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Restatement of the Law — Torts
Restatement (Second) of Torts
Current through April 2009

Division 4. Misrepresentation
Chapter 22. Misrepresentation And Nondisclosure Causing Pecuniary Loss
Topic 3. Negligent Misrepresentation

§ 552. Information Negligently Supplied For The Guidance Of Others

Link to Case Citations

(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.

(2) Except as stated in Subsection (3), the liability stated in Subsection (1) is limited to loss suffered

(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

(b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction.

(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.

Comment:

a. Although liability under the rule stated in this Section is based upon negligence of the actor in failing to exercise reasonable care or competence in supplying correct information, the scope of his liability is not determined by the rules that govern liability for the negligent supplying of chattels that imperil the security of the person, land or chattels of those to whom they are supplied (see §§ 388-402), or other negligent misrepresentation that results in physical harm. (See § 311). When the harm that is caused is only pecuniary loss, the courts have found it necessary to adopt a more restricted rule of liability, because of the extent to which misinformation may be, and may be expected to be, circulated, and the magnitude of the

losses which may follow from reliance upon it.

The liability stated in this Section is likewise more restricted than that for fraudulent misrepresentation stated in § 531. When there is no intent to deceive but only good faith coupled with negligence, the fault of the maker of the misrepresentation is sufficiently less to justify a narrower responsibility for its consequences.

The reason a narrower scope of liability is fixed for negligent misrepresentation than for deceit is to be found in the difference between the obligations of honesty and of care, and in the significance of this difference to the reasonable expectations of the users of information that is supplied in connection with commercial transactions. Honesty requires only that the maker of a representation speak in good faith and without consciousness of a lack of any basis for belief in the truth or accuracy of what he says. The standard of honesty is unequivocal and ascertainable without regard to the character of the transaction in which the information will ultimately be relied upon or the situation of the party relying upon it. Any user of commercial information may reasonably expect the observance of this standard by a supplier of information to whom his use is reasonably foreseeable.

On the other hand, it does not follow that every user of commercial information may hold every maker to a duty of care. Unlike the duty of honesty, the duty of care to be observed in supplying information for use in commercial transactions implies an undertaking to observe a relative standard, which may be defined only in terms of the use to which the information will be put, weighed against the magnitude and probability of loss that might attend that use if the information proves to be incorrect. A user of commercial information cannot reasonably expect its maker to have undertaken to satisfy this obligation unless the terms of the obligation were known to him. Rather, one who relies upon information in connection with a commercial transaction may reasonably expect to hold the maker to a duty of care only in circumstances in which the maker was manifestly aware of the use to which the information was to be put and intended to supply it for that purpose.

By limiting the liability for negligence of a supplier of information to be used in commercial transactions to cases in which he manifests an intent to supply the information for the sort of use in which the plaintiff's loss occurs, the law promotes the important social policy of encouraging the flow of commercial information upon which the operation of the economy rests. The limitation applies, however, only in the case of information supplied in good faith, for no interest of society is served by promoting the flow of information not genuinely believed by its maker to be true.

b. The rule stated in this Section applies not only to information given as to the existence of facts but also to an opinion given upon facts equally well known to both the supplier and the recipient. Such an opinion is often given by one whose only knowledge of the facts is derived from the person who asks it. As to the care and competence that the recipient of such an opinion is justified in expecting, see Comment *e*.

Comment on Subsection (1):

c. Pecuniary interest in the transaction. The rule stated in Subsection (1) applies only when the defendant has a pecuniary interest in the transaction in which the information is given. If he has no pecuniary interest and the information is given purely gratuitously, he is under no duty to exercise reasonable care and competence in giving it. The situation is analogous to that of one who gratuitously lends or otherwise supplies a chattel, whose duty is only to disclose any facts he knows that may make it unsafe for use. (See § 405).

Illustrations:

1. A, seeking information as to the will of B, asks C Trust Company for a copy of the will. C Trust Company is not in the business of supplying copies of wills, and has no interest in giving this one to A, but gratuitously agrees to supply the copy as a favor to A. By a negligent mistake but in good faith it gives A a copy of the will of another person of the same name as B. In reliance on the copy A incurs pecuniary loss. C Trust Co. is not liable to A.2. The A Newspaper negligently publishes in one of its columns a statement that a certain proprietary drug is a sure cure for dandruff. B, who is plagued with dandruff, reads the statement and in reliance upon it purchases a quantity of the drug. It proves to be worthless as a dandruff cure and B suffers pecuniary loss. The A Newspaper is not liable to B.

d. The defendant's pecuniary interest in supplying the information will normally lie in a consideration paid to him for it or paid in a transaction in the course of and as a part of which it is supplied. It may, however, be of a more indirect character. Thus the officers of a corporation, although they receive no personal consideration for giving information concerning its affairs, may have a pecuniary interest in its transactions, since they stand to profit indirectly from them, and an agent who expects to receive a commission on a sale may have such an interest in it although he sells nothing.

