1990) | § 319. Duty of Those in Charge of Person Having Dangerous Propensities (2nd) | See above. | Cited in discussion | The absence of evidence indicating a special relationship between Sage and Adams and Sage's lack of control over Adams' behavior, precludes liability under Restatement (Second) of Torts §§ 308, 319 and 324A. |
| Johnson v. State, 553 N.W.2d 40, 49 (Minn. 1996) | § 319. Duty of Those in Charge of Person Having Dangerous Propensities (2nd) | See above. | Cited in support | One who takes charge of third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under duty to exercise reasonable care to control third person to prevent him from doing such harm. |
| Johnson v. State, 536 N.W.2d 328, 335 (Minn. Ct. App. 1995), *reversed*, 553 N.W.2d 40 (Minn. 1996) | § 319. Duty of Those in Charge of Person Having Dangerous Propensities (2nd) | See above. | Cited in support | "Special relationship" exists and may give rise to duty to control the conduct of another person to prevent that person from causing physical injury to others where person takes charge of third person whom he knows or should know to be likely to cause bodily harm to others if not controlled. |
| Stuedemann v. Nose, 713 N.W.2d 79, 84 (Minn. Ct. App. 2006) | § 319. Duty of Those in Charge of Person Having Dangerous Propensities (2nd) | See above. | Cited in support | A person who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled has a duty to exercise reasonable care to control the third person to prevent him from doing such harm. |
| **Section 320** | | | | |
| Verhel v. Indep. School Dist. No. 709, 359 N.W.2d 579, 593 (Minn. 1984) | § 320. Duty of Person Having Custody of Another to Control Conduct of Third Persons (2nd) | One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal power of self-protection or to subject him to association with persons likely to harm him, is under a duty to exercise reasonable care so to control the conduct of third persons as to prevent them from intentionally harming the other or so conducting themselves as to create an | Cited in support | In this kind of situation, the school district's duty to supervise the bannering would not arise until it knew or should have known that the bannering was going to take place. Ordinarily, a school district's duty to supervise is based on the fact that parents have relinquished custody of their children to the school for school activities and, consequently, the school is charged with the duty of protecting the children while in its charge. |

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| | | unreasonable risk of harm to him, if the actor<br>(a) knows or has reason to know that he has the ability to control the conduct of the third persons, and<br>(b) knows or should know of the necessity and opportunity for exercising such control. | | |
| Tomfohr v. Mayo Foundation, 450 N.W.2d 121, 125 (Minn. 1990) | § 320. Duty of Person Having Custody of Another to Control Conduct of Third Persons (2nd) | See above. | Adopted | The law has long recognized that a custodian of another person may be liable for consequences of harm to that person inflicted by a third person when that harm is reasonably foreseeable. See Restatement (Second) of Torts § 320 (1965). It seems to us logical to apply that same rule if the foreseeable harm is self-inflicted. Therefore, we answer the certified question in the negative. |
| Cooney v. Hooks, 535 N.W.2d 609, 611 (Minn. 1995) | § 320. Duty of Person Having Custody of Another to Control Conduct of Third Persons (2nd) | See above. | Cited in discussion | When person has custody of another under circumstances in which detainee is deprived of normal opportunities of self-protection, special relationship between custodian and detainee imposes on custodian duty to protect detainee from intentional harm at hands of another. |
| **Section 321** | | | | |
| Stepnes v. Adams, 452 N.W.2d 256, 259 (Minn. Ct. App. 1990) | § 321. Duty to Act When Prior Conduct is Found to be Dangerous | (1) If the actor does an act, and subsequently realizes or should realize that it has created an unreasonable risk of causing physical harm to another, he is under a duty to exercise reasonable care to prevent the risk from taking effect.<br><br>(2) The rule stated in Subsection (1) applies even though at the time of the act the actor has no reason to believe that it will involve such a risk. | Cited in support | In addition, Stepnes' failure to establish that Sage both created and failed to remedy the dangerous condition precludes liability under Restatement (Second) of Torts § 321. |
| **Section 323** | | | | |

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| Isler v. Burman, 305 Minn. 288, 295, 232 N.W.2d 818, 822 (Minn. 1975) | § 323. Negligent Performance of Undertaking to Render Services (2nd) | One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if<br>(a) his failure to exercise such care increases the risk of such harm, or<br>(b) the harm is suffered because of the other's reliance upon the undertaking. | Cited in support | It is ancient learning that one who assumes to act, even though gratuitously, may thereby become subject to the duty of acting carefully, if he acts at all |
| Cracraft v. City of St. Louis Park, 279 N.W.2d 801, 807 nn.9 & 11 (Minn. 1979) | § 323. Negligent Performance of Undertaking to Render Services (2nd) | See above. | Cited in support | Similarly, Restatement, Torts (2d), s 324A, provides: "One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect (sic) his undertaking, if"(c) the harm is suffered because of reliance of the other or the third person upon the undertaking." See, also, Restatement, Torts (2d), s 323(b). |
| Walsh v. Pagra Air Taxi, Inc., 282 N.W.2d 567, 570 (Minn. 1979) | § 323. Negligent Performance of Undertaking to Render Services (2nd) | See above. | Adopted | The failure of the city to exercise reasonable care in performing this undertaking that is, its failure to repair the door of the garage housing the firetruck increased the risk of harm to Walsh's property. Clearly the city recognized that fire extinguishing equipment and personnel trained to use it are necessary parts of safe airport operation, and the record establishes that Walsh relied upon the airport fire protection service. |
| Reedon of Faribault v. Fid. & Guar. Ins. Underwriters, Inc., 418 N.W.2d 488, 492 (Minn. 1988) | § 323. Negligent Performance of Undertaking to Render Services (2nd) | See above. | Cited in discussion | Though not specifically saying so, the court of appeals apparently relied on Restatement (Second) of Torts § 323 (1965). That section asserts that under the common law one who undertakes to render services to another is subject to liability for |

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| | | | | harm resulting from the failure to exercise reasonable care to perform the undertaking, if the failure to exercise care increases the risk of harm, or the harm is suffered because of the other's reliance on the undertaking. Assuming, without deciding, that the quoted statement is a correct statement of the law, we must first determine whether Fidelity owed any duty to Reedon. It only owes a duty if it undertook "to render services" to respondent. |
| Campbell v. Ins. Serv. Agency, 424 N.W.2d 785, 791 (Minn. Ct. App. 1988) | § 323. Negligent Performance of Undertaking to Render Services (2nd) | See above. | Cited in support | One who undertakes to render services to another which he should recognize as necessary for the protection of the other's things, is subject to liability resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of harm, or (b) the harm is suffered because of the other's reliance upon the undertaking. |
| State, by Humphrey v. Phillip Morris, Inc., 551 N.W.2d 490, 493-94 (Minn. 1996) | § 323. Negligent Performance of Undertaking to Render Services (2nd) | See above. | Cited in support | The Restatement has reflected this principle as follows:<br><br>One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if<br><br>(a) his failure to exercise such care increases the risk of such harm, or<br>(b) the harm suffered because of the other's reliance upon the undertaking. |
| Northfield Ins. Co. v. St. Paul Surplus Ins. Co., 545 N.W.2d 57, 63 (Minn. Ct. App. 1996) | § 323. Negligent Performance of Undertaking to Render Services (2nd) | See above. | Cited in support | the supreme court, relying on the Restatement of Torts, held that a party that gratuitously assumes a duty and leads others to rely on its performance of that duty must exercise reasonable care in that performance. Id. at 414, 75 N.W.2d at 210 (citing |

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| | | | | Restatement (First) of Torts § 325 (1934)). The court stated that this tort applied to property damage and personal injury. Id. at 415, 75 N.W.2d at 211; see also Restatement (Second) of Torts § 323 (1965) (failure to exercise reasonable care in performance of gratuitously assumed duty may give rise to liability for resulting physical harm). |
| Funchess v. Cecil Newman Corp., 632 N.W.2d 666, 674, 675 (Minn. 2001) | § 323. Negligent Performance of Undertaking to Render Services (2nd) | See above. | Cited in support | We must decide whether, by providing security measures, Newman/Gravzy assumed a duty to maintain them that extends to protecting Haynes from harm inflicted by third-party criminals. In the terms used by the Restatement, we ask whether the security measures in place at the apartment building constituted a "service" to Haynes that Newman/Gravzy should have recognized was "necessary for the protection" of Haynes and his property...Although there may be other circumstances in which the duty to maintain security measures would give rise to liability for injuries of the type presented here, those circumstances do not exist in this case. We conclude that in this case a duty to maintain the lock and buzzer/intercom system does not give rise to liability for the criminal acts of third parties entering Haynes' apartment. |
| Bjerke v. Johnson, 742 N.W.2d 660, 672 (Minn. 2007) | § 323. Negligent Performance of Undertaking to Render Services (2nd) | See above. | Cited in discussion | A review of the case law under Restatement § 324A, and the similar provisions of Restatement (Second) of Torts § 323 (1965), fails to reveal a single case that has made the existence of an explicit promise necessary in order to establish an undertaking under either section. Of course, a number of those cases present the situation in which some form of contract or agreement to act for the benefit of another was present. |
| Larson v. Wasemiller, 738 N.W.2d 300, 316 (Minn. 2007) | § 323. Negligent Performance of Undertaking to Render Services (2nd) | See above. | Cited in support | But the qualified immunity afforded by section 145.63 is likely to be of little comfort to a peer review participant. Under the statute, a negligent-credentialing plaintiff must demonstrate that the |

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| | | | | peer review organization did not act based on a reasonable belief or make reasonable efforts to ascertain the facts-but failure to exercise reasonable care is always the basis of a negligence action. See, e.g., Funchess v. Cecil Newman Corp., 632 N.W.2d 666, 674 (Minn.2001) (citing Restatement (Second) of Torts § 323 (1965)). In order to recover, therefore, a negligent credentialing plaintiff would need to prove that the peer review organization's decision was unreasonable even in the absence of Minn.Stat. § 145.63. |
| **Section 324** | | | | |
| Regan v. Stromberg, 285 N.W.2d 97, 100 (Minn. 1979) | § 324. Duty of One Who Takes Charge of Another Who is Helpless (2nd) | One who, being under no duty to do so, takes charge of another who is helpless adequately to aid or protect himself is subject to liability to the other for any bodily harm caused to him by<br>(a) the failure of the actor to exercise reasonable care to secure the safety of the other while within the actor's charge, or<br>(b) the actor's discontinuing his aid or protection, if by so doing he leaves the other in a worse position than when the actor took charge of him. | Cited in support | Where one is in charge of another, or who being under no duty to do so takes charge of another, and who knows or in the exercise of reasonable care should know that the physical or mental condition of such person is such that it is reasonably foreseeable that such person would be exposed to injury, then the person in charge must use reasonable care to prevent such exposure. Failure to do so is negligence. |
| **Section 324A** | | | | |
| Lorshbough v. Twp. of Buzzle, 258 N.W.2d 96, 101 n.8 (Minn. 1977) | § 324A. Liability to Third Person for Negligent Performance of Undertaking (2nd) | One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if<br>(a) his failure to exercise reasonable care increases the risk of such harm, or | Cited in support | A building inspector must be held to have foreseen that his alleged negligence in performing the required inspection might have foreseeably resulted in harm to someone. Furthermore, under the rule of law stated in Restatement, 2 Torts 2d, p. 142, sec. 324A, the building inspector, once he did undertake to inspect the building had a duty to exercise reasonable care in so doing. That duty flowed to the plaintiffs herein." |

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| | | (b) he has undertaken to perform a duty owed by the other to the third person, or<br>(c) the harm is suffered because of reliance of the other or the third person upon the undertaking. | | |
| Cracraft v. City of St. Louis Park, 279 N.W.2d 801, 807 n.9 & 10, 809–11 (Minn. 1979) | § 324A. Liability to Third Person for Negligent Performance of Undertaking (2nd) | See above. | Cited in discussion | Similarly, Restatement, Torts (2d), s 324A, provides: "One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect (sic) his undertaking, if"(c) the harm is suffered because of reliance of the other or the third person upon the undertaking." |
| Walsh v. Pagra Air Taxi, Inc., 282 N.W.2d 567, 570 (Minn. 1979) | § 324A. Liability to Third Person for Negligent Performance of Undertaking (2nd) | See above. | Adopted | We believe that the applicable rule of law is stated in Restatement, Torts 2d, s 324A: "One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if<br><br>"(a) his failure to exercise reasonable care increases the risk of such harm, or<br><br>"(b) he has undertaken to perform a duty owed by the other to the third person, or<br><br>"(c) the harm is suffered because of reliance of the other or the third person upon the undertaking." |
| Andrade v. Ellefson, 391 N.W.2d 836, 846 (Minn. 1986) | § 324A. Liability to Third Person for Negligent Performance of Undertaking (2nd) | See above. | Quoted in concurring opinion | One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability |

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| | | | | to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if his failure to exercise reasonable care increases the risk of such harm Restatement, Torts 2d, § 324A. Is not the risk of injury increased by an inspector's failure to exercise reasonable care in undertaking the inspection service? This should be the focus of the court's inquiry in all such liability cases, whether or not the defendant is a governmental entity. |
| Erickson v. Curtis Inv. Co., 447 N.W.2d 165, 170 (Minn. 1989) | § 324A. Liability to Third Person for Negligent Performance of Undertaking (2nd) | See above. | Adopted | But section 324A also imposes liability on a defendant who undertakes for another (whether gratuitously or for a consideration) to perform a duty owed by the other to a third person. That is precisely our case here. Leadens may have been hired by Curtis to patrol for Curtis, but it also undertook to perform Allright's duty to protect Allright's customers. Consequently, Leadens' duty to use that degree of care which a reasonably prudent professional security firm would use was owed also to plaintiff. |
| In re Norwest Bank Fire Cases, 410 N.W.2d 875, 878 n.1–3, 880(Minn. Ct. App. 1987) | § 324A. Liability to Third Person for Negligent Performance of Undertaking (2nd) | See above. | Cited in discussion | More specifically, appellants claim that IRI is liable for injuries resulting from a negligent inspection that tended to serve a class of persons that could be injured by dangers on the inspected premises. It is plausible to recognize that any inspection is beneficial to someone who could be injured but for the discovery and correction of dangers. Appellants further claim that Strock's failure to detect and deal with safety hazards tended to enlarge the risk of injury because his failure destroyed any chance for control of the hazard. |
| Stepnes v. Adams, 452 N.W.2d 256, 259 (Minn. Ct. App. 1990) | § 324A. Liability to Third Person for Negligent Performance of Undertaking (2nd) | See above. | Cited in support | The absence of evidence indicating a special relationship between Sage and Adams and Sage's lack of control over Adams' behavior, precludes liability under Restatement (Second) of Torts §§ 308, 319 and 324A. |

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| Lubbers v. Anderson, 524 N.W.2d 735, 738 (Minn. Ct. App. 1994) | § 324A. Liability to Third Person for Negligent Performance of Undertaking (2nd) | See above. | Cited in support | A duty may be imposed where an actor voluntarily assumes a duty of care. Restatement (Second) of Torts § 324A (1965). For instance, the supreme court held that a trucker owed a duty of care to a car driver where the trucker signaled to the driver that it was clear to pass. Thelen v. Spilman, 251 Minn. 89, 97, 86 N.W.2d 700, 706 (1957). |
| Bjerke v. Johnson, 742 N.W.2d 660, 665–81 (Minn. 2007) | § 324A. Liability to Third Person for Negligent Performance of Undertaking (2nd) | See above. | Cited in discussion | For example, one has a duty to act when he "undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things," and liability will be imposed if (1) his failure to act increases the risk of harm; (2) he undertook a duty owed by the other to the third party; or (3) the harm is suffered because the other or the third person relied on the undertaking. |
| Laska v. Anoka County, 696 N.W.2d 133, 139 (Minn. Ct. App. 2005) | § 324A. Liability to Third Person for Negligent Performance of Undertaking (2nd) | See above. | Cited in support | But the supreme court has specifically adopted that part of § 324A of the Restatement (Second) of Torts (1965) (Liability to Third Person for Negligent Performance of Undertaking), which "imposes liability on a defendant who undertakes for another (whether gratuitously or for consideration) to perform a duty owed by the other to a third person." |
| Bjerke v. Johnson, 727 N.W.2d 183, 189–90, 196 (Minn. Ct. App. 2007) | § 324A. Liability to Third Person for Negligent Performance of Undertaking (2nd) | See above. | Cited in support | The Restatement provision imposing liability for negligent performance of undertaking imposes liability when a defendant undertakes for another, gratuitously or for consideration, to perform a duty owed by the other to a third person; the extent of the duty owed under the section is defined by the extent of the undertaking. |
| **Section 328** | | | | |
| Gresser v. Taylor, 276 Minn. 440, 452, 150 N.W.2d 869, 876 (Minn. 1967) | § 328. Obstruction of Highway (2nd) | One who wrongfully obstructs a highway and thereby prevents a third person from giving aid necessary to prevent physical harm to another is | Cited in dissenting opinion | The inference which the doctrine permits presupposes that the evidence of the true cause of the event is available to the defendant and not to the plaintiff, Heffter v. Northern States Power Co., |

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| | | subject to liability to the other for physical harm caused by the absence of such aid. | | 173 Minn. 215, 217 N.W. 102, which is not the case here; further, other causes of the event and for which defendant is not responsible (including the conduct of third persons) must be reasonably ruled out by the evidence, Restatement, Torts (2d) s 328 D, which most particularly is not this case. |
| Bundy v. Holmquist, 669 N.W.2d 627, 630–31 (Minn. Ct. App. 2003) | § 328. Obstruction of Highway (2nd) | See above. | Cited in discussion | The district court relied on the Restatement (Second) of Torts § 328 (1965) to conclude that the sisters were neither the owners nor possessors of the land at the time the injury occurred and therefore did not owe appellant a legal duty. Appellants do not challenge the district court's determination that the sisters were not in possession of the land. Appellants only challenge the district court's conclusion that the sisters did not owe appellants a legal duty. |
| **Section 328B** | | | | |
| Germann v. F.L. Smithe Mach. Co., 395 N.W.2d 922, 924 (Minn. 1986) | § 328B. Functions of Court (2nd) | In an action for negligence the court determines<br>(a) whether the evidence as to the facts makes an issue upon which the jury may reasonably find the existence or non-existence of such facts;<br>(b) whether such facts give rise to any legal duty on the part of the defendant;<br>(c) the standard of conduct required of the defendant by his legal duty;<br>(d) whether the defendant has conformed to that standard, in any case in which the jury may not reasonably come to a different conclusion;<br>(e) the applicability of any rules of law determining whether the defendant's conduct is a legal cause of harm to the plaintiff; and<br>(f) whether the harm claimed to be suffered by the plaintiff is legally | Cited in support | The primary issue raised in this appeal is whether Smithe had the legal duty to warn users of the dangers of using the PHP 33 when the safety bar was not properly attached. The question of whether a legal duty to warn exists is a question of law for the court-not one for jury resolution. |

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| Gabrielson v. Warnermunde, 443 N.W.2d 540, 543 n.1 (Minn. 1989) | § 328B. Functions of Court (2nd) | See above. | Cited in support | The court of appeals held that his case should go to the jury for a determination of whether the facts and circumstances of the case give rise to a duty of care owed by Warnemunde to LaCanne. This is erroneous. The existence of a legal duty is a question for the court, not the jury. |
| **Section 328D** | | | | |
| Okrina v. Midwestern Corp., 282 Minn. 400, 402, 165 N.W.2d 259, 261 n.2 (Minn. 1969) | § 328D. Res Ipsa Loquitur (2nd) | (1) It may be inferred that harm suffered by the plaintiff is caused by negligence of the defendant when<br>(a) the event is of a kind which ordinarily does not occur in the absence of negligence;<br>(b) other responsible causes, including the conduct of the plaintiff and third persons, are sufficiently eliminated by the evidence; and<br>(c) the indicated negligence is within the scope of the defendant's duty to the plaintiff.<br><br>(2) It is the function of the court to determine whether the inference may reasonably be drawn by the jury, or whether it must necessarily be drawn.<br><br>(3) It is the function of the jury to determine whether the inference is to be drawn in any case where different conclusions may reasonably be | Cited in support | A plaintiff may have the benefit of the res ipsa rule notwithstanding the fact he has introduced specific evidence of negligence which might itself establish a prima facie case of liability. |

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| Hoven v. Rice Memorial Hosp. 386 N.W.2d 752, 755 (Minn. Ct. App. 1986) | § 328D. Res Ipsa Loquitur (2nd) | See above. | Adopted | If the defendant produces evidence which is so conclusive as to leave no doubt that the event was of a kind which commonly occurs without negligence on the part of anyone and could not be avoided by the exercise of all reasonable care, he may be entitled to a directed verdict. |
| **Section 333** | | | | |
| Gow v. Turnquist, 474 N.W.2d 182, 184 (Minn. Ct. App. 1991) | § 333. General Rule (2nd) | Except as stated in §§ 334-339, a possessor of land is not liable to trespassers for physical harm caused by his failure to exercise reasonable care<br><br>(a) to put the land in a condition reasonably safe for their reception, or<br><br>(b) to carry on his activities so as not to endanger them. | Adopted | Ordinarily, a landowner is under no duty to warn or use reasonable care for the safety of a trespasser. Restatement (Second) of Torts § 333 (1965). However, there are several exceptions to this general rule of nonliability. For example, when a landowner has activities on the land, if a possessor of land knows, or from facts the possessor knows or has reason to know, that a trespasser is present on the premises, then, unless the trespasser is already aware or from facts the trespasser knows or should be aware of the activities and of the risk involved, the possessor of land has a duty: 1. To use reasonable care for the safety of the trespasser while carrying on his activities, or 2. To use reasonable care to warn the trespasser of the danger or risk involved. 4 Minnesota Practice, CIV. JIG 327 (3d ed. 1986). In light of this rule, there are fact questions whether respondent had a duty to appellant. First, because Kim met appellant in the kitchen, there is a fact question whether the knowledge of appellant's presence changed the duty the landowner owed to her. Moreover, because appellant knew the porch stairs were completely dark, there is a fact question whether she knew or should have been aware of the risks involved in using that exit, thus negating the Turnquists' duty to her. |
| Reider v. City of Spring Lake Park, 480 N.W.2d | § 333. General Rule (2nd) | See above. | Cited in support | Appellants' legal status while on Church property determines the standard of care the Church and |

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| 662, 666 (Minn. Ct. App. 1992) | | | | City owed them. Minnesota recognizes the two categories of entrant and trespasser for defining liability to persons injured on another's land, while abolishing the distinctions between a licensee and invitee, both of which are now considered entrants. Peterson v. Balach, 294 Minn. 161, 164-65, 199 N.W.2d 639, 642 (1972). A trespasser is "one who enters or remains on the land without the express or implied consent of the possessor of land." Rieger v. Zackowski, 321 N.W.2d 16, 20 (Minn.1982). Generally a possessor of land owes a duty to warn or use reasonable care for the safety of an entrant, but not for a trespasser. Restatement (Second) Torts § 333 (1965). |
| Sirek by Beaumaster v. State, Dep't of Natural Res., 496 N.W.2d 807, 809 (Minn. 1993) | § 333. General Rule (2nd) | See above. | Cited in support | The rule of law in trespass cases contrasts sharply from the duty of reasonable care owed by most landowners. In a trespass case, the landowner generally owes no duty at all because "a possessor of land is not liable to trespassers for physical harm caused by his failure to exercise reasonable care to put the land in a condition reasonably safe for their reception, or to carry on his activities so as not to endanger them." Restatement (Second) of Torts § 333 (1965). |
| Doe v. Brainerd Int'l Raceway, Inc., 533 N.W.2d 617, 621 (Minn. 1995) | § 333. General Rule (2nd) | See above. | Cited in support | However, the duty imposed upon the operator of a place of public amusement is more limited in the case of a trespasser. Generally, a landowner does not owe a duty to a trespasser. Hanson v. Bailey, 249 Minn. 495, 500, 83 N.W.2d 252, 257 (1957); Restatement (Second) of Torts § 333 (1965). But if the landowner knows or should know that a trespasser is present on the premises, then the landowner has a narrowly defined duty to use reasonable care for the safety of the trespasser while carrying on his activities, or to use reasonable care to warn the trespasser of the danger or risk involved. Id.; Restatement (Second) of Torts § 336 (1965). |
| Olmanson v. Le Sueur County, 673 N.W.2d 506, 512 n.2 (Minn. Ct. App. | § 333. General Rule (2nd) | See above. | Cited in support | Further, generally, a landowner does not owe a duty to a trespasser. Hanson v. Bailey, 249 Minn. 495, 500, 83 N.W.2d 252, 257 (1957); Restatement |

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| 2004) | | | | (Second) of Torts § 333 (1965). But if the landowner knows or should know that a trespasser is present, then the landowner has a narrowly defined duty to use reasonable care for the safety of the trespasser while carrying on his activities, or to use reasonable care to warn the trespasser of the danger or risk involved. Id.; Restatement (Second) of Torts § 336 (1965). However, a landowner's duty of reasonable care does not extend to warn or protect against risks of which the trespasser knew or should have known. |
| **Section 335** | | | | |
| Green-Glo Turf Farms, Inc. v. State, 347 N.W.2d 491, 494 (Minn. 1984) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | A possessor of land who knows, or from facts within his knowledge should know, that trespassers constantly intrude upon a limited area of the land, is subject to liability for bodily harm caused to them by an artificial condition on the land, if<br>(a) the condition<br>(i) is one which the possessor has created or maintains and<br>(ii) is, to his knowledge, likely to cause death or seriously bodily harm to such trespassers and<br>(iii) is of such a nature that he has reason to believe that such trespassers will not discover it, and<br>(b) the possessor has failed to exercise reasonable care to warn such trespassers of the condition and the risk involved. | Cited in support | Subdivision 3(h) immunizes the state from the liability for the acts of its agents in constructing, operating, and maintaining the outdoor recreation system. The state is liable, however, for "conduct that would entitle a trespasser to damages against a private person." Essentially, a trespasser is entitled to damages against a private possessor of land only if the trespasser has sustained bodily harm as a result of the possessor's failure to conform to the standard of conduct commensurate with the duty imposed under certain well-defined circumstances. Restatement (Second) Torts §§ 333-39. Moreover, since the statutory exception that permits the imposition of tort liability on the state rests not on the injured claimant's status but rather on the quality of the state's conduct, conduct related to the maintenance and operation of an outdoor recreation system may give rise to tort liability whether the claimant is within or outside of the recreational area when the conduct causes bodily harm. |
| Watters v. Buckbee Mears Co., 354 N.W.2d 848, 850 (Minn. Ct. App. 1984) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | Appellants admit they were trespassers. A land possessor's duty to known trespassers is addressed in § 335 of the Restatement (Second) of Torts (1965). This standard was adopted by the Minnesota Supreme Court in Hanson v. Bailey, 249 Minn. 495, 499-500, 83 N.W.2d 252, 257 (1957). |
| Henry v. State, 406 | § 335. Artificial Conditions | See above. | Cited in support | Under the Restatement, liability to a trespasser |

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| N.W.2d 608, 611 (Minn. Ct. App. 1987) | Highly Dangerous to Constant Trespassers on Limited Area (2nd) | | | attaches if the possessor of land creates or maintains an artificial condition that is, to his knowledge, likely to cause death or serious bodily harm. Restatement (Second) of Torts § 335. Similarly then, the State is liable for bodily injury caused by its negligence in creating or maintaining dangerous artificial conditions without adequate warnings, but is not liable for bodily injury caused by natural conditions. |
| Lawler v. Soo Line R.R. Co., 424 N.W.2d 313, 316 (Minn. Ct. App. 1988) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | Under Green-Glo it is clear that the state is immune from property damage claims. This precludes Soo Line's claim for damage to its equipment when the train derailed. Soo Line's contention that this provision in Green-Glo is mere dicta is unpersuasive, and the trial court should have dismissed Soo Line's claim. Whether the state may be liable to Lawler for his personal injuries depends upon whether the state's conduct is of the kind that would permit a trespasser to sue a private person. The standard applicable to this case is set forth in Restatement (Second) of Torts § 335 (1965) |
| Cobb v. Dep't of Natural Res., 441 N.W.2d 839, 841 (Minn. Ct. App. 1989) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | When the immunity provision of the statute applies, the state is immune from liability unless its conduct falls within the exception of the statute. The statute exposes the state to liability if it fails to conform to the standard of conduct commensurate with the duty imposed under the law of trespass as defined in the Restatement (Second) of Torts. See Green-Glo Turf Farms, Inc. v. State, 347 N.W.2d 491, 494 (Minn.1984); Lawler v. Soo Line Railroad Co., 424 N.W.2d 313, 316 (Minn.Ct.App.1988), pet. for rev. denied (Minn. Aug. 24, 1988); Henry v. State, 406 N.W.2d 608, 611 (Minn.Ct.App.1987), pet. for rev. denied (Minn. Aug. 12, 1987). |
| Johnson v. State, 478 N.W.2d 769, 772 (Minn. Ct. App. 1991) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | Here, the duty established by statute is that which a landowner owes a trespasser. This duty is defined by the Restatement (Second) of Torts § 335 (1965) |
| Noland v. Soo. Line R.R. | § 335. Artificial Conditions | See above. | Cited in support | The parties concede that appellant was a known |

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| Co., 474 N.W.2d 4 , 5–6 (Minn. Ct. App. 1991) | Highly Dangerous to Constant Trespassers on Limited Area (2nd) | | | trespasser injured by an artificial condition on respondent's property. To determine whether a landowner owes a duty of care to a known trespasser injured by an artificial condition, Minnesota has adopted Restatement (Second) of Torts § 335 (1965). See Hanson v. Bailey, 249 Minn. 495, 499-500, 83 N.W.2d 252, 257 (1957); Watters v. Buckbee Mears Co., 354 N.W.2d 848, 850 (Minn.App.1984). |
| Sirek by Beaumaster v. State, Dep't of Natural Res., 496 N.W.2d 807, 808–12 (Minn. 1993) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | When entrants onto state park land have the legal status of trespassers by virtue of the Minnesota Tort Claims Act, Minn.Stat. § 3.736, subd. 3(h) (1992), and children are accompanied by adults in an area of state parks where unsupervised children are not customarily found, the landowner is subject to the general standard of care owed to trespassers under Restatement (Second) of Torts § 335 (1965), rather than the higher standard owed to children under Restatement (Second) of Torts § 339 (1965). |
| Zacharias v. Dep't of Natural Res., 506 N.W.2d 313, 314–19 (Minn. Ct. App. 1993) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | An artificially created swimming pond in a state park is part of the outdoor recreation system as defined in Minn.Stat. § 86A.04 (1990). The state and its employees are immune from outdoor recreational liability under Minn.Stat. § 3.736, subd. 3(h), unless the state would be liable for conduct that would entitle a trespasser to damages against a private person. Restatement (Second) of Torts § 335 (1965) applies to determine whether the state and its employees are immune from liability for the death of a child, accompanied by an adult, while swimming in the artificially created swimming pond. |
| Johnson v. Washington County, 518 N.W.2d 594, 599 (Minn. 1994) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | To determine whether a trespasser would be entitled to damages against a private person in this case, we first must determine what specific trespasser statute applies. Recently, we considered the Minnesota Tort Claims Act, Minn.Stat. § 3.736, subd. 3(h) (1992), which grants the state and its employees limited immunity from liability arising from the use of state parks, "except that the state is liable for conduct that would entitle a trespasser to |

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| | | | | damages against a private person." Sirek v. State, Dep't of Natural Resources, 496 N.W.2d 807, 809 (Minn.1993) (quoting Minn.Stat. § 3.736, subd. 3(h)). In Sirek we held that the general trespasser standard of Restatement (Second) of Torts § 335 (1965) rather than the heightened "child trespasser" standard of § 339 applies to a child accompanied by an adult in a state park. Id. at 811. |
| Steinke v. City of Andover, 525 N.W.2d 173, 176–77 (Minn. 1994) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | The Steinkes' claim against Andover clearly is based on the operation of a park owned by the city. Steinke was injured on park property and alleges Andover failed to warn Steinke of the ditch. Andover is immune from liability unless its conduct "would entitle a trespasser to damages as against a private person." Minn.Stat. § 466.03, subd. 6e. The standard for determining whether a trespasser is entitled to damages under subdivision 6e is found in the Restatement (Second) of Torts § 335 (1965). See Johnson v. Washington County, 518 N.W.2d 594, 599 (Minn.1994). |
| Martinez v. Minn. Zoological Gardens, 526 N.W.2d 416, 418 (Minn. Ct. App. 1995) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | The State of Minnesota and its employees are not liable for losses incurred by visitors to the Minnesota Zoological Gardens, unless caused by conduct that would entitle a trespasser to damages against a private person. Minn.Stat. § 3.736, subd. 3( o) (1992). In Minnesota, trespassers are entitled to damages under a standard commensurate with the Restatement (Second) of Torts. Green-Glo Turf Farms, Inc. v. State, 347 N.W.2d 491, 494 (Minn.1984). |
| Schaffer v. Spirit Mountain Recreation Area, 541 N.W.2d 357, 360–61 (Minn. Ct. App. 1995) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | Schaffer argues the child trespasser standard found in Restatement (Second) of Torts § 339 (1965) should apply rather than the general trespasser standard found in section 335. Section 339, however, does not apply to situations that " 'may reasonably be expected to be understood and appreciated by any child of an age to be allowed at large.' " Sirek v. State, Dep't of Natural Resources, 496 N.W.2d 807, 811 (Minn.1993) (quoting Restatement (Second) of Torts § 339 cmt.. j (1965)). The condition here is one that should be |

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| | | | | appreciated by children who are allowed to ski without adult supervision. Thus, section 339 is inapplicable and we apply the general trespasser standard of section 335. |
| Lloyd v. City of St. Paul, 538 N.W.2d 921, 923–24 (Minn. Ct. App. 1995) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | The issue, appellants claim, is whether section 335 or section 336 of Restatement (Second) of Torts should be used to define "trespasser" for purposes of the immunity exception, Minn.Stat. § 466.03, subd. 6e. The district court concluded that section 335 of the Restatement should be used. We conclude, however, that neither section 335 nor section 336 should be used in this case because the trespasser exemption itself is inapplicable. The exemption, and those sections, apply to cases involving property marred by some hazard. This, however, is a case of allegedly negligent conduct **unrelated to the condition of the park property.** We must therefore look to another line of authority-one independent of the trespasser exemption to immunity. |
| Canada By and Through Landy v. McCarthy, 567 N.W.2d 496, 504 (Minn. 1997) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | McCarthy further argues that even if he did owe a duty to Tiera, he was relieved of liability because Tiera was under the care of Christine and Gertrude Canada who were aware of the lead abatement hazards. McCarthy asserts that Sirek by Beaumaster v. State, Dept. of Natural Resources, 496 N.W.2d 807 (Minn.1993), dictates this outcome. In Sirek, this court addressed the issue of whether the Department of Natural Resources (the state) could be held liable for injuries suffered by a 6-year-old girl who was in a state park crossing a highway with her parents when she was struck by a van. Id. at 808-09. The Minnesota Tort Claims Act immunizes the state from liability except " 'for conduct that would entitle a trespasser to damages against a private person.' " Id. at 809 (quoting Minn.Stat. § 3.736, subd. 3(h) (1992)). Accordingly, this court considered what duty the state owed to a trespassing child, specifically addressing whether section 335 or section 339 of the Restatement (Second) of Torts (1965) applied. Id. at 809-11. Section 335, the |

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| | | | | general provision on the duty owed to trespassers, establishes a limited standard of care. Id. at 810. In contrast, section 339 imposes a heightened standard of care with respect to child trespassers. Id. |
| Martin v. Spirit Mountain Recreation Area Auth., 566 N.W.2d 719, 721–23 (Minn. 1997) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | As a public entity, appellant is liable only if it violated the standard of care that a private landowner owes to a trespasser. Minn.Stat. § 466.03, subd. 6e. For purposes of determining liability under section 466.03, Minnesota has adopted the standard of care owed to a trespasser found in the Restatement (Second) of Torts § 335 (1965). Steinke v. City of Andover, 525 N.W.2d 173, 176-77 (Minn.1994). |
| Lundstrom v. City of Apple Valley, 587 N.W.2d 517, 519–20 (Minn. Ct. App. 1998) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | The exception to the immunity rule is that a municipality owes the same duty to recreational users of its facilities that a private person owes to trespassers. Id. The trespasser standard adopted in Green-Glo Turf Farms, Inc. v. State, 347 N.W.2d 491 (Minn.1984), and applied in later cases, follows section 335 of the Restatement (Second) of Torts. See id. at 494 (citing sections 333-39 generally). See, e.g., Sirek v. State, 496 N.W.2d 807, 809-10 (Minn.1993) (limiting application to general trespasser standard of section 335). Under this standard, a landowner is liable for failure to warn of an artificial condition which he has created or maintained only if (1) the artificial condition is likely to cause death or serious bodily harm; (2) the landowner has actual knowledge of that danger; and (3) the danger is concealed or hidden from the trespasser. Restatement (Second) of Torts § 335 (1965); see also Sirek, 496 N.W.2d at 809-10; Cobb v. State, 441 N.W.2d 839, 841 (Minn.App.1989). |
| Fear v. Indep. Sch. Dist. 911, 634 N.W.2d 204, 212–14 (Minn. Ct. App. 2001) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | Appellants assert that respondent's claim of negligence is barred by recreational immunity under Minn.Stat. § 466.03, subd. 6e, arguing that the general trespasser standard, rather than the child trespasser standard, should be applied, which is contrary to the district court's conclusion. The two standards are from the Restatement (Second) of Torts §§ 335, 339 (1965), respectively. The |

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| | | | | district court found that "[w]hether the school district is entitled to recreational use immunity is an issue of material fact to be determined at trial." Therefore, recreational immunity "does not wholly absolve state agencies from liability, rather it enables them to treat visitors, in the tort context, as trespassers rather than licensees or invitees." Sirek by Beaumaster v. State, Dept. of Natural Res., 496 N.W.2d 807, 809 (Minn.1993). A public entity is liable only if it violated the standard of care that a private landowner owes to a trespasser" under Minn.Stat. § 466.03, subd. 6e. Martin v. Spirit Mountain Recreation Area Auth., 566 N.W.2d 719, 721 (Minn.1997) (citation omitted). The question becomes whether to apply the general trespasser standard or the child trespasser standard. |
| Lishinski v. City of Duluth, 634 N.W.2d 456, 458 (Minn. Ct. App. 2001) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | The general-trespasser standard of the Restatement (Second) of Torts § 335 (1965) defines the duty owed by a municipality to users of its recreational facilities. Johnson v. Washington County, 518 N.W.2d 594, 599 (Minn.1994); Green-Glo Turf Farms, Inc. v. State, 347 N.W.2d 491, 494 (Minn.1984). |
| Stiele ex rel. Gladieux v. City of Crystal, 646 N.W.2d 251, 25–55 (Minn. Ct. App. 2002) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | In Johnson v. Washington County, 518 N.W.2d 594, 599 (Minn.1994), the court noted the Sirek court's wariness "of requiring child proofing of state parks" and applied the same policy consideration in a suit against a municipality (citation omitted). While both Sirek and Johnson involved children who were under adult supervision, the same concern about requiring parks to be childproofed applies equally here. For these reasons, we conclude that the general trespasser standard, found in section 335, applies in this case. |
| Habeck v. Ouverson, 669 N.W.2d 907, 911 (Minn. Ct. App. 2003) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | Immunity through the recreational-use statute does not completely absolve the Fair Board and its agent from liability. Liability for its treatment of visitors, however, falls under trespasser liability, rather than licensee or invitee liability. Fear, 634 N.W.2d at 213. In denying summary judgment, the district court did not reach the issue of which standard of trespass |

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| | | | | was applicable: the general standard under Restatement (Second) of Torts § 335 (1965), or the more rigorous child-trespasser standard under Restatement (Second) of Torts § 339 (1965). |
| Unzen v. City of Duluth, 683 N.W.2d 875, 879–81 (Minn. Ct. App. 2004) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | Notwithstanding the clubhouse's protected status as recreational property under subdivision 6e, a municipality or its agent may still be liable for "conduct that would entitle a trespasser to damages against a private person." Minn.Stat. § 466.03, subd. 6e; Fear v. Indep. Sch. Dist. 911, 634 N.W.2d 204, 213 (Minn.App.2001), review denied (Minn. Dec. 11, 2001). For purposes of determining this limited liability under the subdivision, Minnesota has adopted the standard of care owed to a trespasser found in the Restatement (Second) of Torts § 335 (1965). Martin v. Spirit Mountain Recreation Area Auth. 566 N.W.2d 719, 721 (Minn.1997). |
| Prokop v. Indep. Sch. Dist. No. 625, 754 N.W.2d 709, 714–15 (Minn. Ct. App. 2008) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | Minnesota courts use the standard for liability to adult trespassers set forth in the Restatement (Second) of Torts § 335 (1965). Green-Glo Turf Farms, Inc. v. State, 347 N.W.2d 491, 494 (Minn.1984). Under this standard, respondent will be liable "only if (1) the artificial condition is likely to cause death or serious bodily harm; (2) the landowner has actual knowledge of that danger; and (3) the danger is concealed or hidden from the trespasser." Lundstrom v. City of Apple Valley, 587 N.W.2d 517, 520 (Minn.App.1998). |
| Krieger v. City of St. Paul, 762 N.W.2d 274, 276 (Minn. Ct. App. 2009) | § 335. Artificial Conditions Highly Dangerous to Constant Trespassers on Limited Area (2nd) | See above. | Cited in support | Minnesota courts use the standard for liability to adult trespassers set forth in the Restatement (Second) of Torts § 335 (1965). Green-Glo Turf Farms, Inc. v. State, 347 N.W.2d 491, 494 (Minn.1984). Section 335 imposes liability when a possessor of land (1) creates or maintains an artificial condition, (2) that the possessor knows is likely to cause death or serious bodily harm, (3) where the possessor has reason to believe that trespassers will not discover the condition, and (4) the possessor has failed to warn of the condition and the risk involved. Restatement (Second) of |

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| | | | | Torts § 335. A landowner is liable only for failing to warn of such dangers. Id. A plaintiff must establish all of the elements of the trespasser-liability exception to recreational-use immunity to defeat an immunity claim. Stiele ex rel. Gladieux v. City of Crystal, 646 N.W.2d 251, 255 (Minn.App.2002). |
| **Section 336** | | | | |
| Doe v. Brainerd Int'l Raceway, Inc., 533 N.W.2d 617, 621 (Minn. 1995) | § 336. Activities Dangerous to Known Trespassers (2nd) | If a landowner knows or should know that a trespasser is present on the premises, then the landowner has a duty to use reasonable care for the safety of the trespasser while carrying on his activities, or to use reasonable care to warn the trespasser of the danger or risk involved. | Adopted | However, the duty imposed upon the operator of a place of public amusement is more limited in the case of a trespasser. Generally, a landowner does not owe a duty to a trespasser. Hanson v. Bailey, 249 Minn. 495, 500, 83 N.W.2d 252, 257 (1957); Restatement (Second) of Torts § 333 (1965). But if the landowner knows or should know that a trespasser is present on the premises, then the landowner has a narrowly defined duty to use reasonable care for the safety of the trespasser while carrying on his activities, or to use reasonable care to warn the trespasser of the danger or risk involved. Id.; Restatement (Second) of Torts § 336 (1965). |
| Lloyd v. City of St. Paul, 538 N.W.2d 921, 923 (Minn. Ct. App. 1995) | § 336. Activities Dangerous to Known Trespassers (2nd) | See above. | Cited in support | The issue, appellants claim, is whether section 335 or section 336 of Restatement (Second) of Torts should be used to define "trespasser" for purposes of the immunity exception, Minn.Stat. § 466.03, subd. 6e. The district court concluded that section 335 of the Restatement should be used. We conclude, however, that neither section 335 nor section 336 should be used in this case because the trespasser exemption itself is inapplicable. The exemption, and those sections, apply to cases involving property marred by some hazard. This, however, is a case of allegedly negligent conduct **unrelated to the condition of the park property.** We must therefore look to another line of authority-one independent of the trespasser exemption to immunity. |
| Lundstrom v. City of Apple Valley, 587 N.W.2d 517, 520 n.1 | § 336. Activities Dangerous to Known Trespassers (2nd) | See above. | Cited in support | Respondent contends that section 336 of the Restatement of Torts is applicable. However, the case cited by respondent did not involve a |

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| (Minn. Ct. App. 1998) | | | | municipality's claim of recreational immunity. See Doe v. Brainerd Int'l Raceway, 533 N.W.2d 617, 621-22 (Minn.1995) (declining to apply section 336 to expand private landowner's duty to trespasser, "landowner has no duty where the harm involves dangers so obvious that no warning is necessary"). Since the supreme court has expressly adopted section 335 of the Restatement as the applicable law in the area of recreational use immunity, we decline to adopt the position advanced by respondent. |
| Olmanson v. Le Sueur County, 673 N.W.2d 506, 512 n.2 (Minn. Ct. App. 2004) | § 336. Activities Dangerous to Known Trespassers (2nd) | See above. | Cited in support | Further, generally, a landowner does not owe a duty to a trespasser. Hanson v. Bailey, 249 Minn. 495, 500, 83 N.W.2d 252, 257 (1957); Restatement (Second) of Torts § 333 (1965). But if the landowner knows or should know that a trespasser is present, then the landowner has a narrowly defined duty to use reasonable care for the safety of the trespasser while carrying on his activities, or to use reasonable care to warn the trespasser of the danger or risk involved. Id.; Restatement (Second) of Torts § 336 (1965). However, a landowner's duty of reasonable care does not extend to warn or protect against risks of which the trespasser knew or should have known. |
| **Section 339** | | | | |
| Crohn v. Dupre, 190 N.W.2d 678, 679 n.1 (Minn. 1971) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | A possessor of land is subject to liability for physical harm to children trespassing thereon caused by an artificial condition upon the land if<br>(a) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass, and<br>(b) the condition is one of which the possessor knows or has reason to know and which he realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children, and<br>(c) the children because of their youth do not discover the condition or | Adopted in footnote 2 | Restatement, Torts (2d) s 339, states: 'A possessor of land is subject to liability for physical harm to children trespassing thereon caused by an artificial condition upon the land if'(a) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass, and'(b) the condition is one of which the possessor knows or has reason to know and which he realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children, and'(c) the children because of their youth do not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it, and'(d) the utility to the possessor of maintaining the condition and the burden of eliminating the |

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| | | realize the risk involved in intermeddling with it or in coming within the area made dangerous by it, and<br>(d) the utility to the possessor of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children involved, and<br>(e) the possessor fails to exercise reasonable care to eliminate the danger or otherwise to protect the children. | | danger are slight as compared with the risk to children involved, and'(e) the possessor fails to exercise reasonable care to eliminate the danger or otherwise to protect the children.' This Restatement rule was adopted for Minnesota in Gimmestad v. Rose Brothers Co. Inc., 194 Minn. 531, 261 N.W. 194, and has consistently been followed. See, e.g., Hocking v. Duluth, Missabe & Iron Range Ry. Co., 263 Minn. 483, 117 N.W.2d 304. The trial court appropriately instructed the jury according to this rule. |
| Matson v. Kivimaki, 200 N.W.2d 164 , 170-71 (Minn. 1972) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | See above. | Cited in support | In Comment c under the proposed revision, it is stated: 'If the trespasses of children are reasonably to be expected, the defendant may be required to exercise reasonable care to protect them from the animal, under the rule stated in s 339.' Restatement, Torts 2d, s 339, which applies to artificial conditions on land, |
| Szyplinski v. Midwest Mobile Home Supply Co., 241 N.W.2d 306, 308–09 (Minn. 1976) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | See above. | Cited in support | In Gimmestad v. Rose Brothers Co., Inc., 194 Minn. 531, 536, 261 N.W. 194, 196 (1935), this court adopted the rule applicable to this case now summarized in Restatement, Torts 2d, s 339 |
| Hughes v. Quarve & Anderson Co., 338 N.W.2d 422 (Minn. 1983) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | See above. | Cited in support | There is no fixed age limit for when the child-trespasser section (339) applies and when the adult-trespasser sections (333 & 335) apply. This is for the jury to decide based on the age and maturity of the child, the character of the danger, and the child's ability to avoid the danger. |
| Kubowski v. Wm. Miller Scrap Iron & Metal Co., 353 N.W.2d 638 , 642 (Minn. Ct. App. 1984) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | See above. | Cited in support | Defendant-Wm. Miller Co. contends that plaintiff failed to meet its burden of proof relative to each and every element of the cause of action of negligence to a trespassing child and thus it was entitled to judgment notwithstanding the verdict. The cause of action of negligence to a trespassing child has five elements: |

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| | | | | (a) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass, and (b) the condition is one of which the possessor knows or has reason to know and which he realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children, and (c) the children because of their youth do not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it, and (d) the utility to the possessor of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children involved, and (e) the possessor fails to exercise reasonable care to eliminate the danger or otherwise to protect the children.<br>Hughes v. Quarve & Anderson Co., 338 N.W.2d 422, 424 (Minn.1983) (quoting Restatement (Second) of Torts § 339 (1965)). |
| Watters v. Buckbee Mears Co., 354 N.W.2d 848, 850 (Minn. Ct. App. 1984) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | See above. | Cited in discussion | In Hughes v. Quarve & Anderson Co., 338 N.W.2d 422 (Minn.1983), the court applied § 339 of the Restatement, which involves a more liberal balancing test, because the plaintiff-trespasser was a minor. In upholding a jury verdict for the plaintiff, the court emphasized that there was a dangerous hidden condition present (the depth of a pond fluctuated because of quarrying activity). Id. at 426. |
| McCormick v. Custom Pools, Inc., 376 N.W.2d 471, 477 (Minn. Ct. App. 1985) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | See above. | Cited in support | The supreme court in Hughes found that the trial court properly instructed the jury on Q & A's duty as set forth in the Restatement (Second) of Torts § 339 (1965), dealing with artificial conditions dangerous to trespassing children. The supreme court further determined, among other things, that there was evidence from which the jury could find that the boy "had no appreciation of the danger involved when he dived into the pond." Id. at 426. |
| Lee v. State, Dep't of Natural Res., 478 N.W.2d | § 339. Artificial Conditions Highly Dangerous to | See above. | Cited in support | Landowner has no duty to prevent dangers that are obvious even to children and that should be |

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| 237 (Minn. Ct. App. 1991) | Trespassing Children (2nd) | | | recognized by children old enough to be unsupervised. |
| Harper v. Herman, 499 N.W.2d 472, 475 (Minn. 1993) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | See above. | Cited in support | "There are many dangers, such as those of fire and water, which under ordinary conditions may reasonably be expected to be fully understood and appreciated by any child." Restatement (Second) of Torts § 339 cmt.. j (1965). If a child is expected to understand the inherent dangers of water, so should a 20-year-old adult. Harper had no reasonable expectation to look to Herman for protection, and we hold that Herman had no duty to warn Harper that the water was shallow. |
| Sirek by Beaumaster v. State, Dep't of Natural Res., 496 N.W.2d 807 (Minn. 1993) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | See above. | Cited in support | In some cases, landowners may have a duty to reconfigure their land in order to protect child trespassers, rather than just providing a warning. |
| Johnson v. Washington County, 518 N.W.2d 594 , 599-600 (Minn. 1994) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | See above. | Cited in support | The court of appeals held that the pond was not an artificial condition because the affected terrain duplicated nature. Johnson, 506 N.W.2d at 637. The court of appeals further held that even if the Reserve Pool were an artificial condition, the county is entitled to immunity because the pool contains no hidden dangers. Id. We agree. As this court recognized in Davies v. Land O'Lakes Racing Association, 244 Minn. 248, 255, 69 N.W.2d 642, 647 (1955), even under § 339, "a possessor of land will not ordinarily be held liable for injuries occurring in ordinary, natural, or artificial bodies of water that are free from traps or concealments." (Emphasis added). The Reserve Pool, as constructed, has a gradually-sloped bottom with no drop-offs and contains no unusual currents. Moreover, as we noted in Davies, "[i]t is generally conceded that the ordinary body of water, even though it be artificial, while it does involve the risk of death or serious harm, does not constitute an unreasonable risk thereof because even a child to some extent appreciates the risks that are |

