

EXHIBIT 7F

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

§ 647. Conditional Privilege Of Rival Claimant

[Link to Case Citations](#)

A rival claimant is conditionally privileged to disparage another's property in land, chattels or intangible things by an assertion of an inconsistent legally protected interest in himself.

Comment:

a. As stated in [§ 646A](#), any circumstances that create a conditional privilege for the publication of defamation will likewise afford a conditional privilege for the publication of an injurious falsehood. This includes the conditional privilege covered by [§ 594](#), which applies when the publisher correctly or reasonably believes that facts exist that affect a sufficiently important interest of his own and that the communication will be of service in the lawful protection of that interest.

b. This Section states an added conditional privilege, applicable only to the publication of injurious falsehood and not to defamation. It differs from the conditional privilege stated in [§ 594](#) in that it goes further and permits the publisher to assert a claim to a legally protected interest of his own provided that the assertion is honest and in good faith, even though his belief is neither correct nor reasonable.

c. A “claimant” is one who asserts that he has property in land, chattels or intangible things. If two persons claim one or more of the same legally protected interests, they are “rival claimants.”

d. Belief in validity of claim. One may disparage another's property in land, chattels or intangible things by asserting a legally protected interest in one's self that is inconsistent with the other's property in the land or other thing in question. Under the rule stated in this Section a rival claimant is privileged to assert the inconsistent interest unless a trier of fact is persuaded that he did not believe in the possible validity of his claim. It is not necessary that the person asserting the claim should believe in its certain or even probable validity. It is enough if he believes in good faith that there is a substantial chance of its being sustained. Bad faith is treated as an abuse of the privilege stated in this Section. (See [§ 650A](#)).

e. Inconsistent interest asserted by claimant. The rule stated in this Section gives a privilege to one who asserts a claim of a legally protected interest inconsistent with the property of another in land, chattels or intangible things only if he does so as a rival claimant. This he can not be unless he knows that some other person, generally a particular person, is claiming an interest in the thing in question that is inconsistent with his own claim. Thus one who informs an intending purchaser of land that he has an easement over the land in question is a rival claimant to its owner who is

selling the land as free from easements. If he is unaware that any other person has or purports to have any property in the land or other thing, he does not assert his claim as a rival claimant and therefore is not within the rule stated in this Section.

f. Rationale of privilege. The privilege stated in this Section is necessary to enable the claimant to preserve the enforceability of his claim. If, knowing that another is offering or about to offer land or other thing for sale as his own, he fails to take advantage of a readily available opportunity to inform the intending purchaser or those likely to become purchasers, as when the sale is by auction, of his claim to the thing, he may preclude himself from afterwards asserting it against the purchaser. Therefore, he must be permitted without fear of liability to protect the enforceability of his claim by asserting it before the purchase is made.

g. The rule stated in this Section is applicable to one who asserts a claim to another's land or other things by oral or written statement or otherwise. A common form of asserting such a claim is the filing for record of a lien or other encumbrance. Unless the filing amounts to the institution of judicial proceedings, in which case the claimant is absolutely privileged under the rule stated in [§ 636](#), the rule stated in this Section is applicable.

h. On the liability of an agent who exercises a privilege which the law accords to his principal, see [Restatement, Second, Agency § 343](#).

i. When the publisher asserts a claim on behalf of some third person otherwise than as his agent, he is privileged only to the extent stated in [§ 595](#) for the publication of defamation.

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

See, in support of the rule stated in this Section: [Frankfort Oil Co. v. Snakard](#), 279 F.2d 436 (10 Cir.1960), certiorari denied, 364 U.S. 920, 81 S.Ct. 283, 5 L.Ed.2d 259; [Allison v. Berry](#), 316 Ill.App. 261, 44 N.E.2d 929 (1942); [Miller v. First Nat. Bank of Gladbrook](#), 220 Iowa 1266, 264 N.W. 272 (1935); [Hayward Farms Co. v. Union Savings Bank & Trust Co.](#), 194 Minn. 473, 260 N.W. 868 (1935); [Bogosian v. First Nat. Bank of Millburn](#), 133 N.J.Eq. 404, 32 A.2d 585 (1943); [Cardon v. McConnell](#), 120 N.C. 461, 27 S.E. 109 (1897); [Briggs v. Coykendall](#), 57 N.D. 785, 224 N.W. 202 (1929); [Keiser v. Kile](#), 166 Okl. 41, 26 P.2d 194 (1933); [Leslie v. Western Steel Co.](#), 202 F.Supp. 27 (S.D.Tex.1962).

Also cases of claimed infringement of patent, trademark or copyright by rival claimants: [Kemart Corp. v. Printing Arts Research Laboratories, Inc.](#), 269 F.2d 375 (9 Cir.1959), certiorari denied, 361 U.S. 893, 80 S.Ct. 197, 4 L.Ed.2d 151; [McIlhenny Co. v. Gaidry](#), 253 F. 613 (5 Cir.1918); [Virtue v. Creamery Package Mfg. Co.](#), 179 F. 115 (8 Cir.1910), affirmed, 227 U.S. 8, 33 S.Ct. 202, 57 L.Ed. 393; [Oil Conservation Eng. Co. v. Brooks Eng. Co.](#), 52 F.2d 783 (6 Cir.1931); [Alliance Securities Co. v. De Vilbiss Mfg. Co.](#), 41 F.2d 668 (6 Cir.1930); [Squires v. Wason Mfg.](#)