The fact that the information is given in the course of the defendant's business, profession or employment is a sufficient indication that he has a pecuniary interest in it, even though he receives no consideration for it at the time. It is not, however, conclusive. But when one who is engaged in a business or profession steps entirely outside of it, as when an attorney gives a casual and offhand opinion on a point of law to a friend whom he meets on the street, or what is commonly called a “curbstone opinion,” it is not to be regarded as given in the course of his business or profession; and since he has no other interest in it, it is considered purely gratuitous. The recipient of the information is not justified in expecting that his informant will exercise the care and skill that is necessary to insure a correct opinion and is only justified in expecting that the opinion will be an honest one.

e. Reasonable care and competence. Since the rule of liability stated in Subsection (1) is based upon negligence, the defendant is subject to liability if, but only if, he has failed to exercise the care or competence of a reasonable man in obtaining or communicating the information. (See §§ 283, 288 and 289). What is reasonable is, as in other cases of negligence, dependent upon the circumstances. It is, in general, a matter of the care and competence that the recipient of the information is entitled to expect in the light of the circumstances and this will vary according to a good many factors. The question is one for the jury, unless the facts are so

clear as to permit only one conclusion.

The particulars in which the recipient of information supplied by another is entitled to expect the exercise of care and competence depend upon the character of the information that is supplied. When the information concerns a fact not known to the recipient, he is entitled to expect that the supplier will exercise that care and competence in its ascertainment which the supplier's business or profession requires and which, therefore, the supplier professes to have by engaging in it. Thus the recipient is entitled to expect that such investigations as are necessary will be carefully made and that his informant will have normal business or professional competence to form an intelligent judgment upon the data obtained. On the other hand, if the supplier makes no pretense to special competence but agrees for a reward to furnish information that lies outside the field of his business or profession, the recipient is not justified in expecting more than that care and competence that the nonprofessional character of his informant entitles him to expect. When the information consists of an opinion upon facts supplied by the recipient or otherwise known to him, the recipient is entitled to expect a careful consideration of the facts and competence in arriving at an intelligent judgment. In all of these cases the recipient of the information is entitled to expect reasonable conversance with the language employed to communicate the information in question and reasonable care in its use, unless he knows that his informant is ignorant of the language in question or peculiarly careless in its use.

Illustration:

3. XYZ Corporation seeks a credit of $100,000 from F & Co., a factoring concern. Because the latest XYZ financial statements, audited by A & Co., a partnership of certified public accountants, are dated as of the last fiscal year-end of XYZ Corporation which fell some eight months previously, F & Co., requests that A & Co. be retained to provide unaudited financial statements for the current interim period. A & Co., knowing the statements are being prepared for the consideration of F & Co. in connection with XYZ Corporation's request for the $100,000 credit, prepares financial statements from the books of the corporation without performing any tests of the accuracy of the entries themselves or respecting the transactions represented to underlie them. The statements, furnished under A & Co.'s letterhead, are labeled “unaudited” on each page and accompanied by a written representation that they have not been audited and that, accordingly, A & Co. is not in a position to express an opinion upon them. Nothing comes to the attention of A & Co. in the course of preparing the statements to indicate that they were incorrect, but because the books from which they were prepared were, unknown to A & Co., in error, the financial statements materially misstate the financial position of XYZ Corporation and its results of operations for the period subsequent to the preceding fiscal year-end. F & Co., because it extends the credit in reliance upon the statements, suffers substantial pecuniary loss. A & Co. is not subject to liability to F & Co.

f. The care and competence that the supplier of information for the guidance of others is required under the rule stated in this Section to exercise in order that the information given may be correct, must be exercised in the following particulars. If the matter is one that requires in-

vestigation, the supplier of the information must exercise reasonable care and competence to ascertain the facts on which his statement is based. He must exercise the competence reasonably expected of one in his business or professional position in drawing inferences from facts not stated in the information. He must exercise reasonable care and competence in communicating the information so that it may be understood by the recipient, since the proper performance of the other two duties would be of no value if the information accurately obtained was so communicated as to be misleading.

Comment on Subsection (2):

g. Information supplied directly and indirectly. The person for whose guidance the information is supplied is often the person who has employed the supplier to furnish it, in which case, if it is supplied for a consideration paid by that person, he has at his election either a right of action under the rule stated in this Section or a right of action upon the contract under which the information is supplied. In many cases, however, the information is supplied directly to the person who is to act upon it although it is paid for by the other party to the transaction. Thus, when a vendor of beans employs a public weigher to weigh beans, the weigher, who gives to the vendee a certificate which through his carelessness overstates the weight of the beans, is subject to liability to the vendee for the amount that he overpays in reliance upon the certificate. However, direct communication of the information to the person acting in reliance upon it is not necessary. In the situation above the liability of the weigher would not be affected by his giving the certificate to the vendor for communication to the vendee.

h. Persons for whose guidance the information is supplied. The rule stated in this Section subjects the negligent supplier of misinformation to liability only to those persons for whose benefit and guidance it is supplied. In this particular his liability is somewhat more narrowly restricted than that of the maker of a fraudulent representation (see § 531), which extends to any person whom the maker of the representation has reason to expect to act in reliance upon it.