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| | | | | connected with it. See, Prosser, Torts, § 77, p. 622." Id. |
| Schaffer v. Spirit Mountain Recreation Area Auth., 541 N.W.2d 357, 360 (Minn. Ct. App. 1995) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | See above. | Cited in support | Schaffer argues the child trespasser standard found in Restatement (Second) of Torts § 339 (1965) should apply rather than the general trespasser standard found in section 335. Section 339, however, does not apply to situations that " 'may reasonably be expected to be understood and appreciated by any child of an age to be allowed at large.' " Sirek v. State, Dep't of Natural Resources, 496 N.W.2d 807, 811 (Minn.1993) (quoting Restatement (Second) of Torts § 339 cmt.. j (1965)). The condition here is one that should be appreciated by children who are allowed to ski without adult supervision. Thus, section 339 is inapplicable and we apply the general trespasser standard of section 335. |
| Howard By and Through Howard v. Mackenhausen, 553 N.W.2d 435 (Minn. Ct. App. 1996) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | See above. | Cited in support | A condition may be peculiarly dangerous to children because of their tendancy to intermeddle with things which are notoriously attractive to them. |
| Canada By and Through Landy v. McCarthy, 567 N.W.2d 496, 505 (Minn. 1997) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | See above. | Cited in support | McCarthy further argues that even if he did owe a duty to Tiera, he was relieved of liability because Tiera was under the care of Christine and Gertrude Canada who were aware of the lead abatement hazards. McCarthy asserts that Sirek by Beaumaster v. State, Dept. of Natural Resources, 496 N.W.2d 807 (Minn.1993), dictates this outcome. In Sirek, this court addressed the issue of whether the Department of Natural Resources (the state) could be held liable for injuries suffered by a 6-year-old girl who was in a state park crossing a highway with her parents when she was struck by a van. Id. at 808-09. The Minnesota Tort Claims Act immunizes the state from liability except " 'for conduct that would entitle a trespasser to damages against a private person.' " Id. at 809 (quoting Minn.Stat. § 3.736, subd. 3(h) (1992)). Accordingly, this court considered what duty the state owed to a trespassing |

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| | | | | child, specifically addressing whether section 335 or section 339 of the Restatement (Second) of Torts (1965) applied. Id. at 809-11. Section 335, the general provision on the duty owed to trespassers, establishes a limited standard of care. Id. at 810. In contrast, section 339 imposes a heightened standard of care with respect to child trespassers. Id. |
| Croaker ex rel. Croaker v. Mackenhausen, 592 N.W.2d 857 *passim* (Minn. 1999) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | See above. | Cited in support | In a claim of duty of a possessor of land to trespassing children, Minnesota follows the Restatement (Second) of Torts § 339(a) (1965) requiring proof of knowledge, or reason to know, that children are likely to trespass at the place where a dangerous artificial condition exists. Knowledge that children frequent the vicinity of a dangerous artificial condition by walking past it on a public road is insufficient to satisfy section 339(a) of the Restatement (Second) of Torts. |
| Fear v. Indep. Sch. Dist. 911, 634 N.W.2d 204 *passim* (Minn. Ct. App. 2001) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | See above. | Cited in support | Here, the children were allowed to play on the snow piles during recess with school district employees present, and therefore the children arguably would not have realized the risk of injury involved. While there was supervision during recess, similar to cases applying section 335, the facts of this case are more directly analogous to section 339, the successor to the attractive nuisance doctrine. We have children playing during recess on a playground that has snow piles that attract their attention, and they are not prohibited from playing on them. The supreme court has stated that school districts have a duty of reasonable care to their students. Fallin v. Maplewood-N. St. Paul Dist. No. 622, 362 N.W.2d 318, 321 (Minn.1985). Absent caselaw applying section 335 to school settings, we conclude that section 339 is more appropriate and shall be applied at trial. Whether to apply section 339 to school supervised playground settings appears to be an issue of first impression. Also, whether the school district is entitled to recreational immunity under section 339 is a question of material fact to be determined at trial. |

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| Stiele ex rel. Gladieux v. City of Crystal, 646 N.W.2d 251, 254 (Minn. Ct. App. 2002) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | See above. | Cited in support | As the supreme court noted in Sirek by Beaumaster v. State, Dep't of Natural Resources, 496 N.W.2d 807, 811 (Minn.1993), section 339 does not apply where dangers "may reasonably be expected to be understood and appreciated by any child of an age to be allowed at large." (quoting Restatement (Second) of Torts § 339 cmt.. j (1965)). In the present case, Stiele was playing at the park with friends and was under no supervision. Because Stiele was apparently allowed to be at large, and the danger of a three-to-four-foot-high metal signpost should be understood by any child allowed at large-especially an 11 year old with no disability-it is our view that the general trespasser standard should apply in this case.<br>Moreover, in several cases the supreme court has recognized that the imposition of the more rigorous standard of section 339 may well require that parks be "childproofed." In Sirek, the supreme court held that the general trespasser standard applied to children accompanied by adults in state parks. 496 N.W.2d at 811. In doing so, the court noted that imposing the child trespasser standard would require the 'childproofing' of vast areas of state parks, which would violate the spirit underlying the preservation of 'Minnesota's natural and historical heritage for public understanding and enjoyment.' (Citation omitted.)<br>Id. |
| Habeck v. Ouverson, 669 N.W.2d 907, 911 (Minn. Ct. App. 2003) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | See above. | Cited in support | Immunity through the recreational-use statute does not completely absolve the Fair Board and its agent from liability. Liability for its treatment of visitors, however, falls under trespasser liability, rather than licensee or invitee liability. Fear, 634 N.W.2d at 213. In denying summary judgment, the district court did not reach the issue of which standard of trespass was applicable: the general standard under Restatement (Second) of Torts § 335 (1965), or the more rigorous child-trespasser standard under Restatement (Second) of Torts § 339 (1965). |

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| Foss v. Kincade, 746 N.W.2d 912, 914–15 (Minn. Ct. App. 2008) | § 339. Artificial Conditions Highly Dangerous to Trespassing Children (2nd) | See above. | Cited in support | Because David is a child, Foss asserts that the determination of duty in this case should be governed by the standard applied to child trespassers under Restatement (Second) of Torts § 339 (1965), which requires landowners to anticipate and protect against dangers that, although obvious to adults, may not be recognized and heeded by children. Our supreme court has applied the Restatement standard to all child entrants, regardless of their status as trespassers, licenses, or invitees. See Meagher v. Hirt, 232 Minn. 336, 339-40, 45 N.W.2d 563, 565 (1951). But the supreme court has also held that the Restatement standard does not apply to children injured while in the company of their parents in areas where one would not expect to find unaccompanied children. See Sirek v. State, Dep't of Natural Res., 496 N.W.2d 807, 811 (Minn.1993) (holding that child-trespasser standard did not apply to child injured while visiting state trails with her parents because unaccompanied children did not frequent isolated state trail). The supreme court has further recognized that the Restatement standard does not apply to dangers that "may reasonably be expected to be understood and appreciated by any child of an age to be allowed at large." Id. (citing Restatement (Second) of Torts § 339 cmt.. j). |
| **Section 388** | | | | |
| McCormack v. Hankscraft Co., 278 Minn. 322, 333, 154 N.W.2d 488, 497 n.1 (Minn. 1967) | § 388. Chattel Known to be Dangerous for Intended Use (2nd) | One who supplies directly or through a third person a chattel for another to use is subject to liability to those whom the supplier should expect to use the chattel with the consent of the other or to be endangered by its probable use, for physical harm caused by the use of the chattel in the manner for which and by a person for whose use it is supplied, if the supplier<br>(a) knows or has reason to know that the chattel is or is likely to be dangerous for the use for which it is | Cited in footnote 1 in support | These findings, together with defendant's utter failure to warn, and the finding that the dangers inherent in the vaporizer's use were not obvious and were outside the realm of common knowledge of potential users (especially in view of defendant's representations of safety) are, we hold, supported by the evidence and alone justified the jury's verdict of liability. |

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| | | supplied, and<br>(b) has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition, and<br>(c) fails to exercise reasonable care to inform them of its dangerous condition or of the facts which make it likely to be dangerous. | | |
| Halvorson v. Am. Hoist and Derrick Co., 307 Minn. 48, 57, 240 N.W.2d 303, 308 (Minn. 1976) | § 388. Chattel Known to be Dangerous for Intended Use (2nd) | See above. | Cited in support | The general rule in other jurisdictions is that there is no recovery for negligent design where the danger is obvious. |
| Gorath v. Rockwell Int'l, Inc., 441 N.W.2d 128, 133 (Minn. Ct. App. 1989) | § 388. Chattel Known to be Dangerous for Intended Use (2nd) | See above. | Cited in discussion | The manufacturer argues that the seller is also negligent under provisions of Restatement (Second) of Torts § 388 (1965). This argument is equally without merit for the reasons set forth in Section II(A) above. Appellants have failed to present any evidence to create a jury issue as to whether the seller should have foreseen that the paper cutter as designed or modified would injure its operator. |
| Gray v. Badger Mining Corp., 676 N.W.2d 268, 274–75, 278, 280 (Minn. 2004) | § 388. Chattel Known to be Dangerous for Intended Use (2nd) | See above. | Adopted | In this context, we have endorsed the broad statement of principles contained in the Restatement (Second) of Torts § 388 (1965) with respect to suppliers of goods. See Clark v. Rental Equip. Co., 300 Minn. 420, 427, 220 N.W.2d 507, 511 (1974) (paraphrasing the language of section 388 without citing the Restatement); Mikel v. Aaker, 256 Minn. 500, 504-05, 99 N.W.2d 76, 79-80 (1959) (quoting Restatement of Torts § 388 (1934), which is identical to Restatement (Second) of Torts § 388). |
| Gray v. Badger Mining Corp., 664 N.W.2d 881, | § 388. Chattel Known to be Dangerous for Intended Use | See above. | Cited in support | In Minnesota, the duty of suppliers of goods to warn users of dangers in those goods is determined |

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| 884–87 (Minn. Ct. App. 2003), *reversed*, 676 N.W.2d 268 (Minn. 2004) | (2nd) | | | under the Restatement (Second) of Torts § 388 (1965). The supreme court recognized this duty in Mikel v. Aaker, 256 Minn. 500, 504-05, 99 N.W.2d 76, 79-80 (1959). One who supplies goods directly or through a third person to an ultimate user is liable to the ultimate user for injury from a hazard associated with the goods if the supplier "has no reason to believe that those for whose use the [goods are] supplied will realize [the] dangerous condition [of the goods]" and if the supplier fails to warn of the hazard. Restatement (Second) of Torts § 388(b), (c). |
| **Section 390** | | | | |
| Axelson v. Williamson, 324 N.W.2d 241, 243-44 (Minn. 1982) | § 390. Chattel for Use by Person Known to Be Incompetent (2nd) | One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them. | Adopted | The first question concerns the appropriateness of the proximate cause instruction given by the trial judge. Generally, the tort of negligent entrustment as it applies to the entrustment of a chattel to an incompetent or inexperienced person is described in the Restatement (Second) of Torts § 390 (1977) |
| Jones v. Fleischacker, 325 N.W.2d 633, 640 (Minn. 1982) | § 390. Chattel for Use by Person Known to Be Incompetent (2nd) | See above. | Cited in support | Where the negligence of the operator is reasonably foreseeable, the owner has the duty to take steps to prevent such operation. |
| Johnson v. Johnson, 611 N.W.2d 823, 826 (Minn. Ct. App. 2000) | § 390. Chattel for Use by Person Known to Be Incompetent (2nd) | See above. | Cited in support | Minnesota has adopted Restatement (Second) of Torts § 390 on negligent entrustment: One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is |

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| | | | | subject to liability for physical harm resulting to them. Axelson v. Williamson, 324 N.W.2d 241, 244 (Minn. 1982) (a car owner who permitted unlicensed, underage girl to drive negligently entrusted the vehicle to her) |
| **Section 394** | | | | |
| Parks v. Allis-Chalmers Corp., 289 N.W.2d 456, 460 (Minn. 1979) | § 394. Chattel Known to Be Dangerous (2nd) | The manufacturer of a chattel which he knows or has reason to know to be, or to be likely to be, dangerous for use is subject to the liability of a supplier of chattels with such knowledge. | Adopted | Since defendant could reasonably foresee that the harvester would at times be used in an improper manner, it was defendant's duty to exercise reasonable care to warn or instruct as to dangers inherent in that manner of use. |
| **Section 397** | | | | |
| Kohn v. La Manufacture Francaise des Pneumatiques Michelin, 476 N.W.2d 184, 187 (Minn. Ct. App. 1991) | § 397. Chattel Made Under Secret Formula (2nd) | A manufacturer of a chattel which is compounded under a secret formula or under a formula which although disclosed should be recognized as unlikely to be understood by those whom he should expect to use it lawfully, is subject to liability for physical harm caused to them and persons whom he should expect to be endangered by its probable use by his failure to exercise reasonable care to adopt such a formula and to bring to the knowledge of those who are to use the chattel such directions as will make it reasonably safe for the use for which it it supplied. | Cited in support | Minnesota has a substantial interest in providing a forum for its citizens injured by acts of foreign corporations. See Minn.Const. art. I, § 8. As applied to Kohn, that interest is diminished by the availability of full recovery from Michelin, the manufacturer and distributor of the tire. |
| **Section 398** | | | | |
| McCormack v. Hankscraft Co., 278 Minn. 322, 334, 154 N.W.2d 488, 497 n.2 (Minn. 1967) | § 398. Chattel Made Under Dangerous Plan or Design (2nd) | A manufacturer of a chattel made under a plan or design which makes it dangerous for the uses for which it is manufactured is subject to liability to others whom he should expect to use the chattel or to be endangered by its probable use for physical harm caused by his failure to exercise reasonable | Cited in support | We similarly conclude and hold that the evidence is also sufficient to support the jury's verdict of liability on the ground that defendant was negligent in adopting an unsafe design. It is well established that a manufacturer, despite lack of privity of contract, has a duty to use reasonable care in designing its product so that those it should expect will use it are protected from unreasonable risk of harm while the |

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| | | care in the adoption of a safe plan or design. | | product is being used for its intended use. A breach of such duty renders the manufacturer liable. |
| Szyplinski v. Midwest Mobile Home Supply Co., 308 Minn. 152, 157, 241 N.W.2d 306, 310 (Minn. 1976) | § 398. Chattel Made Under Dangerous Plan or Design (2nd) | See above. | Cited in support | Third, appellants argue (a) that the jury could not find them negligent in displaying a product unless that product was inherently dangerous, and (b) that by exonerating the manufacturer Griswold, the jury found the lift was not inherently dangerous. Griswold was tried on a products liability theory, and the jury verdict in favor of Griswold was apparently based on plaintiff's failure to prove that the lift was 'dangerous for the uses for which it (was) manufactured.' Restatement, Torts 2d, s 398. The intended use did not include climbing. Therefore, the jury exoneration of Griswold is not inconsistent with a finding of negligent display. Storekeepers may be liable for negligent display of products which are not inherently dangerous. |
| Parks v. Allis-Chalmers Corp., 289 N.W.2d 456, 459 (Minn. 1979) | § 398. Chattel Made Under Dangerous Plan or Design (2nd) | See above. | Cited in support | It was defendant's duty to use reasonable care in design of the harvester to protect users from unreasonable risk of harm while using it in a foreseeable manner. |
| **Section 401** | | | | |
| Erickson v. Am. Honda Motor Co., 455 N.W.2d 74, 77 (Minn. Ct. App. 1990) | § 401. Chattel Likely to Be Dangerous (2nd) | A seller of a chattel manufactured by a third person who knows or has reason to know that the chattel is, or is likely to be, dangerous when used by a person to whom it is delivered or for whose use it is supplied, or to others whom the seller should expect to share in or be endangered by its use, is subject to liability for bodily harm caused thereby to them if he fails to exercise reasonable care to inform them of the danger or otherwise to protect them against it. | Cited in support | It is undisputed that the trial court correctly instructed the jury regarding respondent's duty to warn under Restatement (Second) of Torts § 401 (1965). We conclude, as did the trial court, that there is evidence reasonably tending to show: (1) Burnsville had reason to know of the dangers of operating the ATV; (2) the warnings provided fell short of those reasonably required and Burnsville breached its duty of care; and (3) the failure to warn caused the injury. |
| **Section 402** | | | | |

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| Gorath v. Rockwell Int'l, Inc., 441 N.W.2d 128, 132 (Minn. Ct. App. 1989) | § 402. Absence of Duty to Inspect Chattel (2nd) | A seller of a chattel manufactured by a third person, who neither knows nor has reason to know that it is, or is likely to be, dangerous, is not liable in an action for negligence for harm caused by the dangerous character or condition of the chattel because of his failure to discover the danger by an inspection or test of the chattel before selling it. | Adopted | Sellers have no duty to inspect the products they sell unless they know or have reason to know that the products are dangerous. A seller of a chattel manufactured by a third person, who neither knows nor has reason to know that it is, or is likely to be, dangerous, is not liable in an action for negligence for harm caused by the dangerous character or condition of the chattel because of his failure to discover the danger by an inspection or test of the chattel before selling it. |
| In re Shigellosis Litig., 647 N.W.2d 1, 6 (Minn. Ct. App. 2002) | § 402. Absence of Duty to Inspect Chattel (2nd) | See above. | Cited in support | Even though Horse & Hunt preserved its objection for failure to instruct on negligence, we are not persuaded that the district court erred in denying it. We agree that a seller may have independent fault under negligence principles if the seller breached a duty to the injured party. See Schweich v. Ziegler, Inc., 463 N.W.2d 722, 729-30 (Minn.1990) (holding evidence supported finding of negligence against seller who failed to inspect grab bar on tractor it sold); Erickson v. American Honda Motor Co., 455 N.W.2d 74, 77-78 (Minn.App.1990), review denied (Minn. July 13, 1990) (holding evidence supported finding of negligence against a dealer who sold an all-terrain vehicle without providing a safety brochure and video and without showing location of owner's manual). A seller may also be liable in negligence for failure to discover a product defect if the seller knows, or has reason to know, that the product is dangerous. Gorath, 441 N.W.2d at 132 (citing Restatement (Second) of Torts § 402). |
| **Section 402A** | | | | |
| McCormack v. Hankscraft Co., Inc., 278 Minn. 322, 338, 154 N.W.2d 488, 499 n.15 (Minn. 1967) | § 402A. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | (1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if<br>(a) the seller is engaged in the | Adopted | Imposing SL meets the public policy demands of protecting consumers from the inevitable risks of bodily harm created by mass production and complex marketing conditions. The manufacturer, who can reduce/eliminate the hazard and absorb/pass on such costs, is a better cost bearer than the consumer. |

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| | | business of selling such a product, and (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.<br>(2) The rule stated in Subsection (1) applies although<br>(a) the seller has exercised all possible care in the preparation and sale of his product, and (b) the user or consumer has not bought the product from or entered into any contractual relation with the seller. | | |
| Magnuson v. Rupp. Mfg., Inc., 285 Minn. 32, 171 N.W.2d 201 (Minn. 1969) | § 402A cmt. g. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Adopted | Under the SL doctrine, P must prove: (1) a defect; (2) causing unreasonable danger; (3) in existence at the time the product was in possession of the D to be charged; (4) causing injury; and (5) injury was not caused by any voluntary, unusual, or abnormal handling by the P.<br>The defective condition must be the proximate cause of the P's injuries. |
| | § 402A cmt. h. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | Seller is not liable for an injury that results from abnormal handling or abnormal preparation for use | Adopted | See above. |
| | § 402A cmt. i. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | Consumer expectations theory | Adopted | See above. |
| | § 402A cmt. j. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | Heeding presumption | Court does not directly address it | See above. |
| Farr v. Armstrong Rubber Co., 288 Minn. | § 402A cmt. m. Special Liability of Seller of Product | Special liability is similar to, but different than, express or implied | Adopted | Rules defining and governing warranites were developed to meet the needs of commercial |

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| 83, 89, 93, 179 N.W.2d 64, 68, 70 (Minn. 1970) | For Physical Harm to User or Consumer (2nd) | warranties in contracts and special liability is not subject to the contract rules applicable to the sale of goods | | transactions. SL in tort removes contract rules from consideration when no contract exists and more adequately addresses the public policy demands set forth in Hankscraft. |
| Lee v. Crookston Coco-Cola Bottling Co., 290 Minn. 321, 328, 188 N.W.2d 426, 432 (Minn. 1971) | § 402A. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support | See above. |
| Olson v. Village of Babbitt, 291 MInn. 105, 110, 189 N.W.2d 701, 705 (Minn. 1971) | § 402A. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support | See above. |
| Waite v. Am. Creosote Workers, Inc., 295 Minn. 288, 292, 204 N.W.2d 410, 412 (Minn. 1973) | § 402A. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support | See above. |
| Goblirsch v. WesternLand Roller Co., 310 Minn. 471, 476, 246 N.W.2d 687, 690 (Minn. 1976) | § 402A. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support | See above. |
| Halvorson v. Am. Hoist and Derrick Co., 307 Minn. 48, 50, 54, 240 N.W.2d 303, 305, 306 (Minn. 1976) | § 402A. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support | A product which is sold with instructions and/or warnings is not in a defective condition nor is it unreasonably dangerous if a product is safe when used in accordance with the instructions and/or warnings. Before the strict liability rule can apply, the party asserting the rule must prove that a defect existed when it left the possession of the party charged and was unreasonably dangerous to the user.'<br>This instruction is in accord with 4 Hetland & Adamson, Minnesota Practice, Jury Instruction Guides (2 ed.) JIG II 118, and our decisions in McCormack v. Hankscraft Co. Inc., 278 Minn. 322, |

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| | | | | 154 N.W.2d 488 (1967) (in which we adopted Restatement, Torts 2d, s 402A) |
| Milbank Mut. Ins. Co. v. Proksch, 309 Minn. 106, 110, 244 N.W.2d 105, 115 n.4 (Minn. 1976) | § 402A. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited as being adopted in *Hankscraft* | See above. |
| Busch v. Busch, Constr., Inc., 262 N.W.2d 377, 382, 393–94 (Minn. 1977) | § 402A cmt. n. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Partially adopted | A consumer's negligent failure to inspect a product or guard against defects is not a defense to a distributor's special liability. All other types of consumer negligence, misuse, or assumption of the risk must be compared with the distributor's special liability under the comparative fault statute. |
| O'Laughlin v. Minn. Natural Gas Co., 253 N.W.2d 826, 827, 829, 831 (Minn. 1977) | § 402A. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited as being adopted in *Hankscraft* and *Farr* | See above. |
| Bigham v. J.C. Penney Co., 268 N.W.2d 892, 897 (Minn. 1978) | § 402A cmt. j. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support | See above. |
| Cairl v. City of St. Paul, 268 N.W.2d 908, 910–11 (Minn. 1978) | § 402A. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support | Section 402A involves design defects and thus does not apply to SL for abnormally dangerous activities |
| Armstrong v. Mailand, 284 N.W.2d 343, 347 (Minn. 1979) | § 402A. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support | A wrongful death action was brought to recover damages for firemen who were killed when a liquified petroleum gas storage tank exploded while the firemen were fighting a fire at the storage facility. The trial court granted summary judgment to the defendants and an appeal was taken. This court affirmed the trial court and held that the issue was whether the firemen had assumed the risk of the explosion. The court held that the firemen had assumed all risks which were reasonably |

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| | | | | apparent to them and which were apart of the fire fighting but that the firemen had not assumed unanticipated or hidden risks. There was ample testimony that all of the firemen were aware of the likelihood of an explosion so the court held that the firemen had assumed the risk and therefore could not recover. |
| Wegscheider v. Plastics, Inc., 289 N.W.2d 167, 170 (Minn. 1980) | § 402A. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support | See above. |
| Seim v. Garavalia, 306 N.W.2d 806, 809–10 (Minn. 1981) | § 402A. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support | See above. |
| Superwood Corp.v. Siempelkamp Corp., 311 N.W.2d 159, 161 n.3, 162 (Minn. 1981) | § 402A. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support | See above. |
| Holm v. Sponco Mfg., Inc., 324 N.W.2d 207, 213 (Minn. 1982) | § 402A cmt c. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | Manufacturer is in a better position than the consumer to bear economic loss and redistribute it via increased prices. The manufacturer is also better able to appreciate and minimize the risk of injury through the production of safer goods. | Adopted | Court overrules Halvorson and rejects the "latent-patent rule." In its place, the Court adopts a balancing test for determining liability which considers: (1) whether the defect is unreasonably dangerous; and (2) whether P used that degree of reasonable care required by the circumstances. Determining "reasonable care" involves balancing the likelihood of harm, the gravity of the harm if it happens, and the burden of the precation. |
| Hudson v. Snyder Body, Inc., 326 N.W.2d 149, 156 (Minn. 1982) | § 402A. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support | See above. |
| Bilotta v. Kelley Co., Inc., 346 N.W.2d 616, 621, | § 402A. Special Liability of Seller of Product For Physical | See above. | Cited in support | Court rejects the "consumer expectation" theory in design defect cases and adopts the "reasonable |

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| 625 n.5 (Minn. 1984) | Harm to User or Consumer (2nd) | | | care" balancing test from Holm. This balancing test focuses on the conduct of the manufacturer rather than the condition of the product. The "consumer expectation" theory still applies in manufacturing defect cases. |
| Rients v. Int'l Harvester Co., 346 N.W.2d 359, 362 (Minn Ct. App. 1984) | § 402A. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support | See above. |
| S.J. Groves & Sons Co. v. Aerospatiale Helicopter, Corp., 374 N.W.2d 431, 435 (Minn. 1985) | § 402A cmt k. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in discussion | This "violent occurrence" distinction stems from Restatement (Second) of Torts § 402A (1965), which provides for recovery for physical harm caused by a "product in a defective condition unreasonably dangerous to the user or consumer," and resolution turns on "whether the safety-insurance policy of tort law or the expectation-bargain protection policy of warranty law is most applicable to a particular claim." Pennsylvania Glass, 652 F.2d at 1173. Accordingly, damage to the product itself caused by a "qualitative defect" is recoverable only under the U.C.C. and contract law, whereas recovery in tort is allowed for damage to the product arising from a "sudden and calamitous occurrence." |
| Kaess v. Armstrong Cork Co., 403 N.W.2d 643, 645 (Minn. 1987) | § 402A cmt k. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support | It is true that the workers compensation statute does permit a suit against a non-employer third party, Minn.Stat. § 176.061 (1984), and that manufacturers and distributors of unreasonably dangerous products may be sued for strict products hability, Farr v. Armstrong Rubber Co., 288 Minn. 83, 90-91, 179 N.W.2d 64, 69 (1970); Restatement (Second) of Torts § 402A (1965). |
| Kallio v. Ford Motor Co., 407 N.W.2d 92, 95 (Minn. 1987) | § 402A cmt k. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in discussion | The rule of strict liability in tort found in Restatement (Second) of Torts § 402A (1965) had its genesis more than 20 years ago. Almost since the rule's inception, courts have tended to borrow |

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| | | | | common law concepts of negligence in determining whether a manufactured product, as designed, is unreasonably dangerous. |
| Forster v. R.J. Reynolds Tobacco Co., 437 N.W.2d 655, 661 n.8 (Minn. 1989) | § 402A cmt k. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support | The claims of unsafe design and defective condition remain exposed to defendants' asserted defense, yet to be ruled on, that they fail to state a claim for relief under state law. Defendants, for example, point to the discussion of a defective condition for food and drink products in Restatement (Second) of Torts § 402A (1965). The Restatement takes the position that products like tobacco and whiskey, though addictive and harmful to health, are not "defective," unless foreign substances are added. Id. comment i. In any event, the parties have not yet set out their positions on unsafe design and defective condition beyond the pleading stage. All that is before us now and all that we decide is that federal preemption does not apply to these claims. |
| Minn.Mining and Mfg. v. Nishika Ltd., 565 N.W.2d 16, 21 (Minn. 1997) | § 402A cmt k. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in discussion | Despite the promulgation of Restatement of Torts (Second) § 402A in 1965-which we adopted in 1967, see McCormack v. Hankscraft Co., 278 Minn. 322, 337-40, 154 N.W.2d 488, 499-501 (1967); see also Milbank Mut. Ins. Co. v. Proksch, 309 Minn. 106, 115 n. 4, 244 N.W.2d 105, 110 n. 4 (1976)-the drafters of the model U.C.C. presented states with Alternative C of the third-party beneficiaries provision, which was intended to follow the trend of strict products liability and extend warranty protection "beyond injuries to the person." U.C.C. § 2-318 cmt.. 3. But the expansion of warranty protection to certain classes of noncontracting parties in the U.C.C. cannot be completely detached from the concerns that motivated our legislature in 1969. See Minn.Stat. § 645.16(1)-(4).<br><br>Our understanding of the background and aims of section 336.2-318 leads us to conclude that the scope of a seller's liability for breach of warranty should recede as the relationship between a |

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| | | | | "beneficiary" of the warranty and the seller's goods becomes more remote. Consistent with Hydra-Mac- and assuming that section 336.2-318 is otherwise satisfied-those who purchase, use, or otherwise acquire warranted goods have standing to sue for purely economic losses. Those who lack any such connection to the warranted goods must demonstrate physical injury or property damage before economic losses are recoverable. This line comports with legislative intent, provides a clear rule of law, and identifies a sensible limit to liability without disrupting settled precedent. |
| Balder v. Haley, 390 N.W.2d 855, 862 (Minn. Ct. App. 1986), reversed 399 N.W.2d 77 (Minn. 1987) | § 402A cmt k. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support | A manufacturer or supplier is liable only for defects existing at the time the product leaves the control of the manufacturer or supplier. Magnuson v. Rupp Manufacturing, Inc., 285 Minn. 32, 38-39, 171 N.W.2d 201, 206 (1969) (quoting Restatement (Second) of Torts § 402A, comment g (1965)). As a result, mishandling by the consumer after the product has left the control of the manufacturer or supplier may defeat proof of cause but may also defeat proof of the ingredients of fault. Id. at 44-45, 171 N.W.2d at 209 (quoting Prosser, The Fall of the Citadel, 50 Minn.L.Rev. 791, 840 (1966)). |
| Germann v. F.L. Smithe Mach. Co., 381 N.W.2d 503, 508 (Minn. Ct. App. 1986), affirmed 395 N.W.2d 922 (Minn. 1986) | § 402A cmt k. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support in footnote 1 | Section 402A was adopted by the court in McCormack v. Hankscraft, 278 Minn. 322, 154 N.W.2d 488 (1967), and provides:<br>(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if<br>(a) the seller is engaged in the business of selling such a product, and<br>(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.<br>(2) The rule stated in Subsection (1) applies although |

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| | | | | (a) the seller has exercised all possible care in the preparation and sale of his product, and<br>(b) the user or consumer has not bought the product from or entered into any contractual relation with the seller. |
| Holstad v. Sw. Porcelain, Inc., 421 N.W.2d 371, 375 (Minn. Ct. App. 1988) | § 402A cmt k. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in discussion | The Purvis court had held that a farmer could not maintain a strict products liability action for damage to his tobacco crop resulting from defective curing barns. The court explained that a products liability claim in a commercial transaction is warranted only when the defect in the product is "dangerous to an extent beyond that which would be contemplated by the ordinary purchaser who purchases it, with the ordinary knowledge common to the community as to its characteristics." Id. 674 F.2d at 222 (quoting Restatement (Second) of Torts § 402A comment i). In citing the seminal case in this area, Seely v. White Motor Corp., 63 Cal.2d 9, 45 Cal.Rptr. 17, 403 P.2d 145 (1965), the court stated that a loss resulting from mere product ineffectiveness was properly subject to the law of contracts and commercial transactions, not strict products liability. Id. at 223. |
| Keenan v. Hydra-Mac, Inc., 422 N.W.2d 741, 745 (Minn. Ct. App. 1988), *reversed*, 434 N.W.2d 463 (Minn. 1989) | § 402A cmt k. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in support | The negligent design and negligent failure to retro-fit the loader were direct causes of Keenan's injuries. Keenan's fortuitous status as a minor should not preclude him from asserting claims against the manufacturer and dealer whose negligence contributed to his injuries. Cf. Heckman v. Federal Press Co., 587 F.2d 612, 616 (3d Cir.1978) ("Whatever effect the [state safety] regulations might have as between employer and employee does not extend to relieve the manufacturer of its liability under [Restatement] § 402A as a matter of law.") (applying Pennsylvania strict liability law). |
| Andren v. White-Rodgers Co., 465 N.W.2d 102, | § 402A cmt k. Special Liability of Seller of Product | n. Contributory negligence. Since the liability with which this Section deals is | Comment (n) cited in support | Thus, primary assumption of the risk is applicable in a products liability action involving a defective |

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| 105 (Minn. Ct. App. 1991) | For Physical Harm to User or Consumer (2nd) | not based upon negligence of the seller, but is strict liability, the rule applied to strict liability cases (see § 524) applies. Contributory negligence of the plaintiff is not a defense when such negligence consists merely in a failure to discover the defect in the product, or to guard against the possibility of its existence. On the other hand the form of contributory negligence which consists in voluntarily and unreasonably proceeding to encounter a known danger, and commonly passes under the name of assumption of risk, is a defense under this Section as in other cases of strict liability. If the user or consumer discovers the defect and is aware of the danger, and nevertheless proceeds unreasonably to make use of the product and is injured by it, he is barred from recovery. | | product. See also Wagner v. Firestone Tire & Rubber Co., 890 F.2d 652, 657 (3d Cir.1989) (assumption of risk is a complete defense in design defect cases); Rolfes v. International Harvester Co., 817 F.2d 471, 474 (8th Cir.1987) (Iowa law provides that assumption of the risk is a defense in a defective product case); Restatement (Second) of Torts § 402A, comment n (1965). |
| Harmon Cont. Glazing v. Libby-Owens-Ford, 493 N.W.2d 146, 149 (Minn. Ct. App. 1992) | § 402A cmt k. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | h. A product is not in a defective condition when it is safe for normal handling and consumption. If the injury results from abnormal handling, as where a bottled beverage is knocked against a radiator to remove the cap, or from abnormal preparation for use, as where too much salt is added to food, or from abnormal consumption, as where a child eats too much candy and is made ill, the seller is not liable. Where, however, he has reason to anticipate that danger may result from a particular use, as where a drug is sold which is safe only in limited doses, he may be required to give adequate warning of the danger (see Comment j), and a product sold without such | Comment (h) quoted in discussion | A manufacturer has a duty to use reasonable care when designing a product, so as to avoid any unreasonable risk of harm to anyone who is likely to be exposed to the danger. Bilotta v. Kelley Co., 346 N.W.2d 616, 621 (Minn.1984). Minnesota has recognized that a design defect may be in the product itself, in its preparation, in its container or packaging, or in the instructions necessary for its safe use. Hauenstein v. Loctite Corp., 347 N.W.2d 272, 275 (Minn.1984). A product includes its container or package if that container or package is an integral part of the product. See, e.g., Cerepak v. Revlon, Inc., 294 Minn. 268, 270, 200 N.W.2d 33, 35 (1972) (glass deodorant bottle); Holkestad v. Coca-Cola Bottling Co., 288 Minn. 249, 255, 180 N.W.2d 860, 865 (1970) (soft-drink bottle). These decisions are based in part on the idea that: |

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| | | warning is in a defective condition. The defective condition may arise not only from harmful ingredients, not characteristic of the product itself either as to presence or quantity, but also from foreign objects contained in the product, from decay or deterioration before sale, or from the way in which the product is prepared or packed. No reason is apparent for distinguishing between the product itself and the container in which it is supplied; and the two are purchased by the user or consumer as an integrated whole. Where the container is itself dangerous, the product is sold in a defective condition. Thus a carbonated beverage in a bottle which is so weak, or cracked, or jagged at the edges, or bottled under such excessive pressure that it may explode or otherwise cause harm to the person who handles it, is in a defective and dangerous condition. The container cannot logically be separated from the contents when the two are sold as a unit, and the liability stated in this Section arises not only when the consumer drinks the beverage and is poisoned by it, but also when he is injured by the bottle while he is handling it preparatory to consumption. | | No reason is apparent for distinguishing between the product itself and the container in which it is supplied; and the two are purchased by the user or consumer as an integrated whole. * * * The container cannot logically be separated from the contents when the two are sold as a unit.<br><br>Restatement (Second) of Torts § 402A, cmt.. h (1965). |
| J & W Enters., Inc. v. Economy Sales, Inc., 486 N.W.2d 179, 181 (Minn. Ct. App. 1992) | § 402A cmt j. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | j. Directions or warning. In order to prevent the product from being unreasonably dangerous, the seller may be required to give directions or warning, on the container, as to its use. The seller may reasonably assume that those with common allergies, as for | Comment (j) quoted in support | Likewise, the Restatement of Torts provides:<br><br>Where warning is given, the seller may reasonably assume that it will be read and heeded; and a product bearing such a warning, which is safe for use if it is followed, is not in defective condition, nor is it unreasonably dangerous. |

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| | | example to eggs or strawberries, will be aware of them, and he is not required to warn against them. Where, however, the product contains an ingredient to which a substantial number of the population are allergic, and the ingredient is one whose danger is not generally known, or if known is one which the consumer would reasonably not expect to find in the product, the seller is required to give warning against it, if he has knowledge, or by the application of reasonable, developed human skill and foresight should have knowledge, of the presence of the ingredient and the danger. Likewise in the case of poisonous drugs, or those unduly dangerous for other reasons, warning as to use may be required.<br><br>But a seller is not required to warn with respect to products, or ingredients in them, which are only dangerous, or potentially so, when consumed in excessive quantity, or over a long period of time, when the danger, or potentiality of danger, is generally known and recognized. Again the dangers of alcoholic beverages are an example, as are also those of foods containing such substances as saturated fats, which may over a period of time have a deleterious effect upon the human heart.<br><br>Where warning is given, the seller may reasonably assume that it will be read and heeded; and a product bearing such a warning, which is safe for use if | | Restatement (Second) of Torts § 402A, cmt.. j (1965) (emphasis added). |

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| | | it is followed, is not in defective condition, nor is it unreasonably dangerous. | | |
| Drager by Gutzman v. Aluminum Ind., 495 N.W.2d 879, 883 (Minn. Ct. App. 1993) | § 402A cmt i. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | i. Unreasonably dangerous. The rule stated in this Section applies only where the defective condition of the product makes it unreasonably dangerous to the user or consumer. Many products cannot possibly be made entirely safe for all consumption, and any food or drug necessarily involves some risk of harm, if only from over-consumption. Ordinary sugar is a deadly poison to diabetics, and castor oil found use under Mussolini as an instrument of torture. That is not what is meant by "unreasonably dangerous" in this Section. The article sold must be dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics. Good whiskey is not unreasonably dangerous merely because it will make some people drunk, and is especially dangerous to alcoholics; but bad whiskey, containing a dangerous amount of fuel oil, is unreasonably dangerous. Good tobacco is not unreasonably dangerous merely because the effects of smoking may be harmful; but tobacco containing something like marijuana may be unreasonably dangerous. Good butter is not unreasonably dangerous merely because, if such be the case, it deposits cholesterol in the arteries and leads to heart attacks; but bad butter, | Comment (i) quoted in support | The issue of whether a manufacturer has a duty to design a screen which would keep a person from falling through a window was recently addressed by the Illinois Supreme Court in a case involving facts substantially similar to the case at bar. See Lamkin, 150 Ill.Dec. at 562, 563 N.E.2d at 449. Plaintiffs in Lamkin were children who were injured when they fell from a window after dislodging its screen. Id. at 563-64, 563 N.E.2d at 450-51. The trial court in Lamkin certified a question as to the screen manufacturer's duty for review by the Illinois Supreme Court. Id. at 565, 563 N.E.2d at 452. The Lamkin court explained: Virtually any manufactured product can cause or be a proximate cause of injury if put to certain uses or misuses, but strict liability applies only when the product is "dangerous to an extent beyond that which would be contemplated by the ordinary [person]." Id. 150 Ill.Dec. at 571, 563 N.E.2d at 458 (quoting Restatement (Second) of Torts § 402A cmt.. i (1965) (other citations omitted)). |

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| | | contaminated with poisonous fish oil, is unreasonably dangerous. | | |
| In re Shigellosis Litig., 647 N.W.2d 1, 6, 9, 11 (Minn. Ct. App. 2002) | § 402A cmt k. Special Liability of Seller of Product For Physical Harm to User or Consumer (2nd) | See above. | Cited in discussion | The Minnesota Supreme Court adopted the concept of strict tort liability against the manufacturer of a defective product in McCormack v. Hankscraft Co., 278 Minn. 322, 333-34, 154 N.W.2d 488, 497-98 (1967). Three years later, the court clarified that an injured person may also maintain an action for strict liability in tort against the commercial seller of a defective product, even if the seller has no active fault or negligence. Farr v. Armstrong Rubber Co., 288 Minn. 83, 89, 179 N.W.2d 64, 68 (1970) (citing Restatement (Second) of Torts § 402A (1965) (stating commercial seller who sells defective product is liable for physical harm even if seller is not negligent and not in privity with the injured person)). |
| **Section 402B** | | | | |
| Matter of Discipline of Appert, 315 N.W.2d 204, 206 (Minn. 1981) | § 402B. Misrepresentation by Seller of Chattels to Consumer (2nd) | One engaged in the business of selling chattels who, by advertising, labels, or otherwise, makes to the public a misrepresentation of a material fact concerning the character or quality of a chattel sold by him is subject to liability for physical harm to a consumer of the chattel caused by justifiable reliance upon the misrepresentation, even though<br>(a) it is not made fraudulently or negligently, and<br>(b) the consumer has not bought the chattel from or entered into any contractual relation with the seller. | Cited in support | The device was aggressively advertised by Robins even after these problems were brought to its attention. Moreover, Robins allegedly misrepresented these problems to members of the medical community and allegedly made no disclosure to the public generally concerning the possible dangers connected with the device. The various lawsuits have included claims of negligence, breach of implied warranty, breach of express warranty, strict liability, misrepresentation under section 402B of the Restatement of Torts, civil conspiracy, gross and wanton negligence, willful misrepresentation, fraud, and violation of local consumer protection statutes. |
| **Section 409** | | | | |
| Conover v. N. States Power Co., 313 N.W.2d 397, 403 (Minn. 1981) | § 409. General Principle (2nd) | Except as stated in §§ 410-429, the employer of an Indep. contractor is not liable for physical harm caused to | Quoted in discussion | The general rule, given in section 409 of the Restatement (Second), is that "the employer of an independent contractor is not liable for physical |

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| | | another by an act or omission of the contractor or his servants. | | harm caused to another by an act or omission of the contractor or his servants." See also Rausch v. Julius B. Nelson & Sons, Inc., 276 Minn. 12, 149 N.W.2d 1 (1967). This court has long recognized the erosion of the general rule by a multitude of exceptions, observing some 40 years ago that "(i)ndeed, it would be proper to say that the rule is now primarily important as a preamble to the catalog of its exceptions." Pacific Fire Insurance Co. v. Kenny Boiler & Manufacturing Co., 201 Minn. 500, 503, 277 N.W. 226, 228 (1937). These exceptions are collected in sections 416 to 429 of the Restatement. |
| Lakeview Terrace Homeowners Ass'n v. Le Rivage, Inc., 498 N.W.2d 68, 71 (Minn. Ct. App. 1993) | § 409. General Principle (2nd) | See above. | Cited in discussion | Generally, an employer is not liable for the acts or omissions of an independent contractor or its agents. Lamb v. South Unit Jehovah's Witnesses, 232 Minn. 259, 263, 45 N.W.2d 403, 406 (1950); Restatement (Second) of Torts § 409 (1965). The general rule, however, is riddled with exceptions. Id. The exceptions fall into three categories: (1) negligence of the employer in selecting, instructing or supervising the contractor; (2) nondelegable duties of the employer, arising out of some relationship toward the public or the particular plaintiff; and (3) work which is specifically, peculiarly, or "inherently" dangerous. Restatement (Second) of Torts § 409 cmt.. b (1965). |
| Anderson v. State, Dep't of Natural Res., 693 N.W.2d 181, 189 (Minn. 2005) | § 409. General Principle (2nd) | See above. | Cited in discussion | The general rule is that an employer of an independent contractor is not liable for physical harm caused to another by an act or omission of the contractor or his servants. Conover v. Northern States Power, 313 N.W.2d 397, 403 (Minn.1981) (citing Restatement (Second) of Torts § 409 (1965)). But an employer of an independent contractor may be found negligent when it retains detailed control over a project and then fails to exercise reasonably careful supervision over that project. Conover, 313 N.W.2d at 401. |

| **Section 411** | | | | |
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| Lakeview Terrace Homeowners Ass'n v. Le Rivage, Inc., 498 N.W.2d 68, 71 (Minn. Ct. App. 1993) | § 411. Negligence in Selection of Contractor (2nd) | An employer is subject to liability for physical harm to third persons caused by his failure to exercise reasonable care to employ a competent and careful contractor<br>(a) to do work which will involve a risk of physical harm unless it is skillfully and carefully done, or<br>(b) to perform any duty which the employer owes to third persons. | Cited in discussion | The first and third exceptions to the general rule are not applicable in this case. First, we hold as a matter of law that building a retaining wall like the one in this case is not "inherently" dangerous work. Second, the trial court did not err by finding that HSII was not negligent in hiring Artison. It is true that an employer is subject to liability for physical harm to third persons caused by its failure to employ a competent independent contractor. Restatement (Second) of Torts § 411 (1965). In this case, because Artison is apparently insolvent, Lakeview claims HSII breached its duty to hire a solvent and properly insured contractor. We disagree. The weight of authority supports not imposing liability on an employer, like HSII, for hiring an apparently competent contractor, like Artison, that turns out to be judgment proof. |
| Larson v. Wasemiller, 738 N.W.2d 300, 306, 308 (Minn. 2007) | § 411. Negligence in Selection of Contractor (2nd) | See above. | Adopted | The tort of negligent credentialing is perhaps even more directly related to the tort of negligent selection of an independent contractor, which has been recognized in the Restatement of Torts to exist under certain circumstances. The Restatement (Second) of Torts § 411 (1965) provides that<br><br>An employer is subject to liability for physical harm to third persons caused by his failure to exercise reasonable care to employ a competent and careful contractor<br><br>(a) to do work which will involve a risk of physical harm unless it is skillfully and carefully done, or<br><br>(b) to perform any duty which the employer owes to third persons.<br><br>Although we have not specifically adopted this tort, we have frequently relied on the Restatement of Torts to guide our development of tort law in areas that we have not previously had an opportunity to |

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| **Section 413** | | | | |
| Conover v. N. States Power Co., 313 N.W.2d 397, 405 n.5 (Minn. 1981) | § 413. Duty to Provide for Taking of Precautions Against Dangers Involved in Work Entrusted to Contractor | One who employs an independent contractor to do work which the employer should recognize as likely to create, during its progress, a peculiar unreasonable risk of physical harm to others unless special precautions are taken, is subject to liability for physical harm caused to them by the absence of such precautions if the employer<br>(a) fails to provide in the contract that the contractor shall take such precautions, or<br>(b) fails to exercise reasonable care to provide in some other manner for the taking of such precautions. | Cited in discussion | "Peculiar risk" as used in section 416 is defined at length in section 413, Comment b. "Special danger" as used in section 427 is defined in Comment b of that section. |
| **Section 414** | | | | |
| Rausch v. Julius B. Nelson & Sons, 276 Minn. 12, 18, 20, 149 N.W.2d 1, 6–7 (Minn. 1967) | § 414. Negligence in Exercising Control Retained by Employer (2nd) | One who entrusts work to an independent contractor, but who retains the control of any part of the work, is subject to liability for physical harm to others for whose safety the employer owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care. | Adopted | With respect to what commonlaw duty defendants owed decedent, it is significant that even a general contractor is not liable for the negligent acts and omissions of his subcontractor unless the right of the former to control or supervise the latter as to time, place, and manner of performing the work exists by force of the contract between them, as interpreted in the light of all the surrounding circumstances, or unless the duty to assume such control and supervision is imposed, as a matter of law, by reason of some peculiar relation which the person for whom the work is being performed bears to third persons as to the time, place, or manner of performance. |
| Vagle v. Pickands Mather & Co., 313 N.W.2d 396 (Minn. 1981) | § 414. Negligence in Exercising Control Retained by Employer (2nd) | See above. | Cited in discussion | Where plaintiff was injured while working for an independent contractor on the premises of the defendant, under the above set of facts and as may be supplemented by reference to the transcript of the trial record herein by either plaintiff, defendant |

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| | | | | or the trial court, may Restatement of Torts (second edition), Sections 414, 416, 422 and 427 be given to the jury on the issue of whether defendant, as a possessor of land, could be held to be vicariously liable for the negligence committed by the independent contractor who was plaintiff's employer?<br><br>Insofar as we are able to respond to the question certified to us by the federal district court, the law of Minnesota is as stated in Conover v. Northern States Power Co., 313 N.W.2d 397, filed herewith. Whether it is or is not consistent with Vagle v. Pickands Mather & Co., 611 F.2d 1212 (8th Cir. 1979), cert. denied, 444 U.S. 1033, 100 S.Ct. 704, 62 L.Ed.2d 669 (1980), or whether, if inconsistent, the decision of the Eighth Circuit controls this case is a question of federal law, on which it would not be appropriate for us to comment. |
| Sutherland v. Barton, 570 N.W.2d 1, 5 (Minn. 1997) | § 414. Negligence in Exercising Control Retained by Employer (2nd) | See above. | Adopted | Not just any amount of control by the hiring company is sufficient to impose direct liability. For liability to attach, the company must retain control over the "operative detail" of the work. Restatement (Second) of Torts § 414 cmt.. a (1965). We implicitly adopted § 414 of the Restatement (Second) of Torts in Conover, 313 N.W.2d at 401 (citing Thill v. Modern Erecting Co., 272 Minn. 217, 136 N.W.2d 677 (1965)). |
| Doe v. Brainerd Int'l Raceway, Inc., 514 N.W.2d 811, 821 (Minn. Ct. App. 1994), *reversed*, 533 N.W.2d 617 (Minn. 1995) | § 414. Negligence in Exercising Control Retained by Employer (2nd) | See above. | Cited in support | An exception to the rule absolving the employer of liability for the acts of the independent contractor is the retained-control exception, defined by the Restatement (Second) of Torts § 414 comment:<br><br>[T]he employer must have retained at least some degree of control over the manner in which the work is done. It is not enough that he has merely a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations |

