

EXHIBIT 7E

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

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Division 6. Injurious Falsehood
Chapter 28. Injurious Falsehood (Including Slander Of Title And Trade Libel)
Topic 4. Privileges To Publish Injurious Falsehood

§ 646A. Conditional Privileges

[Link to Case Citations](#)

The rules on conditional privileges to publish defamatory matter stated in §§ 594 to 598A and on the special privileges stated in §§ 611 and 612 apply to the publication of an injurious falsehood.

Comment:

a. Under any circumstances that would give rise to a conditional privilege for the publication of defamation, there is likewise a conditional privilege for the publication of an injurious falsehood. The circumstances under which the publication of defamation is conditionally privileged are covered in §§ 594 to 598A; see also §§ 611 and 612. The Comments under those Sections are equally applicable to the publication of injurious falsehood, so far as they are pertinent.

Illustrations:

1. A subscribes to the service of a company formed for the purpose of conducting research into the quality and value of commodities in common use. The officers and employees of the corporation, after reasonably competent investigation, inform its subscribers that the toothpaste sold by the X Company contains substances that are deleterious to health, and that the toothpaste sold by the Y Company while containing no harmful ingredients has no cleansing value whatever. The company and its officers and employees are conditionally privileged as to both publications. (Compare § 595). 2. A learns that B, a close friend, is about to take passage on a ship that A reasonably believes to be unseaworthy. A communicates his fears to B and B takes passage on another ship. A is conditionally privileged. (Compare § 595). 3. A, a stockholder in a corporation, learns that it is about to buy a tract of land from X. A communicates to other stockholders his belief that X's title to the land is defective and that the land is of inferior quality and not worth the price. As a result, the corporation does not make the purchase. A is conditionally privileged. (Compare § 596). 4. A informs B, a city milk inspector, that milk delivered in the city by the X Company is impure and dangerous to the public health. A is conditionally privileged. (Compare § 598). 5. An official governmental report on a particular type of products states that A's product has specified defects in it. B Newspaper accurately publishes the report. Even though the statement in the report as to A's product is erroneous, B's publication in the newspaper is privileged. (Compare § 611). 6. On business of the State, the Governor sends a telegram to A, disparaging his property in certain land. The Governor is absolutely privileged to send the communication. (Compare § 591). The telegraph company is also privileged to convey the communication. (Compare § 612).

b. There are, in addition to the conditional privileges applicable to defamation, two special conditional privileges that are applicable only to the publication of injurious falsehood. These are the conditional privilege of rival claimants to assert their claims, as stated in § 647, which is analogous to the defamation privilege covered by § 594; and the

privilege of a competitor to make an unduly favorable comparison of his own land, chattels or other things with those of the one with whom he is competing, as stated in [§ 649](#).

Case Citations

[Reporter's Notes & Cross References Through December 1977](#)

— June 1987 [Case Citations 1978 — June 1987](#)

— June 2001 [Case Citations July 1987 — June 2001](#)

— June 2009 [Case Citations July 2001 — June 2009](#)

[Reporter's Notes & Cross References Through December 1977:](#)

REPORTER'S NOTE

This Section has been added to the first Restatement. It replaces §§ 643, 644, 645, 648 and 650, which are now omitted.

See, in support of this Section, the following:

Acts of attorney in asserting his client's claim: [Watson v. Reynolds, Moody & M.](#) 1, 173 Eng.Rep. 1059 (1826); cf. [Kendall v. Stone](#), 4 Super. (2 Sandf.) 269 (1848), reversed, [5 N.Y. \(1 Seld.\) 14](#).

Attorney giving opinion on abstract of title: [Hines v. Lumpkin](#), 19 Tex.Civ.App. 556, 47 S.W. 818 (1898); cf. [Gilcrest House v. Guaranteed Title & Mortgage Co.](#), 277 App.Div. 788, 97 N.Y.S.2d 226 (1950), affirmed, [302 N.Y. 852](#), 100 N.E.2d 46 (refusal to insure title).

Report by publisher of judicial proceeding: [Mack, Miller Candle Co. v. MacMillan Co.](#), 239 App.Div. 738, 269 N.Y.S. 33 (1934), affirmed, [266 N.Y. 489](#), 195 N.E. 167; cf. [Artloom Corp. v. National Better Business Bureau](#), 48 F.2d 897 (S.D.N.Y.1931).

Fair comment on matters submitted to the public: [City of Tempe v. Pilot Properties, Inc.](#), 22 Ariz.App. 356, 527 P.2d 515 (1974); [Gott v. Pulsifer](#), 122 Mass. 235 (1877); [Browning v. Van Rensselaer](#), 97 F. 531 (C.C.Pa.1899); [Purofied Down Products Corp. v. National Ass'n of Bedding Manufacturers](#), 97 N.Y.S.2d 683 (Sup.Ct.1950); [Fahey v. Shafer](#), 98 Wash. 517, 167 P. 1118 (1917).

Notice given by carrier concerning inspection of diseased cattle: [Youngquist v. American Ry. Express Co.](#), 49 S.D. 373, 206 N.W. 576 (1926).

See Notes to §§ 647 and 649.

Cross References to

1. Digest System Key Numbers

[Libel and Slander](#)  [40-47](#)