Under this Section, as in the case of the fraudulent misrepresentation (see § 531), it is not necessary that the maker should have any particular person in mind as the intended, or even the probable, recipient of the information. In other words, it is not required that the person who is to become the plaintiff be identified or known to the defendant as an individual when the information is supplied. It is enough that the maker of the representation intends it to reach and influence either a particular person or persons, known to him, or a group or class of persons, distinct from the much larger class who might reasonably be expected sooner or later to have access to the information and foreseeably to take some action in reliance upon it. It is enough, likewise, that the maker of the representation knows that his recipient intends to transmit the information to a similar person, persons or group. It is sufficient, in other words, insofar as the plaintiff's identity is concerned, that the maker supplies the information for repetition to a certain group or class of persons and that the plaintiff proves to be one of them, even though the maker never had heard of him by name when the information was given. 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.

Even when the maker is informed of the identity of a definite person to whom the recipient intends to transmit the information, the circumstances may justify a finding that the name and identity of that person was regarded by the maker, and by the recipient, as important only because the person in question was one of a group whom the information was intended to reach and for whose guidance it was being supplied. In many situations the identity of the person for whose guidance the information is supplied is of no moment to the person who supplies it, although the number and character of the persons to be reached and influenced, and the nature and extent of the transaction for which guidance is furnished may be vitally important. This is true because the risk of liability to which the supplier subjects himself by undertaking to give the information, while it may not be affected by the identity of the person for whose guidance the information is given, is vitally affected by the number and character of the persons, and particularly the nature and extent of the proposed transaction. On the other hand, the circumstances may frequently show that the identity of the person for whose guidance the information is given is regarded by the person supplying it, and by the recipient, as important and material; and therefore the person giving the information understands that his liability is to be restricted to the named person and to him only. Thus when the information is procured for transmission to a named or otherwise described person, whether the maker is liable to another, to whom in substitution the information is transmitted in order to influence his conduct in an otherwise identical transaction, depends upon whether it is understood between the one giving the information and the one bringing about its transmission, that it is to be given to the named individual and to him only.

Illustrations:

4. A, having lots for sale, negligently supplies misinformation concerning the lots to a real estate board, for the purpose of having the information incorporated in the board's multiple listing of available lots, which is distributed by the board to approximately 1,000 prospective purchasers of land each month. The listing is sent by the board to B, and in reliance upon the misinformation B purchases one of A's lots and in consequence suffers pecuniary loss. A is subject to liability to B.5. A is negotiating with X Bank for a credit of $50,000. The Bank requires an audit by independent public accountants. A employs B & Company, a firm of accountants, to make the audit, telling them that the purpose of the audit is to meet the requirements of X Bank in connection with a credit of $50,000. B & Company agrees to make the audit, with the express understanding that it is for transmission to X Bank only. X Bank fails, and A, without any further communication with B & Company, submits its financial statements accompanied by B & Company's opinion to Y Bank, which in reliance upon it extends a credit of $50,000 to A. The audit is so carelessly made as to result in an unqualified favorable opinion on financial statements that materially misstates the financial position of A, and in consequence Y Bank suffers pecuniary loss through its extension of credit. B & Company is not liable to Y Bank.6. The same facts as in Illustration 5, except that nothing is said about supplying the information for the guidance of X Bank only, and A merely informs B & Company that he expects to negotiate a bank loan, for $50,000, requires the audit for the purpose of the loan, and has X Bank in mind. B & Company is subject to liability to