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| | | | | which need not necessarily be followed, or to prescribe alterations and deviations. There must be such a retention of a right of supervision that the contractor is not entirely free to do the work in his own way. |
| Sutherland v. Barton, 560 N.W.2d 116, 120 (Minn. Ct. App. 1997) | § 414. Negligence in Exercising Control Retained by Employer (2nd) | See above. | Cited in support | We also hold that Waldorf owed Sutherland a duty based on its retained control over the manner of performance of repairs. Waldorf retained limited control by communicating to Muska that the electricity in the plant would not be cut off for this project. An employer who retains control over any part of the work entrusted to an independent contractor must act reasonably in the exercise of that control. |
| **Section 416** | | | | |
| Conover v. N. States Power Co., 313 N.W.2d 397, 403–04, 405 n.5 407, 408 (Minn. 1981) | § 416. Work Dangerous in Absence of Special Precautions (2nd) | One who employs an Indep. contractor to do work which the employer should recognize as likely to create during its progress a peculiar risk of physical harm to others unless special precautions are taken, is subject to liability for physical harm caused to them by the failure of the contractor to exercise reasonable care to take such precautions, even though the employer has provided for such precautions in the contract or otherwise. | Adopted, but clarified | These exceptions are collected in sections 416 to 429 of the Restatement. They rest on the policy grounds that an employer should not be permitted to escape a direct duty of care for the personal safety of another by delegating that responsibility to the independent contractor for the proper conduct of certain types of work. The term "others," used in section 416 and the other pertinent sections, plainly enough has in mind third persons who might come upon or about the jobsite and be injured. Does "others" also include the employees of the independent contractor who have to be on the jobsite and whose work exposes them to the very hazard contributing to their injury? Authorities elsewhere are split. We conclude the term "others" should not be construed to include employees of the independent contractor. To hold otherwise, we believe, creates needless conceptual and practical difficulties and does not give due consideration to the employer-independent contractor relationship. |
| Vagle v. Pickands Mather & Co., 313 N.W.2d 396 | § 416. Work Dangerous in Absence of Special | See above. | Cited in discussion | The federal court certified the following question of law to this court: "Where plaintiff was injured while |

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| (Minn. 1981) | Precautions (2nd) | | | working for an independent contractor on the premises of the defendant, under the above set of facts and as may be supplemented by reference to the transcript of the trial record herein by either plaintiff, defendant or the trial court, may Restatement of Torts (second edition), Sections 414, 416, 422 and 427 be given to the jury on the issue of whether defendant, as a possessor of land, could be held to be vicariously liable for the negligence committed by the independent contractor who was plaintiff's employer?" The court responded that the law of Minnesota was stated in Conover v. Northern States Power Co., 313 N.W.2d 397, decided that same day. The court did not comment on whether that decision was consistent with an Eighth Circuit case and, if inconsistent, whether the Eighth Circuit case controlled. |
| Sutherland v. Barton, 570 N.W.2d 1, 5 n.4 (Minn. 1997) | § 416. Work Dangerous in Absence of Special Precautions (2nd) | See above. | Cited in support | In Conover, this court dealt specifically with Restatement (Second) of Torts §§ 416, 424, 427 and 428 (1965). 313 N.W.2d at 403. We made reference to sections 416 to 429 of the Restatement, however, in our conclusion that the term "others" in the "pertinent sections" of the Restatement did not include the employees of an independent contractor. |
| Anderson v. State, Dep't of Natural Res., 674 N.W.2d 748, 758 n.4 (Minn. Ct. App. 2004) | § 416. Work Dangerous in Absence of Special Precautions (2nd) | See above. | Cited in support | In Minnesota, the general rule is that the employer of a contractor is not liable for the harm caused by an act or omission of the contractor. Conover v. N. States Power Co., 313 N.W.2d 397, 403 (Minn.1981). But the Conover court recognized that many exceptions have eroded this common-law rule. Id. at 403-04. These exceptions rest primarily on the policy grounds that an employer should not be permitted to escape a direct duty of care for the personal safety of another by delegating that responsibility to the independent contractor for the proper conduct of certain types of work-e.g., work that entails a peculiar risk of physical harm to others unless special precautions are taken. Id. at |

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| | | | | 404. Thus, the so-called nondelegable-duty rule was intended to prevent one from contracting out hazardous work and thereby escaping one's responsibility to the general public and adjoining property owners. |
| **Section 417** | | | | |
| Westby v. Itasca County, 290 N.W.2d 437, 438 (Minn. 1980) | § 417. Work Done in Public Place (2nd) | One who employs an Indep. contractor to do work in a public place which unless carefully done involves a risk of making the physical condition of the place dangerous for the use of members of the public, is subject to liability for physical harm caused to members of the public by a negligent act or omission of the contractor which makes the physical condition of the place dangerous for their use. | Adopted | A principal is liable for the negligent performance of a nondelegable duty by an independent contractor, and road maintenance is such a duty. Lamb v. South Unit Jehovah's Witnesses, 232 Minn. 259, 45 N.W.2d 403, 33 A.L.R.2d 1 (1950); Restatement (Second) of Torts s 417 (1965) |
| Lakeview Terrace Homeowners Ass'n v. Le Rivage, Inc., 498 N.W.2d 68, 71–72 (Minn. Ct. App. 1993) | § 417. Work Done in Public Place (2nd) | See above. | Cited in support | Lakeview's reliance on section 417, Brown, and Lamb, is misplaced. "Public place" denotes a place where the state or its subdivisions "maintains for the use of the public and includes not only public highways, but parks and public buildings and other similar places." Restatement (Second) of Torts § 417, cmt.. b (1965). Unlike the public sidewalk in Brown and Lamb, the retaining wall in this case separated two private parking lots. Thus, this case differs from other cases which, for policy reasons, i.e. protection of the public's safety, an employer cannot shift to an independent contractor the duty of reasonable conduct. |
| Anderson v. State, Dep't of Natural Res., 674 N.W.2d 748, 758 n.4 (Minn. Ct. App. 2004) | § 417. Work Done in Public Place (2nd) | See above. | Cited in support | In Minnesota, the general rule is that the employer of a contractor is not liable for the harm caused by an act or omission of the contractor. Conover v. N. States Power Co., 313 N.W.2d 397, 403 (Minn.1981). But the Conover court recognized that many exceptions have eroded this common-law rule. Id. at 403-04. These exceptions rest primarily |

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| **Section 418** | | | | |
| Anderson v. State, Dep't of Natural Res., 674 N.W.2d 748, 758 n.4 (Minn. Ct. App. 2004) | § 418. Maintenance of Public Highways and Other Public Places (2nd) | (1) One who is under a duty to construct or maintain a highway in reasonably safe condition for the use of the public, and who entrusts its construction, maintenance, or repair to an Indep. contractor, is subject to the same liability for physical harm to persons using the highway while it is held open for travel during such work, caused by the negligent failure of the contractor to make it reasonably safe for travel, as though the employer had retained the work in his own hands.<br><br>(2) The statement in Subsection (1) applies to any place which is maintained by a government for the use of the public, if the government is under the same duty to maintain it in reasonably safe condition as it owes to the public in respect to the condition of its highways. | Cited in support | In Minnesota, the general rule is that the employer of a contractor is not liable for the harm caused by an act or omission of the contractor. Conover v. N. States Power Co., 313 N.W.2d 397, 403 (Minn.1981). But the Conover court recognized that many exceptions have eroded this common-law rule. Id. at 403-04. These exceptions rest primarily on the policy grounds that an employer should not be permitted to escape a direct duty of care for the personal safety of another by delegating that responsibility to the independent contractor for the proper conduct of certain types of work-e.g., work that entails a peculiar risk of physical harm to others unless special precautions are taken. Id. at 404. Thus, the so-called nondelegable-duty rule was intended to prevent one from contracting out hazardous work and thereby escaping one's responsibility to the general public and adjoining property owners. |
| **Section 419** | | | | |
| Anderson v. State, Dep't of Natural Res., 674 | § 419. Repairs Which Lessor Is Under a Duty to His Lessee | A lessor of land who employs an Indep. contractor to perform a duty which the | Cited in support | In Minnesota, the general rule is that the employer of a contractor is not liable for the harm caused by |

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| N.W.2d 748, 758 n.4 (Minn. Ct. App. 2004) | to Make (2nd) | lessor owes to his lessee to maintain the leased land in reasonably safe condition, is subject to liability to the lessee, and to third persons upon the land with the consent of the lessee, for physical harm caused by the contractor's failure to exercise reasonable care to make the land reasonably safe. | | an act or omission of the contractor. Conover v. N. States Power Co., 313 N.W.2d 397, 403 (Minn.1981). But the Conover court recognized that many exceptions have eroded this common-law rule. Id. at 403-04. These exceptions rest primarily on the policy grounds that an employer should not be permitted to escape a direct duty of care for the personal safety of another by delegating that responsibility to the independent contractor for the proper conduct of certain types of work-e.g., work that entails a peculiar risk of physical harm to others unless special precautions are taken. Id. at 404. Thus, the so-called nondelegable-duty rule was intended to prevent one from contracting out hazardous work and thereby escaping one's responsibility to the general public and adjoining property owners. |
| **Section 420** | | | | |
| Anderson v. State, Dep't of Natural Res., 674 N.W.2d 748, 758 n.4 (Minn. Ct. App. 2004) | § 420. Repairs Gratuitously Undertaken by Lessor (2nd) | A lessor of land who employs an Indep. contractor to make repairs which the lessor is under no duty to make, is subject to the same liability to the lessee, and to others upon the land with the consent of the lessee, for physical harm caused by the contractor's negligence in making or purporting to make the repairs as though the contractor's conduct were that of the lessor. | Cited in support | In Minnesota, the general rule is that the employer of a contractor is not liable for the harm caused by an act or omission of the contractor. Conover v. N. States Power Co., 313 N.W.2d 397, 403 (Minn.1981). But the Conover court recognized that many exceptions have eroded this common-law rule. Id. at 403-04. These exceptions rest primarily on the policy grounds that an employer should not be permitted to escape a direct duty of care for the personal safety of another by delegating that responsibility to the independent contractor for the proper conduct of certain types of work-e.g., work that entails a peculiar risk of physical harm to others unless special precautions are taken. Id. at 404. Thus, the so-called nondelegable-duty rule was intended to prevent one from contracting out hazardous work and thereby escaping one's responsibility to the general public and adjoining property owners. |
| **Section 421** | | | | |

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| Anderson v. State, Dep't of Natural Res., 674 N.W.2d 748, 758 n.4 (Minn. Ct. App. 2004) | § 421. Maintenance of Structures on Land Retained in Lessor's Possession Necessary to Tenant's Enjoyment of Leased Land (2nd) | A possessor of land who, having leased a part of the land, is under a duty to maintain in reasonably safe condition the part retained by him, and who entrusts the repair of such part to an Indep. contractor, is subject to the same liability to the lessee, and to others upon the retained part of the land with the consent of the lessee, for physical harm caused by the negligence of the contractor in failing to maintain such part of the land in reasonably safe condition, as though the lessor had himself retained the making of the repairs in his own hands. | Cited in support | In Minnesota, the general rule is that the employer of a contractor is not liable for the harm caused by an act or omission of the contractor. Conover v. N. States Power Co., 313 N.W.2d 397, 403 (Minn.1981). But the Conover court recognized that many exceptions have eroded this common-law rule. Id. at 403-04. These exceptions rest primarily on the policy grounds that an employer should not be permitted to escape a direct duty of care for the personal safety of another by delegating that responsibility to the independent contractor for the proper conduct of certain types of work-e.g., work that entails a peculiar risk of physical harm to others unless special precautions are taken. Id. at 404. Thus, the so-called nondelegable-duty rule was intended to prevent one from contracting out hazardous work and thereby escaping one's responsibility to the general public and adjoining property owners. |
| **Section 422** | | | | |
| Vagle v. Pickands Mather & Co., 313 N.W.2d 396 (Minn. 1981) | § 422. Work on Buildings and Other Structures on Land (2nd) | A possessor of land who entrusts to an Indep. contractor construction, repair, or other work on the land, or on a building or other structure upon it, is subject to the same liability as though he had retained the work in his own hands to others on or outside of the land for physical harm caused to them by the unsafe condition of the structure<br>(a) while the possessor has retained possession of the land during the progress of the work, or<br>(b) after he has resumed possession of the land upon its completion. | Adopted | The federal court certified the following question of law to this court: "Where plaintiff was injured while working for an independent contractor on the premises of the defendant, under the above set of facts and as may be supplemented by reference to the transcript of the trial record herein by either plaintiff, defendant or the trial court, may Restatement of Torts (second edition), Sections 414, 416, 422 and 427 be given to the jury on the issue of whether defendant, as a possessor of land, could be held to be vicariously liable for the negligence committed by the independent contractor who was plaintiff's employer?" The court responded that the law of Minnesota was stated in Conover v. Northern States Power Co., 313 N.W.2d 397, decided that same day. The court did not comment on whether that decision was consistent with an Eighth Circuit case and, if inconsistent, whether the Eighth Circuit case controlled. |

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| Lakeview Terrace Homeowners Ass'n v. Le Rivage, Inc., 498 N.W.2d 68, 72 (Minn. Ct. App. 1993) | § 422. Work on Buildings and Other Structures on Land (2nd) | See above. | Cited in discussion | HSII, however, was not a "possessor" of the retaining wall either when the wall was completed or when the damage occurred. When built, the wall was on Lakeview's property, not HSII's property. Further, HSII had sold the property to Sobhani and Tavakolean five years before the wall collapsed. Accordingly, section 422 does not impose vicarious liability on HSII for Artison's negligence. |
| Anderson v. State, Dep't of Natural Res., 674 N.W.2d 748, 758 n.4 (Minn. Ct. App. 2004) | § 422. Work on Buildings and Other Structures on Land (2nd) | See above. | Cited in support | In Minnesota, the general rule is that the employer of a contractor is not liable for the harm caused by an act or omission of the contractor. Conover v. N. States Power Co., 313 N.W.2d 397, 403 (Minn.1981). But the Conover court recognized that many exceptions have eroded this common-law rule. Id. at 403-04. These exceptions rest primarily on the policy grounds that an employer should not be permitted to escape a direct duty of care for the personal safety of another by delegating that responsibility to the independent contractor for the proper conduct of certain types of work-e.g., work that entails a peculiar risk of physical harm to others unless special precautions are taken. Id. at 404. Thus, the so-called nondelegable-duty rule was intended to prevent one from contracting out hazardous work and thereby escaping one's responsibility to the general public and adjoining property owners. |
| **Section 422A** | | | | |
| Anderson v. State, Dep't of Natural Res., 674 N.W.2d 748, 758 n.4 (Minn. Ct. App. 2004) | § 422A. Work Withdrawing Lateral Support (2nd) | One who employs an Indep. contractor to do work which the employer knows or should know to be likely to withdraw lateral support from the land of another is subject to the same liability for the contractor's withdrawal of such support as if the employer had retained the work in his own hands. | Cited in support | In Minnesota, the general rule is that the employer of a contractor is not liable for the harm caused by an act or omission of the contractor. Conover v. N. States Power Co., 313 N.W.2d 397, 403 (Minn.1981). But the Conover court recognized that many exceptions have eroded this common-law rule. Id. at 403-04. These exceptions rest primarily on the policy grounds that an employer should not be permitted to escape a direct duty of care for the personal safety of another by delegating that responsibility to the independent contractor for the |

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| | | | | proper conduct of certain types of work-e.g., work that entails a peculiar risk of physical harm to others unless special precautions are taken. Id. at 404. Thus, the so-called nondelegable-duty rule was intended to prevent one from contracting out hazardous work and thereby escaping one's responsibility to the general public and adjoining property owners. |
| **Section 424** | | | | |
| Conover v. N. States Power Co., 313 N.W.2d 397, 403, 407, 408 (Minn. 1981) | § 424. Precautions Required by Statute or Regulation (2nd) | One who by statute or by administrative regulation is under a duty to provide specified safeguards or precautions for the safety of others is subject to liability to the others for whose protection the duty is imposed for harm caused by the failure of a contractor employed by him to provide such safeguards or precautions. | Cited in discussion | We hold, therefore, an employer of an independent contractor does not owe a nondelegable duty of care to the contractor's employees for the negligence of the contractor, and the trial court properly refused to instruct on sections 416 and 427 of the Restatement. Appellants also urge it was error for the trial court not to instruct on Restatement sections 424 (precautions required by statute or regulation) and 428 (work which cannot lawfully be done except under a franchise). Both of these sections again create nondelegable duties of the employer to "others." For the reasons already stated, we do not consider these sections applicable to the case here and we hold the trial court properly refused to so instruct. |
| Nichols v. Metro. Bank, 435 N.W.2d 637, 640 (Minn. Ct. App. 1989) | § 424. Precautions Required by Statute or Regulation (2nd) | See above. | Adopted | Accordingly, a secured party may not delegate to third persons the secured party's duty to repossess in a peaceable manner. Cf. Restatement (Second) of Torts § 424 (1965) (a person under a statutory duty to provide specific safeguards or precautions for the safety of another is liable for injuries to the other person caused by a contractor's failure to provide the necessary safeguards or precautions). |
| Sutherland v. Barton, 570 N.W.2d 1, 5 n.4 (Minn. 1997) | § 424. Precautions Required by Statute or Regulation (2nd) | See above. | Cited in discussion | In Conover, this court dealt specifically with Restatement (Second) of Torts §§ 416, 424, 427 and 428 (1965). 313 N.W.2d at 403. We made reference to sections 416 to 429 of the Restatement, however, in our conclusion that the term "others" in the |

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| | | | | "pertinent sections" of the Restatement did not include the employees of an independent contractor. Id. at 404. |
| Anderson v. State, Dep't of Natural Res., 674 N.W.2d 748, 758 n.4 (Minn. Ct. App. 2004) | § 424. Precautions Required by Statute or Regulation (2nd) | See above. | Cited in support | In Minnesota, the general rule is that the employer of a contractor is not liable for the harm caused by an act or omission of the contractor. Conover v. N. States Power Co., 313 N.W.2d 397, 403 (Minn.1981). But the Conover court recognized that many exceptions have eroded this common-law rule. Id. at 403-04. These exceptions rest primarily on the policy grounds that an employer should not be permitted to escape a direct duty of care for the personal safety of another by delegating that responsibility to the independent contractor for the proper conduct of certain types of work-e.g., work that entails a peculiar risk of physical harm to others unless special precautions are taken. Id. at 404. Thus, the so-called nondelegable-duty rule was intended to prevent one from contracting out hazardous work and thereby escaping one's responsibility to the general public and adjoining property owners. |
| **Section 425** | | | | |
| Anderson v. State, Dep't of Natural Res., 647 N.W.2d 748, 758 n.4 (Minn. Ct. App. 2004) | § 425. Repair of Chattel Supplied or Land Held Open to Public as Place of Business (2nd) | One who employs an Indep. contractor to maintain in safe condition land which he holds open to the entry of the public as his place of business, or a chattel which he supplies for others to use for his business purposes or which he leases for immediate use, is subject to the same liability for physical harm caused by the contractor's negligent failure to maintain the land or chattel in reasonably safe condition, as though he had retained its maintenance in his own hands. | Cited in support | In Minnesota, the general rule is that the employer of a contractor is not liable for the harm caused by an act or omission of the contractor. Conover v. N. States Power Co., 313 N.W.2d 397, 403 (Minn.1981). But the Conover court recognized that many exceptions have eroded this common-law rule. Id. at 403-04. These exceptions rest primarily on the policy grounds that an employer should not be permitted to escape a direct duty of care for the personal safety of another by delegating that responsibility to the independent contractor for the proper conduct of certain types of work-e.g., work that entails a peculiar risk of physical harm to others unless special precautions are taken. Id. at |

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| **Section 426** | | | | |
| Westby v. Itasca County, 290 N.W.2d 437, 438–39 (Minn. 1980) | § 426. Negligence Collateral to Risk of Doing the Work (2nd) | Except as stated in §§ 428 and 429, an employer of an Indep. contractor, unless he is himself negligent, is not liable for physical harm caused by any negligence of the contractor if<br>(a) the contractor's negligence consists solely in the improper manner in which he does the work, and<br>(b) it creates a risk of such harm which is not inherent in or normal to the work, and<br>(c) the employer had no reason to contemplate the contractor's negligence when the contract was made. | Cited in support | The trial court ruled as a matter of law that the failure to clear the mud off of the road was collateral negligence on the part of the independent contractor which relieved the county of liability. However, negligence of an independent contractor is "collateral" only when the negligence is disassociated "from any inherent or contemplated special risk which may be expected to be created by the work." W. Prosser, Handbook of the Law of Torts s 71 at 475 (1971). See Restatement (Second) of Torts s 426 (1965); Smith, Collateral Negligence, 25 Minn.L.Rev. 399 (1941). Claude was negligent in failing either to remove the debris, give warning of the hazard, or notify the county of the dangerous condition of the road. |
| Anderson v. State, Dep't of Natural Res., 674 N.W.2d 748, 758 n.4 (Minn. Ct. App. 2004) | § 426. Negligence Collateral to Risk of Doing the Work (2nd) | See above. | Cited in support | In Minnesota, the general rule is that the employer of a contractor is not liable for the harm caused by an act or omission of the contractor. Conover v. N. States Power Co., 313 N.W.2d 397, 403 (Minn.1981). But the Conover court recognized that many exceptions have eroded this common-law rule. Id. at 403-04. These exceptions rest primarily on the policy grounds that an employer should not be permitted to escape a direct duty of care for the personal safety of another by delegating that responsibility to the independent contractor for the proper conduct of certain types of work-e.g., work that entails a peculiar risk of physical harm to others unless special precautions are taken. Id. at 404. Thus, the so-called nondelegable-duty rule was intended to prevent one from contracting out hazardous work and thereby escaping one's responsibility to the general public and adjoining |

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| **Section 427** | | | | |
| Conover v. N. States Power Co., 313 N.W.2d 397, 399, 403, 404, 407, 408 (Minn. 1981) | § 427. Negligence as Danger Inherent in the Work (2nd) | One who employs an Indep. contractor to do work involving a special danger to others which the employer knows or has reason to know to be inherent in or normal to the work, or which he contemplates or has reason to contemplate when making the contract, is subject to liability for physical harm caused to such others by the contractor's failure to take reasonable precautions against such danger. | Cited in discussion | More to the point, however, we do not find the Restatement rationale appropriate here. The Restatement, in sections 416 and 427, imposes a nondelegable duty on an employer if the trier of fact finds the "work" involves either a "peculiar risk" or a "special damage." But the risk or danger the Restatement has in mind is one created by the independent contractor, not by the employer. It is the contractor's "work" that creates the risk. Consequently, the employer should not be held vicariously liable to someone who is injured while under the direction and control, as an employee, of the very party who creates the danger. As the Eighth Circuit Court of Appeals put it, in Vagle v. Pickands Mather & Co., 611 F.2d 1212, 1218 (1979), the nondelegable duty rule was intended to prevent one from contracting out hazardous work and thereby escaping one's responsibility to the general public and adjoining property owners; but one who hires an independent contractor with employees specialized to do the hazardous work should not be penalized by being held vicariously liable for an injury to those employees. |
| Vagle v. Pickands Mather & Co., 313 N.W.2d 396 (Minn. 1981) | § 427. Negligence as Danger Inherent in the Work (2nd) | See above. | Cited in discussion | Where plaintiff was injured while working for an independent contractor on the premises of the defendant, under the above set of facts and as may be supplemented by reference to the transcript of the trial record herein by either plaintiff, defendant or the trial court, may Restatement of Torts (second edition), Sections 414, 416, 422 and 427 be given to the jury on the issue of whether defendant, as a possessor of land, could be held to be vicariously liable for the negligence committed by the independent contractor who was plaintiff's employer?<br><br>Insofar as we are able to respond to the question |

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| | | | | certified to us by the federal district court, the law of Minnesota is as stated in Conover v. Northern States Power Co., 313 N.W.2d 397, filed herewith. |
| Sutherland v. Barton, 570 N.W.2d 1, 5 n.4 (Minn. 1997) | § 427. Negligence as Danger Inherent in the Work (2nd) | See above. | Cited in discussion | In Conover, this court dealt specifically with Restatement (Second) of Torts §§ 416, 424, 427 and 428 (1965). 313 N.W.2d at 403. We made reference to sections 416 to 429 of the Restatement, however, in our conclusion that the term "others" in the "pertinent sections" of the Restatement did not include the employees of an independent contractor. Id. at 404. |
| Anderson v. State, Dep't of Natural Res., 674 N.W.2d 748, 758 n.4 (Minn. Ct. App. 2004) | § 427. Negligence as Danger Inherent in the Work (2nd) | See above. | Cited in support | In Minnesota, the general rule is that the employer of a contractor is not liable for the harm caused by an act or omission of the contractor. Conover v. N. States Power Co., 313 N.W.2d 397, 403 (Minn.1981). But the Conover court recognized that many exceptions have eroded this common-law rule. Id. at 403-04. These exceptions rest primarily on the policy grounds that an employer should not be permitted to escape a direct duty of care for the personal safety of another by delegating that responsibility to the independent contractor for the proper conduct of certain types of work-e.g., work that entails a peculiar risk of physical harm to others unless special precautions are taken. Id. at 404. Thus, the so-called nondelegable-duty rule was intended to prevent one from contracting out hazardous work and thereby escaping one's responsibility to the general public and adjoining property owners. |
| **Section 427A** | | | | |
| Kellen v. Mathias, 519 N.W.2d 218, 221 (Minn. Ct. App. 1994) | § 427A. Work Involving Abnormally Dangerous Activity (2nd) | One who employs an Indep. contractor to do work which the employer knows or has reason to know to involve an abnormally dangerous activity, is subject to liability to the same extent as the contractor for physical harm to | Cited in support | Assuming, as Kellen avers in his complaint, that aerial spraying is an "ultra-hazardous" activity, it follows that one who employs another to engage in an ultrahazardous activity is vicariously liable for any loss. See Restatement (Second) of Torts § 427A (1965); see also Lawler v. Skelton, 241 Miss. 274, |

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| | | others caused by the activity. | | 130 So.2d 565, 569 (1961) (owner of farmland may not delegate work of spraying of crops to an independent contractor and avoid liability); Loe v. Lenhardt, 227 Or. 242, 362 P.2d 312, 318 (1961) (landowner who hires contractor to spray chemicals from an airplane is liable for the resulting harm). |
| Anderson v. State, Dep't of Natural Res., 674 N.W.2d 748, 758 n.4 (Minn. Ct. App. 2004) | § 427A. Work Involving Abnormally Dangerous Activity (2nd) | See above. | Cited in support | In Minnesota, the general rule is that the employer of a contractor is not liable for the harm caused by an act or omission of the contractor. Conover v. N. States Power Co., 313 N.W.2d 397, 403 (Minn.1981). But the Conover court recognized that many exceptions have eroded this common-law rule. Id. at 403-04. These exceptions rest primarily on the policy grounds that an employer should not be permitted to escape a direct duty of care for the personal safety of another by delegating that responsibility to the independent contractor for the proper conduct of certain types of work-e.g., work that entails a peculiar risk of physical harm to others unless special precautions are taken. Id. at 404. Thus, the so-called nondelegable-duty rule was intended to prevent one from contracting out hazardous work and thereby escaping one's responsibility to the general public and adjoining property owners. |
| **Section 427B** | | | | |
| Anderson v. State, Dep't of Natural Res., 674 N.W.2d 748, 758 n.4 (Minn. Ct. App. 2004) | § 427B. Work Likely to Involve Trespass or Nuisance | One who employs an Indep. contractor to do work which the employer knows or has reason to know to be likely to involve a trespass upon the land of another or the creation of a public or a private nuisance, is subject to liability for harm resulting to others from such trespass or nuisance. | Cited in support | In Minnesota, the general rule is that the employer of a contractor is not liable for the harm caused by an act or omission of the contractor. Conover v. N. States Power Co., 313 N.W.2d 397, 403 (Minn.1981). But the Conover court recognized that many exceptions have eroded this common-law rule. Id. at 403-04. These exceptions rest primarily on the policy grounds that an employer should not be permitted to escape a direct duty of care for the personal safety of another by delegating that responsibility to the independent contractor for the proper conduct of certain types of work-e.g., work that entails a peculiar risk of physical harm to |

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| **Section 428** | | | | |
| Conover v. N. States Power Co., 313 N.W.2d 397, 399, 403, 407, 408 (Minn. 1981) | § 428. Contractor's Negligence in Doing Work Which Cannot Lawfully Be Done Except Under a Franchise Granted to His Employer (2nd) | An individual or a corporation carrying on an activity which can be lawfully carried on only under a franchise granted by public authority and which involves an unreasonable risk of harm to others, is subject to liability for physical harm caused to such others by the negligence of a contractor employed to do work in carrying on the activity. | Cited in discussion | Appellants also urge it was error for the trial court not to instruct on Restatement sections 424 (precautions required by statute or regulation) and 428 (work which cannot lawfully be done except under a franchise). Both of these sections again create nondelegable duties of the employer to "others." For the reasons already stated, we do not consider these sections applicable to the case here and we hold the trial court properly refused to so instruct. |
| Sutherland v. Barton, 570 N.W.2d 1, 5 n.4 (Minn. 1997) | § 428. Contractor's Negligence in Doing Work Which Cannot Lawfully Be Done Except Under a Franchise Granted to His Employer (2nd) | See above. | Cited in discussion | In Conover, this court dealt specifically with Restatement (Second) of Torts §§ 416, 424, 427 and 428 (1965). 313 N.W.2d at 403. We made reference to sections 416 to 429 of the Restatement, however, in our conclusion that the term "others" in the "pertinent sections" of the Restatement did not include the employees of an independent contractor. Id. at 404. |
| Anderson v. State, Dep't of Natural Res., 674 N.W.2d 748, 758 n.4 (Minn. Ct. App. 2004) | § 428. Contractor's Negligence in Doing Work Which Cannot Lawfully Be Done Except Under a Franchise Granted to His Employer (2nd) | See above. | Cited in support | In Minnesota, the general rule is that the employer of a contractor is not liable for the harm caused by an act or omission of the contractor. Conover v. N. States Power Co., 313 N.W.2d 397, 403 (Minn.1981). But the Conover court recognized that many exceptions have eroded this common-law rule. Id. at 403-04. These exceptions rest primarily on the policy grounds that an employer should not be permitted to escape a direct duty of care for the personal safety of another by delegating that responsibility to the independent contractor for the proper conduct of certain types of work-e.g., work |

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| | | | | that entails a peculiar risk of physical harm to others unless special precautions are taken. Id. at 404. Thus, the so-called nondelegable-duty rule was intended to prevent one from contracting out hazardous work and thereby escaping one's responsibility to the general public and adjoining property owners. |
| **Section 429** | | | | |
| Anderson v. State, Dep't of Natural Res., 674 N.W.2d 748, 758 n.4 (Minn. Ct. App. 2004) | § 429. Negligence in Doing Work Which Is Accepted in Reliance on the Employer's Doing the Work Himself | One who employs an Indep. contractor to perform services for another which are accepted in the reasonable belief that the services are being rendered by the employer or by his servants, is subject to liability for physical harm caused by the negligence of the contractor in supplying such services, to the same extent as though the employer were supplying them himself or by his servants. | Cited in support | In Minnesota, the general rule is that the employer of a contractor is not liable for the harm caused by an act or omission of the contractor. Conover v. N. States Power Co., 313 N.W.2d 397, 403 (Minn.1981). But the Conover court recognized that many exceptions have eroded this common-law rule. Id. at 403-04. These exceptions rest primarily on the policy grounds that an employer should not be permitted to escape a direct duty of care for the personal safety of another by delegating that responsibility to the independent contractor for the proper conduct of certain types of work-e.g., work that entails a peculiar risk of physical harm to others unless special precautions are taken. Id. at 404. Thus, the so-called nondelegable-duty rule was intended to prevent one from contracting out hazardous work and thereby escaping one's responsibility to the general public and adjoining property owners. |
| **Section 431** | | | | |
| Fehling v. Levitan, 382 N.W.2d 901, 906 (Minn. Ct. App. 1986) | § 431. What Constitutes Legal Cause (2nd) | The actor's negligent conduct is a legal cause of harm to another if<br><br>(a) his conduct is a substantial factor in bringing about the harm, and<br><br>(b) there is no rule of law relieving the actor from liability because of the manner in which his negligence has resulted in the harm. | Cited in dissenting opinion | It is for the purpose of avoiding this problem that the "substantial factor" test was adopted and applied in cases where two or more causes are sufficient to cause a death. See Prosser and Keeton on the Law of Torts § 41, at 265-68 (5th ed.1984). At trial, plaintiff objected to the court's decision to give the "but for" instruction. The Minnesota Jury Instruction Guides, adopting the view in Restatement (Second) of Torts § 431 (1965), set forth instructions on direct cause and on |

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| | | | | concurring cause, neither of which include the "but for" test. See JIG II, 140 G-S; JIG II, 141 G-S. The trial court's instructions, however, added the "but for" test to the "substantial factor" test. The instruction as given further complicated an already difficult and confusing rule of law, and as such constituted reversible error. |
| George v. Estate of Baker, 724 N.W.2d 1, 10 (Minn. 2006) | § 431. What Constitutes Legal Cause (2nd) | See above. | Adopted | Minnesota applies the substantial factor test for causation. The negligent act is a direct, or proximate, cause of harm if the act was a substantial factor in the harm's occurrence. 4 Minn. Dist. Judges Ass'n, Minnesota Practice-Jury Instruction Guides, Civil, CIVJIG 27.10 (4th ed.1999); Restatement (Second) of Torts § 431 (1965). |
| **Section 432** | | | | |
| Fehling v. Levitan, 382 N.W.2d 901, 905 (Minn. Ct. App. 1986) | § 432. Negligent Conduct as Necessary Antecedent of Harm (2nd) | (1) Except as stated in Subsection (2), the actor's negligent conduct is not a substantial factor in bringing about harm to another if the harm would have been sustained even if the actor had not been negligent.<br><br>(2) If two forces are actively operating, one because of the actor's negligence, the other not because of any misconduct on his part, and each of itself is sufficient to bring about harm to another, the actor's negligence may be found to be a substantial factor in bringing it about. | Cited in discussion | Under the general instruction, the defendants could properly argue that, if Fehling would have died despite any negligence on their part, their negligence could not have been a substantial factor in causing his death. Cf. Restatement (Second) of Torts § 432 (1965). |
| George v. Estate of Baker, 724 N.W.2d 1, 11 (Minn. 2006) | § 432. Negligent Conduct as Necessary Antecedent of Harm (2nd) | See above. | Adopted | But-for causation, however, is still necessary for substantial factor causation because if the harm would have occurred even without the negligent act, the act could not have been a substantial factor in bringing about the harm. Restatement (Second) of Torts § 432 (1965); Draxton v. Katzmarek, 203 Minn. 161, 164-65, 280 N.W. 288, 290 (1938) ("If |

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| | | | | the accident would have happened even if there had been an absence of excessive speed, such speed was not a material element or substantial factor in bringing it about and hence not a proximate cause."). |
| **Section 433A** | | | | |
| Morlock v. St. Paul Guardian Ins. Co., 650 N.W.2d 154, 163–65 (Minn. 2002) | § 433A. Apportionment of Harm to Causes (2nd) | See above. | Adopted | Our rules have been consistent with the Restatement of Torts rules for allocating between harm resulting from a pre-existing condition for which the defendant is in no way responsible and the further harm which his tortious conduct caused. Restatement (Second) of Torts § 433A (1)(b) cmt.. e (1965); see also Restatement (Third) of Torts: Apportionment of Liability § 26 cmt.. f (2000) ("As long as any person caused only a part of damages, the damages are divisible, irrespective of the timing."). |
| Rowe v. Munye, 702 N.W.2d 729 *passim*(Minn. 2005) | § 433A. Apportionment of Harm to Causes (2nd) | See above. | Adopted | A "necessary corollary" to the rule of holding each defendant liable for the entire harm was "that when the harm can be apportioned on some rational basis, then liability should be proportionate only." Boston, supra, at 284. Apportionment principles were incorporated in the Restatement (Second) of Torts §§ 433A, 433B (1965). These apportionment principles apply to all contributing causes of a single harm and divisible harms. Id. § 433A. Preexisting conditions are divisible harms. Id. § 433A cmt.. e. "[P]re-existing conditions can be apportioned from the incremental harm attributable to the defendant's tortious conduct. [T]he touchstone of apportionment is reliance on the contribution that causes the ultimate harm and not to some actual division of the harm itself." Boston, supra, at 301. Joint and several liability applies to situations involving one "innocent" cause and two or more culpable causes, where either culpable cause would have been sufficient to cause the harm or where both are essential to the harm. Restatement (Second) of Torts § 433A cmt.. i. |

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| Blatz v. Allina Health Sys. 622 N.W.2d 376, 390, 391 (Minn. Ct. App. 2001) | § 433A. Apportionment of Harm to Causes (2nd) | See above. | Cited in support | The principles expressed in the new instruction's last sentence are drawn in part from the rules apportioning liability contained in the Restatement (Second) of Torts §§ 433A & 433B (1965). The restatement's central apportionment rule is that damages may be apportioned among causes when the causes have combined to bring about a single harm if the harm is capable of reasonable division. Restatement, supra, § 433A. The rule provides for liability apportionment among at-fault defendants and also for damage apportionment among innocent causes such as the plaintiff's conduct, a force of nature, or a pre-existing condition. Id. & cmt.s. a, e. Minnesota adopted the Restatement concept of apportioning liability among at-fault defendants in Mathews v. Mills, 288 Minn. 16, 22, 178 N.W.2d 841, 845 (1970). |
| Bondy v. Allen, 635 N.W.2d 244, 250 (Minn. Ct. App. 2001) | § 433A. Apportionment of Harm to Causes (2nd) | See above. | Cited in discussion | No Minnesota case has applied the SII rule to hold a medical defendant jointly and severally liable with the tortfeasor who caused the original injury for which treatment was provided. Restatement (Second) of Torts § 433A cmt.. c (1965) states that an original tortfeasor may be liable not only for harm he inflicted, but also for "additional damages resulting from the negligent treatment of the injury by a physician." But a physician providing treatment may be liable only for additional harm caused by negligent treatment. Id. The Restatement groups physicians and other medical personnel together when addressing the distinct liability of the original tortfeasor for additional harm resulting from efforts of third parties rendering aid to an injured person. Id. § 457 cmt.s. a, b, c. |
| **Section 433B** | | | | |
| Mathews v. Mills, 288 Minn. 16, 22, 178 N.W.2d 841, 845 (Minn. | § 433B. Burden of Proof (2nd) | (1) Except as stated in Subsections (2) and (3), the burden of proof that the tortious conduct of the defendant has | Adopted | The rule as propounded in Ruud v. Grimm, Supra, becomes viable only upon a determination of where the burden of proof of capability of apportionment |

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| 1970) | | caused the harm to the plaintiff is upon the plaintiff.<br>(2) Where the tortious conduct of two or more actors has combined to bring about harm to the plaintiff, and one or more of the actors seeks to limit his liability on the ground that the harm is capable of apportionment among them, the burden of proof as to the apportionment is upon each such actor.<br>(3) Where the conduct of two or more actors is tortious, and it is proved that harm has been caused to the plaintiff by only one of them, but there is uncertainty as to which one has caused it, the burden is upon each such actor to prove that he has not caused the harm. | | lies. In this respect, we feel that the rule adopted in Restatement, Torts (2d) s 433 B(2), is the one by which we should be governed. This section provides:<br><br>'Where the tortious conduct of two or more actors has been combined to bring about harm to the plaintiff, and one or more of the actors seeks to limit his liability on the ground that the harm is capable of apportionment among them, the burden of proof as to the apportionment is upon each such actor.' |
| Northern Petrochem Co. v. Thorsen & Thorshov, Inc., 297 Minn. 118, 128–29, 211 N.W.2d 159, 167–68 (Minn. 1973 | § 433B. Burden of Proof (2nd) | See above. | Cited in support | We also adopted the rule advocated in Restatement, Torts 2d, s 433B(2):<br><br>'Where the tortious conduct of two or more actors has combined to bring about harm to the plaintiff, and one or more of the actors seeks to limit his liability on the ground that the harm is capable of apportionment among them, the burden of proof as to the apportionment is upon each such actor.'<br><br>Finally in Mathews, we set out the roles of the judge and jury where the difficult question of apportionment is raised with respect to any damages properly awarded but which are not, in terms of causation, clearly separable (288 Minn. 23, 178 N.W.2d 845) |
| Kowalske v. Armour & Co., 300 Minn. 301, 307, 220 N.W.2d 268, 272 (Minn. 1974) | § 433B. Burden of Proof (2nd) | See above. | Cited in support | It is essential to note that such rule of joint and several liability applies only when plaintiff is free from negligence. As pointed out in the Mathews case (288 Minn. 22, 178 N.W.2d 845), 'the rule is a |

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| | | | | result of a choice made as to where a loss due to failure of proof (as to the apportionability of damages) shall fall-on an innocent plaintiff or on defendants who are clearly proved to have been at fault.' Such is not the case before us since the plaintiff, deemed 10-percent negligent by the jury, is also at fault in causing the single, indivisible injury. |
| Bixler by Bixler v. Avondale Mills, 405 N.W.2d 428, 430 (Minn. Ct. App. 1987) | § 433B. Burden of Proof (2nd) | See above. | Cited in support | Applying these standards to the present case, we agree with the trial court that this is not a proper case for application of the theory of alternative liability. |
| Canada By and Through Landy v. McCarthy, 567 N.W.2d 496, 507 (Minn. 1997) | § 433B. Burden of Proof (2nd) | See above. | Cited in support | The burden of proving that the harm is capable of being separated lies with each defendant who contends it can be divided. Id. at 22, 178 N.W.2d at 845 (quoting Restatement (Second) of Torts § 433B(2) (1965)). "This placement of the burden of proof is justified by considerations of fairness the rule is a result of a choice made as to where a loss due to failure of proof shall fall-on an innocent plaintiff or on defendants who are clearly proved to have been at fault." Id. Whether the injury is capable of apportionment is a question of law. Id. at 23, 178 N.W.2d at 845. Once the trial court finds that the harm can be apportioned, the question of actual apportionment is a question of fact for the jury. Id. |
| Morlock v. St. Paul Guardian Ins. Co., 650 N.W.2d 154, 163–65 (Minn. 2002) | § 433B. Burden of Proof (2nd) | See above. | Cited in support | Section 433B of the Restatement (Second) addresses the burden of proof and failure to produce evidence justifying apportionment. Restatement (Second) of Torts § 433B cmt.. g (1965). Section 433B (1) states that the plaintiff must prove that the defendant's tortious conduct caused the harm that is subject to potential apportionment. Section 433B (2) says that it is an exception to the rule stated in subsection (1) and provides for burden-shifting in two situations involving multiple tortfeasors. When the tortious |

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| | | | | conduct of two or more defendants has combined to bring about the harm, the defendant seeking to limit liability has the burden as to apportionment; and when the plaintiff sues two or more tortfeasors and proves that at least one of them has caused harm but there is uncertainty as to which one has caused it, the burden is on the defendant to prove that he had not caused the harm. Restatement (Second) of Torts § 433B (2) (1965). Comment "c," in reiterating that subsection (2) is an exception to the general rule that the plaintiff has the burden of establishing that the defendant's tortious conduct caused the harm, suggests that burden-shifting only applies to multiple tortfeasor situations. |
| Rowe v. Munye, 702 N.W.2d 729 *passim* (Minn. 2005) | § 433B. Burden of Proof (2nd) | See above. | Cited in support in concurring opinion | A "necessary corollary" to the rule of holding each defendant liable for the entire harm was "that when the harm can be apportioned on some rational basis, then liability should be proportionate only." Boston, supra, at 284. Apportionment principles were incorporated in the Restatement (Second) of Torts §§ 433A, 433B (1965). These apportionment principles apply to all contributing causes of a single harm and divisible harms. Id. § 433A |
| Blatz v. Allina Health Sys. 622 N.W.2d 376, 390, 391 (Minn. Ct. App. 2001) | § 433B. Burden of Proof (2nd) | See above. | Cited in support | The principles expressed in the new instruction's last sentence are drawn in part from the rules apportioning liability contained in the Restatement (Second) of Torts §§ 433A & 433B (1965). The restatement's central apportionment rule is that damages may be apportioned among causes when the causes have combined to bring about a single harm if the harm is capable of reasonable division. Restatement, supra, § 433A. The rule provides for liability apportionment among at-fault defendants and also for damage apportionment among innocent causes such as the plaintiff's conduct, a force of nature, or a pre-existing condition. Id. & cmt.s. a, e. Minnesota adopted the Restatement concept of apportioning liability among at-fault defendants in Mathews v. Mills, 288 Minn. 16, 22, |

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| | | | | 178 N.W.2d 841, 845 (1970). |
| **Section 434** | | | | |
| Mathews v. Mills, 288 Minn. 16, 23, 178 N.W.2d 841, 845 (Minn. 1970) | § 434. Functions of Court and Jury (2nd) | (1) It is the function of the court to determine<br>(a) whether the evidence as to the facts makes an issue upon which the jury may reasonably differ as to whether the conduct of the defendant has been a substantial factor in causing the harm to the plaintiff;<br>(b) whether the harm to the plaintiff is capable of apportionment among two or more causes; and<br>(c) the questions of causation and apportionment, in any case in which the jury may not reasonably differ.<br><br>(2) It is the function of the jury to determine, in any case in which it may reasonably differ on the issue,<br>(a) whether the defendant's conduct has been a substantial factor in causing the harm to the plaintiff, and<br>(b) the apportionment of the harm to two or more causes. | Adopted | Having decided that the burden of establishing that the injuries in a multiple-accident situation are capable of apportionment rests upon the defendants so claiming, we further hold that it is the function of the trial court to determine whether such burden has been met. Whether or not the harm to the plaintiff is capable of apportionment among two or more causes is a question of law. Once the trial court determines that the harm is capable of apportionment, the question of actual apportionment of damages among several causes becomes one of fact to be determined by the jury. See, Restatement, Torts (2d) s 434(1)(b), and comment D. |
| Northern Petrochem Co. v. Thorsen & Thorshov, Inc., 297 Minn. 118, 129, 211 N.W.2d 159, 168 (Minn. 1973) | § 434. Functions of Court and Jury (2nd) | See above. | Cited in support | In the instant case, the apportionment issue understandably was buried under the multiplicity of issues and arguments raised by the various parties to the lawsuit. While Watson's evidence on the issue of apportionment was far from compelling, it was sufficient to require a determination by the trial court whether the damages to Northern Petro were capable of apportionment. The task of apportionment was unusually difficult in this case because of the problem of isolating the cause of each item of damage. Various reconstruction costs and derivative damages could be viewed as either apportionable or as 'single indivisible injuries.' For example, Watson argues that the building defects |

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| | | | | for which it was responsible could have been repaired in a shorter period of time than those growing out of the defective design and that therefore the derivative damages for loss of use should not have been apportioned by simply using the same ratio as the apportionment of reconstruction costs. |
| Rowe v. Munye, 702 N.W.2d 729, 746–47 (Minn. 2005) | § 434. Functions of Court and Jury (2nd) | See above. | Cited in support in concurring opinion | Restatement (Second) of Torts § 434 spells out the functions of the court and jury. The court determines whether the evidence meets the causation threshold and whether the harm is divisible. Restatement (Second) of Torts § 434(1)(a), (b). If the harm is divisible, the jury determines the apportionment. Id. § 434(2)(b). |
| **Section 435** | | | | |
| Mack v. McGrath, 276 Minn. 419, 427, 150 N.W.2d 681, 686 n.4 (Minn. 1967) | § 435. Foreseeability of Harm or Manner of Its Occurrence (2nd) | (1) If the actor's conduct is a substantial factor in bringing about harm to another, the fact that the actor neither foresaw nor should have foreseen the extent of the harm or the manner in which it occurred does not prevent him from being liable.<br><br>(2) The actor's conduct may be held not to be a legal cause of harm to another where after the event and looking back from the harm to the actor's negligent conduct, it appears to the court highly extraordinary that it should have brought about the harm. | Adopted | The following rule governing foreseeability is adopted in Restatement, Torts (2d) s 435(2): 'The actor's conduct may be held not to be a legal cause of harm to another where after the event and looking back from the harm to the actor's negligent conduct, it appears to the court highly extraordinary that it should have brought about the harm.' See, also, Jacobs v. Draper, 274 Minn. 110, 116, 142 N.W.2d 628, 632; Hanson v. Christensen, 275 Minn. 204, 212, 145 N.W.2d 868, 874; Annotation, 173 A.L.R. 626, 648. |
| **Section 436** | | | | |
| Okrina v. Midwestern Corp., 282 Minn. 400, 404, 165 N.W.2d 259, 262–63 (Minn. 1969) | § 436. Physical Harm Resulting From Emotional Disturbance (2nd) | (1) If the actor's conduct is negligent as violating a duty of care designed to protect another from a fright or other emotional disturbance which the actor should recognize as involving an unreasonable risk of bodily harm, the | Adopted | The Purcell case has not only been the law of Minnesota for over 65 years but now appears to represent the majority view. Robb v. Pennsylvania R. Co. (Del.) 210 A.2d 709; Falzone v. Busch, 45 N.J. 559, 214 A.2d 12; Retatement, Torts (2d) s 436; 2 Harper & James, The Law of Torts, s 18.4; Prosser, |

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| | | fact that the harm results solely through the internal operation of the fright or other emotional disturbance does not protect the actor from liability.<br>(2) If the actor's conduct is negligent as creating an unreasonable risk of causing bodily harm to another otherwise than by subjecting him to fright, shock, or other similar and immediate emotional disturbance, the fact that such harm results solely from the internal operation of fright or other emotional disturbance does not protect the actor from liability<br>(3) The rule stated in Subsection (2) applies where the bodily harm to the other results from his shock or fright at harm or peril to a member of his immediate family occurring in his presence. | | Torts (3 ed.) s 55, p. 349. |
| Dornfield v. Oberg, 503 N.W.2d 115, 118 , 119(Minn. 1993) | § 436. Physical Harm Resulting From Emotional Disturbance (2nd) | See above. | Cited in support | Furthermore, the Restatement defines reckless infliction of emotional distress in the chapter on intentional torts, whereas negligent infliction of emotional distress is defined in the negligence section, thereby further indicating that reckless infliction of emotional distress requires some "intentional" act. Compare Restatement (Second) of Torts § 46 (1965) (discussing the requirements for intentional or reckless infliction of emotional distress) with Restatement (Second) of Torts §§ 312-313 (1965) (defining the conduct which gives rise to an action for negligent infliction of emotional distress) and Restatement (Second) of Torts §§ 436-436A (1965) (describing the rules which determine the responsibility of an actor for negligent infliction of emotional distress). Thus, in order to hold Oberg liable for reckless infliction of emotional distress, this court must find that his actions were intentionally "directed at" respondent's |

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| | | | | husband. |
| Engler v. Ill. Farmers Ins. Co., 706 N.W.2d 764, 771 (Minn. 2005) | § 436. Physical Harm Resulting From Emotional Disturbance (2nd) | See above. | Adopted | In so holding, we find the reasoning of the Restatement (Second) of Torts, explaining the zone of danger approach, persuasive. The Restatement provides that a plaintiff may recover for injury resulting from distress due to witnessing harm or peril to a third party if the defendant's conduct created an unreasonable risk of bodily harm to the plaintiff. Restatement (Second) of Torts §§ 313, 436 (1965). |
| Engler v. Wehmas, 633 N.W.2d 868, 872, 874–75 (Minn. Ct. App. 2001) | § 436. Physical Harm Resulting From Emotional Disturbance (2nd) | See above. | Cited in support in dissenting opinion | Thus, the concerns voiced by Minnesota courts in prior cases limiting recovery of emotional distress damages are simply absent here. There is no danger that respondent's claims are not reliable or genuine because she has met the limits set out by Minnesota courts to "lead to reasonable and consistent results": she was within the zone of danger, feared for her own safety, and has exhibited physical manifestations caused by her emotional distress. |
| **Section 436A** | | | | |
| Dornfield v. Oberg, 503 N.W.2d 115, 118–19 (Minn. 1993) | § 436A. Negligence Resulting in Emotional Disturbance Alone (2nd) | If the actor's conduct is negligent as creating an unreasonable risk of causing either bodily harm or emotional disturbance to another, and it results in such emotional disturbance alone, without bodily harm or other compensable damage, the actor is not liable for such emotional disturbance. | Cited in support | In addition, the cases cited above also require persons to prove that they suffered severe emotional distress with resultant physical injury before recovery is permitted, Stadler, 295 N.W.2d at 553, and proof of physical injury is only a requirement for negligent infliction of emotional distress, not for intentional infliction. See Restatement (Second) of Torts § 436A (1965). Thus, these prior cases are inapposite. The issue in this case is one of first impression for this court. |
| Quill v. Trans World Airlines, Inc., 361 N.W.2d 438, 443 (Minn. Ct. App. 1985) | § 436A. Negligence Resulting in Emotional Disturbance Alone (2nd) | See above. | Cited in support | Our issue remains whether plaintiff has satisfied the physical injury or symptom requirement. This requirement is a judicial obstacle designed to insure a plaintiff's claim is real. See Restatement (Second) of Torts, § 436A, com. b. (1965). Our task is problematic for no clear line can be drawn between |

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| | | | | mental and physical injury. Comment, Negligently Inflicted Mental Distress: The Case for an Independent Tort, 59 Geo.L.J. 1237, 1241 (1971). Cases taking varying positions on what meets the physical injury requirement illustrate the difficulty. |
| Soucek v. Banham, 503 N.W.2d 153, 164 (Minn. Ct. App. 1993) | § 436A. Negligence Resulting in Emotional Disturbance Alone (2nd) | See above. | Cited in support | The Restatement (Second) of Torts also requires physical manifestation of emotional distress before one may recover for negligent infliction of emotional distress. See Restatement (Second) of Torts § 436A (1965). Respondent has made no assertions in the pleadings or elsewhere of physical manifestations of emotional distress he allegedly suffered as a result of the officers' actions. Nor has respondent presented any evidence of this nature. |
| Carlson v. Ill. Farmers Ins. Co., 520 N.W.2d 534, 535, 537 (Minn. Ct. App. 1994) | § 436A. Negligence Resulting in Emotional Disturbance Alone (2nd) | See above. | Cited in support | While driver had duty to protect passenger and her friend from physical harm because they were passengers in his automobile, he had no duty to protect passenger from distress arising from fate of her friend; to hold otherwise would impose on negligent driver liability out of proportion to his culpability. Restatement (Second) of Torts § 436A, comment. |
| Estate of Benson v. Minn. Bd. Of Med., 526 N.W.2d 634, 637 (Minn. Ct. App. 1995) | § 436A. Negligence Resulting in Emotional Disturbance Alone (2nd) | See above. | Cited in discussion | The nature of the damages sought by Benson, while not determinative, also demonstrates the personal nature of the injury alleged. Benson claims damages for the decedent's emotional and physical devastation, and professional humiliation and ostracism. Lawsuits for emotional distress are disfavored even where the plaintiff is alive. See Hubbard v. United Press Int'l, Inc., 330 N.W.2d 428, 438 (Minn.1983) (claims for mental anguish are speculative and likely to lead to fictitious allegations); Eklund v. Vincent Brass & Aluminum Co., 351 N.W.2d 371, 379 (Minn.App.1984) (tort claims seeking damages for intentional infliction of emotional distress are disfavored); Restatement (Second) of Torts § 436A cmt.. b (1965); see generally Michael K. Steenson, The Anatomy of |

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| | | | | Emotional Distress Claims in Minnesota, 19 Wm. Mitchell L.Rev. 1 (1993) (discussing history of emotional distress law and standards for recovery). Because the alleged injuries are so personal, a jury would have to guess on the extent and nature of the decedent's emotional devastation, humiliation and ostracism without his presence and testimony at trial. |
| Engler v. Wehmas, 633 N.W.2d 868, 872, 874–75 (Minn. Ct. App. 2001) | § 436A. Negligence Resulting in Emotional Disturbance Alone (2nd) | See above. | Cited in discussion | Moreover, "[c]ourts historically have been concerned about the reliability of emotional distress claims and have limited liability for those claims." Carlson v. Illinois Farmers Ins. Co., 520 N.W.2d 534, 535 (Minn.App.1994) (citing Restatement (Second) of Torts § 436A cmt.. b (1965)) (other citation omitted). |
| **Section 440** | | | | |
| Rieger v. Zackoski, 321 N.W.2d 16, 25 (Minn. 1982) | § 440. Superseding Cause Defined (2nd) | A superseding cause is an act of a third person or other force which by its intervention prevents the actor from being liable for harm to another which his antecedent negligence is a substantial factor in bringing about. | Cited in support in dissenting opinion | In applying the rule of superseding cause, a defendant's antecedent negligence is immaterial. It may well be that BIR was negligent in allowing Zackoski on the racetrack. However, the totally unforeseeable behavior of Rieger and Zackoski should, in my opinion, justify a jury's relieving appellant of liability even if the original negligence was a substantial factor in bringing about the accident. Restatement (Second) of Torts § 440 comment b (1965) |
| Wartnick v. Moss & Barnett, 490 N.W.2d 108, 113 (Minn. 1992) | § 440. Superseding Cause Defined (2nd) | See above. | Adopted | While the general rule is that a negligent actor is responsible for all injuries which proximately result from a negligent action, there is an exception: the doctrine of superseding cause. The doctrine of superseding cause recognizes that although an actor's negligent actions may have put the plaintiff in the position to be injured, and therefore contributed to the injury, the actual injury may have been caused by an intervening event. That intervention prevents the original negligent actor from being liable for the final injury. See |

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| | | | | Restatement (Second) of Torts [hereinafter Restatement] § 440 (1965). |
| **Section 442** | | | | |
| Rieger v. Zackoski, 321 N.W.2d 16, 21–22 & n.3, 26 (Minn. 1982) | § 442. Considerations Important in Determining Whether an Intervening Force Is a Superseding Cause | The following considerations are of importance in determining whether an intervening force is a superseding cause of harm to another:<br>(a) the fact that its intervention brings about harm different in kind from that which would otherwise have resulted from the actor's negligence;<br>(b) the fact that its operation or the consequences thereof appear after the event to be extraordinary rather than normal in view of the circumstances existing at the time of its operation;<br>(c) the fact that the intervening force is operating Indep.ly of any situation created by the actor's negligence, or, on the other hand, is or is not a normal result of such a situation;<br>(d) the fact that the operation of the intervening force is due to a third person's act or to his failure to act;<br>(e) the fact that the intervening force is due to an act of a third person which is wrongful toward the other and as such subjects the third person to liability to him;<br>(f) the degree of culpability of a wrongful act of a third person which sets the intervening force in motion. | Cited in support in dissenting opinion | It is hard to imagine more foolhardy behavior than to run out in the middle of a racetrack with a speeding car bearing down. No proprietor should be expected to anticipate behavior bordering on madness. BIR's liability for its antecedent negligence should not encompass such extraordinary consequences as those resulting from the intentional, unpredictable acts of Zackoski and Rieger. See Restatement (Second) of Torts § 442 and comments (1965). |
| Wartnick v. Moss & Barnett, 490 N.W.2d 108, 114, 115 (Minn. 1992) | § 442. Considerations Important in Determining Whether an Intervening Force Is a Superseding Cause | See above. | Cited in support | The third element will be satisfied if the intervening cause actively works to bring about a result different from that which would have followed from the original negligence. Wartnick argues that the statute's amendment worked to bring about the very same result which Gainsley's alleged negligence brought about: a costly adverse verdict in a civil |

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| | | | | action. Whether this element is satisfied will depend on the definition of "result." The Restatement calls for an examination of whether:<br><br>(a) the intervention brings about harm different in kind from that which would otherwise have resulted from the actor's negligence.<br><br>Restatement (Second) of Torts, § 442(a) (1965). |
| **Section 442A** | | | | |
| Rieger v. Zackoski, 321 N.W.2d 16, 21, 26 (Minn. 1982) | § 442A. Intervening Force Risked by Actor's Conduct (2nd) | Where the negligent conduct of the actor creates or increases the foreseeable risk of harm through the intervention of another force, and is a substantial factor in causing the harm, such intervention is not a superseding cause. | Cited in support | Initially, we note that it cannot be denied that there is ample evidence to permit a jury to find that BIR was negligent in failing to prevent Zackoski and Herges from gaining access to the racetrack proper. On August 15, 1976, BIR had a security force of significant size positioned around the facility specifically charged with the responsibilities of insuring that its patrons, the spectators, left the premises safely and that unauthorized drivers not move onto the track. The latter responsibility was clearly and negligently unfulfilled in this case. But for BIR's substantial negligence in this regard, Zackoski could not have gained access to the track and driven in a negligent manner, and the accident would not have occurred. BIR's negligence let loose a continuing force which culminated in Rieger's injury. Therefore, we find that the opportunity for Zackoski's negligence was in fact created and "brought about by the original negligence" of BIR. See Restatement (Second) of Torts, §§ 442 A, B (1966). |
| **Section 442B** | | | | |
| Rieger v. Zackoski, 321 N.W.2d 16, 21, 22 & n.3, 26 (Minn. 1982) | § 442B. Intervening Force Causing Some Harm as That Risked by Actor's Conduct (2nd) | Where the negligent conduct of the actor creates or increases the risk of a particular harm and is a substantial factor in causing that harm, the fact that the harm is brought about through the intervention of another | Cited in support | Initially, we note that it cannot be denied that there is ample evidence to permit a jury to find that BIR was negligent in failing to prevent Zackoski and Herges from gaining access to the racetrack proper. On August 15, 1976, BIR had a security force of significant size positioned around the facility |

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| | | force does not relieve the actor of liability, except where the harm is intentionally caused by a third person and is not within the scope of the risk created by the actor's conduct. | | specifically charged with the responsibilities of insuring that its patrons, the spectators, left the premises safely and that unauthorized drivers not move onto the track. The latter responsibility was clearly and negligently unfulfilled in this case. But for BIR's substantial negligence in this regard, Zackoski could not have gained access to the track and driven in a negligent manner, and the accident would not have occurred. BIR's negligence let loose a continuing force which culminated in Rieger's injury. Therefore, we find that the opportunity for Zackoski's negligence was in fact created and "brought about by the original negligence" of BIR. See Restatement (Second) of Torts, §§ 442 A, B (1966). |
| **Section 443** | | | | |
| Rieger v. Zackoski, 321 N.W.2d 16, 22 (Minn. 1982) | § 443. Normal Intervening Force (2nd) | The intervention of a force which is a normal consequence of a situation created by the actor's negligent conduct is not a superseding cause of harm which such conduct has been a substantial factor in bringing about. | Cited in support | BIR also argues that, even if it was negligent in permitting Zackoski to reach the racetrack, Rieger's act of moving onto the track from the infield itself constitutes a superseding cause. We do not find such action by a 19-year-old, first-time visitor to the racetrack to be unforeseeable, especially when one considers that it was not uncommon for spectators to leap the low, infield fence during nonrace periods for a variety of reasons. Once Rieger viewed his friends driving around the track, a situation created by BIR's negligence, it does not seem unusual that he would wish to accompany them around the track. See Restatement (Second) of Torts, § 443, and comment b (1966) (intervening force which is normal consequence of situation created by actor's negligence is not superseding cause; "normal consequence" is defined within context of event as not an extraordinary response to situation). |
| State v. Olson, 435 N.W.2d 530, 534 (Minn. 1989) | § 443. Normal Intervening Force (2nd) | See above. | Cited in support | As the trial court properly ruled, the doctors' conduct was not, as a matter of law, a superseding intervening cause. The medical intervention was a normal, foreseeable consequence of defendant's |

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| | | | | shaking the child. To be a superseding cause, the intervening conduct must be the sole cause of the end result and that is not the case here. Removal of the life support system did not produce a death that would not otherwise have occurred. See generally, Minnesota Practice, JIG 142 (3d ed. 1986) and cases cited; Restatement (Second) of Torts § 443. "In effect, the doctors were just passively stepping aside to let the natural course of events lead from brain death to common law death." State v. Fierro, 124 Ariz. 182, 186, 603 P.2d 74, 78 (1979). |
| Wartnick v. Moss & Barnett, 490 N.W.2d 108, 114 (Minn. 1992) | § 443. Normal Intervening Force (2nd) | See above. | Cited in discussion | More recently, we held that where an intervening event was "a normal, foreseeable consequence" of the original act, the subsequent act was not a superseding intervening cause as a matter of law. State v. Olson, 435 N.W.2d 530, 534 (Minn.1989). The Restatement states it another way:<br>The intervention of a force which is a normal consequence of a situation created by the actor's negligent conduct is not a superseding cause of harm which such conduct has been a substantial factor in bringing about.<br>Restatement (Second) of Torts § 443 (1965).<br>It is not necessary that [a subsequent act] which is done by a third person be "reasonable". It is enough that the [subsequent] act is a normal consequence of the situation created by the [original] actor's negligence.<br>Restatement (Second) of Torts § 443 comment a (1965). |
| Kunza v. Pantze, 527 N.W.2d 846, 849 (Minn. Ct. App. 1995), *reversed*, 531 N.W.2d 839 (Minn. 1995) | § 443. Normal Intervening Force (2nd) | See above. | Cited in support | The court in Smith relied in part on the Restatement, holding that<br>[a]n act done in normal response to the stimulus of the situation created by the actor's negligence is a substantial factor in bringing about the injury and not an independent intervening cause.<br>Id. at 272, 296 N.W. at 134 (citing Restatement (First) of Torts § 443 cmt.. a (1934)). Restatement section 443 now states: |

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| | | | | The intervention of a force which is a normal consequence of a situation created by the actor's negligent conduct is not a superseding cause of harm which such conduct has been a substantial factor in bringing about. Restatement (Second) of Torts § 443 (1965). A comment explains that the section applies to an act committed by the person injured and that the injured person's act need not be "reasonable" (though an unreasonable act may amount to contributory negligence). Id. cmt.. a. In this case, appellant's act may have been a normal response to the situation created by the intoxication (i.e., the physical abuse); therefore, appellant's act may not have severed the chain of causation from Pantze's intoxication to appellant's injuries. |
| **Section 447** | | | | |
| Jacobs v. Draper, 274 Minn. 110, 118, 142 N.W.2d 628, 634 (Minn. 1966) | § 447. Negligence of Intervening Acts (2nd) | The fact that an intervening act of a third person is negligent in itself or is done in a negligent manner does not make it a superseding cause of harm to another which the actor's negligent conduct is a substantial factor in bringing about, if<br>(a) the actor at the time of his negligent conduct should have realized that a third person might so act, or<br>(b) a reasonable man knowing the situation existing when the act of the third person was done would not regard it as highly extraordinary that the third person had so acted, or<br>(c) the intervening act is a normal consequence of a situation created by the actor's conduct and the manner in which it is done is not extraordinarily negligent. | Cited in support | We think it clear also that even had the jury found negligence on the part of Draper a proximate cause of the accident, such negligence would not have been an independent act superseding the negligence of the ice cream dispensers since it was within the realm of reasonable foreseeability. As in the Mackey case, the gist of defendant Ralston's negligence was that he should have realized the danger of just such an accident, with or without some degree of negligence on the part of the passing motorist. Proximate cause is therefore to be determined, in the present case, as a fact in view of the circumstances attending it. See, Restatement, Torts (2 ed.) s 447; Hines v. Westerfield (Ky.) 254 S.W.2d 728; Mackey v. Spradlin, supra. |
| Larson v. Montpetit, 275 Minn. 394, 398, 147 N.W.2d 580, 583 n.4 | § 447. Negligence of Intervening Acts (2nd) | See above. | Cited in support | Since a defendant may not be relieved of liability by an intervening cause which could reasonably be foreseen, Johnson v. Scully Const. Co., 255 Minn. |

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| (Minn. 1966) | | | | 41, 95 N.W.2d 409; Peterson v. Richfield Plaza, Inc., 252 Minn. 215, 89 N.W.2d 712; Crawford v. Woodrich Const. Co., 239 Minn. 12, 57 N.W.2d 648; Eichten v. Central Minn. Co-op. Power Assn., 224 Minn. 180, 28 N.W.2d 862; Restatement, Torts (2d) s 447; Prosser, The Minnesota Court on Proximate Cause, 21 Minn.L.Rev. 19, 39, the issue of superseding cause should not be submitted to the jury unless there might be a reasonable difference of opinion regarding the foreseeability of the intervening act. Strobel v. Chicago, R.I. & P.R. Co., 255 Minn. 201, 96 N.W.2d 195. |
| Rieger v. Zackoski, 321 N.W.2d 16, 22 n.3 (Minn. 1982) | § 447. Negligence of Intervening Acts (2nd) | See above. | Adopted | The record, however, did not reveal any evidence whatsoever tending to establish that Zackoski acted intentionally tortiously. Furthermore, such a claim was not argued to this court on appeal either in the brief or oral argument of appellant BIR. Based upon the record, we can conclude only that Zackoski acted negligently without intent to harm Rieger. Third-party negligence that the original negligent actor should have realized might result from his own negligence does not relieve that actor from liability produced by the third party's intervening negligent act. Id. at § 447; see also id. at § 442B and comment b. |
| **Section 448** | | | | |
| Hilligoss v. Cross Co., 304 Minn. 546, 547, 228 N.W.2d 585, 586 (Minn. 1975) | § 448. Intentionally Tortious or Criminal Acts Done Under Opportunity Afforded by Actor's Negligence (2nd) | The act of a third person in committing an intentional tort or crime is a superseding cause of harm to another resulting therefrom, although the actor's negligent conduct created a situation which afforded an opportunity to the third person to commit such a tort or crime, unless the actor at the time of his negligent conduct realized or should have realized the likelihood that such a situation might be created, and that a third person might avail himself of the | Adopted | As a general rule, a criminal act of a third person is an intervening efficient cause sufficient to break the chain of causation. Anderson v. Theisen, 231 Minn. 369, 43 N.W.2d 272 (1950). However, to be a legally sufficient intervening cause, the criminal act itself must not be reasonably foreseeable. Wallinga v. Johnson, 269 Minn. 436, 131 N.W.2d 216 (1964); Restatement, Torts 2d, ss 302B, 448, 449. The question of foreseeability of an intervening act is normally one for the trial court and should be submitted to a jury only where there might be a reasonable difference of opinion. Strobel v. Chicago, R.I. & P.R. Co., 255 Minn. 201, 96 N.W.2d |

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| | | opportunity to commit such a tort or crime. | | 195 (1959). |
| Rieger v. Zackoski, 321 N.W.2d 16, 22 n.3 (Minn. 1982) | § 448. Intentionally Tortious or Criminal Acts Done Under Opportunity Afforded by Actor's Negligence (2nd) | See above. | Cited in support | We recognize that Zackoski's failure to swerve or to use his brakes prior to colliding with Rieger is nettlesome. If it were shown that Zackoski acted deliberately in a tortious manner then, of course, we would conclude that a superseding cause instruction would be required. See Restatement (Second) of Torts, § 448 (1966). |
| Funchess ex rel. Haynes v. Cecil Newman Corp., 615 N.W.2d 397, 402 (Minn. Ct. App. 2000), *reversed*, 632 N.W.2d 666 (Minn. 2001) | § 448. Intentionally Tortious or Criminal Acts Done Under Opportunity Afforded by Actor's Negligence (2nd) | See above. | Cited in support | An intervening cause is one that comes about after the negligent act. It must come between the negligent act of the actor and the resulting harm, shifting the responsibility for the harm to the intervening act. If the actual harm is caused by an intervening act, the negligent actor is absolved from liability. See Restatement (Second) of Torts § 448 (1965). |
| **Section 449** | | | | |
| Crohn v. Dupre, 291 Minn. 290, 292, 190 N.W.2d 678. 680 (Minn. 1971) | § 449. Tortious or Criminal Acts the Probability of Which Makes Actor's Conduct Negligent (2nd) | If the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious, or criminal does not prevent the actor from being liable for harm caused thereby. | Adopted | The court's instruction regarding superseding cause, although given without objection, was inappropriate because Dupre's act of throwing the lime-cement, negligent or not, could not be a superseding cause. The act was reasonably foreseeable and was, in the words of 2 Restatement, Torts (2d) s 449, Comment b, 'the very event the likelihood of which makes the (landowner) actor's conduct negligent and so subjects the actor to liability |
| Hilligoss v. Cross Co., 304 Minn. 546, 547, 228 N.W.2d 585, 586 (Minn. 1975) | § 449. Tortious or Criminal Acts the Probability of Which Makes Actor's Conduct Negligent (2nd) | See above. | Cited in support | As a general rule, a criminal act of a third person is an intervening efficient cause sufficient to break the chain of causation. Anderson v. Theisen, 231 Minn. 369, 43 N.W.2d 272 (1950). However, to be a legally sufficient intervening cause, the criminal act itself must not be reasonably foreseeable. Wallinga v. Johnson, 269 Minn. 436, 131 N.W.2d 216 (1964); Restatement, Torts 2d, ss 302B, 448, 449. The |

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| | | | | question of foreseeability of an intervening act is normally one for the trial court and should be submitted to a jury only where there might be a reasonable difference of opinion. Strobel v. Chicago, R.I. & P.R. Co., 255 Minn. 201, 96 N.W.2d 195 (1959). |
| Sandborg v. Blue Earth County, 615 N.W.2d 61, 65 (Minn. 2000) | § 449. Tortious or Criminal Acts the Probability of Which Makes Actor's Conduct Negligent (2nd) | See above. | Cited in support | Therefore, comparative fault is not applicable when one party has a duty to protect another party from committing the very harm to be protected against, in this case self-inflicted harm. Because the jail had the duty to protect Sandborg from self-inflicted harm, and that is the same harm on which the decedent's fault would be based, comparative fault is not applicable. |
| **Section 452** | | | | |
| Sandborg v. Blue Earth County, 615 N.W.2d 61, 64 (Minn. 2000) | § 452. Third Person's Failure to Prevent Harm (2nd) | (1) Except as stated in Subsection (2), the failure of a third person to act to prevent harm to another threatened by the actor's negligent conduct is not a superseding cause of such harm.<br><br>(2) Where, because of lapse of time or otherwise, the duty to prevent harm to another threatened by the actor's negligent conduct is found to have shifted from the actor to a third person, the failure of the third person to prevent such harm is a superseding cause. | Adopted | However, the Restatement of Torts recognizes that there are exceptional relationships where:<br><br>because the duty, and hence the entire responsibility for the situation, has been shifted to a third person, the original actor is relieved of liability for the result which follows from the operation of his own negligence. The shifted responsibility means in effect that the duty, or obligation, of the original actor in the matter has terminated, and has been replaced by that of the third person.<br><br>Restatement (Second) of Torts § 452, cmmt. d (1965) (emphasis added). Because the original actor is relieved of his duty in these extraordinary circumstances, he can have no fault to be compared. |
| **Section 457** | | | | |
| Bondy v. Allen, 635 N.W.2d 244, 250 (Minn. Ct. App. 2001) | § 457. Additional Harm Resulting From Efforts to Mitigate Harm Caused by Negligence (2nd) | If the negligent actor is liable for another's bodily injury, he is also subject to liability for any additional bodily harm resulting from normal | Cited in discussion | No Minnesota case has applied the SII rule to hold a medical defendant jointly and severally liable with the tortfeasor who caused the original injury for which treatment was provided. Restatement |

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| | | efforts of third persons in rendering aid which the other's injury reasonably requires, irrespective of whether such acts are done in a proper or a negligent manner. | | (Second) of Torts § 433A cmt.. c (1965) states that an original tortfeasor may be liable not only for harm he inflicted, but also for "additional damages resulting from the negligent treatment of the injury by a physician." But a physician providing treatment may be liable only for additional harm caused by negligent treatment. Id. The Restatement groups physicians and other medical personnel together when addressing the distinct liability of the original tortfeasor for additional harm resulting from efforts of third parties rendering aid to an injured person. Id. § 457 cmt.s. a, b, c. |
| **Section 461** | | | | |
| Rowe v. Munye, 702 N.W.2d 729, 748 (Minn. 2005) | § 461. Harm Increased in Extent by Other's Unforeseeable Physical Condition (2nd) | The negligent actor is subject to liability for harm to another although a physical condition of the other which is neither known nor should be known to the actor makes the injury greater than that which the actor as a reasonable man should have foreseen as a probable result of his conduct. | Cited in dissenting opinion | It has long been recognized that a tortfeasor is liable for all injuries proximately caused by the tortfeasor's negligence, even if such injuries could not have been anticipated. Dellwo v. Pearson, 259 Minn. 452, 455, 107 N.W.2d 859, 861 (1961); Christianson v. Chicago, St. Paul, Minneapolis & Omaha Ry. Co., 67 Minn. 94, 96-97, 69 N.W. 640, 641 (1896). In the context of preexisting physical conditions, this principle is called the eggshell (or thin skull) plaintiff doctrine, and is fundamental to tort law. See, e.g., Restatement (Second) of Torts § 461; Purcell v. St. Paul City Ry. Co., 48 Minn. 134, 139, 50 N.W. 1034, 1035 (1892) ("[A]ny one injured by the negligence must be entitled to recover to the full extent of the injury so caused, without regard to whether, owing to his previous condition of health, he is more or less liable to injury."). |
| **Section 480** | | | | |
| Koval v. Thompson, 272 Minn. 53, 56, 136 N.W.2d 789, 792 n.2 (Minn. 1965) | § 480. Last Clear Chance: Inattentive Plaintiff (2nd) | A plaintiff who, by the exercise of reasonable vigilance, could discover the danger created by the defendant's negligence in time to avoid the harm to him, can recover if, but only if, the defendant | Adopted | In an action based on negligence, the doctrine of discovered peril or that portion of the 'last clear chance' rule which deals with conscious disregard of danger (sometimes misnamed the doctrine of 'willful and wanton negligence') can operate to relieve a plaintiff of the bar of his contributory |

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| | | (a) knows of the plaintiff's situation, and<br>(b) realizes or has reason to realize that the plaintiff is inattentive and therefore unlikely to discover his peril in time to avoid the harm, and<br>(c) thereafter is negligent in failing to utilize with reasonable care and competence his then existing opportunity to avoid the harm. | | negligence when defendant, discovering plaintiff in a position of danger, fails to use reasonable care to avoid injuring him. Under our cases, the doctrine cannot be applied unless it is established that plaintiff's negligence preceded that of defendant as distinguished from operating contemporaneously therewith ( Fonda v. St. Paul City Ry. Co., 71 Minn. 438, 74 N.W. 166); that defendant had actual knowledge of plaintiff's dangerous position in the sense that defendant realized plaintiff's predicament ( Carlson v. Sanitary Farm Dairies, Inc., 200 Minn. 177, 273 N.W. 665); and after such realization, had sufficient time and the then-existing ability to avoid the collision. Westerberg v. Motor Truck Service Co., 158 Minn. 202, 197 N.W. 98. |
| **Section 481** | | | | |
| Victor v. Sell, 301 Minn. 309, 315, 222 N.W.2d 337, 341 (Minn. 1974) | § 481. Intentional Injury (2nd) | The plaintiff's contributory negligence does not bar recovery against a defendant for a harm caused by conduct of the defendant which is wrongful because it is intended to cause harm to some legally protected interest of the plaintiff or a third person. | Adopted | Since the sole theory of liability upon which the jury was instructed was trespass, the trial court erred in explaining contributory negligence and assumption of risk to the jury, indicating they might be defenses, and posing questions about them in the special verdict. Negligence on the part of the plaintiff is not a defense to an intentional tort. Nor, unless it amounts to consent, is assumption of risk. Prosser, Torts (3 ed.) ss 18, 64, 67; 2 Harper and James, Law of Torts, s 22.5; Restatement, Torts 2d, ss 481, 496A to 496G. |
| **Section 483** | | | | |
| Zerby v. Warren, 297 Minn. 134, 139, 141, 210 N.W.2d 58, 62, 63 (Minn. 1973) | § 483. Defense to Violation of Statute (2nd) | The plaintiff's contributory negligence bars his recovery for the negligence of the defendant consisting of the violation of a statute, unless the effect of the statute is to place the entire responsibility for such harm as has occurred upon the defendant. | Adopted | In order to create absolute liability, it must be found that the legislative purpose of such a statute is to protect a limited class of persons from their own inexperience, lack of judgment, inability to protect themselves or to resist pressure, or tendency toward negligence. Restatement, Torts 2d s 483, comment C. See, Prosser, Torts (4 ed.) s 36, p. 201, s 65, p. 425, s 68, p. 453. In instances such as the present case, this legislative intent can be deduced |

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| | | | | from the character of the statute and the background of the social problem and the particular hazard at which the statute is directed. Dusha v. Virginia & Rainy Lake Co., 145 Minn. 171, 176 N.W. 482 (1920); Prosser, Contributory Negligence as Defense to Violation of Statute, 32 Minn.L.Rev. 105. |
| Scott v. Indep. School Dist. No. 709, 256 N.W.2d 485, 488–89 (Minn. 1977) | § 483. Defense to Violation of Statute (2nd) | See above. | Cited in support | The trial court also found that violation of the statute by the student did not constitute contributory negligence. Generally, violations of statutes, as negligence per se, permit consideration of contributory negligence. See, Prosser, Contributory Negligence as Defense to Violation of Statute, 32 Minn.L.Rev. 105. However, in certain instances it has been found that by enacting the given legislation, the legislature intended to protect a limited class of persons from their own inexperience, lack of judgment, inability to protect themselves or to resist pressure, or tendency toward negligence. Restatement, Torts 2d s 483, Comment c. |
| Seim v. Garavalia, 306 N.W.2d 806, 811–12 (Minn. 1981) | § 483. Defense to Violation of Statute (2nd) | See above. | Cited in support | The doctrine of absolute liability was recognized before enactment of the comparative negligence statute with reference to negligence per se in Dart v. Pure Oil Co., 223 Minn. 526, 27 N.W.2d 555 (1947). In Dart, the court recognized the existence of an exceptional class of statutes that, by legislative design, do not permit the defense of contributory negligence when it is found that the statute "was intended for the protection of a limited class of persons from their inability to protect themselves." Id. at 535, 27 N.W.2d at 560. Types of statutes included in this category are child labor statutes, statutes for the protection of intoxicated persons, and statutes prohibiting sale of dangerous articles to minors. Id. at 536, 27 N.W.2d at 560; see Restatement (Second) of Torts s 483, Comment c (1965). |

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| VanWagner v. Mattison, 533 N.W.2d 75, 78 (Minn. Ct. App. 1995) | § 483. Defense to Violation of Statute (2nd) | See above. | Cited in support | In order to create absolute liability, it must be found that the legislative purpose of such a statute is to protect a limited class of persons from their own inexperience, lack of judgment, inability to protect themselves or to resist pressure, or tendency toward negligence. Id. at 139, 210 N.W.2d at 62 (citing Restatement (Second) of Torts § 483 cmt.. c (1965)). The court reviewed the three categories of "exceptional statutes" in Dart, and concluded that a statute prohibiting the sale of a certain airplane glue to minors fell within the second category because it concerned the sale of a dangerous article. Id. at 140, 210 N.W.2d at 62. Consequently, the supreme court held that the violation of the airplane glue statute created absolute liability and that the defenses of contributory negligence and assumption of the risk were thus precluded. Id. |
| **Section 485** | | | | |
| Weber v. Stokely-Van Camp, Inc., 274 Minn. 482, 488, 144 N.W.2d 540, 543 (Minn. 1966) | § 485. Imputed Negligence: General Principle (2nd) | Except as stated in §§ 486, 491, and 494, a plaintiff is not barred from recovery by the negligent act or omission of a third person. | Adopted | Had s 495 in the original draft been adopted in cases involving the masterservant relationship and others where contributory negligence is imputed to a faultless plaintiff it would have been more in harmony with our concept of negligence based on fault. In view of the fact that imputed negligence has now been abandoned in Restatement, Torts (2d) as to relationships where it formerly applied, it is difficult to find any tenable reason why it should be retained in a master-servant relationship where the master is entirely without fault. |
| Milbank Mut. Ins. Co. v. U.S. Fid. and Guar. Co., 332 N.W.2d 160, 165 (Minn. 1983) | § 485. Imputed Negligence: General Principle (2nd) | See above. | Cited in support | The enactment of section 170.54 in 1945 reflects the public policy of this state that owners of motor vehicles shall be responsible for torts committed by permittees in the use thereof. The enactment of the statute changed the common law. This court has recognized that public policy dictates that the statute be accorded the construction that will achieve the purpose of giving to persons injured by the negligent operation of automobiles "an |

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| | | | | approximate certainty" of an effective recovery by making the owner who lent his vehicle to another responsible as well as the possible or probable irresponsible operator. Hutchings v. Bourdages, 291 Minn. 211, 189 N.W.2d 706 (1971). See also Restatement (Second) of Torts § 485, comment b (1966). |
| **Section 486** | | | | |
| Pierson v. Edstrom, 286 Minn. 164, 169, 174 N.W.2d 712, 715 (Minn. 1970) | § 486. Master and Servant (2nd) | A master is barred from recovery against a negligent defendant by the negligence of his servant acting within the scope of his employment. | Cited in support | The Weber case on its facts applied only to master-servant situations and other courts, textwriters, and the Restatement all considered Weber as authority limited to those situations. See, Nagele-Kelly Mfg. Co. v. Hannak, 13 Mich.App. 427, 164 N.W.2d 540; Wilson v. G.N. Ry. Co. (So.Dak.) 157 N.W.2d 19; Jasper v. Freitag (No.Dak.) 145 N.W.2d 879; Pinaglia v. Beaulieu, 28 Conn.Sup. 90, 250 A.2d 522; Note, 51 Minn.L.Rev. 377; Note, 42 Wash.L.Rev. 662; Comment, 24 Wash. & Lee L.Rev. 126; Note, 16 DePaul L. Rev. 478; Note, 20 Ark.L.Rev. 380; and Restatement in the Courts, 1967 Supp., Torts, s 486. If Weber completely abolished imputed contributory negligence, then it would be abolished where a beneficiary sued under a wrongful death act, Restatement, Torts (2d) s 494, and we do not believe that the reasons which prompted us to abolish it as to master-servant are applicable in that situation. We hold that Weber abolished the imputed contributory negligence rule only in master-servant context and was not intended to decide joint-enterprise cases. |
| **Section 487** | | | | |
| Pierson v. Edstrom, 286 Minn. 164, 169, 174 N.W.2d 712, 715 (Minn. 1970) | § 487. Husband and Wife (2nd) | The negligence of husband or wife does not bar the other spouse from recovery for his or her own physical harm. | Cited in discussion | The rule which imputes contributory negligence in these situations is a result of judicial logic and reasoning. The master was held liable to third parties for the negligence of his servant and joint venturers were held liable to third parties for the negligence of one; therefore, it followed that they would be held accountable for the contributory |

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| | | | | negligence of the servant or co-adventurer. See, Gregory, Vicarious Responsibility and Contributory Negligence, 41 Yale L.Rev. 831. This became known as the both-ways rule. At one time it was applicable in many other situations where any relationship existed between plaintiff and a contributorially negligent person. Those situations where recovery was formerly barred by contributory negligence of another but is no longer, as listed in Restatement, Torts (2d), are: Husband and wife, s 487; parent and child, s 488; passenger or guest in vehicle, s 490; contributory negligence of one beneficiary under wrongful death statute, s 493. The rule has been dropped by Restatement, Torts (2d) in all but these three situations: Master and servant, s 486; joint enterprise, s 491; and wrongful death where deceased was negligent, s 494. |
| **Section 488** | | | | |
| Pierson v. Edstrom, 286 Minn. 164, 169, 174 N.W.2d 712, 715 (Minn. 1970) | § 488. Parent and Child (2nd) | (1) A child who suffers physical harm is not barred from recovery by the negligence of his parent, either in the parent's custody of the child or otherwise.<br><br>(2) A parent who suffers physical harm is likewise not barred from recovery by the negligence of his child. | Cited in discussion | The rule which imputes contributory negligence in these situations is a result of judicial logic and reasoning. The master was held liable to third parties for the negligence of his servant and joint venturers were held liable to third parties for the negligence of one; therefore, it followed that they would be held accountable for the contributory negligence of the servant or co-adventurer. See, Gregory, Vicarious Responsibility and Contributory Negligence, 41 Yale L.Rev. 831. This became known as the both-ways rule. At one time it was applicable in many other situations where any relationship existed between plaintiff and a contributorially negligent person. Those situations where recovery was formerly barred by contributory negligence of another but is no longer, as listed in Restatement, Torts (2d), are: Husband and wife, s 487; parent and child, s 488; passenger or guest in vehicle, s 490; contributory negligence of one beneficiary under wrongful death statute, s 493. The rule has been dropped by Restatement, Torts (2d) in all but these three situations: Master and servant, s 486; |

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| **Section 489** | | | | |
| Weber v. Stokely-Van Camp, Inc., 274 Minn. 482, 485, 144 N.W.2d 540, 541 n.1 (Minn. 1966) | § 489. Bailees (2nd) | The negligence of a bailee of a chattel does not bar the bailor from recovery for harm to the chattel or himself. | Cited in support | While plaintiff does not seriously dispute the existing rule, he argues that the rule is unjust and ought to be abandoned. There is much merit in his position. In Christensen v. Hennepin Transp. Co., Inc., 215 Minn. 394, 10 N.W.2d 406, 147 A.L.R. 945, we held the negligence of a bailee was not to be imputed to a bailor in an action by the plaintiff-bailor against a third party to recover damages for personal injuries, even though under our Financial Responsibility Act, Minn.St. 170.54, the bailor would be liable to a third party injured by the negligence of the bailee. |
| **Section 490** | | | | |
| Pierson v. Edstrom, 286 Minn. 164, 169, 174 N.W.2d 712, 715 (Minn. 1970) | § 490. Passenger or Guest in Vehicle (2nd) | A passenger or guest in a vehicle is not barred from recovery for harm resulting from the negligence of a third person by the negligence of his carrier or host. | Cited in discussion | The rule which imputes contributory negligence in these situations is a result of judicial logic and reasoning. The master was held liable to third parties for the negligence of his servant and joint venturers were held liable to third parties for the negligence of one; therefore, it followed that they would be held accountable for the contributory negligence of the servant or co-adventurer. See, Gregory, Vicarious Responsibility and Contributory Negligence, 41 Yale L.Rev. 831. This became known as the both-ways rule. At one time it was applicable in many other situations where any relationship existed between plaintiff and a contributorially negligent person. Those situations where recovery was formerly barred by contributory negligence of another but is no longer, as listed in Restatement, Torts (2d), are: Husband and wife, s 487; parent and child, s 488; passenger or guest in vehicle, s 490; contributory negligence of one beneficiary under wrongful death statute, s 493. The rule has been dropped by Restatement, Torts (2d) in all but these three situations: Master and servant, s 486; |

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| **Section 491** | | | | |
| Pierson v. Edstrom, 286 Minn. 164, 169, 174 N.W.2d 712, 715 (Minn. 1970) | § 491. Joint Enterprise (2nd) | (1) Any one of several persons engaged in a joint enterprise, such as to make each member of the group responsible for physical harm to other persons caused by the negligence of any member, is barred from recovery against such other persons by the negligence of any member of the group.<br><br>(2) Any person engaged in such a joint enterprise is not barred from recovery against the member of the group who is negligent, but is barred from recovery against any other member of the group. | Cited in discussion | The rule which imputes contributory negligence in these situations is a result of judicial logic and reasoning. The master was held liable to third parties for the negligence of his servant and joint venturers were held liable to third parties for the negligence of one; therefore, it followed that they would be held accountable for the contributory negligence of the servant or co-adventurer. See, Gregory, Vicarious Responsibility and Contributory Negligence, 41 Yale L.Rev. 831. This became known as the both-ways rule. At one time it was applicable in many other situations where any relationship existed between plaintiff and a contributorially negligent person. Those situations where recovery was formerly barred by contributory negligence of another but is no longer, as listed in Restatement, Torts (2d), are: Husband and wife, s 487; parent and child, s 488; passenger or guest in vehicle, s 490; contributory negligence of one beneficiary under wrongful death statute, s 493. The rule has been dropped by Restatement, Torts (2d) in all but these three situations: Master and servant, s 486; joint enterprise, s 491; and wrongful death where deceased was negligent, s 494. |
| **Section 493** | | | | |
| Pierson v. Edstrom, 286 Minn. 164, 169, 174 N.W.2d 712, 715 (Minn. 1970) | § 493. Beneficiary Under a Death Statute (2nd) | (1) Unless otherwise provided by statute the contributory negligence of one beneficiary under a death statute does not bar recovery for the benefit of any other beneficiary.<br><br>(2) Whether the contributory negligence of a beneficiary under a death statute bars or reduces recovery to the extent of his own benefit | Cited in discussion | The rule which imputes contributory negligence in these situations is a result of judicial logic and reasoning. The master was held liable to third parties for the negligence of his servant and joint venturers were held liable to third parties for the negligence of one; therefore, it followed that they would be held accountable for the contributory negligence of the servant or co-adventurer. See, Gregory, Vicarious Responsibility and Contributory Negligence, 41 Yale L.Rev. 831. This became known |

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| | | depends upon the statute. | | as the both-ways rule. At one time it was applicable in many other situations where any relationship existed between plaintiff and a contributorially negligent person. Those situations where recovery was formerly barred by contributory negligence of another but is no longer, as listed in Restatement, Torts (2d), are: Husband and wife, s 487; parent and child, s 488; passenger or guest in vehicle, s 490; contributory negligence of one beneficiary under wrongful death statute, s 493. The rule has been dropped by Restatement, Torts (2d) in all but these three situations: Master and servant, s 486; joint enterprise, s 491; and wrongful death where deceased was negligent, s 494. |
| **Section 494** | | | | |
| Schwalich v. Guenther, 282 Minn. 504, 507, 166 N.W.2d 74, 77 n.2 (Minn. 1969) | § 494. Negligence of Person for Whose Death or Loss of Services Action is Brought (2nd) | The plaintiff is barred from recovery for an invasion of his legally protected interest in the health or life of a third person which results from the harm or death of such third person, if the negligence of such third person would have barred his own recovery. | Cited in support | The trial court also granted defendant summary judgment on Melchior Schwalich's claim for his wife's medical and hospital expenses resulting from the accident. In Peters v. Bodin, 242 Minn. 489, 65 N.W.2d 917, we held that a wife's negligence while driving an automobile is imputed to her husband in an action by him to recover her medical expenses. This holding was based upon the well-established rule that such a claim is purely derivative so that if the wife herself could not recover for such damages, her husband's right is also barred. Since Emma Schwalich is precluded from recovering these expenses because of her negligence, her husband is also precluded. |
| Pierson v. Edstrom, 286 Minn. 164, 169, 174 N.W.2d 712, 715 (Minn. 1970) | § 494. Negligence of Person for Whose Death or Loss of Services Action is Brought (2nd) | See above. | Cited in discussion | The rule which imputes contributory negligence in these situations is a result of judicial logic and reasoning. The master was held liable to third parties for the negligence of his servant and joint venturers were held liable to third parties for the negligence of one; therefore, it followed that they would be held accountable for the contributory negligence of the servant or co-adventurer. See, Gregory, Vicarious Responsibility and Contributory Negligence, 41 Yale L.Rev. 831. This became known |

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| **Section 495** | | | | |
| Weber v. Stokely-Van Camp, Inc., 274 Minn. 482, 489, 144 N.W.2d 540, 544 (Minn. 1966) | § 495. Failure to Control Negligent Third Person (2nd) | A plaintiff is barred from recovery if the negligence of a third person is a legally contributing cause of his harm, and the plaintiff has been negligent in failing to control the conduct of such person. | Cited in discussion | Had s 495 in the original draft been adopted in cases involving the masterservant relationship and others where contributory negligence is imputed to a faultless plaintiff it would have been more in harmony with our concept of negligence based on fault. In view of the fact that imputed negligence has now been abandoned in Restatement, Torts (2d) as to relationships where it formerly applied, it is difficult to find any tenable reason why it should be retained in a master-servant relationship where the master is entirely without fault. |
| **Section 496C** | | | | |
| Evanson v. Jerowski, 308 Minn. 113, 119, 241 N.W.2d 636, 640 (Minn. 1976) | § 496C. Implied Assumption of Risk (2nd) | (1) Except as stated in Subsection (2), a plaintiff who fully understands a risk of harm to himself or his things caused by the defendant's conduct or by the condition of the defendant's land or chattels, and who nevertheless voluntarily chooses to enter or remain, or to permit his things to enter or remain within the area of that risk, under circumstances that manifest his willingness to accept it, is not entitled | Cited in support | It is not every deliberate encountering of a known danger which is reasonably to be interpreted as evidence of such consent. The jaywalker who dashes into the street in the middle of the block, in the path of a stream of cars driven in excess of the speed limit, certainly does not manifest consent that they shall use no care and run him down. On the contrary, he is insisting that they shall take immediate precautions for his safety; and while this is certainly contributory negligence, it is not assumption of risk. This is undoubtedly the most |

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| | | to recover for harm within that risk.<br><br>(2) The rule stated in Subsection (1) does not apply in any situation in which an express agreement to accept the risk would be invalid as contrary to public policy. | | frequent error of attorneys, and even of the courts, in dealing with the defense.'<br><br>See, also, Restatement, Torts 2d, s 496 C, Comment H.<br><br>As applied to the facts asserted by respondents, while appellant may well have deliberately encountered the danger of respondents' approaching automobile, he had every reason to expect that respondents would act reasonably and take immediate precautions to avoid hitting him. |
| **Section 496D** | | | | |
| Parr v. Hamnes, 303 Minn. 333, 339, 228 N.W.2d 234, 238 & n.2 (Minn. 1975) | § 496D. Knowledge and Appreciation of Risk (2nd) | Except where he expressly so agrees, a plaintiff does not assume a risk of harm arising from the defendant's conduct unless he then knows of the existence of the risk and appreciates its unreasonable character. | Cited in discussion in footnote 2 | Defendants contend that even if plaintiff was not specifically aware of the repositioning of the ladder that knowledge should be imputed to him because the ladder was in plain sight and is a simple tool with which it must be assumed he is familiar. While that legal theory is applicable with respect to obvious dangers such as the slipperiness of ice or the danger of falling objects to one who is walking under a ladder on a busy construction site, we do not believe it is applicable here. |
| **Division 2 Negligence Chapter 17A Assumption of Risk- General Materials** | | | | |
| Victor v. Sell, 222 N.W.2d 337 (Minn. 1974) | | | Cited in support | Cit. in sup. ss 496A through 496G which comprise all of Ch. 17A. The plaintiff sued to recover damages for personal injuries sustained when he fell from a ladder, which was leaning against his own house, onto a radiator discarded by his neighbor which was allegedly on the plaintiff's property. In affirming a judgment for the defendant, the court held that the jury charge was sufficient to convey the idea that an intentional placing of the radiator on the plaintiff's property would constitute a trespass and that since the jury found that there was no trespass, the trial court did not commit reversible error in explaining contributory negligence and assumption of risk to |

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| | | | | the jury, even though these were not defenses to the plaintiff's action. |
| Andren v. White-Rodgers Co., 465 N.W.2d 102 (Minn. Ct. App. 1991) | | | Cited in support | §§ 496A-496E, comprising most of Ch. 17A, cit. in sup. Plaintiff was severely burned when liquid propane gas leaking from a space heater exploded in his basement. He sued the manufacturer and the retailer of the heater alleging strict liability, breach of warranty, and negligence. The trial court granted summary judgment for the manufacturer. Affirming, the court of appeals held that plaintiff's claims were barred by the doctrine of primary assumption of the risk. Where plaintiff knew that liquid propane gas could explode if exposed to a spark or flame, and appreciated the risk because he recognized the smell of gas in the basement, his lighting of a cigarette in a gas-filled room was a voluntary acceptance of a known danger, relieving the defendant of liability. |
| **Section 496E** | | | | |
| Peterson v. W.T. Rawleigh Co., 274 Minn. 495, 498, 500, 144 N.W.2d 555, 559 & n.5 (Minn. 1966) | § 496E. Necessity of Voluntary Assumption (2nd) | (1) A plaintiff does not assume a risk of harm unless he voluntarily accepts the risk.<br><br>(2) The plaintiff's acceptance of a risk is not voluntary if the defendant's tortious conduct has left him no reasonable alternative course of conduct in order to<br>(a) avert harm to himself or another, or<br>(b) exercise or protect a right or privilege of which the defendant has no right to deprive him. | Adopted | In a number of Minnesota cases we have held that where the dilemma is created by defendant's tortious conduct, a plaintiff is not necessarily guilty of assuming a risk encountered under compulsion which leaves him with no reasonable alternatives. Thus, in Behrendt v. Ahlstrand, 264 Minn. 10, 19, 118 N.W.2d 27, 33, on which plaintiff relies, we noted that defendant had 'failed to present any evidence to show what safer approaches or exits had been made available to plaintiff as a business invitee.' |
| **Section 496F** | | | | |
| Armstrong v. Mailand, 284 N.W.2d 343, 350 (Minn. 1979) | § 496F. Violation of Statute (2nd) | The plaintiff's assumption of risk bars his recovery for the defendant's violation of a statute, unless such a | Cited in support | The theories of recovery advanced against the other defendants are negligence per se, strict liability for an abnormally dangerous activity, and strict |

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| | | result would defeat a policy of the statute to place the entire responsibility for such harm as has occurred upon the defendant. | | products liability. We have little difficulty concluding that primary assumption of the risk precludes recovery in an action predicated on negligence per se. Negligence per se merely involves a type of negligence, and therefore the doctrines barring recovery in negligence actions generally bar recovery in actions based on negligence per se. See, Scott v. Independent School Dist. No. 709, 256 N.W.2d 485, 488 (Minn.1977); Restatement, Torts (2d), s 496F. Because we have concluded a fireman's primary assumption of the risk may, under the proper circumstances, preclude recovery on the basis of a landowner's negligence, we conclude similarly that primary assumption of the risk may preclude recovery in an action predicated upon negligence per se. |
| **Section 500** | | | | |
| Kempa v. E.W. Coons Co., 370 N.W.2d 414, 421 (Minn. 1985) | § 500. Reckless Disregard of Safety Defined (2nd) | The actor's conduct is in reckless disregard of the safety of another if he does an act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent. | Cited in support | We have said that reckless conduct includes willful and wanton disregard for the safety of others, and we have also pointed out that reckless misconduct differs from intentional wrongdoing in one very important particular-the reckless act is intended by the actor, but the harm is not. State v. Bolsinger, 221 Minn. 154, 157-58, 21 N.W.2d 480, 484-85 (1946). See Restatement, Second, Torts § 500, comment f. (1965). |
| Dornfield v. Oberg, 503 N.W.2d 115, 118–19 (Minn. 1993) | § 500. Reckless Disregard of Safety Defined (2nd) | See above. | Cited in support | In contrast, section 46(2) clearly requires that the reckless conduct be "directed at" a third party, thereby requiring some intentional act on the part of the actor. Restatement (Second) of Torts § 46(2) (1965). In fact, the Restatement defines "recklessness" as an intentional act with unintended consequences: "While an act to be reckless must be intended by the actor, the actor does not intend to cause the harm which results from it." Restatement |