Y Bank.7. The same facts as in Illustration 5, except that A informs B & Company that he expects to negotiate a bank loan, but does not mention the name of any bank. B & Company is subject to liability to Y Bank.8. A, wishing to sell his car to B, writes to C, an expert mechanic, asking him to inspect the car and forward to A a letter stating its condition, in order that A may give the letter to B, who, as A tells C, is a prospective purchaser. Nothing is said about using the information only for B. C may be found to have supplied the information for the guidance of B only, or for the guidance either of B or of any other purchaser whom A may find.9. The City of A is about to ask for bids for work on a sewer tunnel. It hires B Company, a firm of engineers, to make boring tests and provide a report showing the rock and soil conditions to be encountered. It notifies B Company that the report will be made available to bidders as a basis for their bids and that it is expected to be used by the successful bidder in doing the work. Without knowing the identity of any of the contractors bidding on the work, B Company negligently prepares and delivers to the City an inaccurate report, containing false and misleading information. On the basis of the report C makes a successful bid, and also on the basis of the report D, a subcontractor, contracts with C to do a part of the work. By reason of the inaccuracy of the report, C and D suffer pecuniary loss in performing their contracts. B Company is subject to liability to C and to D.10. A, an independent public accountant, is retained by B Company to conduct an annual audit of the customary scope for the corporation and to furnish his opinion on the corporation's financial statements. A is not informed of any intended use of the financial statements; but A knows that the financial statements, accompanied by an auditor's opinion, are customarily used in a wide variety of financial transactions by the corporation and that they may be relied upon by lenders, investors, shareholders, creditors, purchasers and the like, in numerous possible kinds of transactions. In fact B Company uses the financial statements and accompanying auditor's opinion to obtain a loan from X Bank. Because of A's negligence, he issues an unqualifiedly favorable opinion upon a balance sheet that materially misstates the financial position of B Company, and through reliance upon it X Bank suffers pecuniary loss. A is not liable to X Bank.11. A Bank receives an inquiry from B Bank respecting the creditworthiness of C Corporation, a customer of A Bank. B Bank informs A Bank that the reason for the inquiry is that D & Co., an advertising agency, has been approached by C Corporation with a request that it manage a $200,000 advertising campaign for C Corporation on the local television station; that under the terms of its customary arrangement with the television station, D & Co. would be guarantor of any amount owing the station, and that D & Co. has requested its bank to ascertain from C Corporation's bank whether C Corporation is sufficiently credit-worthy to incur and satisfy a liability of $200,000. A Bank, without checking C Corporation's account, and without a disclaimer of liability for its answer, replies that it believes C Corporation to be good for such an obligation. D & Co. arranges for the advertising campaign and shortly thereafter C Corporation enters bankruptcy. A Bank is subject to liability for negligence to D & Co.12. In 1934, A Company, a firm of surveyors, contracts with B to make a survey and description of B's land. A Company is not informed of any intended use of the survey report but knows that survey reports are customarily used in a wide variety of real estate transactions and that it may be relied upon by purchasers, mortgagees, investors and others. The survey is negligently made and misstates the boundaries and extent

of the land. In 1958 C, relying upon the report that B exhibits to him, purchases the land from B, and in consequence suffers pecuniary loss. A Company is not liable to C.

Comment:

i. Comparison with other Sections. When a misrepresentation creates a risk of physical harm to the person, land or chattels of others, the liability of the maker extends, under the rules stated in §§ 310 and 311, to any person to whom he should expect physical harm to result through action taken in reliance upon it. When a misrepresentation is fraudulent and results in pecuniary loss, the liability of the maker extends, under the rule stated in § 531, to any of the class of persons whom he intends or should expect to act in reliance upon it, and to loss suffered by them in any of the general type of transactions in which he intends or should expect their conduct to be influenced.

Under the rule stated in Subsection (2) of this Section, when the misrepresentation is merely negligent and results in pecuniary loss, the scope of the liability is narrower. The maker of the negligent misrepresentation is subject to liability to only those persons for whose guidance he knows the information to be supplied, and to them only for loss incurred in the kind of transaction in which it is expected to influence them, or a transaction of a substantially similar kind. There is an exception, as stated in Subsection (3), when there is a public duty to give the information. (See Comment *k*, below).

j. Transactions for guidance in which the information is supplied. The rule stated in Clause (2)(b) is somewhat more narrowly restricted than in the case of the liability of the maker of a fraudulent representation stated in § 531, Clause (b). The liability of the maker of the fraudulent representation extends to all transactions of the type or kind that the maker intends or has reason to expect. Under this Section, the liability of the maker of a negligent misrepresentation is limited to the transaction that he intends, or knows that the recipient intends, to influence, or to a substantially similar transaction.

Thus independent public accountants who negligently make an audit of books of a corporation, which they are told is to be used only for the purpose of obtaining a particular line of banking credit, are not subject to liability to a wholesale merchant whom the corporation induces to supply it with goods on credit by showing him the financial statements and the accountant's opinion. On the other hand, it is not necessary that the transaction in which the opinion is relied on shall be identical in all of its minute details with the one intended. It is enough that it is substantially the same transaction or one substantially similar. Thus, in the situation above stated, if the corporation, finding that at the moment it does not need the credit to obtain which the audit was procured, uses it a month later to obtain the same credit from the same bank, the accountants will remain subject to liability to the bank for the loss resulting from its extension of credit, unless the financial condition of the corporation has materially changed in the interim or so much time has elapsed that the bank cannot justifiably rely upon the audit.

There may be many minor differences that do not affect the essential character of the trans-

action. The question may be one of the extent of the departure that the maker of the representation understands is to be expected. If he is told that the information that he supplies is to be used in applying to a particular bank for a loan of $10,000, the fact that the loan is made by that bank for $15,000 will not necessarily mean that the transaction is a different one. But if the loan is for $500,000, the very difference in amount would lead the ordinary borrower or lender to regard it as a different kind of transaction. The ordinary practices and attitudes of the business world are to be taken into account, and the question becomes one of whether the departure from the contemplated transaction is so major and so significant that it cannot be regarded as essentially the same transaction. It is also possible, of course, that more than one kind of transaction may be understood as intended.

Illustrations:

13. A negligently furnishes to a title insurance company a letter praising its facilities and operation, for the purpose of aiding it in selling title insurance. The company exhibits the letter to B, who relies on it in taking out title insurance with the company, and is also induced by the letter to purchase stock in the company. The company proves to be insolvent and B suffers pecuniary loss. A is subject to liability to B for his loss on the title insurance but not for his loss on the purchase of the stock.14. A, an independent public accountant, negligently conducts an audit for B Corporation, and issues an unqualified favorable opinion on its financial statements, although it is in fact insolvent. A knows that B Corporation intends to exhibit the balance sheet to C Corporation, as a basis for applying for credit for the purchase of goods. In reliance upon the balance sheet, C Corporation buys the controlling interest in the stock of B Corporation and as a result suffers pecuniary loss. A is not liable to C Corporation.15. The same facts as in Illustration 14, except that A is informed that C Corporation will be asked to extend credit for the purchase of washing machines, and credit is extended instead for the purchase of electric refrigerators. A is subject to liability to C Corporation.

Comment on Subsection (3):

k. Public duty to give information. When there is a public duty to supply the information in question, an exception arises to the rule stated in Subsection (2), and the maker of the negligent misrepresentation becomes subject to liability to any of the class of persons for whose benefit the duty is created and for their pecuniary losses suffered in any of the general type of transactions in which they are intended to be protected.

The usual case in which the exception arises is that of a public officer who, by his acceptance of his office, has undertaken a duty to the public to furnish information of a particular kind. Typical is the case of a recording clerk, whose duty it is to furnish certified copies of the records under his control. The rule stated is not, however, limited to public officers, and it may apply to private individuals or corporations who are required by law to file information for the benefit of the public.

The scope of the defendant's duty to others in these cases will depend upon the purpose for which the information is required to be furnished. The purpose may be found to be to protect

only a particular and limited class of persons, as when a statute requiring insurance companies to file information concerning their finances with a state insurance commissioner is found to be only for the protection of those buying insurance. In such a case the liability of the company when it negligently gives false information extends only to those who take out insurance policies and only to losses suffered through taking out the policy. On the other hand, the group protected may be a much broader one and may include any one who may reasonably be expected to rely on the information and suffer loss as a result.

Illustrations:

16. A, a notary public, in the performance of his official duties, negligently takes an acknowledgment of a signature on a deed, and certifies that it is that of B. In fact the person signing is not B and the signature is a forgery. The deed is recorded, and in reliance upon the record C purchases the land from D, and as a result suffers pecuniary loss. A is subject to liability to C.17. A, a county tax clerk, in the performance of his official duties, negligently gives B a certificate stating that the taxes on B's land have been paid. In reliance upon the certificate, C buys the land from B and as a result suffers pecuniary loss when he is compelled to pay the taxes. A is subject to liability to C.18. A, a United States government food inspector, in the performance of his official duties, negligently stamps a quantity of B's beef as “Grade A.” In fact the beef is of inferior quality. In reliance upon the stamps, C buys the beef from D, and suffers pecuniary loss as a result. A is subject to liability to C.

Case Citations

Reporter's Notes, Case Citations & Cross References Through December 1977

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REPORTER'S NOTE

This Section has been changed by rewording it in order to clarify the meaning, and by the addition of Subsection (3). The Comments have been extensively rewritten.

Comment c: Illustration 1 is taken from Renn v. Provident Trust Co., 328 Pa. 481, 196 A. 8 (1938).

In accord is Low v. Bouverie, [1891] 3 Ch. 82, where a trustee replied to any inquiry from one to deal with the cestui.

Cf. Holt v. Kolker, 189 Md. 636, 57 A.2d 287 (1948).

Illustration 2 is based on MacKown v. Illinois Pub. & Printing Co., 289 Ill.App. 59, 6 N.E.2d 526 (1937); and Curry v. Journal Pub. Co., 41 N.M. 318, 68 P.2d 168 (1937).