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| | | | | (Second) of Torts § 500 cmt.. f (1965). Thus, in order to qualify as "reckless" within the meaning of section 46, the act itself must be intentional. |
| Schumacher v. Schumacher, 676 N.W.2d 685, 692 (Minn. Ct. App. 2004) | § 500. Reckless Disregard of Safety Defined (2nd) | See above. | Cited in support | The Restatement (Second) of Torts defines recklessness as follows:<br>The actor's conduct is in reckless disregard of the safety of another if he does an act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent. Restatement (Second) of Torts § 500, at 587. |
| **Division 3 – Strict Liability** | | | | |
| **Section 511** | | | | |
| Matson v. Kivimaki, 294 Minn. 140, 151, 200 N.W.2d 164, 170 (Minn. 1972) | § 511. Liability to Trespassers (2nd) | A possessor of land is not subject to strict liability to one who intentionally or negligently trespasses upon the land, for harm done to him by a wild animal or an abnormally dangerous domestic animal that the possessor keeps on the land, even though the trespasser has no reason to know that the animal is kept there. | Cited in discussion | This was an action to recover for injuries sustained by a 2 1/2-year-old boy who was bitten by a dog as he reached through defendant's fence. This court held that, as a rule of general application, it is improper to include in instruction to the jury a comparison between the utility of keeping a domestic animal and the risk to children involved; the court held further that the evidence in this case gave no basis for submitting to the jury the question of the viciousness of the dog where only two prior occasions involving nipping of hands were shown. |
| **Section 512** | | | | |
| Matson v. Kivimaki, 294 Minn. 140, 151, 200 N.W.2d 164, 170 (Minn. 1972) | § 512. Liability to Trespassers for Negligence (2nd) | The rules as to the liability of a possessor of land to a trespasser on the land for the possessor's negligence in failing to prevent harm to the trespasser from a wild animal or an abnormally dangerous domestic animal kept on the land are the same as for other artificial conditions or for | Cited in discussion | As a rule of general application, we hold that it is improper under the decisions in Minnesota to include in these instructions a comparison between the utility of keeping a domestic animal and the risk to the children involved. |

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| **Section 514** | | | | |
| Gilbert v. Christiansen, 259 N.W.2d 896, 897, 898 n.2 (Minn. 1977) | § 514. Harborers of Wild Animals or Abnormally Dangerous Domestic Animals (2nd) | One who, although not in possession, harbors a wild animal or an abnormally dangerous domestic animal, is subject to the same liability as if he were in possession of it. | Cited in support | Nor is the mere right to exclude dogs a sufficient ground to make Towns Edge an insurer of the conduct of dogs residing in the apartment complex. Other courts have implicitly agreed by failing to find a landlord responsible on that basis alone for a tenant's pet. |
| **Section 519** | | | | |
| Ferguson v. N. States Power Co., 307 Minn. 26, 32, 239 N.W.2d 190, 193 n.2 (Minn. 1976) | § 519. General Principle (2nd) | (1) One who carries on an abnormally dangerous activity is subject to liability for harm to the person, land or chattels of another resulting from the activity, although he has exercised the utmost care to prevent the harm.<br><br>(2) This strict liability is limited to the kind of harm, the possibility of which makes the activity abnormally dangerous. | Cited in discussion | We considered the risk so unusual that we requested further argument, both from the parties and amici curiae, on whether the maintenance of an uninsulated high-voltage transmission line constitutes an 'abnormally dangerous activity,' thereby subjecting the owner of the line to strict liability for harm caused another as a result of coming in contact with the line. When the proposed. Restatement sections quoted in footnote 2 below are applied to the circumstances of this case, a convincing argument can be made for holding the utility strictly liable. Moreover, spreading the cost of serious injury over all consumers of electricity is equitably more appealing. However, the court is persuaded by the amicus briefs which detail the severe economic consequences which may be sustained by the many small electric utilities in the state by the abrupt imposition of such a rule. We therefore decline to decide this issue at this time; however, we do call this matter to the attention of the legislature which is better equipped to resolve economic problems of this nature. |
| Mahowald v. Minn. Gas Co., 344 N.W.2d 856 *passim*(Minn. 1984) | § 519. General Principle (2nd) | See above. | Expressly not adopted in this instance | In none of these cases did we apply those sections, nor has our attention been directed to any other case where we did apply them. Furthermore, our research reveals that no other court has extended the rules of sections 519 and 520 of the Restatement |

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| | | | | (Second) of Torts so as to impose strict liability under these circumstances. While these decisions are not binding on us as authority, nevertheless they are persuasive in that they indicate the number of courts which have considered the standard of liability and which have opted, on public policy grounds, for the negligence standard. All jurisdictions, with minor variation, impose a high standard of care on the gas distributor-care commensurate with the risk involved. In the case of escaping natural gas, the risk is great because it is invisible, highly dangerous to person and property and, when it has leached through the soil, odorless. |
| **Section 520** | | | | |
| Ferguson v. N. States Power Co., 307 Minn. 26, 32, 239 N.W.2d 190, 193 n.2 (Minn. 1976) | § 520. Abnormally Dangerous Activities (2nd) | In determining whether an activity is abnormally dangerous, the following factors are to be considered:<br>(a) existence of a high degree of risk of some harm to the person, land or chattels of others;<br>(b) likelihood that the harm that results from it will be great;<br>(c) inability to eliminate the risk by the exercise of reasonable care;<br>(d) extent to which the activity is not a matter of common usage;<br>(e) inappropriateness of the activity to the place where it is carried on; and<br>(f) extent to which its value to the community is outweighed by its dangerous attributes. | Cited in discussion | We considered the risk so unusual that we requested further argument, both from the parties and amici curiae, on whether the maintenance of an uninsulated high-voltage transmission line constitutes an 'abnormally dangerous activity,' thereby subjecting the owner of the line to strict liability for harm caused another as a result of coming in contact with the line. [Footnote 2] When the proposed. Restatement sections quoted in footnote 2 below are applied to the circumstances of this case, a convincing argument can be made for holding the utility strictly liable. Moreover, spreading the cost of serious injury over all consumers of electricity is equitably more appealing. However, the court is persuaded by the amicus briefs which detail the severe economic consequences which may be sustained by the many small electric utilities in the state by the abrupt imposition of such a rule. We therefore decline to decide this issue at this time; however, we do call this matter to the attention of the legislature which is better equipped to resolve economic problems of this nature. |
| Mahowald v. Minn. Gas Co., 344 N.W.2d 856 | § 520. Abnormally Dangerous Activities (2nd) | See above. | Expressly not adopted in this | our research reveals that no other court has extended the rules of sections 519 and 520 of the |

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| *passim*(Minn. 1984) | | | instance | Restatement (Second) of Torts so as to impose strict liability under these circumstances. See W. Prosser, Law of Torts § 78, at 510 (4th ed. 1971). The majority of the court in New Meadows Holding Co. v. Washington Water Power Co., 34 Wash.App. 25, 659 P.2d 1113 (1983), indicated that its research revealed no jurisdiction which had imposed strict liability for accidents arising out of escaping gas from lines maintained in the public streets. On the other hand, many jurisdictions have adopted the negligence standard. While these decisions are not binding on us as authority, nevertheless they are persuasive in that they indicate the number of courts which have considered the standard of liability and which have opted, on public policy grounds, for the negligence standard. All jurisdictions, with minor variation, impose a high standard of care on the gas distributor-care commensurate with the risk involved. In the case of escaping natural gas, the risk is great because it is invisible, highly dangerous to person and property and, when it has leached through the soil, odorless. |
| Cairl v. City of St. Paul, 268 N.W.2d 908, 911 (Minn. 1978) | § 520. Abnormally Dangerous Activities (2nd) | See above. | Cited in discussion | This passage, however, taken from Restatement, Torts, s 520, Comment e, is in reference to an enormous automotive vehicle whose size and weight could crush water and gas mains under a highway. |
| **Section 521** | | | | |
| Cairl v. City of St. Paul, 268 N.W.2d 908, 911 (Minn. 1978) | § 521. Abnormally Dangerous Activity Carried on in Pursuance of a Public Duty (2nd) | The rules as to strict liability for abnormally dangerous activities do not apply if the activity is carried on in pursuance of a public duty imposed upon the actor as a public officer or employee or as a common carrier. | Cited in discussion | Furthermore, Restatement, Torts, s 521, which is cited in Luthringer, provides that the doctrine of ultrahazardous activities "does not apply if the activity is carried on in pursuance of a public duty imposed upon the actor as a public officer or employee ." A similar exclusion is contained in the Restatement, Torts 2d, s 521, with respect to the doctrine of abnormally dangerous activities. Since it is the public duty of police officers to pursue offenders, the doctrine of ultrahazardous activities appears to be inapplicable. See, State v. Valstad, 282 Minn. 301, 311, 165 N.W.2d 19, 25 (1969). In short, |

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| | | | | the plaintiff and the trial court have cited no legal authority which compels this court to impose strict liability in situations involving high-speed pursuits by police officers. |
| **Section 523** | | | | |
| Armstrong v. Mailand, 284 N.W.2d 343, 352 (Minn. 1979) | § 523. Assumption of Risk (2nd) | The plaintiff's assumption of the risk of harm from an abnormally dangerous activity bars his recovery for the harm. | Adopted | However, strict liability is not absolute liability, and we have on numerous occasions held that certain types of the plaintiff's conduct may provide a complete or partial bar to recovery in an action predicated upon strict liability. See, Busch v. Busch Const. Inc. supra; Magnuson v. Rupp Manufacturing Co., 285 Minn. 32, 171 N.W.2d 201 (1969). See, generally, Comment, 3 Wm. Mitchell L.Rev.241; Note, 2 Wm. Mitchell L.Rev. 235. Decisions from other jurisdictions indicate a similar position. Annotation,46 A.L.R.3d 240; Note, 25 Drake L.Rev. 189. See, also, Restatement, Torts (2d), s 523 (assumption of risk is a defense in actions predicated upon strict liability for an abnormally dangerous activity). Implicit in these decisions is a recognition that the public policies underlying the theories of strict liability are not so strong as to remove the plaintiff's conduct from the court's consideration when assessing liability. In conformity with these decisions, we hold that a plaintiff may, implicitly or expressly, manifest his consent to relieve the defendant of his duty under the theories of strict liability, and, therefore, the doctrine of primary assumption of the risk may be utilized in actions based on strict products liability and strict liability for an abnormally dangerous activity. |
| Arrowhead Elec. Coop., Inc. v. LTV Steel, 568 N.W.2d 875, 879 (Minn. Ct. App. 1997) | § 523. Assumption of Risk (2nd) | See above. | Cited in support | Under these circumstances, the parties were free to re-allocate to UPA the risk of damage to UPA's own commercial property resulting from an activity that may have otherwise subjected LTV to claims of strict liability. See Armstrong v. Mailand, 284 N.W.2d 343, 351-52 (Minn.1979) (concluding that plaintiff may assume risk by manifesting consent to relieve |

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| | | | | defendant from actions based on strict products liability or strict liability for an abnormally dangerous activity); T & E Indus., Inc. v. Safety Light Corp., 123 N.J. 371, 587 A.2d 1249, 1258-59 (1991) (citing Restatement (Second) of Torts, § 523 (1977) for proposition that buyer may knowingly and voluntarily assume risk of harm from abnormally dangerous activity). In concluding that the parties' agreement did not violate public policy, we assume that UPA was aware of the ash heap at the time it agreed to assume the risk of damage, and that LTV did not fail to disclose to UPA any known, hidden risks. |
| **Division 4 – Misrepresentation** | | | | |
| **Section 526** | | | | |
| Florenzano v. Olson, 387 N.W.2d 168, 173, 177 n.1 (Minn. 1986) | § 526. Conditions Under Which Misrepresentation Is Fraudulent (Scienter) (2nd) | A misrepresentation is fraudulent if the maker<br>(a) knows or believes that the matter is not as he represents it to be,<br>(b) does not have the confidence in the accuracy of his representation that he states or implies, or<br>(c) knows that he does not have the basis for his representation that he states or implies. | Adopted | There is no doubt of fraudulent intent when the misrepresenter knows or believes the matter is not as he or she represents it to be. Fraudulent intent is also present when a misrepresenter speaks positively and without qualification, but either is conscious of ignorance of the truth, or realizes that the information on which he or she relies is not adequate or dependable enough to support such a positive, unqualified assertion. Our explication of the states of mind that constitute fraudulent intent parallels that of the Restatement (Second) of Torts. |
| **Section 533** | | | | |
| Kronebusch v. MVBA Harvestore Sys., 488 N.W.2d 490, 496 (Minn. Ct. App. 1992) | § 533. Representation Made of a Third Person (2nd) | The maker of a fraudulent misrepresentation is subject to liability for pecuniary loss to another who acts in justifiable reliance upon it if the misrepresentation, although not made directly to the other, is made to a third person and the maker intends or has reason to expect that its terms will be repeated or its substance communicated to the other, and that it will influence his conduct in the | Cited in support | The manufacturers concede the trial court correctly used CIVJIG 610 to instruct the jury on the law of intentional misrepresentation. However, they argue the trial court improperly instructed the jury on the law of "indirect representations." We disagree. First, the instruction was based on Restatement (Second) of Torts §§ 533, 534 (1977) and accurately explained the law as stated in Vikse v. Flaby, 316 N.W.2d 276, 284 (Minn.1982). |

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| | | transaction or type of transaction involved. | | |
| Flynn v. Am. Home Products Corp., 627 N.W.2d 342, 347 (Minn. Ct. App. 2001) | § 533. Representation Made of a Third Person (2nd) | See above. | Cited in discussion | See, e.g., Baker v. Smith & Nephew Richards, Inc., No. Civ.A.1:97 CV1233RWS, 1999 WL 1129650 at (N.D.Ga. Sept.30, 1999) (fraud-on-the-FDA derived from Restatement (Second) Torts § 533, an indirect fraud claim, supported by Georgia law, but granting summary judgment to medical manufacturer because "intent to defraud the FDA is not intent to defraud the Plaintiffs.") |
| **Section 534** | | | | |
| Kronebusch v. MVBA Harvestore Sys., 488 N.W.2d 490, 496 (Minn. Ct. App. 1992) | § 534. Representation to More Than One Person (2nd) | One who makes a fraudulent misrepresentation intending or with reason to expect that more than one person or class of persons will be induced to rely on it, or that there will be action or inaction in more than one transaction or type of transaction, is subject to liability for pecuniary loss to any one of such persons justifiably relying upon the misrepresentation in any one or more of such transactions. | Adopted | The manufacturers concede the trial court correctly used CIVJIG 610 to instruct the jury on the law of intentional misrepresentation. However, they argue the trial court improperly instructed the jury on the law of "indirect representations." We disagree. First, the instruction was based on Restatement (Second) of Torts §§ 533, 534 (1977) and accurately explained the law as stated in Vikse v. Flaby, 316 N.W.2d 276, 284 (Minn.1982). |
| **Section 537** | | | | |
| Vogt v. Carriage Hills Golf Club, 418 N.W.2d 536, 538 (Minn. Ct. App. 1988) | § 537. General Rule (2nd) | The recipient of a fraudulent misrepresentation can recover against its maker for pecuniary loss resulting from it if, but only if,<br>(a) he relies on the misrepresentation in acting or refraining from action, and<br>(b) his reliance is justifiable. | Adopted | In order to establish reliance, respondent needs to show that he in fact relied on the misrepresentation. The Restatement comments to the general rule regarding reliance state:<br>If the recipient does not in fact rely on the misrepresentation, the fact that he takes some action that would be consistent with his reliance on it and as a result suffers pecuniary loss, does not impose any liability upon the maker.<br>Restatement (Second) of Torts § 537 Comment a (1977). A thorough review of the record reveals no evidence to show that Vogt in fact relied on the statements. |

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| **Section 541A** | | | | |
| Hoyt Props. Inc. v. Prod. Res. Group, L.L.C., 716 N.W.2d 366, 374 (Minn. Ct. App. 2006) | § 541A. Representation of Fact by Adverse Party (2nd) | The recipient of a fraudulent misrepresentation of fact may be justified in relying upon it although he believes the maker to have an adverse interest in the transaction. | Adopted | A party may reasonably rely on representations made by an adverse party, unless the falsity of the representation is obvious. Restatement (Second) of Torts § 541A (stating that "recipient of a fraudulent misrepresentation of fact may be justified in relying upon it although he believes the maker to have an adverse interest in the transaction"), cmt.. a (1977) (stating that "recipient [of representation made by adverse party] is entitled to assume that a representation of fact ... is honestly made, unless its falsity is obvious to his senses"). |
| **Section 545** | | | | |
| Hoyt Props., Inc. v. Prod. Res. Group, L.L.C., 736 N.W.2d 313, 318, 319, 324 (Minn. 2007) | § 545. Misrepresentation of Law (2nd) | (1) If a misrepresentation as to a matter of law includes, expressly or by implication, a misrepresentation of fact, the recipient is justified in relying upon the misrepresentation of fact to the same extent as though it were any other misrepresentation of fact.<br>(2) If a misrepresentation as to a matter of law is only one of opinion as to the legal consequences of facts, the recipient is justified in relying upon it to the same extent as though it were a representation of any other opinion. | Adopted | A representation of law that is clearly a statement of opinion does not carry an implication of fact and is not actionable. See Restatement (Second) of Torts § 545 (1977). Thus, according to the Restatement, one who says, " 'I think that my title to this land is good, but do not take my word for it; consult your own lawyer,' " cannot be reasonably understood as asserting any fact with respect to the title. Id. cmt.. d. However, a legal statement in the form of an expression of opinion may still be actionable if it carries "with it by implication the assertion that the facts known to the maker are not incompatible with his opinion or that he does know facts that justify him in forming it." Id. cmt.. c. |
| **Section 545A** | | | | |
| Florenzano v. Olson, 387 N.W.2d 168, 176 n.7 (Minn. 1986) | § 545A. Contributory Negligence (2nd) | One who justifiably relies upon a fraudulent misrepresentation is not barred from recovery by his contributory negligence in doing so. | Cited in support | It is the rule of law in virtually all states that fault should not be apportioned between an intentional tortfeasor and a merely negligent victim. See W. Prosser, Law of Torts § 65, 426 (4th ed.1971). The reasons underlying this rule are persuasive. Intentional torts are punished not because the actor failed to use reasonable care, but because the actor intended the act. The difference between the victim's actions and the defendant's action is not one of degree, but of kind, and they are therefore |

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| | | | | not comparable. Id.; Note, The Scope of Comparative Fault in Minnesota, 9 Wm. Mitchell L.Rev. 299, 321-22 (1984); See also Restatement (Second) of Torts § 545A (1977) (contributory negligence not a defense to action of fraudulent misrepresentation). |
| **Section 550** | | | | |
| DeCosse v. Armstrong Cork Co., 319 N.W.2d 45, 50 n.12, 51 (Minn. 1982) | § 550. Liability for Fraudulent Concealment (2nd) | One party to a transaction who by concealment or other action intentionally prevents the other from acquiring material information is subject to the same liability to the other, for pecuniary loss as though he had stated the nonexistence of the matter that the other was thus prevented from discovering. | Cited in support | This case, however, does not require us to do what we said we could not do in Cashman-namely, encroach upon the legislative function by engrafting a provision of the general statute of limitations onto the wrongful death act limitation period. The appellant instead asks that we apply a generally accepted, and judicially created, tolling doctrine to the wrongful death act. |
| **Section 551** | | | | |
| Vikse v. Flaby, 316 N.W.2d 276, 283 (Minn. 1982) | § 551. Liability for Nondisclosure (2nd) | (1) One who fails to disclose to another a fact that he knows may justifiably induce the other to act or refrain from acting in a business transaction is subject to the same liability to the other as though he had represented the nonexistence of the matter that he has failed to disclose, if, but only if, he is under a duty to the other to exercise reasonable care to disclose the matter in question.<br><br>(2) One party to a business transaction is under a duty to exercise reasonable care to disclose to the other before the transaction is consummated,<br>(a) matters known to him that the other is entitled to know because of a fiduciary or other similar relation of trust and confidence between them; and | Cited in support | It is not necessary to set out all of the elements of fraud and/or misrepresentation and test the facts against each separate element in order to determine that the jury verdict is supported by the evidence here. At trial the jury heard considerable evidence from which it could have concluded that certain facts within the knowledge of appellants were not disclosed to their agent, Flaby, about the condition of Thunderbird Valley and the security of respondents' investments, despite the fact that appellants knew unsophisticated individuals such as respondents would rely on Flaby's knowledge. |

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| | | (b) matters known to him that he knows to be necessary to prevent his partial or ambiguous statement of the facts from being misleading; and<br>(c) subsequently acquired information that he knows will make untrue or misleading a previous representation that when made was true or believed to be so; and<br>(d) the falsity of a representation not made with the expectation that it would be acted upon, if he subsequently learns that the other is about to act in reliance upon it in a transaction with him; and<br>(e) facts basic to the transaction, if he knows that the other is about to enter into it under a mistake as to them, and that the other, because of the relationship between them, the customs of the trade or other objective circumstances, would reasonably expect a disclosure of those facts. | | |
| Gerbin v. Princeton State Bank, 371 N.W.2d 5, 9 (Minn. Ct. App. 1985) | § 551. Liability for Nondisclosure (2nd) | See above. | Cited in support | Under these principles, we believe the bank had a duty to disclose the existence of the tax liens. The bank knew about the existence of the tax liens. John Hoffman claims he did not know about the tax liens, but this is a question of material fact to be determined by a jury. |
| Hommerding v. Peterson, 376 N.W.2d 456, 459 (Minn. Ct. App. 1985) | § 551. Liability for Nondisclosure (2nd) | See above. | Cited in support | Appellants have presented no specific facts showing that respondents had actual knowledge of the low water pressure. Further, these facts do not present any kind of "hidden defect." See, e.g., Restatement (Second) of Torts § 551, comment 1, illustration 9 (1977). Respondents did not have special knowledge of a material fact to which appellants did not have access. The sufficiency of a water supply in a well is the kind of fact "open to discovery upon reasonable inquiry by the vendee." Papile v. |

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| | | | | Robinson, 4 Conn.Cir. 307, 231 A.2d 91, 95 (1967). Summary judgment was properly granted as to respondents Hatten and Century 21. |
| L & H Airco, Inc. v. Rapistan Corp., 446 N.W.2d 372, 380 (Minn. 1989) | § 551. Liability for Nondisclosure (2nd) | See above. | Cited in support | A duty to disclose facts may exist under certain circumstances, such as when a confidential or fiduciary relationship exists between the parties or when disclosure would be necessary to clarify information already disclosed, which would otherwise be misleading. Id.; see also Restatement (Second) Torts § 551 (1976). We have also stated that "[o]ne who has special knowledge of material facts to which the other party does not have access may have a duty to disclose these facts to the other party." Klein, 293 Minn. at 421, 196 N.W.2d at 622. However, we have rarely addressed that particular theory of fraud. |
| **Section 552** | | | | |
| Bonhiver v. Graff, 311 Minn. 111, 111–12, 121–22, 248 N.W.2d 291, 293–94, 298 (Minn. 1976) | § 552. Information Negligently Supplied for the Guidance of Others (2nd) | (1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.<br>(2) Except as stated in Subsection (3), the liability stated in Subsection (1) is limited to loss suffered<br>(a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and<br>(b) through reliance upon it in a transaction that he intends the | Adopted | On the facts of this case, defendant accountants can be held liable for malpractice in negligently producing workpapers and adjusting entries, even though no audited financial statement was completed, when they had actual knowledge that the workpapers and adjusting entries were being relied upon by the commissioner of insurance in performing a statutorily required examination. Restatement, Torts 2d, Tent.Draft No. 12, s 552. |

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| | | information to influence or knows that the recipient so intends or in a substantially similar transaction.<br><br>(3) The liability of one who is under a public duty to give the information extends to loss suffered by any of the class of persons for whose benefit the duty is created, in any of the transactions in which it is intended to protect them. | | |
| Florenzano v. Olson, 387 N.W.2d 168, 174 n.3, 177 n.3, 178 n.5 (Minn. 1986) | § 552. Information Negligently Supplied for the Guidance of Others (2nd) | See above. | Cited in support | In Bonhiver, we adopted the Restatement (Second) of Torts definition of negligent misrepresentation: "(1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information." |
| L & H Airco, Inc. v. Rapistan Corp., 446 N.W.2d 372, 378 n.2 (Minn. 1989) | § 552. Information Negligently Supplied for the Guidance of Others (2nd) | See above. | Cited in support | In Bonhiver, we recognized the tort's formulation as stated in The Restatement (Second) of Torts § 552 (Tent. Draft No. 12). The most recent definition appears as follows:<br>§ 552. Information Negligently Supplied for the Guidance of Others |
| Smith v. Brutger Cos., 569 N.W.2d 408, 413–14 & n.3, 415 (Minn. 1997) | § 552. Information Negligently Supplied for the Guidance of Others (2nd) | See above. | Cited in support | The tort of negligent misrepresentation involving the risk of physical harm differs from the companion tort of negligent misrepresentation involving damages for pecuniary loss as defined in Restatement (Second) of Torts § 552 (1977). |
| Safeco Ins. Co. of Am. v. Dain Bosworth, 531 N.W.2d 867, 870 & n.1, | § 552. Information Negligently Supplied for the Guidance of Others (2nd) | See above. | Cited in support | In Minnesota, one making representations is held to this duty of care when supplying information for the guidance of others in the course of a |

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| 871 (Minn. Ct. App. 1995) | | | | transaction in which one has a pecuniary interest, or in the course of one's business, profession or employment. Id.; accord L & H Airco, Inc. v. Rapistan Corp., 446 N.W.2d 372, 378 n. 2 (Minn.1989). This definition of negligent misrepresentation parallels that of the Restatement (Second) of Torts § 552. |
| Valspar Refinish, Inc. v. Gaylord's, Inc., 764 N.W.2d 359, 369 (Minn. 2009) | § 552. Information Negligently Supplied for the Guidance of Others (2nd) | See above. | Cited in support | We have recognized the common-law tort of negligent misrepresentation involving pecuniary loss as defined in Restatement (Second) of Torts § 552. Florenzano v. Olson, 387 N.W.2d 168, 174 & n. 3 (Minn.1986); Bonhiver v. Graff, 311 Minn. 111, 121-22, 248 N.W.2d 291, 298-99 (1976). |
| G.A.W. v. D.M.W., 596 N.W.2d 284, 291 (Minn. Ct. App. 1999) | § 552. Information Negligently Supplied for the Guidance of Others (2nd) | See above. | Cited in support | The tort in South Dakota was based on the same section of the Restatement of Torts as the tort in Minnesota. See Restatement (Second) of Torts § 552 (1977). Because we agree with South Dakota's interpretation of this cause of action, we dismiss appellant's claim for negligent misrepresentation. |
| NorAm Inv. Serv. V. Stirtz Bernards Boyden, 611 N.W.2d 372 *passim* (Minn. Ct. App. 2000) | § 552. Information Negligently Supplied for the Guidance of Others (2nd) | See above. | Cited in discussion | The chain of reliance here is several links longer than the chain in Bonhiver.<br>It is not enough that the maker merely knows of the ever-present possibility of repetition to anyone, and the possibility of action in reliance upon it, on the part of anyone to whom it may be repeated. Restatement (Second) of Torts § 552, cmt.. h (1977). Unlike the insurance broker in Bonhiver, NorAm as a broker extending margin credit is not clearly in the class that should be protected by the SEC's reliance. “If that liability is to be drawn somewhere short of foreseeability, it must be drawn on pragmatic grounds alone.” Bonhiver, 311 Minn. at 129, 248 N.W.2d at 302.<br><br>We conclude that Stirtz is not liable for the bad margin loans made by NorAm. As the district court observed, holding Stirtz liable to NorAm could lead to virtually unlimited liability. |

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| Schroeder v. White, 624 N.W.2d 810, 812 (Minn. Ct. App. 2001) | § 552. Information Negligently Supplied for the Guidance of Others (2nd) | See above. | Cited in support | The Minnesota supreme court has adopted the following definition of negligent misrepresentation: Bonhiver v. Graff, 311 Minn. 111, 122, 248 N.W.2d 291, 298-99 (1976) (quoting Restatement (Second) of Torts § 552); see also Smith v. Woodwind Homes, Inc., 605 N.W.2d 418, 424 (Minn.App.2000) ("An essential element of negligent misrepresentation is that the alleged misrepresenter owes a duty of care to the person to whom they are providing information."). |
| Dakota Bank v. Eiesland, 645 N.W.2d 177, 181, 182 (Minn. Ct. App. 2002) | § 552. Information Negligently Supplied for the Guidance of Others (2nd) | See above. | Cited in support | In Bonhiver, the Minnesota Supreme Court applied section 552 of the Restatement (Second) of Torts to establish an accountant's liability to third parties for negligent misrepresentation. |
| Reinsurance Ass'n of Minn. v. Timmer, 641 N.W.2d 302, 312–13 (Minn. Ct. App. 2002) | § 552. Information Negligently Supplied for the Guidance of Others (2nd) | See above. | Cited in support | Minnesota has adopted the Restatement of Torts definition of negligent misrepresentation:<br>One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information. |
| Hebrink v. Farm Bureau Life Ins. Co., 664 N.W.2d 414, 420 (Minn. Ct. App. 2003) | § 552. Information Negligently Supplied for the Guidance of Others (2nd) | See above. | Cited in support | In defining the tort of negligent misrepresentation, the Second Restatement of Torts explains as follows:<br>One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or |

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| | | | | communicating the information.<br>Restatement (Second) of Torts § 552(1) (1977); see Bonhiver v. Graff, 311 Minn. 111, 122, 248 N.W.2d 291, 298-99 (1976) (adopting the restatement's definition of negligent misrepresentation). |
| Grueling v. Wells Fargo Home Mortgage, Inc., 690 N.W.2d 757, 760 (Minn. Ct. App. 2005) | § 552. Information Negligently Supplied for the Guidance of Others (2nd) | See above. | Cited in support | In Bonhiver v. Graff, the supreme court adopted The Restatement (Second) of Torts § 552 (1976), which states:<br>[O]ne who, in the course of his business, profession, or employment, or in [any other] transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.<br>311 Minn. 111, 122, 248 N.W.2d 291, 298 (Minn.1976). |
| McIntosh County Bank v. Dorsey & Whitney, LLP, 726 N.W.2d 108, 120 (Minn. Ct. App. 2007) | § 552. Information Negligently Supplied for the Guidance of Others (2nd) | See above. | Cited in support | But under Minnesota caselaw, it is not necessary that Dorsey have made representations directly to appellants. In Bonhiver v. Graff, 311 Minn. 111, 122, 248 N.W.2d 291, 298 (1976), the supreme court adopted the formulation of negligent misrepresentation described in the Restatement (Second) of Torts § 552 (1976) |
| Williams v. Bd. of Regents, 763 N.W.2d 646, 652 (Minn. Ct. App. 2009) | § 552. Information Negligently Supplied for the Guidance of Others (2nd) | See above. | Cited in support | In contrast, appellant's negligent-misrepresentation claim is a common-law cause of action that is not premised on an equitable or legal claim to employment. The tort of negligent misrepresentation is defined as:<br>One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise |

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| | | | | reasonable care or competence in obtaining or communicating the information.<br>Hebrink v. Farm Bureau Life Ins. Co., 664 N.W.2d 414, 420 (Minn.App.2003) (quoting Restatement (Second) of Torts § 552(1) (1977)). |
| **Section 552A** | | | | |
| Florenzano v. Olson, 387 N.W.2d 168, 176 (Minn. 1986) | § 552A. Contributory Negligence | The recipient of a negligent misrepresentation is barred from recovery for pecuniary loss suffered in reliance upon it if he is negligent in so relying. | Adopted | This is also the view of respected commentators, including the Restatement (Second) of Torts. "The recipient of a negligent misrepresentation is barred from recovery for pecuniary loss suffered in reliance upon it if he is negligent in so relying." Restatement (Second) of Torts § 552A (1977). We agree with these commentators and with the majority of states that have considered the issue. This court has long favored the concept of comparative negligence as a just way to apportion liability. We applied the Comparative Negligence Act expansively, even extending it to many causes of action not traditionally within the scope of negligence. |
| **Section 557A** | | | | |
| R.A.P. v. B.J.P., 428 N.W.2d 103, 109 (Minn. Ct. App. 1988) | § 557A. Fraudulent Misrepresentation Causing Physical Harm (2nd) | One who by a fraudulent misrepresentation or nondisclosure of a fact that it is his duty to disclose causes physical harm to the person or to the land or chattel of another who justifiably relies upon the misrepresentation, is subject to liability to the other. | Cited in support | We find no support for B.J.P.'s assertion that fraud actions may arise only in business or contractual contexts. Although it is true that most fraud claims involve monetary damage resulting from business transactions, it is clear under Minnesota law that fraud claims may also be based on fraudulently-induced personal injuries. "The injury to one's person by the fraud of another is quite as serious as an injury to his pocketbook." Flaherty v. Till, 119 Minn. 191, 192, 137 N.W. 815, 816 (1912); see also Restatement (Second) of Torts, § 557A (establishing liability for physical harm caused by fraudulent misrepresentation or nondisclosure of fact which person had legal duty to disclose). |
| **Division 5 – Defamation** | | | | |
| **Division 5 Defamation: General Materials** | | | | |
| Anderson v. Kammeier, | Rest 2d Torts 5 GM | | Cited in discussion | §§ 558 to 623 cit. in ftn. in disc. These sections |

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| 262 N.W.2d 366 (Minn. 1977) | | | | comprise all of Division Five, Defamation. The parties entered into a management consultation agreement, an agreement for the lease of office space, and an agreement for the release of employment contracts in order to effectuate the sale of an employment agency to several of its employees. The seller of the employment agency brought an action against the buyers to recover the remainder of the purchase price, and the buyers claimed failure of consideration and rescission and requested damages for slander. The lower court allowed the buyers to rescind the management consultation contract and awarded the buyers $1000 in punitive damages for slander, and the seller appealed. The court held that the seller materially breached its management consultation agreement with the buyers by giving the buyers erroneous advice 2 out of 3 times, by making slanderous remarks concerning the buyers, and by turning over to the state a tape disclosing illegal activities of an employee of the sold agency in which one of the buyers had been involved, and that the buyers were entitled to rescind the management consultation agreement because the agreements of the parties were divisible. The court noted that whether a contract is entire or divisible depends on the intent of the parties, which must be determined by considering the language used, the subject matter of the contract, and how the parties themselves treated it. The court also found that the evidence supported the finding that the seller's statement that one buyer was a "draft dodger" was slanderous, and that statements that a buyer "could not be trusted" in the operation of his business affairs, and that he would "stab anyone in the back" were slanderous per se. Therefore, the judgment of the lower court was affirmed. |
| **Section 558** | | | | |
| Stuempges v. Parke, Davis & Co., 297 N.W.2d | § 558. Elements Stated (2nd) | To create liability for defamation there must be: | Adopted | The elements of a common law defamation action are well settled. In order for a statement to be |

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| 252, 255 (Minn. 1980) | | (a) a false and defamatory statement concerning another;<br>(b) an unprivileged publication to a third party;<br>(c) fault amounting at least to negligence on the part of the publisher; and<br>(d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. | | considered defamatory it must be communicated to someone other than the plaintiff, it must be false, and it must tend to harm the plaintiff's reputation and to lower him in the estimation of the community. Restatement (Second) of Torts ss 558-559 (1977) |
| Woody v. Krueger, 374 N.W.2d 822, 824 (Minn. Ct. App. 1985) | § 558. Elements Stated (2nd) | See above. | Cited in support | The essential elements of a defamation action are as follows: (1) The alleged writing must be communicated to someone other than the plaintiff; (2) the writing must be "false" and; (3) it must tend to harm the plaintiff's reputation and to lower him in the estimation of the community. Stuempges v. Parke, Davis and Company, 297 N.W.2d 252, 255 (Minn.1980); Restatement (Second) of Torts §§ 558-559 (1977). |
| Britton v. Koep, 470 N.W.2d 518, 520 (Minn. 1991) | § 558. Elements Stated (2nd) | See above. | Cited in support | The elements of a cause of action for defamation include a false and defamatory statement about the plaintiff; an unprivileged publication to a third party; a tendency to harm the plaintiff's reputation in the community; and fault, at least negligence. Restatement (Second) of Torts § 558 (1977); see, e.g., Lewis v. Equitable Life Assurance Soc'y, 389 N.W.2d 876, 886 (Minn.1986). This case concerns the standard to be applied in determining fault. If this court determines that Britton, in his capacity as a county probation officer, is a public official rather than a private individual, the standard of fault the plaintiff must prove is higher. |
| Rouse v. Dunkley & Bennett, P.A., 520 N.W.2d 406, 410 (Minn. 1994) | § 558. Elements Stated (2nd) | See above. | Cited in support | Evaluating the record before us in light of this standard, we find that the trial court properly granted summary judgment for the defendant lawyers. The moving party is entitled to summary judgment as a matter of law if the non-moving party |

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| | | | | completely fails to prove an element that is essential to the non-moving party's case, and for which the non-moving party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 2552-53, 91 L.Ed.2d 265 (1986). The elements of defamation require the plaintiff to prove that a statement was false, that it was communicated to someone besides the plaintiff, and that it tended to harm the plaintiff's reputation and to lower him in the estimation of the community. Stuempges v. Parke, Davis & Co., 297 N.W.2d 252, 255 (Minn.1980) (citing Restatement (Second) of Torts §§ 558-559 (1977)). |
| Culliton v. Mize, 403 N.W.2d 853, 854 (Minn. Ct. App. 1987) | § 558. Elements Stated (2nd) | See above. | Cited in discussion | We hold that the constitutional protections of New York Times are not contingent upon whether the defendant is a "media defendant." If the alleged defamation relates to public officials on an issue of public concern, the New York Times protections attach no matter what the defendant's status. See Dun & Bradstreet, 472 U.S. at 771-76, 780-85, 105 S.Ct. at 2952-54, 2957-59; see also Restatement (Second) of Torts §§ 580A & B (1977). |
| LeDoux v. Nw. Pub., Inc., 521 N.W.2d 59, 67 (Minn. Ct. App. 1994) | § 558. Elements Stated (2nd) | See above. | Cited in support | In order for a statement to be defamatory, it must be communicated to someone other than the plaintiff, it must be false, and it must tend to harm the plaintiff's reputation and to lower him in the estimation of the community. Stuempges v. Parke, Davis & Co., 297 N.W.2d 252, 255 (Minn.1980) (citing Restatement (Second) of Torts §§ 558-59 (1977); W. Prosser, Handbook of the Law of Torts § 111 at 739 (4th ed. 1971)). |
| Singleton v. Christ Servant Evangelical, 541 N.W.2d 606, 615 (Minn. Ct. App. 1996) | § 558. Elements Stated (2nd) | See above. | Cited in support | A statement is defamatory if (1) it is communicated to someone other than the plaintiff, (2) it is false, and (3) it tends to harm the plaintiff's reputation and tends to lower the plaintiff in the estimation of the community. Stuempges v. Parke, Davis & Co., 297 N.W.2d 252, 255 (Minn.1980) (citing Restatement (Second) of Torts §§ 558-559 (1977); |

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| | | | | W. Prosser, Handbook of the Law of Torts § 111 at 739 (4th ed. 1971)). A communication is conditionally privileged, however, if it is "made upon a proper occasion, from a proper motive, and based upon reasonable or probable cause." Id. at 256-57 (quoting Hebner v. Great N. Ry., 78 Minn. 289, 292, 80 N.W. 1128, 1129 (1899)). |
| Metge v. Central Neighborhood Improvement Ass'n, 649 N.W.2d 488, 496 (Minn. Ct. App. 2002) | § 558. Elements Stated (2nd) | See above. | Cited in support | Metge next challenges the district court's conclusion that the statements Sabri made were either not defamatory or were not made with actual malice. To be considered defamatory, a statement of fact about a plaintiff must be communicated to someone other than the plaintiff, it must be false, and it must tend to harm the plaintiff's reputation and to lower him [or her] in the estimation of the community. Stuempges v. Parke, Davis & Co., 297 N.W.2d 252, 255 (Minn.1980) (citing Restatement (Second) of Torts §§ 558-59 (1977)). |
| **Section 559** | | | | |
| Stuempges v. Parke, Davis & Co., 297 N.W.2d 252, 255 (Minn. 1980) | § 559. Defamatory Communication Defined (2nd) | A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. | Adopted | 1. The elements of a common law defamation action are well settled. In order for a statement to be considered defamatory it must be communicated to someone other than the plaintiff, it must be false, and it must tend to harm the plaintiff's reputation and to lower him in the estimation of the community. Restatement (Second) of Torts ss 558-559 (1977); W. Prosser, Handbook of the Law of Torts s 111 at 739 (4th ed. 1971). Slanders affecting the plaintiff in his business, trade, profession, office or calling are slanders per se and thus actionable without any proof of actual damages. Anderson v. Kammeier, 262 N.W.2d 366, 372 (Minn.1977); W. Prosser, supra, s 112 at 754. Truth, however, is a complete defense, and true statements, however disparaging, are not actionable. |
| Woody v. Krueger, 374 | § 559. Defamatory | See above. | Cited in support | The essential elements of a defamation action are as |

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| N.W.2d 822, 824 (Minn. Ct. App. 1985) | Communication Defined (2nd) | | | follows: (1) The alleged writing must be communicated to someone other than the plaintiff; (2) the writing must be "false" and; (3) it must tend to harm the plaintiff's reputation and to lower him in the estimation of the community. Stuempges v. Parke, Davis and Company, 297 N.W.2d 252, 255 (Minn.1980); Restatement (Second) of Torts §§ 558-559 (1977). |
| Rouse v. Dunkley & Bennett, P.A., 520 N.W.2d 406, 410 (Minn. 1994) | § 559. Defamatory Communication Defined (2nd) | See above. | Cited in support | Evaluating the record before us in light of this standard, we find that the trial court properly granted summary judgment for the defendant lawyers. The moving party is entitled to summary judgment as a matter of law if the non-moving party completely fails to prove an element that is essential to the non-moving party's case, and for which the non-moving party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 2552-53, 91 L.Ed.2d 265 (1986). The elements of defamation require the plaintiff to prove that a statement was false, that it was communicated to someone besides the plaintiff, and that it tended to harm the plaintiff's reputation and to lower him in the estimation of the community. Stuempges v. Parke, Davis & Co., 297 N.W.2d 252, 255 (Minn.1980) (citing Restatement (Second) of Torts §§ 558-559 (1977)). |
| Culliton v. Mize, 403 N.W.2d 853, 854 (Minn. Ct. App. 1987) | § 559. Defamatory Communication Defined (2nd) | See above. | Cited in discussion | Before 1964, libel in the United States was exclusively governed by local common law. A plaintiff had only to prove a defamatory statement was communicated to another person, that it was false, and that it tended to harm the plaintiff's reputation and lower him in the estimation of the community. Restatement (Second) of Torts, §§ 558-59 (1977); W. Prosser, Handbook of the Law of Torts, § 111, at 739 (4th ed. 1971). |
| LeDoux v. Nw. Pub., Inc., 521 N.W.2d 59, 67 (Minn. Ct. App. 1994) | § 559. Defamatory Communication Defined (2nd) | See above. | Cited in support | In order for a statement to be defamatory, it must be communicated to someone other than the plaintiff, it must be false, and it must tend to |

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| | | | | harm the plaintiff's reputation and to lower him in the estimation of the community. Stuempges v. Parke, Davis & Co., 297 N.W.2d 252, 255 (Minn.1980) (citing Restatement (Second) of Torts §§ 558-59 (1977); W. Prosser, Handbook of the Law of Torts § 111 at 739 (4th ed. 1971)). |
| Richie v. Paramount Pictures Corp., 532 N.W.2d 235, 240 (Minn. Ct. App. 1995) | § 559. Defamatory Communication Defined (2nd) | One who falsely publishes matter defamatory of another in such a manner as to make the publication a libel is subject to liability to the other although no special harm results from the publication. | Cited in support | Under both types of defamation (libel and slander) recognized by common law, statements imputing to another commission of crime-particularly when involving moral turpitude or serious sexual misconduct-constitute defamation per se. |
| Singleton v. Christ Servant Evangelical, 541 N.W.2d 606, 615 (Minn. Ct. App. 1996) | § 559. Defamatory Communication Defined (2nd) | See above. | Cited in support | A statement is defamatory if (1) it is communicated to someone other than the plaintiff, (2) it is false, and (3) it tends to harm the plaintiff's reputation and tends to lower the plaintiff in the estimation of the community. Stuempges v. Parke, Davis & Co., 297 N.W.2d 252, 255 (Minn.1980) (citing Restatement (Second) of Torts §§ 558-559 (1977); W. Prosser, Handbook of the Law of Torts § 111 at 739 (4th ed. 1971)). A communication is conditionally privileged, however, if it is "made upon a proper occasion, from a proper motive, and based upon reasonable or probable cause." Id. at 256-57 (quoting Hebner v. Great N. Ry., 78 Minn. 289, 292, 80 N.W. 1128, 1129 (1899)). |
| Metge v. Central Neighborhood Improvement Ass'n, 649 N.W.2d 488, 496 (Minn. Ct. App. 2002) | § 559. Defamatory Communication Defined (2nd) | See above. | Cited in support | Metge next challenges the district court's conclusion that the statements Sabri made were either not defamatory or were not made with actual malice. To be considered defamatory, a statement of fact about a plaintiff must be communicated to someone other than the plaintiff, it must be false, and it must tend to harm the plaintiff's reputation and to lower him [or her] in the estimation of the community. Stuempges v. Parke, Davis & Co., 297 N.W.2d 252, 255 (Minn.1980) (citing Restatement (Second) of Torts §§ 558-59 (1977)). |

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| **Section 563** | | | | |
| Jadwin v. Minneapolis Star & Tribune Co., 367 N.W.2d 476, 492 (Minn. 1985) | § 563. Meaning of the Communication (2nd) | The meaning of a communication is that which the recipient correctly, or mistakenly but reasonably, understands that it was intended to express. | Adopted | We do not intend by our adoption of a negligence standard for a private individual defamation plaintiff to preclude the use by defendants of any absolute or qualified privilege recognized in this state, the application of which may be warranted by the facts. The meaning of any unprivileged statement or communication, however, is to be construed together with its context. Restatement (Second) of Torts, § 563 comment d (1976). |
| Schlieman v. Gannett Minn. Broad., Inc., 637 N.W.2d 297, 305, 308 (Minn. Ct. App. 2001) | § 563. Meaning of the Communication (2nd) | See above. | Cited in support | In determining whether a communication is defamatory, words must be construed in context. See Jadwin v. Minneapolis Star and Tribune Co., 367 N.W.2d 476, 492 (Minn.1985) (citing Restatement (Second) of Torts § 563 comment d (1976)). |
| **Section 564** | | | | |
| Covey v. Detroit Lakes Printing Co., 490 N.W.2d 138, 143 (Minn. Ct. App. 1992) | § 564. Applicability of Defamatory Communication to Plaintiff (2nd) | A defamatory communication is made concerning the person to whom its recipient correctly, or mistakenly but reasonably, understands that it was intended to refer. | Adopted | Essential to any defamation action is a determination that the alleged defamatory statement concerns or is understood to concern the plaintiff. Restatement (Second) of Torts § 564 (1977); see Stuempges, 297 N.W.2d at 257 (defamatory statement must tend to harm plaintiff's reputation). Contrary to appellants' assertions, a negligent defamation action is not a standard negligence action. See Jadwin v. Minneapolis Star & Tribune Co., 367 N.W.2d 476, 491-92 (Minn.1985). |
| **Section 566** | | | | |
| Capan v. Daugherty, 402 N.W.2d 561, 563 (Minn. Ct. App. 1987) | § 566. Expressions of Opinion (2nd) | A defamatory communication may consist of a statement in the form of an opinion, but a statement of this nature is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion. | Cited in support | The Eighth Circuit recently adopted a multi-factor test for determining whether a remark is mere opinion protected by the first amendment. See Janklow v. Newsweek, Inc., 788 F.2d 1300 (8th Cir.) (modifying the four factor test established in Ollman v. Evans, 750 F.2d 970 (D.C.Cir.1984), cert. denied, 471 U.S. 1127, 105 S.Ct. 2662, 86 L.Ed.2d 278 (1985)), cert. denied, — U.S. —, 107 S.Ct. 272, |

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| | | | | 93 L.Ed.2d 249 (1986). The court previously had relied on the single factor test of the Restatement (Second) of Torts § 566 (1977). See Lauderback v. American Broadcasting Companies, 741 F.2d 193 (8th Cir.1984), cert. denied, 469 U.S. 1190, 105 S.Ct. 961, 83 L.Ed.2d 967 (1985). |
| Diesen v. Hessburg, 455 N.W.2d 446, 462 n.5 (Minn. 1990) | § 566. Expressions of Opinion (2nd) | See above. | Cited in discussion in dissenting opinion | Judge Robinson recognized that a "defamatory communication may consist of a statement in the form of an opinion, but a statement of this nature is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion." Id. at 1027 (citing Restatement (Second) of Torts § 566 (1977)). Judge Robinson concluded that this rule should extend to cover hybrid statements accompanied by an incomplete disclosure of background facts. Id. |
| Lund v. Chicago and Nw. Transp., 467 N.W.2d 366, 369, 371–72 & n.4, 373 (Minn. Ct. App. 1991) | § 566. Expressions of Opinion (2nd) | See above. | Cited in support | The opinion-fact determination is a question of law. See Gernander v. Winona State Univ., 428 N.W.2d 473, 475 (Minn.App.1988); see also Restatement (Second) of Torts § 566 comment c (1977) (the court determines whether an expression of opinion may reasonably be understood to imply the assertion of undisclosed facts). Applying the four-factor test of Janklow, the trial court determined that the words contained in line 66 were clearly statements of opinion. We agree. |
| **Section 568** | | | | |
| Bolton v. Dep't of Human Servs., State, 527 N.W.2d 149, 157 n.2 (Minn Ct. App. 1995), *reversed*, 540 N.W.2d 523 (Minn. 1995) | § 568. Libel and Slander Distinguished | (1) Libel consists of the publication of defamatory matter by written or printed words, by its embodiment in physical form or by any other form of communication that has the potentially harmful qualities characteristic of written or printed words.<br><br>(2) Slander consists of the publication | Cited in support | We note also that the Restatement includes as libel written or printed words or "any other form of communication that has the potentially harmful qualities characteristic of written or printed words," and includes as slander "transitory gestures or any form of communication other than [libel]." Restatement (2d) of Torts § 568 (1977). |

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| | | of defamatory matter by spoken words, transitory gestures or by any form of communication other than those stated in Subsection (1).<br><br>(3) The area of dissemination, the deliberate and premeditated character of its publication and the persistence of the defamation are factors to be considered in determining whether a publication is a libel rather than a slander. | | |
| **Section 570** | | | | |
| Longbehn v. Schoenrock, 727 N.W.2d 153, 158 (Minn. Ct. App. 2007) | § 570. Liability Without Proof of Special Harm-Slander (2nd) | See above. | Adopted | Statements are defamatory per se if they falsely accuse a person of a crime, of having a loathsome disease, or of unchastity, or if they refer to improper or incompetent conduct involving a person's business, trade, or profession. Anderson v. Kammeier, 262 N.W.2d 366, 372 (Minn.1977); Restatement (Second) of Torts § 570 (1977). |
| **Section 574** | | | | |
| Longbehn v. Schoenrock, 727 N.W.2d 153, 159 (Minn. Ct. App. 2007) | § 574. Slanderous Imputations of Sexual Misconduct (2nd) | One who publishes a slander that imputes serious sexual misconduct to another is subject to liability to the other without proof of special harm. | Adopted | With regard to false accusations of a crime, "the words need not carry upon their face a direct imputation of crime." Larson v. R.B. Wrigley Co., 183 Minn. 28, 29, 235 N.W. 393, 394 (1931). "It is sufficient if the words spoken, in their ordinary acceptance, would naturally and presumably be understood, in the connection and under the circumstances in which they are used, to impute a charge of crime." Id. In accordance with this principle, courts have held that statements that impute serious sexual misconduct are defamatory per se. Richie v. Paramount Pictures Corp., 544 N.W.2d 21, 25 n. 3 (Minn.1996) (citing Baufield v. Safelite Glass Corp., 831 F.Supp. 713, 717 (D.Minn.1993)); Restatement (Second) of Torts § 574 cmt.. d (1977) (stating that statements that are actionable because they impute serious sexual |

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| | | | | misconduct may also be actionable under the rule that statements that impute a crime are defamatory per se). |
| **Section 575** | | | | |
| Stuempges v. Parke, Davis & Co., 297 N.W.2d 252, 258–59 (Minn. 1980) | § 575. Slander Creating Liability Because of Special Harm (2nd) | One who publishes a slander that, although not actionable per se, is the legal cause of special harm to the person defamed, is subject to liability to him. | Adopted | Special harm may be a loss of presently existing advantage, as a discharge from employment. It may also be a failure to realize a reasonable expectation of gain, as a denial of employment which, but for the currency of the slander, the plaintiff would have received. It is not necessary that he be legally entitled to receive the benefits that are denied to him because of the slander. It is enough that the slander has disappointed his reasonable expectation of receiving a gratuity. |
| Longbehn v. Schoenrock, 727 N.W.2d 153, 160 (Minn. Ct. App. 2007) | § 575. Slander Creating Liability Because of Special Harm (2nd) | See above. | Cited in support | "Special harm ... is the loss of something having economic or pecuniary value." Restatement (Second) of Torts § 575 cmt.. b (1977). It may be "a loss of [a] presently existing advantage, as a discharge from employment," or "a failure to realize a reasonable expectation of gain, as a denial of employment." Stuempges v. Parke, Davis & Co., 297 N.W.2d 252, 258-59 (Minn.1980) (quotation omitted). General damages are recoverable for injury to the plaintiff's "reputation, his wounded feelings and humiliation, ... as well as estimated future damages of the same kind." Richie, 544 N.W.2d at 27 (quotation omitted). Punitive damages are "inflicted wholly with a view to punish, and make an example of the defendant [ ]." Loftsgaarden, 267 Minn. at 182-83, 126 N.W.2d at 155 n. 2 (quotation omitted). |
| **Section 577** | | | | |
| Frankson v. Design Space Int'l, 394 N.W.2d 140, 143 (Minn. 1986) | § 577. What Constitutes Publication (2nd) | (1) Publication of defamatory matter is its communication intentionally or by a negligent act to one other than the person defamed. | Adopted | Both the Restatement (Second) of Torts and Professor Keeton agree that the first position, treating intra-corporate communications as publications that may be qualifiedly privileged, is the better view. See Restatement (Second) of Torts |

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| | | (2) One who intentionally and unreasonably fails to remove defamatory matter that he knows to be exhibited on land or chattels in his possession or under his control is subject to liability for its continued publication. | | § 577 comment h (1977); W. Keeton, D. Dobbs, R. Keeton & D. Owens, Prosser and Keeton on the Law of Torts § 113 (5th ed.1984). |
| Lewis v. Equitable Life Assur. Soc. Of the U.S., 389 N.W.2d 876, 886, 895 (Minn. 1986) | § 577. What Constitutes Publication (2nd) | See above. | Cited in support | In order for a statement to be considered defamatory, it must be communicated to someone other than the plaintiff, it must be false, and it must tend to harm the plaintiff's reputation and to lower him or her in the estimation of the community. Stuempges, 297 N.W.2d at 255. Generally, there is no publication where a defendant communicates a statement directly to a plaintiff, who then communicates it to a third person. Restatement (Second) of Torts § 577, comment m (1977). |
| Frankson v. Design Space Int'l, 380 N.W.2d 560, 566 (Minn. Ct. App. 1986) | § 577. What Constitutes Publication (2nd) | See above. | Cited in support | The Minnesota rule, however, is the more prevalent position, and it enjoys important additional support. Restatement (Second) of Torts says in part: The dictation of a defamatory letter to a stenographer who takes shorthand notes is itself a publication of a libel by the person dictating the letter even though the notes are never transcribed nor read by the stenographer or any other person.<br><br>Restatement (Second) of Torts § 577 comment h (1977). |
| Dorn v. Peterson, 512 N.W.2d 902, 906 (Minn. Ct. App. 1994) | § 577. What Constitutes Publication (2nd) | See above. | Cited in support | We likewise hold that a publication that is part of an absolutely privileged response is also privileged. Roden, Peterson's secretary, who typed the letters, served as the channel for transmitting the material to the Department, and Stark, the plant manager, assisted in putting the letters together. These communications took place within the scope of their employment and are protected by privilege. |

| **Section 577A** | | | | |
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| Church, Etc. v. Minn. State Med. Ass'n Found., 264 N.W.2d 152, 155 n.6 (Minn. 1978) | § 577A. Single and Multiple Publications (2nd) | (1) Except as stated in Subsections (2) and (3), each of several communications to a third person by the same defamer is a separate publication.<br><br>(2) A single communication heard at the same time by two or more third persons is a single publication.<br><br>(3) Any one edition of a book or newspaper, or any one radio or television broadcast, exhibition of a motion picture or similar aggregate communication is a single publication.<br><br>(4) As to any single publication,<br>(a) only one action for damages can be maintained;<br>(b) all damages suffered in all jurisdictions can be recovered in the one action; and<br>(c) a judgment for or against the plaintiff upon the merits of any action for damages bars any other action for damages between the same parties in all jurisdictions. | Adopted | In contrast, defendants urge us instead to adopt the so-called "single-publication rule" which originated in New York and has been adopted by several other jurisdictions and the American Law Institute. Under the "single-publication rule," the statute of limitations begins to run when a mass-produced newspaper, book, or magazine is first released to the public, and the statutory period for actions against the original publisher will not begin to run again as a result of subsequent incidental republications. This court has never had occasion to consider which rule should be applied in Minnesota. Even if we were to assume that MSMA's acts constitute republication of the article, the present case persuades us that the "single-publication rule" is the better rule because it reflects the facts of modern-day mass publishing and duplicating and gives effect to the policy of repose underlying the statute of limitations. |
| Weinberger v. Maplewood Review, 668 N.W.2d 667, 675 n.8 (Minn. 2003) | § 577A. Single and Multiple Publications (2nd) | See above. | Cited in support | The dissent suggests that Weinberger can prove defamation by evidence of similar statements made by the Tartan Defendants to third parties and thus does not need to rely on statements from the Maplewood Review article. But these similar statements do not provide Weinberger with a "remedy less destructive of First Amendment rights" because the statements to third parties and the statements in the Maplewood Review article constitute separate publications, each of which results in a separate injury, gives rise to separate damages, and supports a separate cause of action |

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| | | | | for defamation. See, e.g., Restatement (Second) of Torts § 577A cmt.. a (1977) (stating that "each communication of the same defamatory matter by the same defamer, whether to a new person or to the same person, is a separate and distinct publication, for which a separate cause of action arises"). |
| **Section 580A** | | | | |
| Jadwin v. Minneapolis Star & Tribune Co., 367 N.W.2d 476, 483 (Minn. 1985) | § 580A. Defamation of Public Official or Public Figure (2nd) | One who publishes a false and defamatory communication concerning a public official or public figure in regard to his conduct, fitness or role in that capacity is subject to liability, if, but only if, he<br>(a) knows that the statement is false and that it defames the other person, or<br>(b) acts in reckless disregard of these matters. | Adopted | The trial court in the case before us held that Jadwin and the two corporate plaintiffs were private individuals, who had "neither invited undue attention and comment nor assumed special prominence prior to the article's publication." Since the determination of the plaintiffs' status is a question of law this court is not bound to extend any special deference to the trial court's conclusion on this question. |
| Culliton v. Mize, 403 N.W.2d 853, 856 (Minn. Ct. App. 1987) | § 580A. Defamation of Public Official or Public Figure (2nd) | See above. | Cited in support | We hold that the constitutional protections of New York Times are not contingent upon whether the defendant is a "media defendant." If the alleged defamation relates to public officials on an issue of public concern, the New York Times protections attach no matter what the defendant's status. See Dun & Bradstreet, 472 U.S. at 771-76, 780-85, 105 S.Ct. at 2952-54, 2957-59; see also Restatement (Second) of Torts §§ 580A & B (1977). |
| Chafoulias v. Peterson, 668 N.W.2d 642, 649, 663 (Minn. 2003) | § 580A. Defamation of Public Official or Public Figure (2nd) | See above. | Cited in support | The Restatement (Second) of Torts, § 580A. cmt.. c (1977), classifies the question of whether a plaintiff is a "public figure" as "one of law, not of fact," but recognizes that "the facts on which the determination is to be made may be in dispute and therefore subject to the determination of the fact finder." That comment does not identify who that "fact finder" should be, but that issue is specifically addressed in Restatement (Second) of Torts, § 619 |

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| | | | | cmt.. a (1977), which discusses the respective functions of the court and jury in connection with the determination of privileges. |
| **Section 580B** | | | | |
| Jadwin v. Minneapolis Star & Tribune Co., 367 N.W.2d 476, 491, 492 n.21 (Minn. 1985) | § 580B. Defamation of Private Person (2nd) | One who publishes a false and defamatory communication concerning a private person, or concerning a public official or public figure in relation to a purely private matter not affecting his conduct, fitness or role in his public capacity, is subject to liability, if, but only if, he<br>(a) knows that the statement is false and that it defames the other,<br>(b) acts in reckless disregard of these matters, or<br>(c) acts negligently in failing to ascertain them. | Adopted | After carefully considering the standards of liability, and the rules of the various states adopting the negligence standard in particular, we conclude that the following standard best reconciles the competing societal interests in the protection of private reputation and the media's right and obligation to freely investigate and report the news. We hold that a private individual may recover actual damages for a defamatory publication upon proof that the defendant knew or in the exercise of reasonable care should have known that the defamatory statement was false. The conduct of defamation defendants will be judged on whether the conduct was that of a reasonable person under similar circumstances. Restatement (Second) of Torts, § 580B comment g (1976). |
| Culliton v. Mize, 403 N.W.2d 853, 856 (Minn. Ct. App. 1987) | § 580B. Defamation of Private Person (2nd) | See above. | Cited in support | We hold that the constitutional protections of New York Times are not contingent upon whether the defendant is a "media defendant." If the alleged defamation relates to public officials on an issue of public concern, the New York Times protections attach no matter what the defendant's status. See Dun & Bradstreet, 472 U.S. at 771-76, 780-85, 105 S.Ct. at 2952-54, 2957-59; see also Restatement (Second) of Torts §§ 580A & B (1977). |
| **Section 581** | | | | |
| Church of Scientology of Minn. v. Minn. State Med. Ass'n Found., 264 N.W.2d 152, 156 (Minn. 1978) | § 581. Transmission of Defamation Published by Third Person (2nd) | (1) Except as stated in subsection (2), one who only delivers or transmits defamatory matter published by a third person is subject to liability if, but only if, he knows or has reason to know of its defamatory character. | Adopted | We turn then to the question of whether the acts of MSMA and its officers constitute republication of the article. "Publication" is a term of art in defamation law expressing one of the elements of that tort. Those who merely deliver or transmit defamatory material previously published by another will be considered to have published the |

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| | | (2) One who broadcasts defamatory matter by means of radio or television is subject to the same liability as an original publisher. | | material only if they knew, or had reason to know, that the material was false and defamatory. See, Restatement, Torts 2d, s 581. It is this rule that protects libraries and vendors of books, magazines, and newspapers. Hartmann v. American News Co., 171 F.2d 581 (7 Cir. 1948); Balabanoff v. Fossani, 192 Misc. 615, 81 N.Y.S.2d 732 (1948). |
| Cole v. Star Tribune, 581 N.W.2d 364, 369 (Minn. Ct. App. 1998) | § 581. Transmission of Defamation Published by Third Person (2nd) | See above. | Cited in discussion | While no Minnesota court has specifically addressed the validity of the wire service defense, the supreme court employed similar reasoning and analysis in Church of Scientology of Minn. v. Minnesota State Med. Ass'n Found., 264 N.W.2d 152 (Minn.1978). In that case, a medical association served as a conduit, providing a magazine article critical of plaintiff to a state agency. Id. at 154-55. The supreme court held that because the article's original publisher was known to be reputable, there was no reason for the medical association to believe that the article was false and defamatory. Id. at 156 (citing Restatement (Second) of Torts § 581). There is no distinguishable difference between the Church of Scientology reasoning and that used in foreign jurisdiction wire service defense cases. We conclude, therefore, that the wire service defense is an available defense in the state of Minnesota. |
| **Section 581A** | | | | |
| Lewis v. Equitable Life Assur. Soc. Of the U.S., 389 N.W.2d 876, 889 (Minn. 1986) | § 581A. True Statements (2nd) | One who publishes a defamatory statement of fact is not subject to liability for defamation if the statement is true. | Adopted | Requiring that truth as a defense go to the underlying implication of the statement, at least where the statement involves more than a simple allegation, appears to be the better view. See Restatement (Second) of Torts § 581A, comment e (1977). Moreover, the truth or falsity of a statement is inherently within the province of the jury. This court will not overturn a jury finding on the issue of falsity unless the finding is manifestly and palpably contrary to the evidence. Thus, we find no error on this point because the record amply supports the jury verdict that the charge of gross insubordination was false. |

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| Jadwin v. Minneapolis Star & Tribune Co., 390 N.W.2d 437, 440, 441 (Minn. Ct. App. 1986) | § 581A. True Statements (2nd) | See above. | Cited in support | At common law, a defamatory statement was presumed to be false. Truth was an absolute, affirmative defense. See Jadwin, 367 N.W.2d at 480; Restatement (Second) of Torts § 581A and comment b (1977). Second, the plaintiff cannot succeed in meeting the burden of proving falsity by showing only that the statement is not literally true in every detail. If the statement is true in substance, inaccuracies of expression or detail are immaterial. See Stuempges v. Parke Davis, 297 N.W.2d 252, 255-56 (Minn.1980); Restatement (Second) of Torts § 581A comment f |
| Bauer v. State, 511 N.W.2d 447, 449 (Minn. 1994) | § 581A. True Statements (2nd) | See above. | Cited in support | A decision to discharge an employee may well involve official immunity, as it did in Rico, because the decision involves judgment and discretion at the operational level of government. But official immunity does not fit defamation. In defamation, the essential focus is not so much on alternative courses of conduct and the reasonableness of the actor's conduct, as it is in most torts, but on the nature of the published statement. "One who publishes a defamatory statement of fact is not subject to liability for defamation if the statement is true." Restatement (Second) of Torts § 581A (1977). |
| Benson v. Nw. Airlines, Inc., 561 N.W.2d 530, 542 (Minn. Ct. App. 1997) | § 581A. True Statements (2nd) | See above. | Cited in concurring and dissenting in part opinion | The common law recognized that truth is an absolute defense to a defamation claim. Thompson v. Pioneer Press Co., 37 Minn. 285, 294, 33 N.W. 856, 861-62 (1887), Palmer v. Smith, 21 Minn. 419, 420-21 (1875); see also Jadwin, 390 N.W.2d at 440 (citing Jadwin, 367 N.W.2d at 480; Restatement (Second) of Torts § 581A cmt.. b (1977)). |
| **Section 583** | | | | |
| LeBaron v. Minn. Bd. of Pub. Def., 499 N.W.2d 39, 42 (Minn. Ct. App. | § 583. General Principle | Except as stated in § 584, the consent of another to the publication of defamatory matter concerning him is a | Adopted | Defamatory statements are absolutely privileged if the plaintiff consents to their publication. Utecht v. Shopko Dep't Store, 324 N.W.2d 652, 654 |

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| 1993) | | complete defense to his action for defamation. | | (Minn.1982); Restatement (Second) of Torts § 583 (1977). |
| **Section 584** | | | | |
| Bol v. Cole, 561 N.W.2d 143, 148 (Minn. 1997) | § 584. Inquiry and Investigation | An honest inquiry or investigation by the person defamed to ascertain the existence, source, content or meaning of a defamatory publication is not a defense to an action for its republication by the defamer. | Adopted | These "absolute privileges" are based chiefly upon a recognition of the necessity that certain persons, because of their special position or status, should be as free as possible from fear that their actions in that position might have an adverse effect upon their own personal interests. To accomplish this, it is necessary for them to be protected not only from civil liability but also from the danger of even an unsuccessful civil action. To this end, it is necessary that the propriety of their conduct not be inquired into indirectly by either court or jury in civil proceedings brought against them for misconduct in their position. Therefore the privilege, or immunity, is absolute and the protection that it affords is complete. Restatement (Second) of Torts § 584, at 243 (1977). |
| Redwood County Tel. Co. v. Luttman, 567 N.W.2d 717, 720 n.2 (Minn. Ct. App. 1997) | § 584. Inquiry and Investigation | See above. | Cited in discussion | The district court erred by denying the sheriff's motion for summary judgment. Absolute privilege applies to the statements, and Redwood Telephone's defamation claims against Sheriff Luttman and Redwood County must be dismissed. |
| **Division 5-Defamation, Chapter 25- Defenses to Actions For Defamation, Topic 2- Absolute Privileges, Title B- Absolute Privilege Irrespective of Consent** | | | | |
| Bd. of Regents of U of M v. Reid, 522 N.W.2d 344 (Minn. Ct. App. 1994) | General Materials | | Cited in support | The holder of an absolute privilege has absolute immunity from suit for defamation. See Carradine v. State, 511 N.W.2d 733, 735 (Minn.1994); see also Restatement (Second) of Torts Topic 2. Absolute Privileges, Title B, introductory note (1976) (what traditionally has been called "absolute privilege" is actually an immunity). |
| Moreno v. Crookston Times Printing Co., 610 N.W.2d 321 (Minn. 2000) | General Materials | | Cited in discussion | Section 611 is set apart both from the absolute privileges in sections 585 to 592A and the conditional or qualified privileges in sections 594 to 598A. See generally Restatement (Second) of Torts |

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| **Section 585** | | | | |
| Freier v. Indep. School Dist. No. 197, 356 N.W.2d 724, 729 (Minn. Ct. App. 1984) | § 585. Judicial Officers (2nd) | A judge or other officer performing a judicial function is absolutely privileged to publish defamatory matter in the performance of the function if the publication has some relation to the matter before him. | Adopted | Communications incidental to judicial proceedings are absolutely privileged. Statements incidental to judicial proceedings, whether defamatory or not, are absolutely privileged. The judicial privilege extends to the tribunal that is responsible for making the decision. A judge or other officer performing a judicial function is absolutely privileged to publish defamatory matter in the performance of the function if the publication has some relation to the matter before him. Restatement (2d) of Torts § 585 (1977). Here, the school board was the tribunal that performed the judicial function. |
| **Section 586** | | | | |
| Kittler v. Eckberg, Lammers, et al., 535 N.W.2d 653, 655 & n.2, 656 (Minn. Ct. App. 1995) | § 586. Attorneys At Law (2nd) | An attorney at law is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as a part of, a judicial proceeding in which he participates as counsel, if it has some relation to the proceeding. | Adopted | The language has been updated in Restatement (Second) of Torts (1977), where section 586 reads: An attorney at law is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding if it has some relations to the proceeding. |
| Mahoney & Hagberg v. Newgard, 729 N.W.2d 302, 306 (Minn. 2007) | § 586. Attorneys At Law (2nd) | See above. | Cited in support | Absolute privilege extends to statements published prior to the judicial proceeding, but in order for the privilege to apply, such statements must have some relation to the judicial proceeding. See Matthis, 243 Minn. at 226-28, 67 N.W.2d at 418-19; Restatement (Second) of Torts § 586, cmt.. a ("The publication of defamatory matter by an attorney is protected not only when made in the institution of the proceedings or in the conduct of litigation before a judicial tribunal, but in conferences and other communications preliminary to the proceeding."). |

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| **Section 588** | | | | |
| McGovern v. Cargill, Inc., 463 N.W.2d 556, 558 (Minn. Ct. App. 1990) | § 588. Witnesses in Judicial Proceedings (2nd) | A witness is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding or as a part of a judicial proceeding in which he is testifying, if it has some relation to the proceeding. | Adopted | Communications and reports made by a witness in preparation for trial are absolutely privileged. See Jenson v. Olson, 273 Minn. 390, 394, 141 N.W.2d 488, 491 (1966) (citing Restatement (Second) of Torts § 588 (1965)). |
| Mahoney & Hagberg v. Newgard, 729 N.W.2d 302, 306 (Minn. 2007) | § 588. Witnesses in Judicial Proceedings (2nd) | See above. | Cited in support | In the context of judicial proceedings, absolute privilege encourages frank testimony by witnesses, by enabling them to testify without fear of civil liability for their statements. See id. at 225, 67 N.W.2d at 418; Restatement (Second) of Torts § 588, cmt.. a (1977) ("The function of witnesses is of fundamental importance in the administration of justice. The final judgment of the tribunal must be based upon the facts as shown by their testimony, and it is necessary therefore that a full disclosure not be hampered by fear of private suits for defamation."). |
| **Section 590** | | | | |
| Johnson v. Northside Res. Redev. Council, 467 N.W.2d 826, 828 (Minn. Ct. App. 1991) | § 590. Legislators (2nd) | A member of the Congress of the United States or of a State or local legislative body is absolutely privileged to publish defamatory matter concerning another in the performance of his legislative functions. | Adopted | Absolute privileges provide immunity from defamation suits. This form of privilege includes the absolute privilege afforded legislators. A member of the Congress of the United States or of a State or local legislative body is absolutely privileged to publish defamatory matter concerning another in the performance of his legislative functions. Restatement (Second) of Torts § 590 (1977). |
| **Section 591** | | | | |
| Johnson v. Dirkswager, 315 N.W.2d 215, 220 (Minn. 1982) | § 591. Executive and Administrative Officers (2nd) | An absolute privilege to publish defamatory matter concerning another in communications made in the performance of his official duties exists for<br>(a) any executive or administrative | Adopted | We also said in Matthis that the absolute privilege should be confined to situations where the public service or the administration of justice requires it, keeping in mind that the purpose of the privilege is not so much to protect public officials but to promote the public good, i.e., to keep the public |

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| | | officer of the United States; or<br>(b) a governor or other superior executive officer of a state. | | informed of the public's business. |
| Bauer v. State, 511 N.W.2d 447, 450 (Minn. 1994) | § 591. Executive and Administrative Officers (2nd) | See above. | Cited in support | We stressed that "[w]e are dealing, it must be remembered, only with top-level, cabinet-equivalent executives ," id., and we cited Restatement (Second) of Torts § 591 (1977) (absolute privilege for "superior executive officers of a state"). Significantly, we did not say in Dirkswager that the Commissioner was entitled to either statutory discretionary function immunity or official immunity. There is also an "absolute privilege" for defamatory statements made by public officials acting in a judicial or quasi-judicial capacity. Thus school board members have an absolute privilege for allegedly defamatory statements made in connection with quasi-judicial proceedings involving termination of a teacher. |
| LeBaron v. Minn. Bd. Of Pub. Def., 499 N.W.2d 39, 41 (Minn. Ct. App. 1993) | § 591. Executive and Administrative Officers (2nd) | See above. | Cited in support | A top-level official in state government has an absolute privilege to communicate defamatory statements in the performance of his or her official duties. Johnson v. Dirkswager, 315 N.W.2d 215, 223 (Minn.1982); Restatement (Second) of Torts § 591 (1977). |
| **Section 592A** | | | | |
| Johnson v. Dirkswager, 315 N.W.2d 215, 223 (Minn. 1982) | § 592A. Publication Required by Law (2nd) | One who is required by law to publish defamatory matter is absolutely privileged to publish it. | Adopted | So here, where the defamatory statement appears in the context of the mandate of the Data Privacy Act, further support is afforded for an absolute privilege, since "one who is required by law to publish defamatory matter is absolutely privileged to publish it." Restatement (Second) of Torts s 592A (1977). |
| Freier v. Indep. School Dist. No. 197, 356 N.W.2d 724, 729 (Minn. Ct. App. 1984) | § 592A. Publication Required by Law (2nd) | See above. | Cited in support | Public bodies have an absolute privilege to follow the requirements of law. It is well established: One who is required by law to publish defamatory matter is absolutely privileged to publish it. Restatement |

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| | | | | (2d) of Torts Section 592A (1977); Johnson v. Dirkswager, 315 N.W.2d 215, 223 (Minn.1982). |
| Grossman v. School Bd. of I.S.D. No. 640, 389 N.W.2d 532, 535 (Minn. Ct. App. 1986) | § 592A. Publication Required by Law (2nd) | See above. | Cited in support | The second inquiry is whether there was absolute privilege because publication of the allegations was required by law. See Restatement (Second) of Torts § 592A (1977). As in Freier, publication of the two board proceedings was mandated by Minn. Stat. § 123.33, subd. 11 (1982) |
| Bol v. Cole, 561 N.W.2d 143, 148 (Minn. 1997) | § 592A. Publication Required by Law (2nd) | See above. | Cited in support | Section 592A of the Restatement (Second) of Torts provides: "One who is required by law to publish defamatory matter is absolutely privileged to publish it." Section 592A does not require that a publisher of defamatory matter be a government official to be protected by an absolute privilege. This court cited section 592A with approval in Dirkswager, 315 N.W.2d at 223. |
| McIntire v. State, 458 N.W.2d 714, 720 (Minn. Ct. App. 1990) | § 592A. Publication Required by Law (2nd) | See above. | Cited in support | Even if McIntire could prevail on this element, liability does not attach if the statement is privileged. We have previously ruled that under state law public bodies and public officials have an absolute privilege to follow the requirements of the law. Freier v. Independent School District No. 197, 356 N.W.2d 724, 729 (Minn.App.1984) (quoting Restatement (2d) of Torts, Section 592A (1977)); see Grossman v. School Board of I.S.D. No. 640, 389 N.W.2d 532, 536 (Minn.App.1986). |
| LeBaron v. Minn. Bd. Of Pub. Def., 499 N.W.2d 39, 42 (Minn. Ct. App. 1993) | § 592A. Publication Required by Law (2nd) | See above. | Cited in support | In general, one who is required by law to publish defamatory matter is absolutely privileged to publish it. Dirkswager, 315 N.W.2d at 223; McIntire v. State, 458 N.W.2d 714, 720 (Minn.App.1990), pet. for rev. denied (Minn. Sept. 28, 1990), cert. denied, 498 U.S. 1090, 111 S.Ct. 970, 112 L.Ed.2d 1056 (1991); Freier v. Independent Sch. Dist. No. 197, 356 N.W.2d 724, 729 (Minn.App.1984); Restatement (Second) of Torts § 592A (1977). |

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| Redwood County Tel. Co. v. Luttman, 567 N.W.2d 717, 720 n.2 (Minn. Ct. App. 1997) | § 592A. Publication Required by Law (2nd) | See above. | Cited in support in footnote 2 | A second type of absolute privilege applies to "[o]ne who is required by law to publish defamatory matter." Bol, 561 N.W.2d at 148 (quoting Restatement (Second) of Torts § 592A). |
| **Division 5-Defamation, Chapter 25-Defenses to Actions for Defamation, Topic 3-Conditional Privileges, Title A-Occasions Making A Publication Conditionally Privileged, Subtitle I-General Requirements** | | | | |
| Jadwin v. Minneapolis Star & Tribune Co., 367 N.W.2d 476 (Minn. 1985) | General Materials | | Cited in support | Qualified privileges have attached in a broader range of circumstances where the interest in shielding the defendant is considered less compelling, but still sufficiently important to vindicate. Historically, a publication has been privileged when " 'fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned.' " |
| Moreno v. Crookston Times Printing Co., 610 N.W.2d 321 (Minn. 2000) | General Materials | | Cited in support | Historically, a qualified privilege has protected a publication when it was made by a person in the discharge of a public or private duty, legal or moral, or in the conduct of his own affairs and in matters where his interest is concerned. |
| **Section 593** | | | | |
| Lewis v. Equitable Life Assur. Soc. Of the U.S., 389 N.W.2d 876, 889 (Minn. 1986) | § 593. Elements of Conditional Privilege Arising From Occasion (2nd) | One who publishes defamatory matter concerning another is not liable for the publication if<br>(a) the matter is published upon an occasion that makes it conditionally privileged and<br>(b) the privilege is not abused. | Adopted | Even though an untrue defamatory statement has been published, the originator of the statement will not be held liable if the statement is published under circumstances that make it conditionally privileged and if privilege is not abused. Restatement (Second) of Torts § 593 (1977). The law in Minnesota is: [A] communication, to be privileged, must be made upon a proper occasion, from a proper motive, and must be based upon reasonable or probable cause. When so made in good faith, the law does not imply malice from the communication itself, as in the ordinary case of libel. Actual malice must be proved, before there can be a recovery, and in the absence of such proof the plaintiff cannot recover. Stuempges, 297 N.W.2d at 256-57 (quoting Hebner v. Great |

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| | | | | Northern Railway, 78 Minn. 289, 292, 80 N.W. 1128, 1129 (1899)). |
| Bol v. Cole, 561 N.W.2d 143, 149 (Minn. 1997) | § 593. Elements of Conditional Privilege Arising From Occasion (2nd) | See above. | Cited in support | Having declined to recognize an absolute privilege, we must next decide whether Cole and RMHC are entitled to a qualified privilege. One who makes a defamatory statement will not be held liable if the statement is published under circumstances that make it qualifiedly privileged and if the privilege is not abused. Lewis v. Equitable Life Assurance Soc'y of the United States, 389 N.W.2d 876, 889 (Minn.1986) (citing Restatement (Second) of Torts § 593). |
| Harvet v. Unity Med. Ctr., Inc., 428 N.W.2d 574, 578 (Minn. Ct. App. 1988) | § 593. Elements of Conditional Privilege Arising From Occasion (2nd) | See above. | Cited in support | However, even though an untrue defamatory statement has been published the originator of the statement will not be held liable if the statement is published under circumstances that make it conditionally privileged and if the privilege is not abused. Restatement (second) of Torts § 593 (1977). |
| **Division 5-Defamation, Chapter 25-Defenses to Actions for Defamation, Topic 3- Conditional Privileges, Title A-Occasions Making a Publication Conditionally Privileged, Subtitle II-Factors Determining the Existence of a Conditional Privilege Arising From an Occasion** | | | | |
| Jadwin v. Minneapolis Star & Tribune Co., 367 N.W.2d 476 (Minn. 1985) | §§ 594–598A. General Materials (2nd) | | Cited in discussion | §§ 594-598A which comprise all of Ch. 25, Topic 3, Subtitle II. The individual plaintiff and two corporations he formed, a tax-free bond fund and an investment advisor company, sued the defendant newspaper for libel, after it had published an article accusing the individual plaintiff of running a one-man show and lacking experience. The article also attacked the uniqueness of the fund and predicted high initial expenses. The trial court found all three plaintiffs to be private persons but granted summary judgment to the defendants on the theory that when defamatory matter involves an issue of public concern, actual malice must be proved. On appeal, this court held, after conducting an independent review of the record, that the corporate plaintiffs were limited public figures who |

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| | | | | were required to prove malice, and it affirmed the dismissal of their cases. The individual plaintiff's case was reversed and remanded because he was held to be a private plaintiff who was required to prove only negligence to recover. |
| Moreno v. Crookston Times Printing Co., 610 N.W.2d 321 (Minn. 2000) | §§ 594–598A. General Materials (2nd) | | Cited in discussion | The individual plaintiff and two corporations he formed, a tax-free bond fund and an investment advisor company, sued the defendant newspaper for libel, after it had published an article accusing the individual plaintiff of running a one-man show and lacking experience. The article also attacked the uniqueness of the fund and predicted high initial expenses. The trial court found all three plaintiffs to be private persons but granted summary judgment to the defendants on the theory that when defamatory matter involves an issue of public concern, actual malice must be proved. On appeal, this court held, after conducting an independent review of the record, that the corporate plaintiffs were limited public figures who were required to prove malice, and it affirmed the dismissal of their cases. The individual plaintiff's case was reversed and remanded because he was held to be a private plaintiff who was required to prove only negligence to recover. |
| **Section 598A** | | | | |
| Bird v. State, Dep't of Pub. Safety, 375 N.W.2d 36, 41 (Minn. Ct. App. 1985) | § 598A. Inferior State Officers (2nd) | An occasion makes a publication conditionally privileged if an inferior administrative officer of a state or any of its subdivisions who is not entitled to an absolute privilege makes a defamatory communication required or permitted in the performance of his official duties. | Adopted | However, in this instance the allegedly defamatory statement was published by public employees who did not hold top-level positions. Statements by such persons are only granted a qualified privilege. Peterson v. Steenerson, 113 Minn. 87, 129 N.W. 147 (1910); Restatement (Second) of Torts § 598A (1976). |
| Johnson v. Northside Res. Redev. Council, 467 N.W.2d 826, 828 (Minn. | § 598A. Inferior State Officers (2nd) | See above. | Cited in support | However, as noted in comment c of this section, a number of states do not extend the absolute privilege to members of subordinate legislative |

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| Ct. App. 1991) | | | | bodies. The privileges afforded these public officers are set forth in Restatement (Second) of Torts § 598A (1977). An occasion makes a publication conditionally privileged if an inferior administrative officer of a state or any of its subdivisions who is not entitled to an absolute privilege makes a defamatory communication required or permitted in the performance of his official duties. Minnesota is among the jurisdictions applying this conditional privilege to city council members. |
| LeBaron v. Minn. Bd. Of Pub. Def., 499 N.W.2d 39, 42 (Minn. Ct. App. 1993) | § 598A. Inferior State Officers (2nd) | See above. | Cited in discussion | A district public defender, while performing an important role in the effort to provide legal services in the State, is not a cabinet-equivalent executive. Cf. Restatement (Second) of Torts § 598A (1977) (inferior state officials have only a conditional privilege to defame). |
| **Section 604** | | | | |
| Utecht v. Shopko Dep't Store, 324 N.W.2d 652, 655 (Minn. 1982) | § 604. Excessive Publication (2nd) | One who, upon an occasion giving rise to a conditional privilege for the publication of defamatory matter to a particular person or persons, knowingly publishes the matter to a person to whom its publication is not otherwise privileged, abuses the privilege unless he reasonably believes that the publication is a proper means of communicating the defamatory matter to the person to whom its publication is privileged. | Cited in discussion in dissenting opinion | Shopko used a means it thought reasonable to communicate the fact of plaintiff's credit card loss: a notice on the cash register. To be sure, Shopko might have employed some other means of conveying the information, perhaps by putting the information on a clipboard, or by displaying only a credit card number. But these methods do not convey the message so clearly, quickly or efficiently to cashiers as the method chosen. If the Utechts were serious about not having their credit card accepted, one cannot fault Shopko following through on this request. Its method would work. |
| **Section 611** | | | | |
| Moreno v. Crookston Times Printing Co., 610 N.W.2d 321 *passim*(Minn. 2000) | § 611. Report of Official Proceeding or Public Meeting (2nd) | The publication of defamatory matter concerning another in a report of an official action or proceeding or of a meeting open to the public that deals with a matter of public concern is privileged if the report is accurate and complete or a fair abridgement of the | Adopted | We agree with the policy objective that the fair and accurate reporting privilege supports-that the public interest is served by the fair and accurate dissemination of information concerning the events of public proceedings. Further, we find persuasive the Restatement (Second) of Torts § 611's articulation of the common law on the fair and |

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| | | occurrence reported. | | accurate reporting privilege. However, our decision here must be limited to the legal questions presented by the facts of this case and made within the context of our own common law. |
| Moreno v. Crookston Times Printing Co., 594 N.W.2d 555, 556, 557–58, 559, *reversed*, 610 N.W.2d 321 (Minn. 2000) | § 611. Report of Official Proceeding or Public Meeting (2nd) | See above. | Expressly not adopted | The Restatement (Second) of Torts § 611 does not represent Minnesota law. The qualified privilege associated with the fair and accurate reporting of public proceedings can be defeated by a showing of common law malice. |
| Chafoulis v. Peterson, 642 N.W.2d 764, 777 n.1 (Minn. Ct. App. 2002), *aff'd in part, rev'd in part*, 668 N.W.2d 642 (Minn. 2003) | § 611. Report of Official Proceeding or Public Meeting (2nd) | See above. | Cited in discussion | Because we affirm the grant of summary judgment in ABC's favor, we do not address ABC's claim, raised by notice of review, that "The VIP Floor" was privileged as a fair and accurate report or a fair abridgement of the federal harassment lawsuits. See Moreno, 610 N.W.2d at 332 (the media generally have a qualified privilege when making a fair and accurate report of public records). We note, however, that "The VIP Floor" would not likely enjoy the privilege, because it is "edited in such a manner as to misrepresent the proceeding and become misleading." Id. at 332 (citing Restatement (Second) of Torts § 611, cmt.. f). |
| **Section 613** | | | | |
| Church of Scientology of Minn. v. Minn. State Med. Ass'n Foundation, 264 N.W.2d 152, 156 (Minn. 1978) | § 613. Burden of Proof (2nd) | (1) In an action for defamation the plaintiff has the burden of proving, when the issue is properly raised,<br>(a) the defamatory character of the communication,<br>(b) its publication by the defendant,<br>(c) its application to the plaintiff,<br>(d) the recipient's understanding of its defamatory meaning,<br>(e) the recipient's understanding of it as intended to be applied to the plaintiff,<br>(f) special harm resulting to the | Cited in discussion | For a public-figure or public-official plaintiff to meet these requirements, he must, as a practical matter, assume the burden of proving that the communication was false. This is, of course, contrary to the common-law view. The American Law Institute has expressly withheld an opinion on this problem. Restatement, Torts 2d, s 613, Caveat and Comment j. Since the present case does not require us to resolve this difficulty, we merely note its presence for future consideration. |

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| | | plaintiff from its publication,<br>(g) the defendant's negligence, reckless disregard or knowledge regarding the truth or falsity and the defamatory character of the communication, and<br>(h) the abuse of a conditional privilege.<br><br>(2) In an action for defamation the defendant has the burden of proving, when the issue is properly raised, the presence of the circumstances necessary for the existence of a privilege to publish the defamatory communication. | | |
| **Division 5- Defamation, Chapter 26- Burden of Proof and Function of Judge and Jury In Actions For Defamation, Topic 2- Function of Court and Jury** | | | | |
| Advanced Training Sys. v. Caswell Equip. Co., 352 N.W.2d 1 (Minn. 1984) | §§ 614–616. General Materials | | Cited in discussion | Cit. in ftn. §§ 614-616, comprising most of Ch. 26, Topic 2. A manufacturer of firearms training equipment sued a competitor for libel and disparagement of products. When the jury returned a special verdict for the plaintiff, the defendant moved for judgment notwithstanding the verdict or a new trial on the grounds that the plaintiff had failed to prove special damages on the disparagement claim or the publication of libel within the two-year statute of limitations. The trial court granted the defendant's motion for judgment notwithstanding the verdict. The court reversed in part and reinstated the verdict in favor of the plaintiff on the libel claim, finding the evidence sufficient to support a finding of libel within the statute of limitations. |
| **Section 615** | | | | |
| Longbehn v. Schoenrock, 727 N.W.2d 153, 158 (Minn. Ct. App. 2007) | § 615. Determination of Slander Actionable Per Se (2nd) | (1) The court determines whether a crime, a disease or a type of sexual misconduct imputed by spoken language is of such a character as to | Cited in discussion | Appellant argues that the district court erred by concluding that respondent's statement was not defamatory per se. The application of law to established facts is a question of law, which this |

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| | | make the slander actionable per se.<br><br>(2) Subject to the control of the court whenever the issue arises, the jury determines whether spoken language imputes to another conduct, characteristics or a condition incompatible with the proper conduct of his business, trade, profession or office. | | court reviews de novo. Morton Bldgs., Inc., v. Comm'r of Revenue, 488 N.W.2d 254, 257 (Minn.1992); see also Restatement (Second) of Torts § 615(1) (1977) (stating that it is for the court to decide whether words are actionable per se). |
| **Section 619** | | | | |
| Utecht v. Shopko Dep't Store, 324 N.W.2d 652, 655 (Minn. 1982) | § 619. Privileges (2nd) | (1) The court determines whether the occasion upon which the defendant published the defamatory matter gives rise to a privilege.<br><br>(2) Subject to the control of the court whenever the issue arises, the jury determines whether the defendant abused a conditional privilege. | Cited in dissenting opinion | I dissent from the majority on this point: the lower court could rule as a matter of law that no abuse of the qualified privilege occurred through excessive publication. The Restatement (Second) of Torts § 619(2) (1977) suggests the rule: "Subject to control of the court whenever the issue arises, the jury determines whether the defendant abused a conditional privilege." But importantly, the comments to the subsection add: "These questions are for the jury to determine unless the facts are such that only one conclusion can reasonably be drawn." Id., comment on subsection (2) (emphasis supplied). If the facts of the instant case point to only one conclusion-that Shopko used a reasonable means to convey the message not to accept the Utecht credit card-then the judge may decide the issue of abuse of a qualified privilege. Id. |
| Lewis v. Equitable Life Assur. Soc. Of the U.S., 389 N.W.2d 876, 890 (Minn. 1986) | § 619. Privileges (2nd) | See above. | Adopted | This conclusion does not necessarily determine that the company's statements were privileged. A qualified privilege may be lost if it is abused. The burden is on the plaintiff to show that the privilege has been abused. Id. While the initial determination of whether a communication is privileged is a question of law for the court to decide, the question of whether the privilege was abused is a jury question. Restatement (Second) of Torts, § 619 (1977). |

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| Lewis v. Equitable life Assur. Soc. Of U.S., 361 N.W.2d 875, 885 (Minn. Ct. App. 1985) *aff'd in part, rev'd in part*, 389 N.W.2d 876 (Minn. 1986) | § 619. Privileges (2nd) | See above. | Cited in dissenting opinion | The trial court erred in submitting the issue of qualified privilege to the jury:<br><br>Whether the occasion was a privileged one is a question to be determined by the court as an issue of law, unless of course the facts are in dispute, in which case the jury will be instructed as to the proper rules to apply.<br><br>Prosser and Keeton on the Law of Torts, § 115 (5th ed. 1984); see also, Restatement of Torts 2d § 619. |
| Lund v. Chicago and Nw. Transp., 467 N.W.2d 366, 374 (Minn. Ct. App. 1991) | § 619. Privileges (2nd) | See above. | Cited in discussion in dissenting opinion | Whether a conditional privilege has been abused is usually a question of fact for the jury, Lewis v. Equitable Life Assurance Soc'y, 389 N.W.2d 876, 890 (Minn.1986) (citing Restatement (Second) of Torts § 619), unless the facts are such that only one conclusion can be drawn. See Harvet v. Unity Medical Center Inc., 428 N.W.2d 574, 579 (Minn.App.1988). |
| Chafoulias v. Peterson, 668 N.W.2d 642, 649–50 (Minn. 2003) | § 619. Privileges (2nd) | See above. | Cited in support | That comment does not identify who that "fact finder" should be, but that issue is specifically addressed in Restatement (Second) of Torts, § 619 cmt.. a (1977), which discusses the respective functions of the court and jury in connection with the determination of privileges. |
| **Section 621** | | | | |
| Becker v. Alloy Hardfacing & Eng'g Co., 401 N.W.2d 655, 661 (Minn. 1987) | § 621. General Damages (2nd) | One who is liable for a defamatory communication is liable for the proved, actual harm caused to the reputation of the person defamed. | Expressly not adopted | Recent commentators have suggested that some showing of harm to reputation, either by inference or direct evidence, should be required before allowing recovery of damages. See W. Keeton, D. Dobbs, R. Keeton, D. Owen, Prosser and Keeton on Torts, § 112 at 797 (5th ed. 1984); Restatement (Second) of Torts § 621 (1977). Appellants have failed to convince us that we should overrule long-established precedent in favor of a new rule. We reaffirm the rule that where a defendant's statements are defamatory per se, general damages |

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| | | | | are presumed. |
| Frankson v. Design Space Int'l, 380 N.W.2d 560, 571, 575 (Minn. Ct. App. 1986) | § 621. General Damages (2nd) | See above. | Cited in concurring and dissenting in part opinion | The "presumed damage" rule, once extensively followed throughout the United States, has come under increasing challenge. See Prosser and Keeton on the Law of Torts § 112, at 795-97 (W. Keeton 5th ed. 1984); Restatement (Second) of Torts § 621 (1977). Our supreme court has recently applied the presumed damage rule in defamation of an individual's business reputation. Stuempges, 297 N.W.2d at 259. In affirming the award of presumed compensatory damages in Stuempges, the court specifically referred to the "devastating quality" of the defendant's remarks. |
| Richie v. Paramount Pictures Corp., 532 N.W.2d 235, 239 (Minn. Ct. App. 1995) | § 621. General Damages (2nd) | See above. | Cited in support | But first amendment principles do not require that harm to reputation be proved as an essential element of a defamation claim. See, e.g., Little Rock Newspapers v. Dodrill, 281 Ark. 25, 660 S.W.2d 933, 936 (1983) (imposing harm-to-reputation prerequisite but noting not constitutionally required); Hearst Corp. v. Hughes, 297 Md. 112, 466 A.2d 486, 491-93 (1983) (trier of fact constitutionally barred from awarding damages for presumed harm to reputation, but not proven harms); accord Restatement (Second) of Torts § 621 at 320 (1977). |
| Longbehn v. Schoenrock, 727 N.W.2d 153, 162 (Minn. Ct. App. 2007) | § 621. General Damages (2nd) | See above. | Cited in support | The presumption of general damages in cases of defamation per se affords little control by the court over the jury's assessment of the appropriate amount of damages. Stuempges, 297 N.W.2d at 259; Restatement (Second) of Torts § 621 cmt.. a (1977). But in the absence of proof, general damages are limited to harm that "would normally be assumed to flow from a defamatory publication of the nature involved." Restatement (Second) of Torts § 621 cmt.. a (1977). |
| **Section 622** | | | | |

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| Stuempges v. Parke, Davis & Co., 297 N.W.2d 252, 258 (Minn. 1980) | § 622. Special Harm as Affecting the Measure of Recovery (2nd) | One who is liable for either a slander actionable per se or a libel is also liable for any special harm legally caused by the defamatory publication. | Adopted | The general rule regarding "pecuniary damages" is that the plaintiff can recover only if he proves actual and special pecuniary loss. W. Prosser, supra, s 112 at 760. See also Restatement (Second) of Torts s 622, Comment a (1977). |
| Longbehn v. Schoenrock, 727 N.W.2d 153, 160 (Minn. Ct. App. 2007) | § 622. Special Harm as Affecting the Measure of Recovery (2nd) | See above. | Cited in support | A plaintiff may recover special damages if he or she proves that the defamatory publication is the legal cause of any actual and special pecuniary loss. Stuempges, 297 N.W.2d at 258-59; Restatement (Second) of Torts § 622 (1977) ("One who is liable for ... a slander actionable per se ... is also liable for any special harm legally caused by the defamatory publication."). A defamatory publication actionable per se is the legal cause of special harm if "it is a substantial factor in bringing about the harm." Restatement (Second) of Torts § 622A(a) (1977). |
| **Section 622A** | | | | |
| Longbehn v. Schoenrock, 727 N.W.2d 153, 160 (Minn. Ct. App. 2007) | § 622A. Legal Causation of Special Harm | Defamation is a legal cause of special harm to the person defamed if<br>(a) it is a substantial factor in bringing about the harm, and<br>(b) there is no rule of law relieving the publisher from liability because of the manner in which the publication has resulted in the harm. | Adopted | A defamatory publication actionable per se is the legal cause of special harm if "it is a substantial factor in bringing about the harm." Restatement (Second) of Torts § 622A(a) (1977). |
| **Division 6 – Injurious Falsehood** | | | | |
| **Section 632** | | | | |
| Paidar v. Hughes, 615 N.W.2d 276, 283 (Minn. 2000) | § 632. Legal Causation of Pecuniary Loss (2nd) | The publication of an injurious falsehood is a legal cause of pecuniary loss if<br>(a) it is a substantial factor in bringing about the loss, and<br>(b) there is no rule of law relieving the publisher from liability because of the manner in which the publication has resulted in the loss. | Cited in support | For there to be recovery, there must be legal causation. Here the comments to Section 632 of the Restatement are helpful. The injurious statement must be a substantial factor that brings about the loss. See Restatement (Second) of Torts, § 632, cmt.. b (1977). A relevant part of the comment to Section 632 reads as follows: Thus the vendibility of land, chattels or intangible things may be impaired when a statement makes them appear less desirable for purchase, lease or other dealings than they |

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| | | | | actually are. But the liability does not accrue until the publication of the disparaging matter operates as a substantial factor in determining the decision of a prospective purchaser or other interested persons, to refrain from buying or otherwise acquiring the thing in question, or causes the owner to incur the expense of such legal proceedings as may be available or necessary to remove the cloud upon the vendibility that is cast upon it by the publication. Id. (emphasis added). |
| **Section 633** | | | | |
| Advanced Training Sys. v. Caswell Equip. Co., 352 N.W.2d 1, 8 (Minn. 1984) | § 633. Pecuniary Loss (2nd) | (1) The pecuniary loss for which a publisher of injurious falsehood is subject to liability is restricted to<br>(a) the pecuniary loss that results directly and immediately from the effect of the conduct of third persons, including impairment of vendibility or value caused by disparagement, and<br>(b) the expense of measures reasonably necessary to counteract the publication, including litigation to remove the doubt cast upon vendibility or value by disparagement.<br><br>(2) This pecuniary loss may be established by<br>(a) proof of the conduct of specific persons, or<br>(b) proof that the loss has resulted from the conduct of a number of persons whom it is impossible to identify. | Cited in support | Plaintiffs make two arguments in support of their contention that they nevertheless proved special damages at trial. First, they argue that ATS suffered pecuniary loss because defendants' disparaging statements prevented the company from growing as fast as it otherwise would have. The company has done quite well despite defendant's campaign, and in fact has captured about 97 percent of the market for portable firearms training equipment. Plaintiffs nevertheless contend that their business would probably have been more successful in its early years had defendant not disparaged their products. This allegation of damage is clearly "too speculative" to meet the requirement that special pecuniary loss in a disparagement case be proved with particularity. See Comment, The Law of Commercial Disparagement: Business Defamation's Impotent Ally, 63 Yale L.J. 65, 90-91 (1953); see also Restatement (Second) of Torts § 633 comment h (1977) |
| Paidar v. Hughes, 615 N.W.2d 276 *passim* (Minn. 2000) | § 633. Pecuniary Loss (2nd) | See above. | Adopted | Property buyers brought a declaratory judgment action against seller for fraud and specific performance of the contract for deed. Seller brought third-party action against title insurance company in both a slander-of-title action and an action to quiet title. Trial court granted title |