Comment d: On information given in the course of business or profession, see Washington & Berkeley Bridge Co. v. Pennsylvania Steel Co., 226 F. 169 (4 Cir.1915) (contractor to subcontractor); Kent v. Bartlett, 49 Cal.App.3d 724, 122 Cal.Rptr. 615 (1975) (surveyor); Virginia Dare Stores v. Schuman, 175 Md. 287, 1 A.2d 897 (1938) (landowner to invitee); Manock v. Amos D. Bridge's Sons, Inc., 86 N.H. 411, 169 A. 881 (1934) (supplier of truck, as to insurance); Bunge Corp. v. Eide, 372 F.Supp. 1058 (D.N.D.1974) (accountant); Robb v. Gylock Corp., 384 Pa. 209, 120 A.2d 174 (1956) (delivery of carboy); Rempel v. Nationwide Ins. Co., 471 Pa. 404, 370 A.2d 366 (1977) (insurance); Moore v. Kluthe & Lane Ins. Agency, Inc., 89 S.D. 419, 234 N.W.2d 260 (1975); Rosenthal v. Blum, 529 S.W.2d 102 (Tex.Civ.App.1975) (doctor's statement of extent of injury relied on for settlement); Valz v. Goodykoontz, 112 Va. 853, 72 S.E. 730 (1911) (landowner to invitee); Schweiger v. Loewi & Co., Inc., 65 Wis.2d 56, 221 N.W.2d 882 (1974) (investment broker).

Cf. Hedley Byrne & Co. v. Heller & Partners, [1964] A.C. 465 (bank giving credit information); Giddings v. Baker, 80 Tex. 308, 16 S.W. 33 (1891) (bank officer answering inquiry).

On "curbstone opinions," see Fish v. Kelly, 17 C.B., N.S., 194, 144 Eng.Rep. 78 (1864) (attorney); Buttersworth v. Swint, 53 Ga.App. 602, 186 S.E. 770 (1936) (physician); cf. Ryan v. Kanne, 170 N.W.2d 395 (Iowa 1969) (accountant uncertified report).

On "pecuniary interest" see Boucher v. Value, 6 Conn.Cir. 661, 298 A.2d 238 (1972); Devore v. Hobart Mfg. Co., 367 So.2d 836 (La.1979) (identification by employer of defective product for benefit of employee); Banker's Trust Co. v. Steenburn, 95 Misc.2d 967, 409 N.Y.S.2d 51 (1978) (bank loans); Haynes v. Cumberland Builders, Inc., 546 S.W.2d 228 (Tenn.App.1977), appeal after remand, 565 S.W.2d 887 (vendor).

Comment h: Illustration 4 is taken from Granberg v. Turnham, 166 Cal.App.2d 390, 333 P.2d 423 (1958).

See also Doyle v. Chatham & Phenix Nat. Bank, 253 N.Y. 369, 171 N.E. 574 (1930) (trustee negligently certifying bonds of a corporation); Mullen v. Eastern Trust & Banking Co., 108 Me. 498, 81 A. 948 (1911); Durham v. Wichita Mill & Elevator Co., 202 S.W. 138 (Tex.Civ.App.1918) (report made to credit agency, intended to reach subscribers).

Illustration 9 is taken from M. Miller Co. v. Central Contra Costa Sanitary District, 198 Cal.App.2d 305, 18 Cal.Rptr. 13 (1961).

Contra is Texas Tunneling Co. v. City of Chattanooga, 329 F.2d 402 (6 Cir.1964), reversing, 204 F.Supp. 821 (E.D.Tenn.1962). In this case the court laid considerable stress upon a disclaimer of accuracy and responsibility contained in the report.

See also, on the basis of express guaranty, Rozny v. Marnul, 43 Ill.2d 54, 250 N.E.2d 656 (1969).

Illustration 10 is taken from Ultramares Corp. v. Touche, Niven & Co., 255 N.Y. 170, 174 N.E. 441 (1931).

In accord, upon similar facts are O'Connor v. Ludlam, 92 F.2d 50 (2 Cir.1937), certiorari denied, 302 U.S. 758, 58 S.Ct. 364, 82 L.Ed. 586; Blank v. Kaitz, 350 Mass. 779, 216 N.E.2d 110 (1966); Landell v. Lybrand, 264 Pa. 406, 107 A. 783 (1919).

Illustration 11 is based on Hedley Byrne & Co., Ltd. v. Heller & Partners, Ltd., [1964] A.C. 465; cf. Nevada National Bank v. Gold Star Meat Co., 89 Nev. 427, 514 P.2d 651 (1973).

Illustration 12 is taken from Howell v. Betts, 211 Tenn. 134, 362 S.W.2d 924 (1962); cf. Craig v. Everett M. Brooks Co., 351 Mass. 497, 222 N.E.2d 752 (1967); Tartera v. Palumbo, 224 Tenn. 262, 453 S.W.2d 780 (1970).