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| | | | | company summary judgment, holding that attorneys' fees could not constitute special damages necessary to plead a slander-of-title action, and the appellate court affirmed. This court reversed and remanded, holding that reasonable attorneys' fees that were a direct consequence of an action to quiet title, which, in turn, resulted from slander of title, constituted special damages. Dissent argued that, by adopting Restatement (Second) of Torts § 633 in a case where the facts did not support liability, the majority adopted a new rule that provided no clear boundaries for future application. |
| **Division 6A - Privacy** | | | | |
| **Section 652B** | | | | |
| Lake v. Wal-Mart Stores, Inc., 582 N.W.2d 231, 233 n.2 (Minn. 1998) | § 652B. Intrusion Upon Seclusion (2nd) | One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person. | Adopted | The Restatement (Second) of Torts outlines the four causes of action that comprise the tort generally referred to as invasion of privacy. Intrusion upon seclusion occurs when one "intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns if the intrusion would be highly offensive to a reasonable person"...Therefore, without consideration of the merits of Lake and Weber's claims, we recognize the torts of intrusion upon seclusion, appropriation, and publication of private facts. |
| Swarthout v. Mut. Serv. Life Ins. Co., 632 N.W.2d 741, 744–45 (Minn. Ct. App. 2001) | § 652B. Intrusion Upon Seclusion (2nd) | See above. | Cited in support | The Restatement (Second) of Torts, § 652(b) (1977), states: One who intentionally intrudes, physically or otherwise, upon the solicitude of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person. Minnesota adopted this tort, known as intrusion upon seclusion, in 1998. Lake v. Wal-Mart Stores, Inc., 582 N.W.2d 231 (Minn.1998). The tort has three elements: (a) an intrusion; (b) that is highly offensive; and (c) into some matter in which a person has a legitimate expectation of |

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| | | | | privacy. E.g., Fletcher v. Price Chopper Foods, 220 F.3d 871, 875 (8th Cir.2000). |
| **Section 652C** | | | | |
| Lake v. Wal-Mart Stores, Inc., 582 N.W.2d 231, 233 n.3 (Minn. 1998) | § 652C. Appropriation of Name or Likeness (2nd) | One who appropriates to his own use or benefit the name or likeness of another is subject to liability to the other for invasion of his privacy. | Adopted | Appropriation protects an individual's identity and is committed when one "appropriates to his own use or benefit the name or likeness of another"...Therefore, without consideration of the merits of Lake and Weber's claims, we recognize the torts of intrusion upon seclusion, appropriation, and publication of private facts. |
| Bodah v. Lakeville Motor Express, Inc., 663 N.W.2d 550, 554 n.3 (Minn. 2003) | § 652C. Appropriation of Name or Likeness (2nd) | See above. | Cited in discussion | The "publicity" required for the invasion of privacy tort of false light publicity is identical to that required for publication of private facts. See Restatement (Second) of Torts § 652E cmt.s. a, b, illus. 1-5 (1977) [the Restatement refers the reader to comment a of § 652C which we believe should read § 652D]...Therefore, without consideration of the merits of Lake and Weber's claims, we recognize the torts of intrusion upon seclusion, appropriation, and publication of private facts. |
| **Section 652D** | | | | |
| Lake v. Wal-Mart Stores, Inc., 582 N.W.2d 231, 233 n.4 (Minn. 1998) | § 652D. Publicity Given to Private Life (2nd) | One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that<br>(a) would be highly offensive to a reasonable person, and<br>(b) is not of legitimate concern to the public. | Adopted | Publication of private facts is an invasion of privacy when one "gives publicity to a matter concerning the private life of another if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public"...Therefore, without consideration of the merits of Lake and Weber's claims, we recognize the torts of intrusion upon seclusion, appropriation, and publication of private facts. |
| Robbinsdale Clinic v. Pro-Life Action, 515 N.W.2d 88, 92 (Minn. Ct. App. 1994) | § 652D. Publicity Given to Private Life (2nd) | See above. | Cited in support | Finally, even where invasion of privacy claims are recognized, they are generally not allowed where private facts are only communicated to a single person or a small group of people, as was the case here. Restatement (Second) of Torts § 652D cmt.. a |

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| | | | | (1976). Given that Clinic has not shown that Patient X's constitutional right of privacy was violated, and in light of the fact that a tort claim for invasion of privacy against Driver would not be recognized, we cannot uphold the more constitutionally suspect state action of finding Driver in contempt for attempting to communicate with Patient X's parents. |
| Lake v. Wal-Mart Stores, Inc., 566 N.W.2d 376, 378 (Minn. Ct. App. 1997), *aff'd in part, rev'd in part*, 582 N.W.2d 231 (Minn. 1998) | § 652D. Publicity Given to Private Life (2nd) | See above. | Cited in support | Generally, the tort can be one of four different types: (1) unreasonable invasion upon the seclusion of another; (2) appropriation of the other's name or likeness; (3) unreasonable publicity given to the others' private life; or (4) publicity that unreasonably places the other in a false light before the public. Restatement (Second) of Torts § 652D (1987); W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 117, at 851-68 (5th ed.1984). |
| Bodah v. Lakeville Motor Express, Inc., 663 N.W.2d 550, 551, 552, 553–54, 556, 557 (Minn. 2003) | § 652D. Publicity Given to Private Life (2nd) | See above. | Adopted | We adopt the definition of "publicity" from the Restatement (Second) of Torts § 652D cmt.. a (1977). Further, we hold that the complaint does not allege the requisite "publicity" to support a claim for publication of private facts. We reverse. |
| Bodah v. Lakeville Motor Express, Inc., 649 N.W.2d 859, 862, 864, 864 (Minn. Ct. App. 2002), *rev'd*, 663 N.W.2d 550 (Minn. 2003) | § 652D. Publicity Given to Private Life (2nd) | See above. | Cited in support | Employees' social security numbers (SSNs) were private information, for purposes of the tort of invasion of privacy; they were unique identifiers that could be used to commit identity theft. Restatement (Second) of Torts § 652D. |
| Robins v. Conseco Fin. Loan Co., 656 N.W.2d 241, 244–45 (Minn. Ct. App. 2003) | § 652D. Publicity Given to Private Life (2nd) | See above. | Cited in support | Although neither of these examples is the same as the instant case, the first is close. The disclosure in the Restatement example is made to the employer. In the instant case, Conseco disclosed the information to a fellow employee of Robins who was planning to sell Robins a manufactured home. The disclosure was only made to a single person and this single person passed the information on to other |

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| | | | | people. It was not communicated "to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge." Id. Thus, under the Restatement definition of publicity, the disclosure of the Robins' credit report to one person does not constitute publicity. |
| **Section 652E** | | | | |
| Lake v. Wal-Mart Stores, Inc., 582 N.W.2d 231, 233 n.5 (Minn. 1998) | § 652E. Publicity Placing Person in False Light (2nd) | One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if<br>(a) the false light in which the other was placed would be highly offensive to a reasonable person, and<br>(b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. | Expressly not adopted | We decline to recognize the tort of false light publicity at this time. We are concerned that claims under false light are similar to claims of defamation, and to the extent that false light is more expansive than defamation, tension between this tort and the First Amendment is increased. False light is the most widely criticized of the four privacy torts and has been rejected by several jurisdictions. |
| Bodah v. Lakeville Motor Express, Inc., 663 N.W.2d 550, 554 n.3 (Minn. 2003) | § 652E. Publicity Placing Person in False Light (2nd) | See above. | Cited in discussion | The "publicity" required for the invasion of privacy tort of false light publicity is identical to that required for publication of private facts. See Restatement (Second) of Torts § 652E cmt.s. a, b, illus. 1-5 (1977) [the Restatement refers the reader to comment a of § 652C which we believe should read § 652D]. |
| **Section 652I** | | | | |
| Estate of Benson v. Minn. Bd. Of Med., 526 N.W.2d 634, 637 (Minn. Ct. App. 1995) | § 652I. Personal Character of Right of Privacy (2nd) | Except for the appropriation of one's name or likeness, an action for invasion of privacy can be maintained only by a living individual whose privacy is invaded. | Cited in support | Our conclusion that an invasion of decedent's statutory privacy rights constitutes a personal injury is supported by general tort principles and foreign case law. Although Minnesota does not recognize an independent tort for invasion of privacy, such a tort is a cause of action for personal injury. See Restatement (Second) of Torts § 652I (privacy right |

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| | | | | is purely personal); Hendry v. Conner, 303 Minn. 317, 319, 226 N.W.2d 921, 923 (1975) (Minnesota has never recognized an action for invasion of privacy); Markgraf v. Douglas Corp., 468 N.W.2d 80, 84 (Minn.App.1991) (same). |
| **Division 7 – Unjustifiable Litigation** | | | | |
| **Section 653** | | | | |
| Stead-Bowers v. Langley, 636 N.W.2d 334, 339 (Minn. Ct. App. 2001) | § 653. Elements of a Cause of Action (2nd) | A private person who initiates or procures the institution of criminal proceedings against another who is not guilty of the offense charged is subject to liability for malicious prosecution if<br>(a) he initiates or procures the proceedings without probable cause and primarily for a purpose other than that of bringing an offender to justice, and<br>(b) the proceedings have terminated in favor of the accused. | Cited in support | We also find commentary on the issue to be persuasive. The Second Restatement of Torts states that the triggering conduct for the tort of malicious prosecution is the initiation of a criminal proceeding. Restatement (Second) of Torts § 653 (1977). |
| **Section 654** | | | | |
| Stead-Bowers v. Langley, 636 N.W.2d 334, 339–40 (Minn. Ct. App. 2001) | § 654. Institution of Criminal Proceedings (2nd) | (1) The term "criminal proceedings" includes any proceeding in which a government seeks to prosecute a person for an offense and to impose upon him a penalty of a criminal character.<br><br>(2) Criminal proceedings are instituted when<br>(a) process is issued for the purpose of bringing the person accused of a criminal offense before an official or tribunal whose function is to determine whether he is guilty of the offense charged, or whether he shall be held for later determination of his guilt or innocence; or<br>(b) without the issuance of process an | Cited in support | We decline to extend the scope of the malicious prosecution tort as advocated by Stead-Bowers. Based on the above policy considerations and sources of law, we find that a distinct line can be drawn between what actions trigger the malicious prosecution tort and what actions do not. We conclude that some formal legal action must be instituted. Actions such as a criminal charge or indictment would meet this requirement. The initiation of a criminal investigation alone without further proceedings falls short. The district court did not err in dismissing Stead-Bowers's claim. |

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| | | indictment is returned or an information filed against him; or (c) he is lawfully arrested on a criminal charge. | | |
| **Section 655** | | | | |
| Williamson v. Guentzel, 584 N.W.2d 20, 25 (Minn. Ct. App. 1998) | § 655. Continuing Criminal Proceedings (2nd) | A private person who takes an active part in continuing or procuring the continuation of criminal proceedings initiated by himself or by another is subject to the same liability for malicious prosecution as if he had then initiated the proceedings. | Adopted | Liability for procurement under the Restatement is not established by merely advising parties or supplying information, but only arises when a party induces a third party to take action either by "insisting" or "urging" that a suit be filed or continued. Id. cmt.. c (incorporating Restatement § 655 cmt.. c (1965), which specifies that liability is not imposed on one who testifies voluntarily in the prosecution of an action, but is limited to those who insist or urge initiation or continuation of lawsuit). Appellant has submitted no evidence that Guentzel either insisted on or urged the pursuit of Fetzer's federal court suit. He argues that Guentzel is liable for supplying information to Fetzer, which formed part of its federal suit. That allegation does not meet the Restatement's standards for liability. |
| **Section 656** | | | | |
| Brown v. Dayton Hudson Corp., 314 N.W.2d 210, 213 (Minn. 1981) | § 656. Absolute Privilege of Public Prosecutor (2nd) | A public prosecutor acting in his official capacity is absolutely privileged to initiate, institute, or continue criminal proceedings. | Adopted | The holding in Imbler is reflected in the RESTATEMENT (SECOND) OF TORTS s 656 (1970), which provides that "(a) public prosecutor acting in his official capacity is absolutely privileged to initiate, institute, or continue criminal proceedings"...We hold that Labat was acting in a quasi-judicial capacity. The discretionary decision whether to charge and whether to continue a prosecution lies at the very heart of the prosecutorial function. We adopt the majority rule that public prosecutors, when acting within the scope of their duties by filing and maintaining criminal charges, are absolutely immune from civil liability. While a qualified immunity might be sufficient to protect the honest prosecutor from an unjust damage award, it would not be sufficient to |

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| **Section 674** | | | | |
| Williamson v. Guentzel, 584 N.W.2d 20, 24–25 (Minn. Ct. App. 1998) | § 674. General Principle (2nd) | One who takes an active part in the initiation, continuation or procurement of civil proceedings against another is subject to liability to the other for wrongful civil proceedings if<br>(a) he acts without probable cause, and primarily for a purpose other than that of securing the proper adjudication of the claim in which the proceedings are based, and<br>(b) except when they are ex parte, the proceedings have terminated in favor of the person against whom they are brought. | Cited in discussion, not adopted | Restatements of the law are persuasive authority only and are not binding unless specifically adopted in Minnesota by statute or case law. See Mahowald v. Minnesota Gas Co., 344 N.W.2d 856, 860 (Minn.1984) (adopting a portion of the Restatement (Second) of Torts, but rejecting other sections). Appellant has failed to cite any authority demonstrating that Minnesota has adopted section 674 of the Restatement. Because the propositions of section 674 would not establish a claim against respondent Guentzel, we need not decide whether the section governs Minnesota law. |
| **Division 8 – Interference in Domestic Relations** | | | | |
| **Section 693** | | | | |
| Huffer v. Kozitza, 361 N.W.2d 451, 454 (Minn. Ct. App. 1985) | § 693. Action by One Spouse for Harm Caused by Tort Against Other Spouse (2nd) | (1) One who by reason of his tortious conduct is liable to one spouse for illness or other bodily harm is subject to liability to the other spouse for the resulting loss of the society and services of the first spouse, including impairment of capacity for sexual intercourse, and for reasonable expense incurred by the second spouse in providing medical treatment.<br><br>(2) Unless it is not possible to do so, the action for loss of society and services is required to be joined with the action for illness or bodily harm, and recovery for loss of society and services is allowed only if the two actions are so joined. | Cited in support | Unless it is not possible to do so, the action for loss of society and services is required to be joined with the action for illness or bodily harm, and recovery for loss of society and services is allowed only if the two actions are so joined. We hold that the appellant is not bound by the settlement entered into by her husband without her knowledge, but may proceed against Kozitza upon her claim for loss of consortium. The order of the trial court granting summary judgment is, accordingly, reversed, and the case is remanded for further proceedings. Reversed and remanded. |

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| **Section 699** | | | | |
| Larson v. Dunn, 460 N.W.2d 39, 48 (Minn. 1990) | § 699. Alienation of Affections of Minor or Adult Child (2nd) | One who, without more, alienates from its parent the affections of a child, whether a minor or of full age, is not liable to the child's parent. | Cited in support in dissenting opinion | Tort law long has protected "relational" interests, such as between family members, from interference. Prosser & Keeton, supra, § 124, at 915; see, e.g., In re Parks, 267 Minn. 468, 127 N.W.2d 548 (1964); Miller v. Monsen, 228 Minn. 400, 37 N.W.2d 543 (1949) (holding child could bring action for enticement of parent). In 1978, however, our legislature abolished alienation of affection and other "heart balm" actions because they "have been subject to grave abuses." Act of March 23, 1978, ch. 515, §§ 1, 2, 1978 Minn.Laws 141, 141, codified at Minn.Stat. §§ 553.01; 553.02 (1988); see Bock v. Lindquist, 278 N.W.2d 326, 327 (Minn.1979) (refusing to recognize a cause of action by a parent against relatives for alienation of a child's affections). These limitations are distinguishable because, with the custody tort, "the interference with family relations is accomplished by means of some independent tort, such as fraud." Prosser & Keeton, supra, § 124, at 930; see Restatement (Second) of Torts § 699 (1977) ( "Restatement") (parent has no action for mere alienation of child's affections). |
| **Section 700** | | | | |
| Larson v. Dunn, 460 N.W.2d 39, 44 n.3, 49, 50, 51, 52 (Minn. 1990) | § 700. Causing Minor Child to Leave or Not to Return Home (2nd) | One who, with knowledge that the parent does not consent, abducts or otherwise compels or induces a minor child to leave a parent legally entitled to its custody or not to return to the parent after it has been left him, is subject to liability to the parent. | Not Adopted (Adoption by Court of Appeals reversed), also cited in dissenting opinion | It has been advocated by some that this tort will "fill in the gaps." Before taking such a step, which may profoundly and permanently affect the relationships between children, their parents, grandparents, aunts and uncles, a broader segment of our society should study, debate and consider this action, and if such a tort is to be adopted, decide how broad its scope and how far reaching its award of damages will be. Expanding the adversarial process to include this new tort is contrary to the best interests of children and will only intensify intrafamily conflict growing out of marriage dissolution without deterring parental abduction. |

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| Larson v. Dunn, 449 N.W.2d 751, 756, 758 (Minn. Ct. App. 1990), *aff'd in part, rev'd in part*, 460 N.W.2d 39 (Minn. 1990) | § 700. Causing Minor Child to Leave or Not to Return Home (2nd) | See above. | Adopted | The comments to section 700 make clear that the defendant's conduct must be affirmative and purposeful, and that mere knowledge of an abducted child's whereabouts is not enough to trigger liability. Id., comments a, b. Only a parent with legal custody may bring an action. Id., comment c. A parent may be liable to the other parent if by judicial decree sole custody of the child has been awarded to the other parent. Id. The Restatement recognizes an affirmative defense for one who rescues the child from unlawful physical violence inflicted by the parent. Id., comment e. To succeed in this defense, however, a defendant must have had an objectively reasonable belief that the child would suffer immediate harm unless rescued. Id.<br>Minnesota public policy supports compensating each of the injuries redressed by the tort of intentional interference with custodial rights. We therefore recognize a tort for use against those who interfere with the relationship between the custodial parent and child, as defined by the Restatement (Second) of Torts § 700. |
| **Section 703** | | | | |
| Higgins v. J.C. Penney Cas. Ins. Co., 388 N.W.2d 429, 430–31 (Minn. Ct. App. 1986) | § 703. Action by Parent for Harm Caused by Tort Against Minor Child (2nd) | One who by reason of his tortious conduct is liable to a minor child for illness or other bodily harm is subject to liability to (a) the parent who is entitled to the child's services for any resulting loss of services or ability to render services, and to<br>(b) the parent who is under a legal duty to furnish medical treatment for any expenses reasonably incurred or likely to be incurred for the treatment during the child's minority. | Not adopted | the Restatement (Second) of Torts directly addresses this issue, stating that a parent may not recover if an adult child is involved, even if the adult child lives in the parent's home and actually renders assistance to the parent. Restatement (Second) of Torts § 703 comment f (1977). We also believe that public policy weighs against extending tort liability to allow recovery by parents for injuries to their adult children. The supreme court has shown a concern that liability for one's actions not be unlimited. In Salin v. Kloempken, 322 N.W.2d 736 (Minn.1982), the supreme court refused to recognize a cause of action for minor children to recover damages for loss of parental consortium resulting from injuries sustained by their parent while a passenger in an automobile accident. |

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| **Section 707A** | | | | |
| Plain v. Plain, 307 Minn. 399, 402–03, 240 N.W.2d 330, 332 (Minn. 1976) | § 707A. Action by Child for Harm Caused by Tort Against Parent (2nd) | One who by reason of his tortious conduct is liable to a parent for illness or other bodily harm is not liable to a minor child for resulting loss of parental support and care. | Cited in support | We are aware of no authority granting a child a cause of action against a third person for negligent injury to his parent. Nor is there authority to support a cause of action against the parent who negligently injures herself. |
| Salin v. Kloempken, 322 N.W.2d 736, 738 (Minn. 1982) | § 707A . Action by Child for Harm Caused by Tort Against Parent (2nd) | See above. | Cited in support | In Plain v. Plain, 307 Minn. 399, 240 N.W.2d 330 (1976), we held that a child could not recover damages from his or her mother for loss of maternal services when she negligently injures herself. We stated that "[a] child's interest in parental services is not protected against negligent interference even on the part of third parties," id. at 402, 240 N.W.2d at 332 (footnote omitted), and quoted a tentative draft of § 707A of the Restatement (Second) of Torts |
| **Division 9 – Interference with Advantageous Economic Relations** | | | | |
| **Division 9- Interference with Advantageous Economic Relations, Chapter 37- Interference with Contract or Prospective Contractual Relation, General Materials** | | | | |
| Thompson v. Estate of Petroff, 319 N.W.2d 400 (Minn. 1982) | General Materials | | Cited in support | Some causes of action have been held to survive because they involve property rights or are closely related to claims arising out of contract. For example, this court has indicated that the tort of wrongful interference probably would survive under section 573.01 "because it resembles a property or a contract claim." Wild v. Rarig, 302 Minn. at 446, 234 N.W.2d at 793. Nevertheless, the tort of wrongful interference is clearly an intentional rather than a negligent act, see Restatement (Second) of Torts ch. 37, Introductory Note (1977); certainly the defendant's state of mind in such a case is relevant in much the same manner as in intentional torts causing personal injury. |
| **Section 766** | | | | |
| Guerdon Indus., Inc. v. Rose, 399 N.W.2d 186, 187–88 (Minn. Ct. App. | § 766. Intentional Interference with Performance of Contract by | One who intentionally and improperly interferes with the performance of a contract (except a contract to marry) | Adopted | Rose did not dispute that the action he took in filing his lawsuit and lis pendens against the property was intentional but claims he lacked the |

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| 1987) | Third Person (2nd) | between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract. | | necessary intent or motive to harm Guerdon. In order to be liable for tortious interference with Guerdon's contract with the third party, Rose must have intended to so interfere. See Restatement (Second) of Torts § 766 comment a (1977). "If the actor does not have this intent, his conduct does not subject him to liability even if it has the unintended effect of deterring the third person from dealing with the other." Id. comment h. It does appear that Rose intended to delay Guerdon's sale of its property, since sale to another would be inconsistent with Rose's request for specific performance. |
| Federated Mut. V. Litchfield Prec. Comp., 456 N.W.2d 434, 439 (Minn. 1990) | § 766. Intentional Interference with Performance of Contract by Third Person (2nd) | See above. | Cited in support | Arguably, res judicata would not apply here either because the claims and defenses to Federated's subrogation action would be different from those raised in a spoliation action. Cf. Restatement (Second) of Torts § 766 comment v (1977) (breach of contract judgment will not bar "intentional interference with contract" tort action as long as judgment is not satisfied). |
| Nordling v. N. States Power Co., 478 N.W.2d 498, 505, 506 (Minn. 1991) | § 766. Intentional Interference with Performance of Contract by Third Person (2nd) | See above. | Cited in support | First of all, even if Nordling's contract claim based on the employee handbook fails, we believe a tortious interference suit will lie. While we have not previously addressed this exact question, we conclude a tortious interference claim will lie for an at-will employment agreement. The at-will employment subsists at the will of the employer and employee, not at the will of a third party meddler who wrongfully interferes with the contractual relations of others. See Restatement (Second) of Torts § 766 comment g (1979). |
| Schumacher v. Ihrke, 469 N.W.2d 329, 332 (Minn. Ct. App. 1991) | § 766. Intentional Interference with Performance of Contract by Third Person (2nd) | See above. | Cited in support | Appellants argue that they intended to acquire the Parker property from Russell Parker, not to interfere with the contract between respondents and FCB. Appellants knew, however, that in order to possess the Parker property they had to interfere with respondents' contract. This knowledge |

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| | | | | establishes intentional interference: The rule applies to an interference that is incidental to the actor's independent purpose and desire but known to him to be a necessary consequence of his action. Guerdon Indus., Inc. v. Rose, 399 N.W.2d 186, 188 (Minn.App.1987) (quoting Restatement of Torts (2d) § 766 comment j (1977)). |
| Kjesbo v. Ricks, 506 N.W.2d 326, 329 (Minn. Ct. App. 1993), *aff'd in part, rev'd in part*, 517 N.W.2d 585 (Minn. 1994) | § 766. Intentional Interference with Performance of Contract by Third Person (2nd) | See above. | Cited in support | Interference includes any act injuring or destroying persons or property which retards, makes more difficult, or prevents performance, or makes performance of a contract of less value to the promisee. Id. (quoting Royal Realty Co. v. Levin, 244 Minn. 288, 291 n. 5, 69 N.W.2d 667, 671 n. 4 (1955)). Knowledge may establish intentional interference:<br>The rule applies to an interference that is incidental to the actor's independent purpose and desire but known to him to be a necessary consequence of his action. Restatement (Second) of Torts § 766 cmt.. j (1979), quoted in Schumacher, 469 N.W.2d at 329. |
| Beck v. Am. Sharecom, Inc., 514 N.W.2d 584, 589–90 (Minn. Ct. App. 1994) | § 766. Intentional Interference with Performance of Contract by Third Person (2nd) | See above. | Cited in support | To prove tortious interference of contract, a plaintiff must show (a) the existence of a contract, (b) defendant's knowledge of that contract, (c) intentional and improper interference, and (d) damage as a result of the unjustified conduct. Major Computer v. Academy Life Ins. Co., 929 F.2d 1249, 1250 (8th Cir.1991); Furlev Sales & Assocs. v. North Am. Automotive Warehouse, 325 N.W.2d 20, 25 (Minn.1982); see Restatement (Second) of Torts § 766 (1979) (defendant liable for intentionally inducing third party not to perform contract). |
| Metge v. Cent. Neighborhood Improvement Ass'n, 649 N.W.2d 488, 499–500 (Minn. Ct. App. 2002) | § 766. Intentional Interference with Performance of Contract by Third Person (2nd) | See above. | Cited in support | In Nordling the supreme court recognized that "a tortious interference claim will lie for an at-will employment agreement" and went on to state that [t]he at-will employment subsists at the will of the employer and employee, not at the will of a third party meddler who wrongfully interferes with the |

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| | | | | contractual relations of others. Id. at 505 (emphasis added); see Kallok v. Medtronic, Inc., 573 N.W.2d 356, 361 (Minn.1998) (stating that its holding in Nordling was "that third party 'meddlers' should not be permitted to interfere with an at-will employment agreement"). The supreme court did not condition the claim against third parties to only those meddlers who could directly terminate an employee. See also Kallok, 573 N.W.2d at 361 (stating "[i]t is well-established that a third party who interferes with and causes the breach of a contract may be held liable for damages"); Carnes v. St. Paul Union Stockyards Co., 164 Minn. 457, 462, 205 N.W. 630, 631 (1925) (stating "[i]t being the law that a [person] who has employment and is discharged by [the] employer solely by reason of the wrongful interference of another, sustains an injury for which the intermeddler is liable"); Restatement (Second) of Torts § 766 (1976) (discussing elements of intentional interference with performance of contract by a third person and not limiting who may be considered an actor). Thus, we conclude that the issue reserved in Nordling, of "[w]hether a tortious interference claim against a [non-supervisory] co-employee might ever lie," is not presented by a tortious interference claim brought against a third party. |
| **Section 766A** | | | | |
| Furlev Sales v. N. Am. Auto., 325 N.W.2d 20, 27 (Minn. 1982) | § 766A. Intentional Interference With Another's Performance of His Own Contract (2nd) | One who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person, by preventing the other from performing the contract or causing his performance to be more expensive or burdensome, is subject to liability to the other for the pecuniary loss resulting to him. | Cited in support | Ordinarily, the plaintiff in a wrongful interference action is a party who claims he has been deprived of the other party's performance by reason of conduct of a third person. The Restatement (Second) of Torts § 766A (1977), however, recognizes the plaintiff may also be the party who was prevented from performing. But here, plaintiff Furlev was "prevented" from performing by agreeing with a third person not to perform. It appears to us that this is not the kind of "interference" contemplated by section 766A. |

| **Section 766B** | | | | |
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| United Wild Rice, Inc. v. Nelson, 313 N.W.2d 628, 632–33 (Minn. 1982) | § 766B. Intentional Interference With Prospective Contractual Relation (2nd) | One who intentionally and improperly interferes with another's prospective contractual relation (except a contract to marry) is subject to liability to the other for the pecuniary harm resulting from loss of the benefits of the relation, whether the interference consists of<br>(a) inducing or otherwise causing a third person not to enter into or continue the prospective relation or<br>(b) preventing the other from acquiring or continuing the prospective relation. | Adopted | The Restatement of Torts sets out the elements of the tort of intentional interference with prospective contractual relations. Restatement (Second) of Torts s 766B (1979)...Here, the prospective contractual relations Nelson interfered with concerned the buying and selling of wild rice. These activities fall squarely within the ambit of competition between Nelson and United. Nelson did not employ wrongful means in carrying out the interference and the interference does not constitute an unlawful restraint of trade. Finally, Nelson's purpose was, at least in part, to advance his interest in competing with United. |
| Park Dev. Co., Inc. v. Snyder Bros. of Minn., Inc., 499 N.W.2d 500, 505 (Minn. Ct. App. 1993) | § 766B. Intentional Interference With Prospective Contractual Relation (2nd) | See above. | Cited in support | The Restatement of Torts sets out the elements of interference with prospective economic advantage. One who intentionally and improperly interferes with another's prospective contractual relation is subject to liability to the other for the pecuniary harm resulting from the loss of the benefits of the relations, whether the interference consists of (a) inducing or otherwise causing a third person not to enter into or continue the prospective relation or (b) preventing the other from acquiring or continuing the prospective relation. United Wild Rice, Inc. v. Nelson, 313 N.W.2d 628, 632-633 (Minn.1982) (quoting Restatement (Second) of Torts § 766B (1979)). |
| R.A., Inc. v. Anheuser-Busch, Inc., 556 N.W.2d 567, 570–71 (Minn. Ct. App. 1996) | § 766B. Intentional Interference With Prospective Contractual Relation (2nd) | See above. | Cited in support | The law clearly requires the actor's conduct to be improper before liability for interference with prospective contractual relations will attach. To determine whether the actor's conduct is improper, several factors must be examined. Restatement (Second) of Torts § 766B cmt.. a. These factors are: (a) the nature of the actor's conduct, (b) the actor's motive, (c) the interests of the other with which the actor's conduct interferes, (d) the interests sought to be advanced by the actor, |

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| | | | | (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other, (f) the proximity or remoteness of the actor's conduct to the interference, and (g) the relations between the parties. Id. at § 767; Northside Mercury Sales & Serv. v. Ford Motor Co., 871 F.2d 758, 761 (8th Cir.1989) (applying Minnesota law). |
| Kellar v. VonHoltum, 568 N.W.2d 186, 190 (Minn. Ct. App. 1997) | § 766B. Intentional Interference With Prospective Contractual Relation (2nd) | See above. | Cited in support | The elements of a common law unfair competition claim based on interference with prospective contractual relations are set forth in Restatement (Second) of Torts § 766B (1979) quoted in United Wild Rice, Inc. v. Nelson, 313 N.W.2d 628, 633 (Minn.1982). Alternatively, a plaintiff may plead a statutory unfair competition claim alleging that in the course of business a person has disparaged the "goods, services or business of another by false or misleading representation of fact." Minn.Stat. § 325D.44, subd 1(8) (1996). |
| Harbor Broad., Inc. v. Boundary Waters Broadcasters, Inc., 636 N.W.2d 560, 569 n.4 (Minn. Ct. App. 2001) | § 766B. Intentional Interference With Prospective Contractual Relation (2nd) | See above. | Cited in discussion | We decline to decide whether a claim for tortious interference with business expectancy is a valid tort claim under Minnesota law. United Wild Rice, which the federal district court of Minnesota and appellants note as approving a claim for tortious interference with business expectancy, only recognized the tort of intentional interference with prospective contractual relations. United Wild Rice, 313 N.W.2d at 632-33. One of the elements a plaintiff must prove to establish a claim for intentional interference with prospective contractual relations is that the defendant "prevent[ed] the [plaintiff] from acquiring or continuing [a] prospective [contractual] relation." Id. at 633 (quoting Restatement (Second) of Torts § 766B (1979)). Appellants' complaint alleges that they were wrongfully denied the fruits of a business expectancy of increased advertising revenues; the complaint does not allege that respondents' failure to comply with the Upgrade Order interfered with |

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| | | | | WWAX's prospective contractual relationship with a specific third party. Whether this is a distinction without a difference we leave for another day. |
| **Section 767** | | | | |
| R.A., Inc. v. Anheuser-Busch, Inc., 556 N.W.2d 567, 568, 571, 572 (Minn. Ct. App. 1996) | § 767. Factors in Determining Whether Interference is Improper (2nd) | In determining whether an actor's conduct in intentionally interfering with a contract or a prospective contractual relation of another is improper or not, consideration is given to the following factors:<br>(a) the nature of the actor's conduct,<br>(b) the actor's motive,<br>(c) the interests of the other with which the actor's conduct interferes,<br>(d) the interests sought to be advanced by the actor,<br>(e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other,<br>(f) the proximity or remoteness of the actor's conduct to the interference and<br>(g) the relations between the parties. | Adopted | To establish a claim of interference with prospective contractual relations, the alleged interference must be improper. In light of the factors in section 767 of the Restatement (Second) of Torts, Anheuser-Busch, Inc.'s conduct was not improper as a matter of law....Beer brewer did not tortiously interfere with prospective contractual relations when it declined to approve sale of beer distributorship; denial was not for any improper purpose, as brewer had simply utilized contractual right to decline to do business with new prospective distributor. |
| **Section 768** | | | | |
| United Wild Rice, Inc. v. Nelson, 313 N.W.2d 628, 633 (Minn. 1982) | § 768. Competition as Proper or Improper Interference (2nd) | (1) One who intentionally causes a third person not to enter into a prospective contractual relation with another who is his competitor or not to continue an existing contract terminable at will does not interfere improperly with the other's relation if<br>(a) the relation concerns a matter involved in the competition between the actor and the other and<br>(b) the actor does not employ wrongful means and<br>(c) his action does not create or continue an unlawful restraint of trade and | Adopted | Application of the factors listed in section 768 to the facts of this case shows that Nelson's interference was not improper. Here, the prospective contractual relations Nelson interfered with concerned the buying and selling of wild rice. These activities fall squarely within the ambit of competition between Nelson and United. Nelson did not employ wrongful means in carrying out the interference and the interference does not constitute an unlawful restraint of trade. Finally, Nelson's purpose was, at least in part, to advance his interest in competing with United. |

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| | | (d) his purpose is at least in part to advance his interest in competing with the other.<br><br>(2) The fact that one is a competitor of another for the business of a third person does not prevent his causing a breach of an existing contract with the other from being an improper interference if the contract is not terminable at will. | | |
| Schumacher v. Ihrke, 469 N.W.2d 329, 334–35 (Minn. Ct. App. 1991) | § 768. Competition as Proper or Improper Interference (2nd) | See above. | Cited in support | While competition is favored in the law and may justify interference, the rule also requires that "the actor does not employ wrongful means." United Wild Rice, Inc. v. Nelson, 313 N.W.2d 628, 633 (Minn.1982) (quoting Restatement (Second) of Torts § 768 (1979)). Under the facts of this case, appellants' means were "wrongful." |
| **Section 772** | | | | |
| Glass Serv. Co. v. State Farm Ins. Co., 530 N.W.2d 867, 871 (Minn. Ct. App. 1995) | § 772. Advice as Proper or Improper Interference | One who intentionally causes a third person not to perform a contract or not to enter into a prospective contractual relation with another does not interfere improperly with the other's contractual relation, by giving the third person<br>(a) truthful information, or<br>(b) honest advice within the scope of a request for the advice. | Cited in support | Moreover, State Farm's representations to its insureds of potential liability for repair costs if Glass Service was used were not improper because they were not false. See Restatement (Second) of Torts § 772 cmt.. b (1979) (no liability for interference on part of one who merely gives truthful information to another). State Farm's obligation to pay for glass repair and replacement under its policies was limited and Glass Service required customers to sign an invoice agreeing to pay for work the insurance company was not required to cover. Glass Service continued to require this commitment even after it represented to State Farm that it did not intend to make customers pay any price difference. Based on the policy limitations and commitment required by Glass Service, it was possible that customers might be liable for some repair costs and thus, State Farm did not improperly interfere with Glass Service's prospective contractual relations by informing insureds of that potential liability. See id. |

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| **Section 773** | | | | |
| Guerdon Indus., Inc. v. Rose, 399 N.W.2d 186, 188 (Minn. Ct. App. 1987) | § 773. Asserting Bona Fide Claim (2nd) | One who, by asserting in good faith a legally protected interest of his own or threatening in good faith to protect the interest by appropriate means, intentionally causes a third person not to perform an existing contract or enter into a prospective contractual relation with another does not interfere improperly with the other's relation if the actor believes that his interest may otherwise be impaired or destroyed by the performance of the contract or transaction. | Adopted | Restatement (Second) of Torts § 773 (1977). This rule affords protection when the actor (1) has a legally protected interest, (2) asserts it in good faith and, (3) uses proper means. Id. comment a. Rose claims that he had a legally protected interest because he believed in good faith that he had a contract with Guerdon. Guerdon argues that because this court found no contract existed, there is no legally protected interest. See Rose v. Guerdon Industries, Inc., 374 N.W.2d 282 (Minn.Ct.App.1985). |
| Kjesbo v. Ricks, 517 N.W.2d 585, 588 (Minn. 1994) | § 773. Asserting Bona Fide Claim (2nd) | See above. | Cited in support | Ordinarily, whether interference is justified is an issue of fact, and the test is what is reasonable conduct under the circumstances. See Bennett v. Storz Broadcasting Co., 270 Minn. 525, 537, 134 N.W.2d 892, 900 (1965) (quoting Carnes v. St. Paul Union Stockyards Co., 164 Minn. 457, 205 N.W. 630 (1925)). The burden of proving justification is on the defendants. Royal Realty Co. v. Levin, 244 Minn. 288, 295, 69 N.W.2d 667, 673 (1955). There is no wrongful interference with a contract where one asserts "in good faith a legally protected interest of his own believ [ing] that his interest may otherwise be impaired or destroyed by the performance of the contract or transaction." Restatement (Second) of Torts § 773 (1979). |
| **Section 774** | | | | |
| Potthoff v. Jefferson Lines, Inc., 363 N.W.2d 771, 777 (Minn. Ct. App. 1985) | § 774A. Damages | (1) One who is liable to another for interference with a contract or prospective contractual relation is liable for damages for<br>(a) the pecuniary loss of the benefits of the contract or the prospective relation; | Adopted | The trial court relied on the Restatement (Second) of Torts § 774A (1979), which provides: One who is liable to another for interference with a contract or prospective contractual relation is liable for damages for (a) the pecuniary loss of the benefits of the contract or the prospective relation; (b) consequential losses for which the interference is a |

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| | | (b) consequential losses for which the interference is a legal cause; and<br>(c) emotional distress or actual harm to reputation, if they are reasonably to be expected to result from the interference.<br>(2) In an action for interference with a contract by inducing or causing a third person to break the contract with the other, the fact that the third person is liable for the breach does not affect the amount of damages awardable against the actor; but any damages in fact paid by the third person will reduce the damages actually recoverable on the judgment. | | legal cause; and (c) emotional distress or actual harm to reputation, if they are reasonably to be expected to result from the interference.<br>We agree that emotional distress could be a natural result of interference with contract relations. Therefore, in appropriate cases emotional distress damages are recoverable in this type of action. |
| **Division 10 – Invasions Of Interests in Land Other Than By Trespass** | | | | |
| **Section 822** | | | | |
| Highview N. Apartments v. County of Ramsey, 323 N.W.2d 65, 70 (Minn. 1982) | § 822. General Rule (2nd) | | Not Adopted | Apparently the plaintiff and the trial court rely on Restatement (Second) of Torts § 822 (1977). There it is said one is subject to liability for a private nuisance "if, but only if, his conduct is a legal cause of an invasion of another's interest in the private use and enjoyment of land," and if the invasion is either (1) "intentional and unreasonable," or (2) unintentional but actionable in negligence, or (3) actionable for "abnormally dangerous conditions or activities." Defendants' argument is that their invasion of plaintiff's property interests was not unreasonable and certainly not intentional, and that if this is so, since the trial court did not find negligence and since defendants' actions cannot be characterized as abnormally dangerous, plaintiff has failed to prove any actionable wrong. We do not, however, see a need to consider an application of the Restatement test of a nuisance, as our own statutory and case law is adequate to resolve the issues posed here. Minn.Stat. § 561.01 (1980) |

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| **Section 825** | | | | |
| Highview N. Apartments v. County of Ramsey, 323 N.W.2d 65, 70 n.4 (Minn. 1982) | § 825. Intentional Invasion-What Constitutes (2nd) | An invasion of another's interest in the use and enjoyment of land or an interference with the public right, is intentional if the actor<br>(a) acts for the purpose of causing it, or<br>(b) knows that it is resulting or is substantially certain to result from his conduct. | Cited in discussion | On the issue of what is intentional conduct, defendants point to Restatement (Second) of Torts § 825 (1977), which provides:<br>An invasion of another's interest in the use and enjoyment of land or an interference with the public right is intentional if the actor<br>(a) acts for the purpose of causing it, or<br>(b) knows that it is resulting or is substantially certain to result from his conduct. (Emphasis added.) It is questionable whether this high standard of subjective intent is supported by the trial court's findings or by the evidence. Plaintiff argues intent can be inferred from failing to abate a nuisance which defendants know they have caused. But while defendants knew the basements were flooding, they disputed the cause, and it was not until a lengthy trial that the complex question of indirect causation was established. |
| **Section 841** | | | | |
| Lake Mille Lacs Inv., Inc. v. Payne, 401 N.W.2d 387, 389 (Minn. Ct. App. 1987) | § 841. Watercourse Defined (2nd) | (1) The term "watercourse," as used in this Chapter, means a stream of water of natural origin, flowing constantly or recurrently on the surface of the earth in a reasonably definite natural channel.<br><br>(2) The term "watercourse" also includes springs, lakes or marshes in which a stream originates or through which it flows. | Cited in discussion | South Harbor is an artificial body of water; prior to dredging it was swampland. The common law rule has been stated as follows: Riparian rights basically adhere to natural, not artificial watercourses. 1A G. Thompson, Commentaries on the Modern Law of Real Property § 275, at 462 (1980); see also Restatement (Second) of Torts §§ 841-843 (1979) (riparian rights defined with reference to natural bodies of water). The issue was presented to the trial court in the briefs and written final arguments, as well as the post-trial motions. The supreme court has held that abutting landowners may acquire riparian rights in artificial watercourses formed by the diversion of a natural channel. Kray v. Muggli, 84 Minn. 90, 86 N.W. 882 (1901)...This theory of riparian rights cannot be applied to the facts of this matter. Although South Harbor had existed for 15 years when respondents began tearing out the docks, the developer, Bohmer-Herberger, owned the land beneath South Harbor and needed no |

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| | | | | prescriptive right to create the artificial condition. Therefore, respondents did not acquire any reciprocal right under Kray. Moreover, respondents made no improvements and took no actions in reliance on their claimed riparian rights in South Harbor, which they did not assert until 1981. |
| **Section 842** | | | | |
| Lake Mille Lacs Inv., Inc. v. Payne, 401 N.W.2d 387, 389 (Minn. Ct. App. 1987) | § 842. Lake Defined (2nd) | A "lake," as used in this Chapter, is a reasonably permanent body of water substantially at rest in a depression in the surface of the earth, if both depression and body of water are of natural origin or a part of a watercourse. | Cited in support | South Harbor is an artificial body of water; prior to dredging it was swampland. The common law rule has been stated as follows: Riparian rights basically adhere to natural, not artificial watercourses. 1A G. Thompson, Commentaries on the Modern Law of Real Property § 275, at 462 (1980); see also Restatement (Second) of Torts §§ 841-843 (1979) (riparian rights defined with reference to natural bodies of water). The issue was presented to the trial court in the briefs and written final arguments, as well as the post-trial motions. The supreme court has held that abutting landowners may acquire riparian rights in artificial watercourses formed by the diversion of a natural channel. Kray v. Muggli, 84 Minn. 90, 86 N.W. 882 (1901)...This theory of riparian rights cannot be applied to the facts of this matter. Although South Harbor had existed for 15 years when respondents began tearing out the docks, the developer, Bohmer-Herberger, owned the land beneath South Harbor and needed no prescriptive right to create the artificial condition. Therefore, respondents did not acquire any reciprocal right under Kray. Moreover, respondents made no improvements and took no actions in reliance on their claimed riparian rights in South Harbor, which they did not assert until 1981. |
| **Section 843** | | | | |
| Lake Mille Lacs Inv., Inc. v. Payne, 401 N.W.2d 387, 389 (Minn. Ct. App. 1987) | § 843. Riparian Land Defined (2nd) | The term "riparian land," as used in this Chapter, means a tract of land that borders on a watercourse or lake, whether or not it includes a part of the | Cited in support | South Harbor is an artificial body of water; prior to dredging it was swampland. The common law rule has been stated as follows: Riparian rights basically adhere to natural, not artificial watercourses. 1A G. |

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| | | bed of the watercourse or lake. | | Thompson, Commentaries on the Modern Law of Real Property § 275, at 462 (1980); see also Restatement (Second) of Torts §§ 841-843 (1979) (riparian rights defined with reference to natural bodies of water). The issue was presented to the trial court in the briefs and written final arguments, as well as the post-trial motions. The supreme court has held that abutting landowners may acquire riparian rights in artificial watercourses formed by the diversion of a natural channel. Kray v. Muggli, 84 Minn. 90, 86 N.W. 882 (1901)...This theory of riparian rights cannot be applied to the facts of this matter. Although South Harbor had existed for 15 years when respondents began tearing out the docks, the developer, Bohmer-Herberger, owned the land beneath South Harbor and needed no prescriptive right to create the artificial condition. Therefore, respondents did not acquire any reciprocal right under Kray. Moreover, respondents made no improvements and took no actions in reliance on their claimed riparian rights in South Harbor, which they did not assert until 1981. |
| **Division 11 – Miscellaneous Rules** | | | | |
| **Section 876** | | | | |
| Olson v. Ische, 343 N.W.2d 284, 289, 291 (Minn. 1984) | § 876. Persons Acting in Concert (2nd) | For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he<br>(a) does a tortious act in concert with the other or pursuant to a common design with him, or<br>(b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or<br>(c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person. | Cited in support | In the tort field, the doctrine [of section 876] appears to be reserved for application to facts which manifest a common plan to commit a tortious act where the participants know of the plan and its purpose and take affirmative steps to encourage the achievement of the result.... "[T]he mere presence of the particular defendant at the commission of the wrong, or his failure to object to it, is not enough to charge him with responsibility." [Citing Prosser.] Here there is not the kind of situation where it can be said the driver and passenger were acting "in accordance with an agreement to cooperate in a particular line of conduct or to accomplish a particular result." Restatement (Second) of Torts § 876, comment (a) (1977). Nor is there the kind of "substantial encouragement" by |

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| | | | | the passenger of the driver's conduct needed to impose joint tort liability. Fritz was with Ische, partying with others, each doing his own drinking voluntarily, and Fritz voluntarily accompanied Ische on his return trip to Norwood in a guest-host driving situation. We hold that, as a matter of law, plaintiff-appellants do not have a cause of action against defendant Fritz under section 876 of the Restatement (Second) of Torts. |
| Leaon v. Washington County, 397 N.W.2d 867, 872 (Minn. 1986) | § 876. Persons Acting in Concert (2nd) | See above. | Cited in support | There is no evidence that any of these four deputies participated in the incident with the nude dancer. In fact, Donald Leaon's testimony is that neither Swanson, Childers, Peterson, nor Fure were among those who escorted him to the stage and imprisoned him there. Rather, plaintiffs' theory seems to be that the four deputies are liable under a theory of "joint concerted tortious conduct." Restatement (Second) of Torts § 876 (1977); see Olson v. Ische, 343 N.W.2d 284 (Minn.1984). Plaintiffs suggest that the four deputies should be liable because they somehow acted in concert with those persons who were directly involved. To impose such liability, however, something more than mere presence at the stag party is required, Olson, 343 N.W.2d at 289, and Leaon's opinion that the incident on the stage was planned is nothing more than surmise. |
| Lind v. Slowinski, 450 N.W.2d 353, 357 (Minn. Ct. App. 1990) | § 876. Persons Acting in Concert (2nd) | See above. | Cited in support | Slowinskis contend Bunnell's activities constitute "joint concerted tortious activity." This theory, as stated in Restatement (Second) of Torts § 876 (1979), was also discussed in Olson...In Olson, as here, there was no agreement or substantial encouragement in the passengers' actions, and the driver's drinking was entirely voluntary. Id., 343 N.W.2d at 289. Further, in this case, Lind's decision to ride in the car was made with knowledge of the drinking activity and without coercion by either driver or passenger. As none of the exceptions to the general rule against passenger liability outlined |

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| | | | | in Olson apply, we conclude Bunnell owed no duty to Lind as a matter of law. The trial court therefore erred in submitting his liability to the jury. Since we reach this result, it is unnecessary to determine Bunnell's additional assignments of error. |
| Witzman v. Lehrman, Lehrman & Flom, 601 N.W.2d 179 *passim* (Minn. 1999) | § 876. Persons Acting in Concert (2nd) | See above. | Adopted | Contrary to what LL & F/Flom assert, Witzman does not ask us to recognize a new cause of action. We have long relied on the "well recognized" rule " 'that all who actively participate in any manner in the commission of a tort, or who procure, command, direct, advise, encourage, aid, or abet its commission, or who ratify it after it is done are jointly and severally liable' for the resulting injury." Greenwood v. Evergreen Mines Co., 220 Minn. 296, 309, 19 N.W.2d 726, 733 (1945) (quoting Virtue v. Creamery Package Mfg. Co., 123 Minn. 17, 40, 142 N.W. 930, 939 (1913)). Moreover, we have, on more than one occasion, cited section 876 of the Restatement (Second) of Torts and addressed the requirements for establishing a valid claim thereunder. See Leaon v. Washington County, 397 N.W.2d 867, 872 (Minn.1986) (holding that the facts failed to support a valid claim based on section 876); Olson v. Ische, 343 N.W.2d 284, 289 (Minn.1984) (same). Thus, at least in some circumstances, Minnesota law does recognize a claim based on aiding and abetting the tortious conduct of another... Like these courts, we are not convinced that public policy requires a wholesale exclusion of professionals from aiding and abetting liability. To grant professionals such immunity would conceivably give them free reign to provide any assistance short of fraud in helping clients engage in conduct the professionals know to be tortious. However, we are also mindful of the policy concerns raised by subjecting professionals to aiding and abetting liability. Accordingly, in cases where aiding and abetting liability is alleged against professionals, we will narrowly and strictly interpret the elements of the claim and require the plaintiff |