Abstractors of title: Abstract & Title Guar. Co. v. Kigin, 21 Ala.App. 397, 108 So. 626 (1926); Phoenix Title & Trust Co. v. Continental Oil Co., 43 Ariz. 219, 29 P.2d 1065 (1934); Talpey v. Wright, 61 Ark. 275, 32 S.W. 1072 (1895); Hawkins v. Oakland Title Ins. & Guar. Co., 165 Cal.App.2d 116, 331 P.2d 742 (1958); Sickler v. Indian River Abstract & Guar. Co., 142 Fla. 528, 195 So. 195 (1940); Ohmart v. Citizens' Sav. & Trust Co., 82 Ind.App. 219, 145 N.E. 577 (1924); Symms v. Cutter, 9 Kan.App. 210, 59 P. 671 (1900); Williams v. Polgar, 391 Mich. 6, 215 N.W.2d 149 (1974); Anderson v. Boone County Abstract Co., 418 S.W.2d 123 (Mo.1967); Thomas v. Guarantee Title & Trust Co., 81 Ohio St. 432, 91 N.E. 183 (1910); Equitable Bldg. & Loan Assn. v. Bank of Commerce & Trust Co., 118 Tenn. 678, 102 S.W. 901 (1907); Peterson v. Gales, 191 Wis. 137, 210 N.W. 407 (1926).

Accord, as to attorneys reporting on a title search, Savings Bank v. Ward, 100 U.S. 195, 25 L.Ed. 621 (1879); Dundee Mortgage & Trust Inv. Co. v. Hughes, 20 F. 39 (C.C.Or.1884).

Accountants and auditors: Bonhiver v. Graff, 311 Minn. 111, 248 N.W.2d 291 (1976) (interesting case, with some new developments); Rusch Factors, Inc. v. Levin, 284 F.Supp. 85 (D.R.I.1968); Shatterproof Glass Co. v. James, 466 S.W.2d 873 (Tex.Civ.App.1971).

Attorney's opinion letter: Roberts v. Ball, Hunt, Hart, Brown & Baerwitz, 57 Cal.App.3d 104, 128 Cal.Rptr. 901 (1976).

Stock ticker service: Jaillet v. Cashman, 235 N.Y. 511, 139 N.E. 714 (1923).

Report on progress of a building: Le Lievre v. Gould, [1891] 1 Q.B. 491.

Inspectors of goods: National Iron & Steel Co. v. Hunt, 312 Ill. 245, 143 N.E. 833 (1924).

See also Anglo-American & Overseas Corp. v. United States, 144 F.Supp. 635 (S.D.N.Y.1956), affirmed 242 F.2d 236 (2 Cir.1957).

Telegraph company negligently transmitting a message: Western Union Tel. Co. v. Schriver, 141 F. 538 (8 Cir.1905).

One signing release of lien claims in the wrong place: Tredway v. Ingram, 102 Pa.Super. 459, 157 A. 4 (1931).

Comment j: Illustration 13 is taken from New York Title & Mortgage Co. v. Hutton, 63 U.S.App.D.C. 266, 71 F.2d 989 (1934).

Cf. Wollenberger v. Hoover, 346 Ill. 511, 179 N.E. 42 (1931) (plaintiff bought property securing bonds instead of the bonds); Ashuelot Savings Bank v. Albee, 63 N.H. 152 (1884) (statements as to soundness of a bank induced plaintiff to become surety on the bond of its treasurer).

See also cases in which stock is purchased on the open market, instead of directly from the defendant: Cheney v. Dickinson, 172 F. 109 (7 Cir.1909); King v. Livingston Mfg. Co., 180 Ala. 118, 60 So. 143 (1912); Greenville Nat. Bank v. National Hardwood Co., 241 Mich. 524, 217 N.W. 786 (1928); Peek v. Gurney, L.R. 6 Eng. & Ir. 377 (1873); cf. Gillespie v. Hunt, 276 Pa. 119, 119 A. 815 (1923), certiorari denied, 261 U.S. 622, 43 S.Ct. 519, 67 L.Ed. 832.

Illustration 14 is based on Anderson v. Aronsohn, 181 Cal. 294, 184 P. 12 (1919); Bellport v. Harkins, 104 Kan. 543, 180 P. 220 (1919); Curtiss v. Colby, 39 Mich. 456 (1878); Barnard v. Schuler, 100 Minn. 289, 110 N.W. 966 (1907); Gardner v. Webber, 177 Mo.App. 60, 164 S.W. 184 (1914); Harrington v. Vogle, 103 Neb. 677, 173 N.W. 699 (1919); Peterson v. Mahon, 27 N.D. 92, 145 N.W. 596 (1914); Erie County United Bank v. Berk, 73 Ohio App. 314, 56 N.Ed.2d 285 (1943), motion overruled; Clapp v. Miller, 56 Okl. 29, 156 P. 210 (1916); Figuers v. Fly, 137 Tenn. 358, 193 S.W. 117 (1917); Lowe v. Wright, 40 Tenn.App. 525, 292 S.W.2d 413 (1956).

Comment k: Illustration 16 is based on Mulroy v. Wright, 185 Minn. 84, 240 N.W. 116 (1931).

See also Commonwealth v. Johnson, 123 Ky. 437, 96 S.W. 801 (1906) (county clerk taking acknowledgment); Cole v. Vincent, 229 App.Div. 520, 242 N.Y.S. 644 (1930) (county clerk erroneously docketing judgment).

Illustration 17 is based on Pearson v. Purkett, 32 Mass. (15 Pick.) 264 (1834).

See also Tardos v. Bozant, 1 La.Ann. 199 (1846); Nickerson v. Thompson, 33 Me. 433 (1851).

Otherwise when no public duty is found. Kahl v. Love, 37 N.J.L. 5 (1874); Day v. Reynolds, 30 N.Y. (23 Hun) 131 (1880).

Illustration 18 is based on Mason v. Moore, 73 Ohio St. 275, 76 N.E. 932 (1906).

See also Connelly v. State of California, 3 Cal.App.3d 744, 84 Cal.Rptr. 257 (1970); Warfield v. Clark, 118 Iowa 69, 91 N.W. 833 (1902); Ver Wys v. Vander Mey, 206 Mich. 499, 173 N.W. 504 (1919); Vandewater & Lapp v. Sacks Builders, Inc., 20 Misc.2d 677, 186 N.Y.S.2d 103 (1959); Coughlin v. State Bank, 117 Or. 83, 243 P. 78 (1926).

On liability for negligent misrepresentation, see, generally, Harper & McNeely, A Synthesis of the Law of Misrepresentation, 22 Minn.L.Rev. 939 (1938); Keeton, Actionable Misrepresentation, 1 Okla.L.Rev. 21 (1948), 2 id. 56 (1949); Keeton, Fraud: The Necessity for an Intent to Deceive, 5 U.C.L.A.L.Rev. 583 (1958).

Earlier treatments are found in Smith, Liability for Negligent Language, 14 Harv.L.Rev. 184 (1909); Williston, Liability for Honest Misrepresentation, 24 Harv.L.Rev. 415 (1911); Bohlen, Misrepresentation as Deceit, Negligence or Warranty, 42 Harv.L.Rev. 733 (1929); Carpenter, Responsibility for Intentional, Negligent or Innocent Misrepresentation, 24 Ill.L.Rev. 749 (1930); Weisiger, Bases of Liability for Misrepresentation, 24 Ill.L.Rev. 866 (1930); Green, Deceit, 16 Va.L.Rev. 749 (1930); Bohlen, Should Negligent Misrepresentation be Treated as Negligence or Fraud, 18 Va.L.Rev. 703 (1932); Green, Innocent Misrepresentation, 19 Va.L.Rev. 742 (1932); Wiener, Negligent Misrepresentation: Fraud or Negligence, 13 Clev.-Mar.L.Rev. 250 (1964).

On liability to third persons, see generally Keeton, The Ambit of a Fraudulent Representator's Responsibilities, 17 Tex.L.Rev. 1 (1938); Prosser, Misrepresentations and Third Persons, 19 Vand.L.Rev. 231 (1969); Fiflis, Current Problems of Accountants' Responsibilities to Third Parties, 28 Vand.L.Rev. 31 (1975); Gormley, Accountants' Professional Liability--A Ten Year Review, 29 Bus.Law. 1205 (1974); Mess, Accountants and the Common Law: Liability to Third Parties, 52 Notre Dame Law. 838 (1977); Roady, Professional Responsibility of Abstractors, 12 Vand.L.Rev. 783 (1959).

COURT CITATIONS TO RESTATEMENT, SECOND

E.D.Pa.1977. Cit. com. (d) and illus. (11) in ftn. Plaintiff, an international air carrier, brought an action against a bank and other persons to recover damages allegedly arising out of the fraudulent procurement and use of its credit cards. A travel agency, which had booked travel accommodations through plaintiff for some time, had become dissatisfied with the airline's fifteen-day billing policy, inasmuch as it had operated on thirty-day credit terms with its own accounts. Since it was against air transport regulations for a travel agency to receive and use plaintiff's credit card, which extended the billing cycle beyond fifteen days, two of plaintiff's executives and the travel agency circumvented the regulation by having the travel agency apply for and receive the cards through a straw corporation, which became theoretically indebted to plaintiff. The court held that plaintiff's responsible officials, acting within the scope of their authority, knew who the real party in interest in the scheme was, and, therefore, their knowledge was imputed to plaintiff so that there was no reliance on the solvency of the straw corporation and no fraud. Judgment for defendants. Pan Am World Airways Inc. v. Continental Bank, 435 F.Supp. 642, 649.