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| | | | | to plead with particularity facts establishing each of these elements. With this standard in mind, we now turn to review whether Witzman's pleadings are sufficient to support her claim that LL & F/Flom aided and abetted Wolfson's breach of trust. |
| **Section 886A** | | | | |
| Oelschlager v. Magnuson, 528 N.W.2d 895, 899 (Minn. Ct. App. 1995) | § 886A. Contribution Among Tortfeasors (2nd) | (1) Except as stated in Subsections (2), (3) and (4), when two or more persons become liable in tort to the same person for the same harm, there is a right of contribution among them, even though judgment has not been recovered against all or any of them.<br><br>(2) The right of contribution exists only in favor of a tortfeasor who has discharged the entire claim for the harm by paying more than his equitable share of the common liability, and is limited to the amount paid by him in excess of his share. No tortfeasor can be required to make contribution beyond his own equitable share of the liability.<br><br>(3) There is no right of contribution in favor of any tortfeasor who has intentionally caused the harm.<br><br>(4) When one tortfeasor has a right of indemnity against another, neither of them has a right of contribution against the other. | Adopted | An intentional tortfeasor is prohibited from seeking contribution from other joint tortfeasors. Farmer's Ins. Exch., 274 Minn. at 255, 143 N.W.2d at 236 (quoting Kemerer v. State Farm Mut. Auto. Ins. Co., 201 Minn. 239, 242, 276 N.W. 228, 230 (1937)). Appellant argues that Redeemer is barred from seeking contribution from the Northwest Conference because Redeemer is vicariously liable for Magnuson's intentional tort. But an intentional tortfeasor is barred from seeking contribution because "the courts will not aid one who has deliberately done harm, so that no man can be permitted to found a cause of action on his own intentional tort." Restatement (Second) of Torts § 886A cmt.. j. Accord Farmer's Ins. Exch., 274 Minn. at 260, 143 N.W.2d at 239. A party that is only vicariously liable for another's intentional tort has neither deliberately caused harm nor committed a tort, so the intentional tort theory does not operate to bar Redeemer's right to contribution. |
| **Division 12 – Defenses Applicable To All Tort Claims** | | | | |
| **Section 892A** | | | | |
| Bjerke v. Johnson, 727 N.W.2d 183, 193 (Minn. Ct. App. 2007) | § 892A. Effect of Consent (2nd) | (1) One who effectively consents to conduct of another intended to invade his interests cannot recover in an | Adopted | Generally, a victim's consent to criminal conduct bars recovery in a tort action based on such conduct. See Restatement (Second) of Torts § |

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| | | action of tort for the conduct or for harm resulting from it.<br><br>(2) To be effective, consent must be<br>(a) by one who has the capacity to consent or by a person empowered to consent for him, and<br>(b) to the particular conduct, or to substantially the same conduct.<br><br>(3) Conditional consent or consent restricted as to time, area or in other respects is effective only within the limits of the condition or restriction.<br><br>(4) If the actor exceeds the consent, it is not effective for the excess.<br><br>(5) Upon termination of consent its effectiveness is terminated, except as it may have become irrevocable by contract or otherwise, or except as its terms may include, expressly or by implication, a privilege to continue to act. | | 892A(1) (1965) (providing that "[o]ne who effectively consents to conduct of another intended to invade his interests cannot recover in an action of tort for the conduct or for harm resulting from it"). When the legislature criminalizes conduct to protect a certain class of persons, however, and the purpose of the legislation is to protect those persons against the conduct irrespective of their consent, consent to the conduct by a member of the protected class will not bar recovery in tort. Restatement (Second) of Torts § 892C(2) (1965). The required legislative purpose to protect a particular person despite his or her consent "will ordinarily be found when it is apparent that the statute is intended for the protection of a class of persons who, by reason of their immaturity, inexperience or lack of judgment, are unable to protect themselves against the conduct to which they are likely to consent." Id. cmt.. e....For the same reasons, we conclude that secondary assumption of risk is not a defense in cases involving children under the age of 16, and has limited availability for children who are at least 16, but not yet 18, at the time of the sexual conduct. We are persuaded that, as a matter of public policy, a person under the age of consent lacks the judgment and maturity necessary to fully appreciate the danger inherent in engaging in sexual relations with an older person...We thus see no reason not to apply the criminal-law presumption that minors are legally incapable of consenting to sexual conduct to civil cases. Accordingly, we conclude that the doctrines of primary and secondary assumption of risk, which are premised on the victim's consent or appreciation of the risk of harm, do not preclude recovery in actions arising from sexual conduct. |
| **Section 892B** | | | | |
| K.A.C. v. Benson, 527 N.W.2d 553, 564 (Minn. 1995) | § 892B. Consent Under Mistake, Misrepresentation, or Duress (2nd) | (1) Except as stated in Subsection (2), consent to conduct of another is effective for all consequences of the | Cited in support in dissenting opinion | One such circumstance is when the consent is obtained through misrepresentation or fraud. Restatement (Second) of Torts § 892B(2) (1977) |

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| | | conduct and for the invasion of any interests resulting from it.<br><br>(2) If the person consenting to the conduct of another is induced to consent by a substantial mistake concerning the nature of the invasion of his interests or the extent of the harm to be expected from it and the mistake is known to the other or is induced by the other's misrepresentation, the consent is not effective for the unexpected invasion or harm.<br><br>(3) Consent is not effective if it is given under duress. | | provides: If the person consenting to the conduct of another is induced to consent by a substantial mistake concerning the nature of the invasion of his interests or the extent of the harm to be expected from it and the mistake is known to the other or is induced by the other's misrepresentation, the consent is not effective for the unexpected invasion or harm. When T.M.W. consented to the gynecological examinations, she clearly did not anticipate any risk of HIV transmission. Nor did she anticipate suffering the emotional distress caused by her concern for contracting HIV from the examinations. It is a jury question as to whether T.M.W.'s consent to the gynecological examinations was induced by Dr. Benson's misrepresentations concerning his health. The court's holding today, without discussing the issue, apparently forecloses a plaintiff's battery claim where the plaintiff consents to the touching due to a defendant's misrepresentations. |
| **Section 892C** | | | | |
| Bjerke v. Johnson, 727 N.W.2d 183, 193 (Minn. Ct. App. 2007) | § 892C. Consent to Crime (2nd) | (1) Except as stated in Subsection (2), consent is effective to bar recovery in a tort action although the conduct consented to is a crime.<br><br>(2) If conduct is made criminal in order to protect a certain class of persons irrespective of their consent, the consent of members of that class to the conduct is not effective to bar a tort action. | Adopted | Generally, a victim's consent to criminal conduct bars recovery in a tort action based on such conduct. See Restatement (Second) of Torts § 892A(1) (1965) (providing that "[o]ne who effectively consents to conduct of another intended to invade his interests cannot recover in an action of tort for the conduct or for harm resulting from it"). When the legislature criminalizes conduct to protect a certain class of persons, however, and the purpose of the legislation is to protect those persons against the conduct irrespective of their consent, consent to the conduct by a member of the protected class will not bar recovery in tort. Restatement (Second) of Torts § 892C(2) (1965). The required legislative purpose to protect a particular person despite his or her consent "will ordinarily be found when it is apparent that the statute is intended for the protection of a class of persons who, by reason of their immaturity, |

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| | | | | inexperience or lack of judgment, are unable to protect themselves against the conduct to which they are likely to consent." Id. cmt.. e....For the same reasons, we conclude that secondary assumption of risk is not a defense in cases involving children under the age of 16, and has limited availability for children who are at least 16, but not yet 18, at the time of the sexual conduct. We are persuaded that, as a matter of public policy, a person under the age of consent lacks the judgment and maturity necessary to fully appreciate the danger inherent in engaging in sexual relations with an older person....We thus see no reason not to apply the criminal-law presumption that minors are legally incapable of consenting to sexual conduct to civil cases. Accordingly, we conclude that the doctrines of primary and secondary assumption of risk, which are premised on the victim's consent or appreciation of the risk of harm, do not preclude recovery in actions arising from sexual conduct. |
| **Section 895A** | | | | |
| Nieting v. Blondell, 306 Minn. 122, 130, 235 N.W.2d 597, 602 n.9 (Minn. 1975) | § 895A. The United States (2nd) | (1) Except to the extent that the United States consents both to suit and to tort liability, it and its agencies are immune to the liability.<br><br>(2) Statutory provisions give the requisite consent to suit and liability for many types of tortious conduct. | Cited in support | The modern trend in this country supports our decision to abolish governmental immunity. A large number of states have abolished the defense of sovereign immunity as it applies to local governmental units. Many of the states, including Minnesota, have done so judicially, although some states have done so by statute. |
| Janklow v. Mn. Bd. Of Examiners, 552 N.W.2d 711, 715 (Minn. 1996) | § 895A. The United States (2nd) | See above. | Cited in support | Before considering the applicability of immunity to suits brought under the Whistleblower Act, we think it useful to begin with a short primer on immunity. Immunity from suit in tort derives from the concept of sovereign immunity-that is, from the ancient idea that the King was infallible and the notion that to allow the monarch to be sued in his own courts was |

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| | | | | contradictory. See William L. Prosser, Law of Torts 970 (4th ed. 1971). This immunity found its way to the U.S. legal system and, today, exists at the federal, state, and local levels of government. See Restatement (Second) of Torts §§ 895A, 895B & 895C (1977) |
| **Section 895B** | | | | |
| Miller v. Chou, 257 N.W.2d 277, 279 n.3 (Minn. 1977) | § 895B. States (2nd) | (1) A State and its governmental agencies are not subject to suit without the consent of the State.<br><br>(2) Except to the extent that a State declines to give consent to tort liability, it and its governmental agencies are subject to the liability.<br><br>(3) Even when a State is subject to tort liability, it and its governmental agencies are immune to the liability for acts and omissions constituting<br>(a) the exercise of a judicial or legislative function, or<br>(b) the exercise of an administrative function involving the determination of fundamental governmental policy.<br><br>(4) Consent to suit and repudiation of general tort immunity do not establish liability for an act or omission that is otherwise privileged or is not tortious. | Cited in discussion | In an action brought against the Regents of the University of Minnesota alleging malpractice on the part of various physicians and staff members of the University Hospitals, the trial court denied defendants' motion for summary judgment. On appeal, the court held that the clause in the University charter which granted the Regents the right to "sue and be sued" did not, alone, subject the Regents to tort liability, that the Regents were immune from tort liability for causes of action which arose before the abolition of sovereign immunity on August 1, 1976, unless the Board was engaged in a proprietary activity, and that the action would be remanded for a determination of whether the operation of the University Hospitals was a proprietary or governmental function. |
| Holmquist v. State, 425 N.W.2d 230, 233 n.1 (Minn. 1988) | § 895B. States (2nd) | See above. | Cited in support | We note that the State's reliance upon the definition of discretion articulated in decisions involving tort actions against public officials is misplaced. E.g., Wilbrecht v. Babcock, 179 Minn. 263, 228 N.W. 916 (1930). Different purposes are served by governmental immunity, which is designed to preserve the separation of powers, and official immunity, which is primarily intended to insure that the threat of potential personal liability |

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| | | | | does not unduly inhibit the exercise of discretion required of public officials in the discharge of their duties. See James, "Tort Liability of Governmental Units and Their Officers," 22 U.Chi.L.Rev. 610, 640-48 (1955); W. Keeton, Prosser & Keeton on the Law of Torts § 131, at 1039-43, 1046-51, § 132 (5th ed. 1984). Cf. Restatement (Second) of Torts § 895B, D (1977) (governmental immunity, official immunity, respectively). The scope of governmental and official immunity differ as well: not infrequently a governmental entity is required to compensate for the harm done by a public official even though the official is not held personally liable. Bermann, "Integrating Governmental and Officer Tort Liability," 77 Colum.L.Rev. 1175, 1186-87 (1977). See also 2 F. Harper & F. James, The Law of Torts § 29.15 (1956). Given the differences in purpose and scope, it is analytically unsound to equate governmental discretionary immunity with official discretionary immunity. |
| Nusbaum v. Blue Earth County, 422 N.W.2d 713, 718 n.4 (Minn. 1988) | § 895B. States (2nd) | See above. | Cited in support | The tort immunity of a governmental unit provided by the discretionary function exception of the state and municipal tort claims acts should be distinguished from common law immunity of a government employee. Although both are phrased in terms of whether the exercise of discretion was involved, they are based on entirely different rationales. Immunity of an employee honestly exercising discretion under common law was based in the notion that imposition of liability for an erroneous decision would inhibit decisionmaking. Thus, discretion in the context of an employee's immunity was much broader than the type of discretion referred to in the discretionary function exception applicable in actions against governmental units. As the following analysis indicates, the discretion referred to in the latter context involves a balancing of policy objections. See Johnson v. County of Steele, 240 Minn. 154, 164, 60 N.W.2d 32, 39 (1953); Williamson v. Cain, |

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| | | | | 310 Minn. 59, 245 N.W.2d 242 (1976). Compare Restatement (Second) of Torts § 895B (state's immunity) with § 895D (public officer's immunity). |
| Janklow v. Mn. Bd. Of Examiners, 552 N.W.2d 711, 715 (Minn. 1996) | § 895B. States (2nd) | See above. | Cited in support | Before considering the applicability of immunity to suits brought under the Whistleblower Act, we think it useful to begin with a short primer on immunity. Immunity from suit in tort derives from the concept of sovereign immunity-that is, from the ancient idea that the King was infallible and the notion that to allow the monarch to be sued in his own courts was contradictory. See William L. Prosser, Law of Torts 970 (4th ed. 1971). This immunity found its way to the U.S. legal system and, today, exists at the federal, state, and local levels of government. See Restatement (Second) of Torts §§ 895A, 895B & 895C (1977) |
| **Section 895C** | | | | |
| Janklow v. Mn. Bd. Of Examiners, 552 N.W.2d 711, 715 (Minn. 1996) | § 895C. Local Government Entities (2nd) | (1) Except as stated in Subsection (2), a local government entity is not immune from tort liability.<br><br>(2) A local governmental entity is immune from tort liability for acts and omissions constituting<br>(a) the exercise of a legislative or judicial function, and<br>(b) the exercise of an administrative function involving the determination of fundamental governmental policy.<br><br>(3) Repudiation of general tort immunity does not establish liability for an act or omission that is otherwise privileged or is not tortious. | Cited in support | Before considering the applicability of immunity to suits brought under the Whistleblower Act, we think it useful to begin with a short primer on immunity. Immunity from suit in tort derives from the concept of sovereign immunity-that is, from the ancient idea that the King was infallible and the notion that to allow the monarch to be sued in his own courts was contradictory. See William L. Prosser, Law of Torts 970 (4th ed. 1971). This immunity found its way to the U.S. legal system and, today, exists at the federal, state, and local levels of government. See Restatement (Second) of Torts §§ 895A, 895B & 895C (1977) |
| **Section 895D** | | | | |
| Cairl v. State, 323 N.W.2d 20, 23 n.3 | § 895D. Public Officers (2nd) | (1) Except as provided in this Section a public officer is not immune from tort | Adopted | A significant consideration in determining the applicability of discretionary immunity is the extent |

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| (Minn. 1982) | | liability.<br><br>(2) A public officer acting within the general scope of his authority is immune from tort liability for an act or omission involving the exercise of a judicial or legislative function.<br><br>(3) A public officer acting within the general scope of his authority is not subject to tort liability for an administrative act or omission if<br>(a) he is immune because engaged in the exercise of a discretionary function,<br>(b) he is privileged and does not exceed or abuse the privilege, or<br>(c) his conduct was not tortious because he was not negligent in the performance of his responsibility. | | to which the threat of liability would impair the effective performance of the governmental act complained of. See Restatement (Second) of Torts § 895D comment b (1979). If release decisions were exposed to the threat of liability those individuals charged with rendering those decisions would likely become unduly responsive to one consideration-the cost of liability. Moreover, the threat of liability would undermine a statewide policy favoring open door treatment rather than custodial detention of the state's mentally ill. See Minn.Stat. § 253A.17, subd. 9 (1980); see generally, Note, Liability of Mental Hospitals for Acts of Their Patients Under the Open Door Policy, 57 U.Va.L.Rev. 156 (1971). |
| Elwood v. Rice County, 423 N.W.2d 671, 678 (Minn. 1988) | § 895D. Public Officers (2nd) | See above. | Cited in support | Finally, while Larson described the "planning level of conduct" as an earmark of immunity, 289 N.W.2d at 120, we have recently stressed the importance of distinguishing between the common law immunity of a government employee and the immunity of a governmental unit under the state and municipal tort claims statutes. Nusbaum v. County of Blue Earth, 422 N.W.2d 713 (Minn.1988). Both doctrines are phrased in terms of whether discretion was involved, but they are based on entirely different rationales. Id. Governmental immunity rests on the need to protect policymaking activities that involve a balancing of social, political or economic considerations. Id., at 722. Official immunity, on the other hand, protects public officials from the fear of personal liability that might deter independent action and impair effective performance of their duties. Restatement (Second) of Torts § 895D comment b; Nusbaum, 422 N.W.2d at 722. Discretion, therefore, has a broader |

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| | | | | meaning in the context of official immunity. |
| Holmquist v. State, 425 N.W.2d 230, 233 n.1 (Minn. 1988) | § 895D. Public Officers (2nd) | See above. | Cited in support | We note that the State's reliance upon the definition of discretion articulated in decisions involving tort actions against public officials is misplaced. E.g., Wilbrecht v. Babcock, 179 Minn. 263, 228 N.W. 916 (1930). Different purposes are served by governmental immunity, which is designed to preserve the separation of powers, and official immunity, which is primarily intended to insure that the threat of potential personal liability does not unduly inhibit the exercise of discretion required of public officials in the discharge of their duties. See James, "Tort Liability of Governmental Units and Their Officers," 22 U.Chi.L.Rev. 610, 640-48 (1955); W. Keeton, Prosser & Keeton on the Law of Torts § 131, at 1039-43, 1046-51, § 132 (5th ed. 1984). Cf. Restatement (Second) of Torts § 895B, D (1977) (governmental immunity, official immunity, respectively). The scope of governmental and official immunity differ as well: not infrequently a governmental entity is required to compensate for the harm done by a public official even though the official is not held personally liable. Bermann, "Integrating Governmental and Officer Tort Liability," 77 Colum.L.Rev. 1175, 1186-87 (1977). |
| Nusbaum v. Blue Earth County, 422 N.W.2d 713, 718 n.4 (Minn. 1988) | § 895D. Public Officers (2nd) | See above. | Cited in support | The tort immunity of a governmental unit provided by the discretionary function exception of the state and municipal tort claims acts should be distinguished from common law immunity of a government employee. Although both are phrased in terms of whether the exercise of discretion was involved, they are based on entirely different rationales. Immunity of an employee honestly exercising discretion under common law was based in the notion that imposition of liability for an erroneous decision would inhibit decisionmaking. Thus, discretion in the context of an employee's immunity was much broader than the type of discretion referred to in the discretionary function |

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| | | | | exception applicable in actions against governmental units. As the following analysis indicates, the discretion referred to in the latter context involves a balancing of policy objections. See Johnson v. County of Steele, 240 Minn. 154, 164, 60 N.W.2d 32, 39 (1953); Williamson v. Cain, 310 Minn. 59, 245 N.W.2d 242 (1976). Compare Restatement (Second) of Torts § 895B (state's immunity) with § 895D (public officer's immunity). |
| Ostendorf v. Kenyon, 347 N.W.2d 834, 837 (Minn. Ct. App. 1984) | § 895D. Public Officers (2nd) | See above. | Cited in support | The purpose of the discretionary acts exclusion is that: the courts, through the vehicle of a negligence action, are not an appropriate forum to review and second guess the acts of government which involve "the exercise of judgment or discretion." Cairl v. State, 323 N.W.2d 20, 23 (Minn.1982); see also, Restatement (Second) Torts § 895D comment f (1979). In general, courts distinguish acts which are discretionary and immune from acts which are ministerial and not immune. This distinction creates the illusion of a clear cut standard. In reality, however, the distinction is a spectrum rather than a standard. |
| Midway Manor Conval & Nursing Home v. Adcock, 386 N.W.2d 782, 788 (Minn. Ct. App. 1986) | § 895D. Public Officers (2nd) | See above. | Cited in support | To determine whether discretionary immunity exists, a court "must examine the nature of the decisionmaking process to determine whether discretionary immunity obtains." Id. Here, as in Cairl, the selection of an appropriate facility for the patients required the professional evaluation of each patient's particular needs. This type of decision is "precisely the type of governmental decision that discretionary immunity was designed to protect from tort litigation by after-the-fact review." Id. Further, as the supreme court points out:<br>A significant consideration in determining the applicability of discretionary immunity is the extent to which the threat of liability would impair the |

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| | | | | effective performance of the governmental act complained of. See Restatement (Second) of Torts § 895D comment b (1979). 323 N.W.2d at 23, n. 3. Thus, since failure to grant immunity to the hospital's social workers, who counsel patients about available and appropriate nursing homes, would impair their effective performance, discretionary immunity was appropriately recognized by the trial court. |
| Sloper v. Dodge, 426 N.W.2d 478, 479 (Minn. Ct. 1988) | § 895D. Public Officers (2nd) | See above. | Cited in support | Judicial immunity precludes judges from being held liable for "acts done in the exercise of judicial authority." Linder v. Foster, 209 Minn. 43, 45, 295 N.W. 299, 300 (1940); see also Restatement (Second) of Torts § 895D(2) (1979). Because judicial immunity is intended to protect the judicial process, it also extends to persons who are integral parts of that process, including prosecutors, counsel, and witnesses. Briscoe v. LaHue, 460 U.S. 325, 334-35, 103 S.Ct. 1108, 1115-16, 75 L.Ed.2d 96 (1983). This "quasi-judicial" immunity has been extended to court-appointed psychiatrists and physicians who prepare and submit medical evaluations relating to judicial proceedings. See Linder 209 Minn. at 48, 295 N.W. at 301, and Bartlett v. Weimer, 268 F.2d 860, 862 (7th Cir.1959) (commitment proceedings); Moses v. Parwatikar, 813 F.2d 891, 892 (8th Cir.1987), and Burkes v. Callion, 433 F.2d 318, 319 (9th Cir.1970) (criminal proceedings in which sanity is at issue); In re Scott County Master Docket, 618 F.Supp. 1534, 1575 (D.Minn.1985) (evaluation of children in child abuse proceedings). |
| Janklow v. Mn. Bd. Of Examiners, 552 N.W.2d 711, 714 n.2, 715 (Minn. 1996) | § 895D. Public Officers (2nd) | See above. | Cited in support | Official immunity is a vestige of the sovereign's immunity, which at common law extended to the sovereign's officers. As they were acting in the sovereign's name, a suit against them was a suit against the sovereign and, therefore, untenable. An exception existed, however: if the officers acted illegally or outside the parameters of their charged |

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| | | | | duties, they waived their immunity and personal liability became possible. See Restatement, supra, at § 895D cmt.. a. Official immunity is intended to protect public officials "from the fear of personal liability that might deter independent action." Elwood v. Rice County, 423 N.W.2d 671, 678 (Minn.1988). Government officials are accorded near complete immunity for their actions in the course of their official duties, so long as they do not exceed the discretion granted them by law. See Barr v. Matteo, 360 U.S. 564, 79 S.Ct. 1335, 3 L.Ed.2d 1434 (1959). But, a public official has no immunity for intentional or malicious wrongdoing. See Susla v. State, 311 Minn. 166, 175, 247 N.W.2d 907, 912 (Minn.1976); Prosser, supra, at 989. |
| Anderson v. Anoka Hennepin Ind. Sch. Dist. 11, 678 N.W.2d 651, 655 (Minn. 2004) | § 895D. Public Officers (2nd) | See above. | Cited in support | We first address whether Peterson is protected by common law official immunity. As we have explained in numerous cases, the doctrine of common law official immunity provides that "a public official charged by law with duties which call for the exercise of his judgment or discretion is not personally liable to an individual for damages unless he is guilty of a willful or malicious wrong." Elwood v. Rice County, 423 N.W.2d 671, 677 (Minn.1988) (quoting Susla v. State, 311 Minn. 166, 175, 247 N.W.2d 907, 912 (1976)). The purpose of official immunity is to "protect[ ] public officials from the fear of personal liability that might deter independent action and impair effective performance of their duties." Id. at 678 (citing Restatement (Second) of Torts § 895D cmt.. B; Nusbaum v. County of Blue Earth, 422 N.W.2d 713, 722 (Minn.1988)). Consistent with this purpose, common law official immunity does not protect officials when they are charged with the execution of ministerial, rather than discretionary, functions, that is, where "independent action" is neither required nor desired. |
| Myers Through Myers v. | § 895D. Public Officers | See above. | Cited in support | A judge or judicial officer cannot be held liable to |

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| Price, 463 N.W.2d 773, 775 (Minn. Ct. App. 1990) | (2nd) | | | anyone in a civil action for "acts done in the exercise of judicial authority." Linder v. Foster, 209 Minn. 43, 45, 295 N.W. 299, 300 (1940) (quoting Stewart v. Cooley, 23 Minn. 347, 350 (1877)); Sloper v. Dodge, 426 N.W.2d 478, 479 (Minn.App.1988); see also Restatement (Second) of Torts § 895D(2) (1979). Judicial immunity applies to determinations and acts in a judicial capacity "however erroneous or by whatever motives prompted." Linder, 209 Minn. at 46, 295 N.W. at 300 (quoting Stewart v. Case, 53 Minn. 62, 66, 54 N.W. 938, 938 (1893)). It extends to all classes of courts, from the highest judge of the nation to "the lowest officer who sits as a court and tries petty cases." Hoppe v. Klapperich, 224 Minn. 224, 234, 28 N.W.2d 780, 788 (1947). The rationale for this broad application of immunity is to preserve judicial independence by allowing judges to act in their official capacity without fear of retaliatory civil suits. Linder, 209 Minn. at 47, 295 N.W. at 301 (quoting Yaselli v. Goff, 12 F.2d 396, 399 (2d Cir.1926), aff'd, 275 U.S. 503, 48 S.Ct. 155, 72 L.Ed. 395 (1927)). |
| Johnson v. Northside Res. Redev. Council, 467 N.W.2d 826, 828, 829 (Minn. Ct. App. 1991) | § 895D. Public Officers (2nd) | See above. | Cited in discussion | The Elwood decision discusses official immunity based on Restatement (Second) of Torts § 895D (1977). Elwood, 423 N.W.2d at 678. This section of the Restatement draws a distinction between privileges and immunities as they relate to various torts. Specifically, it notes the law of privilege is properly applicable to claims of defamation committed by a public official. Restatement (Second) of Torts § 895D comment e (1977). Absolute privileges provide immunity from defamation suits. This form of privilege includes the absolute privilege afforded legislators. |
| **Section 895J** | | | | |
| State Farm Fire & Cas. Co. v. Wicka, 474 N.W.2d 324, 329 (Minn. 1991) | § 895J. Deficient Mental Capacity (2nd) | One who has deficient mental capacity is not immune from tort liability solely for that reason. | Cited in support | It is axiomatic that before an insured can be held liable the insured must have been able to entertain the proscribed intent to cause bodily injury and |

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| | | | | must have, in fact, done so. See Restatement (Second) of Torts § 895J, comment c (1979); Rajspic v. Nationwide Mut. Ins. Co. ( Rajspic I), 104 Idaho 662, 664, 662 P.2d 534, 536 (1983). |
| **Division 13 - Remedies** | | | | |
| **Section 903** | | | | |
| Phelps v. Commonwealth Land Title Ins., 537 N.W.2d 271, 278 (Minn. 1995) | § 903. Compensatory Damages-Definition (2nd) | "Compensatory damages" are the damages awarded to a person as compensation, indemnity or restitution for harm sustained by him. | Cited in dissenting opinion | The term "compensatory damages" has a generally understood meaning just as the terms "actual damages" and "punitive damages"-also used in Minn.Stat. § 363.071, subd. 2-have generally understood meanings. See Minn.Stat. § 645.08(1) (1994) ("Words and phrases are construed according to their common and approved usage."). Black's Law Dictionary defines "compensatory damages" as "such as will compensate the injured party for the injury sustained, and nothing more; such as will simply make good or replace the loss caused by the wrong or injury." Black's Law Dictionary 390 (6th ed. 1990) (emphasis added); see also Restatement (Second) Torts § 903 (defining compensatory damages as "damages awarded to a person as compensation, indemnity or restitution for harm sustained by him"); Webster's Third New Int'l Dictionary 463 (3rd ed. 1961) (defining compensatory damages as "damages awarded to make good or compensate for an injury sustained -distinguished from punitive damages "). |
| Ray v. Miller Meester Adver., Inc. 684 N.W.2d 404, 407 n.3, 410–11 (Minn. 2004) | § 903. Compensatory Damages-Definition (2nd) | See above. | Cited in support, also cited in dissenting opinion | We concluded in Phelps that "[i]n general, compensatory damages 'consist of both general and special damages. General damages are the natural, necessary and usual result of the wrongful act or occurrence in question. Special damages are those which are the natural but not the necessary and inevitable result of the wrongful act.' "...Likewise, the Restatement (Second) of Torts defines compensatory damages as "the damages awarded to a person as compensation, indemnity or restitution for harm sustained by him." Restatement (Second) |

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| **Section 904** | | | | |
| Ray v. Miller Meester Adver., Inc. 684 N.W.2d 404, 407 n.3 (Minn. 2004) | § 904. General and Special Damages (2nd) | (1) "General damages" are compensatory damages for a harm so frequently resulting from the tort that is the basis of the action that the existence of the damages is normally to be anticipated and hence need not be alleged in order to be proved.<br><br>(2) "Special damages" are compensatory damages for a harm other than one for which general damages are given. | Cited in support | The Restatement also notes that both general and special damages are forms of compensatory damages. Id. § 904. The Restatement, like Phelps, defines general damages as "compensatory damages for a harm so frequently resulting from the tort that is the basis of the action that the existence of the damages is normally to be anticipated and hence need not be alleged in order to be proved." Id. (1). The Restatement defines special damages as "compensatory damages for a harm other than one for which general damages are given." Id. (2). |
| **Section 907** | | | | |
| Hermann v. McMenomy & Severson, 583 N.W.2d 283, 290 n.8 (Minn. Ct. App. 1998) | § 907. Nominal Damages (2nd) | Nominal damages are a trivial sum of money awarded to a litigant who has established a cause of action but has not established that he is entitled to compensatory damages. | Cited in discussion | The reason for this rule is that because "the action for negligence developed chiefly out of the old form of action on the case, it retained the rule of that action, that proof of damage was an essential part of the plaintiff's case." Prosser & Keeton, § 30, at 165. Minnesota recognizes this common-law rule. See, e.g., Harding v. Ohio Cas. Ins. Co., 230 Minn. 327, 338, 41 N.W.2d 818, 825 (1950) ("It is the damage wrongfully done, and not the conspiracy, that is the gist of the action on the case for conspiracy.") (citation omitted). Also compare Restatement (Second) of Torts § 907, cmt.. b (1965) (stating that nominal damages may be awarded for nonharmful invasion of interest where harm is not requisite to cause of action) with Schweich, 463 N.W.2d at 729 (stating that injury is element of negligence). |
| **Section 908** | | | | |
| Shetka v. Kueppers, Kueppers, et al., 454 N.W.2d 916, 920 (Minn. 1990) | § 908. Punitive Damages (2nd) | (1) Punitive damages are damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct | Adopted | It seems to us that analysis is persuasive. A punitive damage award operates not to compensate an injured party, but rather to penalize or punish a wrongdoer and discourage him and others from |

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| | | and to deter him and others like him from similar conduct in the future.<br><br>(2) Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant. | | engaging in similar future conduct. Melina v. Chaplin, 327 N.W.2d 19, 20 n. 1 (Minn.1982); Restatement (Second) of Torts § 908, comment a (1977). When such punishment is "exacted, it must be certain that the wrongdoer being punished because of his conduct actually caused the plaintiff's injuries." Collins v. Eli Lilly Co., 116 Wis.2d 166, 202, 342 N.W.2d 37, 54 (emphasis added), cert. denied sub nom. E.R. Squibb & Sons v. Collins, 469 U.S. 826, 105 S.Ct. 107, 83 L.Ed.2d 51 (1984). The Minnesota legislature has attempted to ensure that punitive damages are fairly and effectively assessed on an individual basis by factoring into the consideration of the amount of the award elements which include the degree of the defendant's culpability, the seriousness of the defendant's acts, effect on the public, and the wrongdoer's ability to pay. Minn.Stat. § 549.20, subd. 3 (1988). We agree with the Maryland court, "Punitive damages, in essence, represent a civil fine, and as such, should be imposed on an individual basis." Embrey v. Holly, 293 Md. 128, 142, 442 A.2d 966, 973 (1982). |
| **Section 909** | | | | |
| City of Minneapolis v. Richardson, 307 Minn. 80, 92, 239 N.W.2d 197, 205 n.14 (Minn. 1976) | § 909. Punitive Damages Against a Principal (2nd) | Punitive damages can properly be awarded against a master or other principal because of an act by an agent if, but only if,<br>(a) the principal or a managerial agent authorized the doing and the manner of the act, or<br>(b) the agent was unfit and the principal or a managerial agent was reckless in employing or retaining him, or<br>(c) the agent was employed in a managerial capacity and was acting in the scope of employment, or<br>(d) the principal or a managerial agent of the principal ratified or approved the act. | Cited in discussion | While the major legal encyclopedias report a split of authority on the issue of vicarious liability for punitive damages, 25 C.J.S., Damages, s 125, 22 Am.Jur.2d, Damages, ss 257 and 258, Prosser states that the majority of jurisdictions follows the Schmidt rule in making the employer liable. Prosser, Torts, s 2, p. 12. The alternative rule requires some act on the part of the employer to fairly connect him with the employee's acts, e.g., direct participation, forehand knowledge, ratification, etc. See, Restatement, Torts, s 909, and Tentative Draft No. 19, Restatement, Torts 2d, s 909, and Restatement, Agency 2d, s 217C. |

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| Tennant Co. v. Advance Mach. Co., Inc. 355 N.W.2d 720, 723, 724, 726 (Minn. Ct. App. 1984) | § 909. Punitive Damages Against a Principal (2nd) | See above. | Cited in support | The jury was instructed verbatim under this statute. The same standard is codified into Minnesota law. Minn.Stat. § 549.20, subd. 2 (1982). Since both states apply the same rule, our decision speaks to the Minnesota business community as well. Section 909 imposes punitive damages to deter employment of unfit persons for important positions. It reflects certain policy judgments about corporations, primarily that top management sets the company's ethical tone. Accountability of the principal is necessary to enforce corporate responsibility: If we allow the master to be careless of his servants' torts we lose hold upon the most valuable check in the conduct of social life. Laski, The Basis of Vicarious Liability, 26 Yale L.J. 105, 114 (1916). In this case the president of Advance, who personally hired the individuals responsible for illegal activity, was indifferent to the ethics of their behavior. |
| **Section 910** | | | | |
| Ray v. Miller Meester Adver., Inc. 684 N.W.2d 404, 407 n.3, 410–11 (Minn. 2004) | § 910. Damages for Past, Present and Prospective Harms (2nd) | One injured by the tort of another is entitled to recover damages from the other for all harm, past, present and prospective, legally caused by the tort. | Cited in support, also cited in dissenting opinion | Likewise, the Restatement (Second) of Torts defines compensatory damages as "the damages awarded to a person as compensation, indemnity or restitution for harm sustained by him." Restatement (Second) of Torts § 903 (1979). Section 910 of the Restatement further states that the victim of a tort "is entitled to recover damages from the [tortfeasor] for all harm, past, present and prospective, legally caused by the tort." (Emphasis added.) The Restatement also notes that both general and special damages are forms of compensatory damages. Id. § 904. The Restatement, like Phelps, defines general damages as "compensatory damages for a harm so frequently resulting from the tort that is the basis of the action that the existence of the damages is normally to be anticipated and hence need not be alleged in order to be proved." Id. (1). The Restatement defines special damages as "compensatory damages for a harm other than one for which general damages |

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| **Section 914** | | | | |
| Osborne v. Chapman, 574 N.W.2d 64, 68 (Minn. 1998) | § 914. Expense of Litigation (2nd) | (1) The damages in a tort action do not ordinarily include compensation for attorney fees or other expenses of the litigation.<br><br>(2) One who through the tort of another has been required to act in the protection of his interests by bringing or defending an action against a third person is entitled to recover reasonable compensation for loss of time, attorney fees and other expenditures thereby suffered or incurred in the earlier action. | Cited in support | "[T]his court has always been exceedingly cautious when awarding attorney fees as damages." Kallok v. Medtronic, Inc., 573 N.W.2d 356, 363 (Minn.1998). Litigants ordinarily may not recover attorney fees absent a specific contract or statutory authorization. See Langeland v. Farmers State Bank of Trimont, 319 N.W.2d 26, 33 (Minn.1982). However, we have on occasion recognized one more exception to the general rule: One who through the tort of another has been required to act in the protection of his [or her] interests by bringing or defending an action against a third person is entitled to recover reasonable compensation for loss of time, attorney fees and other expenditures thereby suffered or incurred in the earlier action. Restatement (Second) of Torts § 914(2) (1979); see also, e.g., Prior Lake State Bank v. Groth, 259 Minn. 495, 500, 108 N.W.2d 619, 622 (1961) (citing first version of the Restatement). |
| Paidar v. Hughes, 615 N.W.2d 276, 280 & n.4 (Minn. 2000) | § 914. Expense of Litigation (2nd) | See above. | Cited in support | In examining Minnesota precedent, we are convinced that adoption of the majority rule is consistent with the common law in this state. We have adopted Restatement of Torts § 914 (1939), which sets forth a policy that substantially overlaps with the one set forth in section 633. See Prior Lake State Bank v. Groth, 259 Minn. 495, 499-500, 108 N.W.2d 619, 622 (1961). In Prior Lake State Bank, we held attorney fees to be recoverable when litigation with a third party was the natural and proximate consequence of defendant's tortious conduct (embezzlement from a bank). Id. at 622-23. Section 633 merely provides for recovery of litigation expenses when necessitated by the particular tort of tortious slander of title. |
| **Section 920** | | | | |

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| Gits v. Norwest Bank Minneapolis, 390 N.W.2d 835, 837–38 (Minn. Ct. App. 1986) | § 920. Benefit to Plaintiff Resulting From Defendant's Tort (2nd) | When the defendant's tortious conduct has caused harm to the plaintiff or to his property and in so doing has conferred a special benefit to the interest of the plaintiff that was harmed, the value of the benefit conferred is considered in mitigation of damages, to the extent that this is equitable. | Adopted | We also reject Norwest's claim that the "benefits rule" of damages requires the $736 in compensatory damages to be offset by $3,000 in interest Gits earned through the use of the misapplied $25,000. The benefits rule provides that if a defendant's tortious conduct confers a benefit, as well as a harm, upon the plaintiff, the jury may weigh the value of the benefit against the claimed harm. Restatement (Second) of Torts § 920 (1977); Clapham v. Yanga, 102 Mich.App. 47, 300 N.W.2d 727 (1980). Norwest does not argue that its retention of the bonds conferred a benefit on Gits. Instead, Norwest claims that it conferred a benefit by not seeking to recover all the interest Gits earned on the misapplied $25,000. This "benefit" is not a result of the conversion of the bonds, but of the bank's decision not to seek recovery of the full amount of interest Gits earned, and therefore the benefits rule does not require the compensatory damages to be reduced by the amount of the earned interest. See Restatement (Second) of Torts § 920 comment d (1977). |
| **Section 920A** | | | | |
| Hueper v. Goodrich, 314 N.W.2d 828, 830 (Minn. 1982) | § 920A. Effect of Payments Made to Injured Party (2nd) | (1) A payment made by a tortfeasor or by a person acting for him to a person whom he has injured is credited against his tort liability, as are payments made by another who is, or believes he is, subject to the same tort liability.<br><br>(2) Payments made to or benefits conferred on the injured party from other sources are not credited against the tortfeasor's liability, although they cover all or a part of the harm for which the tortfeasor is liable. | Adopted | Under the collateral source rule, a plaintiff may recover damages from a tortfeasor, although the plaintiff has received money or services in reparation of the injury from a source other than the tortfeasor. Maxwell, The Collateral Source Rule in the American Law of Damages, 46 Minn.L.Rev. 669, 670-71 (1962). The benefit conferred on the injured person from the collateral source is not credited against the tortfeasor's liability, although it may partially or completely reimburse the plaintiff for his injuries. Restatement (Second) of Torts, s 920A (1979). The rule has been applied where the plaintiff has received insurance proceeds, employment benefits, gifts of money or medical services, welfare benefits or tax advantages. Note, Unreason in the Law of Damages: The Collateral Source Rule, 77 Harvard L.Rev. 741, 742-48 (1964). |

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| | | | | Various justifications have been given for applying the rule. Where the plaintiff has paid for the benefit such as by buying an insurance policy, the rationale is that the plaintiff should be reimbursed and the tortfeasor should not get a windfall. See Restatement (Second) of Torts, s 920A, comment b (1979). |
| Imlay v. City of Lake Crystal, 453 N.W.2d 326, 331 (Minn. 1990) | § 920A. Effect of Payments Made to Injured Party (2nd) | See above. | Cited in support | The common law collateral source rule provided that payment for some of the plaintiff's personal injury costs by a source other than the defendant could not be used to reduce the plaintiff's damage award against the defendant. Hueper v. Goodrich, 314 N.W.2d 828, 830 (Minn.1982); D. Dobbs, Handbook on the Law of Remedies § 8.10, at 581 (1973); Restatement (Second) of Torts § 920A (1979). This rule was criticized as granting plaintiffs a windfall or double recovery. E.g., D. Dobbs, supra, at 584; 2 F. Harper & F. James, The Law of Torts § 25.22, at 1348 (1956). Collateral source statutes, such as adopted by Minnesota in 1986, abrogate a plaintiff's common law right to be over-compensated and now prevent double recoveries in many circumstances by requiring the deduction from the verdict of certain benefits received by a plaintiff. |
| Bruwelheide v. Garvey, 465 N.W.2d 96, 98 (Minn. Ct. App. 1991) | § 920A. Effect of Payments Made to Injured Party (2nd) | See above. | Cited in support | We find the sick leave pay in this case is not encompassed by the language of Minn.Stat. § 548.36. Therefore, the analysis used under the common law rule is instructive. For example, sick leave paid by an employer does not reduce a plaintiff's recovery. Payne v. Bilco Co., 54 Wis.2d 424, 433, 195 N.W.2d 641, 647 (1972). The right to payment for sick leave is earned as part of the employee's compensation. Cincinnati Bell, Inc. v. Hinterlong, 70 Ohio Misc. 38, 47-8, 437 N.E.2d 11, 17 (1981) (citing Rigney v. Cincinnati St. Ry. Co., 99 Ohio App. 105, 112, 131 N.E.2d 413, 417 (1954)). A plaintiff is entitled to compensation if he is forced to use his sick leave as a result of the defendant's |

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| | | | | negligence. Cincinnati Bell, 70 Ohio Misc. at 47-8, 437 N.E.2d at 17; see also Annotation, Receipt of Compensation From Consumption of Accumulated Employment Leave, Vacation Time, Sick Leave Allowance or the Like as Affecting Recovery Against Tortfeasor, 52 A.L.R.2d 1443 (1957). If the plaintiff makes advantageous employment arrangements for sick leave benefits, it is not a collateral source. Restatement (Second) of Torts § 920A comment b (1979). |
| Duluth Steam Coop. Ass'n v. Ringsred, 519 N.W.2d 215, 217 (Minn. Ct. App. 1994) | § 920A. Effect of Payments Made to Injured Party (2nd) | See above. | Cited in support | The common law collateral source rule provides that the compensation a plaintiff receives from a third party "will not diminish recovery against a wrongdoer." Hubbard Broadcasting, Inc. v. Loescher, 291 N.W.2d 216, 222 (Minn.1980). Specifically: Payments made to or benefits conferred on the injured party from other sources are not credited against the tortfeasor's liability, although they cover all or a part of the harm for which the tortfeasor is liable. Restatement (Second) of Torts, § 920A(2) (1979). This rule acknowledges that the "tortfeasor's responsibility to compensate for all harm that he causes, not confined to the net loss that the injured party receives." Id., comment b. Furthermore, "[t]he law does not differentiate between the nature of the benefits, so long as they did not come from the defendant or a person acting for him." Id. Minnesota courts have recognized this rule in Hueper v. Goodrich, 314 N.W.2d 828, 830 (Minn.1982) and Hubbard Broadcasting, 291 N.W.2d at 222. |
| VanLandschoot v. Walsh, 660 N.W.2d 152, 155, 156 (Minn. Ct. App. 2003) | § 920A. Effect of Payments Made to Injured Party (2nd) | See above. | Cited in support | The rule is embodied in the Restatement (Second) of Torts, § 920A(2) (1979), which the Minnesota courts have expressly adopted. Hueper, 314 N.W.2d at 830 (Minn.1982); Ringsred, 519 N.W.2d at 217. The collateral-source rule, however, applies only to a payment that comes from a source other than the tortfeasor or someone acting for the tortfeasor. Restatement (Second) of Torts § 920A(2) (1979). If |

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| | | | | the payment comes from the tortfeasor, or someone acting for the tortfeasor, the rule does not apply, and such payments will reduce the tortfeasor's liability. A payment made by a tortfeasor or by a person acting for him to a person whom he has injured is credited against his tort liability, as are payments made by another who is, or believes he is, subject to the same tort liability. Id. at § 920A(1) (emphasis added). In the present case, the payment to the VanLandschoots came, in effect, from Walsh's insurer, and the comment to the Restatement notes that such payments serve to reduce the tortfeasor's liability: If a tort defendant makes a payment toward his tort liability, it of course has the effect of reducing that liability. This is also true of payments made under an insurance policy that is maintained by the defendant, whether made under a liability provision or without regard to liability. Id. at cmt. a (emphasis added). |
| Tezak v. Bachke, 698 N.W.2d 37, 42 (Minn. Ct. App. 2005) | § 920A. Effect of Payments Made to Injured Party (2nd) | See above. | Cited in support | We do not see a distinction between the value of services gratuitously rendered in the cases cited above and the $68,000 debt extinguished by the action of decedent's health insurer in this case, and we conclude that the $68,000 difference between the amount billed and the amount paid is covered by the common-law collateral-source rule. See Duluth Steam Coop. v. Ringsred, 519 N.W.2d 215, 217 (Minn.App.1994) (quoting Restatement (Second) of Torts § 920A(2) (1979)). |
| **Section 923** | | | | |
| Gits v. Norwest Bank Minneapolis, 390 N.W.2d 835, 837 n.1 (Minn. Ct. App. 1986) | § 923. Payment of Debt by Tortfeasor (2nd) | A tortfeasor cannot diminish the amount of recovery by paying a debt of the injured person without the latter's consent, unless<br>(a) the damages recoverable against the tortfeasor would include the amount of the debt, or<br>(b) the payment of the debt was made unofficiously from the proceeds of the | Cited in discussion | Gits did not argue at trial that the measure of actual damages was $31,000, the amount the bank ultimately retained from proceeds of Gits' two bonds. Neither party has raised or briefed the interesting question of whether punitive damages could be based on the $31,000 Norwest kept when the jury found a corresponding debt in the same amount owed by Gits to Norwest. See Restatement (Second) of Torts § 923 (1977). |

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| | | property of the injured person for the value of which suit is brought. | | |
| **Section 927** | | | | |
| R.E.R. v. J.G., 552 N.W.2d 27, 30, 31 (Minn. Ct. App. 1996) | § 927. Conversion or Destruction of a Thing or of a Legally Protected Interest in It (2nd) | (1) When one is entitled to a judgment for the conversion of a chattel or the destruction or impairment of any legally protected interest in land or other thing, he may recover either<br>(a) the value of the subject matter or of his interest in it at the time and place of the conversion, destruction or impairment; or<br>(b) in the case of commodities of fluctuating value customarily traded on an exchange to which traders customarily resort, the higest replacement value of the commodity within a reasonable period during which he might have replaced it.<br><br>(2) His damages also include:<br>(a) the additional value of a chattel due to additions or improvements made by a converter not in good faith;<br>(b) the amount of any further pecuniary loss of which the deprivation has been a legal cause;<br>(c) interest from the time at which the value is fixed; and<br>(d) compensation for the loss of use not otherwise compensated. | Cited in support | Equity allows recovery of the lost value of an asset, the profit of which a beneficiary was deprived, or any improper financial gains made by the fiduciary. Restatement (Second) of Torts § 927 cmt.. j (1977); see also Restatement (Second) of Trusts §§ 199, 205 (1957) (collectively stating the equitable remedies of a beneficiary include compelling the trustee to perform his or her duties, enjoining the trustee from committing a breach, compelling the trustee to redress a breach (by way of the remedies outlined above), appointing a receiver, and removing the trustee). Equity seeks to restore the plaintiff to the position he or she occupied before the breach or to claim the defendant's ill-gotten profits for the plaintiff. Because of these limitations on remedies available for the breach of a fiduciary duty, Minnesota has not recognized an action against a trustee for the recovery of emotional distress losses. |
| **Section 928** | | | | |
| In re Commodore Hotel Fire & Explosion Cases, 324 N.W.2d 245, 250 (Minn. 1982) | § 928. Harm to Chattels (2nd) | When one is entitled to a judgment for harm to chattels not amounting to a total destruction in value, the damages include compensation for<br>(a) the difference between the value of the chattel before the harm and the | Adopted | When a chattel is damaged, not amounting to total destruction in value, the damages include compensation for loss of use. Restatement (Second) of Torts § 928 (1979). Comment (b) to this section states that in addition to damages for diminution in value, the claimant is entitled to loss of use of which |

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| | | value after the harm or, at his election in an appropriate case, the reasonable cost of repair or restoration, with due allowance for any difference between the original value and the value after repairs, and<br>(b) the loss of use. | | the defendant's tort is the legal cause. We see no reason why similar rules should not apply in a tort action seeking recovery for damage sustained by the owner of income-producing real property. Therefore, we hold that if an owner of income-producing real property which has been damaged by a tortfeasor can establish by a fair preponderance of the evidence that, but for the tort, his gross income would have been sufficient to pay all or part of his fixed unabatable overhead costs during the reasonable time of restoration or repair, as an element of loss of use of the property the owner may recover from the tortfeasor those costs that would have been paid from the lost income. |
| Waseca Sand v. Gravel, Inc. v. Olson 379 N.W.2d 592, 595 (Minn. Ct. App. 1985) | § 928. Harm to Chattels (2nd) | See above. | Cited in discussion | Appellants claim the trial court erred by instructing the jury the correct measure of damages was the difference in fair market value before and after the collision instead of the reasonable cost of repair. An injured party may choose between those damages. |
| **Section 929** | | | | |
| Rector, Wardens & Vestry of St. Christopher's Episcopal Church v. C.S. McCrossan, Inc., 306 Minn. 143, 147, 235 N.W.2d 609, 611 & n.1 (Minn. 1975) | § 929. Harm to Land From Past Invasions (2nd) | (1) If one is entitled to a judgment for harm to land resulting from a past invasion and not amounting to a total destruction of value, the damages include compensation for<br>(a) the difference between the value of the land before the harm and the value after the harm, or at his election in an appropriate case, the cost of restoration that has been or may be reasonably incurred,<br>(b) the loss of use of the land, and<br>(c) discomfort and annoyance to him as an occupant.<br>(2) If a thing attached to the land but severable from it is damaged, he may at his election recover the loss in value to the thing instead of the damage to the land as a whole. | Adopted | The owner of property has a right to hold it for his own use as well as to hold it for sale, and if he has elected the former he should be compensated for an injury wrongfully done him in that respect, although that injury might be unappreciable to one holding the same premises for purposes of sale.' Restatement, Torts, s 929, provides in part: 'Where a person is entitled to a judgment for harm to land resulting from a past invasion and not amounting to a total destruction in value, the damages include compensation for '(a) at the plaintiff's election 'i. the difference between the value of the land before the harm and the value after the harm or the cost of restoration which has been or may be reasonably incurred. |