1. Restat 2d of Contracts, § 179

   Client/Matter: -None-

   Narrowed by:

Content Type	Narrowed by
Secondary Materials	-None-

2. Lydiard v. Wingate, 131 Minn. 355

   Client/Matter: -None-

   Narrowed by:

Content Type	Narrowed by
Cases	Custom: Custom

3. Cherne Industrial, Inc. v. Grounds & Associates, Inc., 278 N.W.2d 81

   Client/Matter: -None-

4. In re Estate of Peterson, 230 Minn. 478

   Client/Matter: -None-

5. Perkins v. Hegg, 212 Minn. 377

   Client/Matter: -None-

6. State ex rel. Olson v. Guilford, 174 Minn. 457

   Client/Matter: -None-

   Narrowed by:

Content Type	Narrowed by
Cases	Custom: Custom

7. Minn. Const., Art. I, § 3

   Client/Matter: -None-

Restat 2d of Contracts, § 179

§ 179 Bases of Public Policies Against Enforcement

A public policy against the enforcement of promises or other terms may be derived by the court from

(a) legislation relevant to such a policy, or

(b) the need to protect some aspect of the public welfare, as is the case for the judicial policies against, for example,

(i) restraint of trade (§§ 186-188),

(ii) impairment of family relations (§§ 189-191), and

(iii) interference with other protected interests (§§ 192-196, 356).

COMMENTS & ILLUSTRATIONS

Comment:

a. Development of the judicial role. Historically, the public policies against enforcement of terms were developed by judges themselves on the basis of their own perception of the need to protect some aspect of the public welfare. Some of these policies are now rooted in precedents accumulated over centuries. Important examples are the policies against restraint of trade, impairment of domestic relations, and interference with duties owed to individuals. These are singled out for mention in Paragraph (b) because they are dealt with in detail in Topics 2-4 of this Chapter. Society has, however, many other interests that are worthy of protection, and as society changes so do these interests. Courts remain alert to other and sometimes novel situations in which enforcement of a term may contravene those interests. See Illustration 1. At the same time, courts should not implement obsolete policies that have lost their vigor over the course of years. The rule of this Section is therefore an open-ended one that does not purport to exhaust the categories of recognized public policies.

Illustration:

1. A and B make a written agreement that contains a term providing that "no prior negotiations shall be used to interpret this agreement." Prior negotiations would otherwise be admissible to establish the meaning of the writing (§ 214(c)). If the court decides that the term would unreasonably deprive it of relevant evidence that would enable it toresolve an ambiguity in the agreement and thereby hamper it in the fair administration of justice, it will hold that the term is unenforceable on grounds of public policy.

b. Modern role of legislation. The declaration of public policy has now become largely the province of legislators rather than judges. This is in part because legislators are supported by facilities for factual investigations and can be more responsive to the general public. When proscribing conduct, however, legislators seldom address themselves explicitly to the problems of contract law that may arise in connection with such conduct. See § 178(a). Usually they do not even have these problems in mind and say nothing as to the enforceability of terms. In such situations it is pointless to search for the "intention of the legislature," and the court's task is to determine on its own whether it should, by refusing to enforce the promise, add a sanction to those already provided by the legislature. This is a question of "law," in the conventional sense, rather than one of "fact." The legislation is significant, not as controlling the disposition of the case, but as enlightening the court

concerning some specific policy to which it is relevant. A court will examine the particular statute in the light of the whole legislative scheme in the jurisdiction to see, for example, if similar statutes in the same area contain explicit provisions making comparable promises unenforceable. It will look to the purpose and history of the statute. The fact that the statute explicitly prohibits the making of a promise or the engaging in the promised conduct may be persuasive in showing a policy against enforcement of a promise but it is not necessarily conclusive. On the other hand, the fact that the statute provides a civil sanction, whether in addition to a criminal penalty or not, may suggest that no other civil sanction such as unenforceability is intended, but this is not necessarily conclusive either. See Illustration 2. Furthermore, even though a field is the subject of legislation, a court may decide that the legislature has not entirely occupied the field and may refuse to enforce a term on grounds of a judicially developed public policy even though there is no contravention of the legislation. The term "legislation" is used here in the same broad sense as in the preceding section. See Comment *a* to § 178. Although no attempt is made in this Restatement to state rules to deal with any of the myriad of specific pieces of legislation that may be involved in such controversies, § 181 deals with the important cases involving licensing requirements.

Illustration:

2. A induces B to make an agreement to buy goods on credit from A by bribing B's purchasing agent. A delivers the goods to B. A state statute makes such bribery a crime and gives B a civil action to recover the amount of the bribe against A. Although the statute already provides for a civil sanction, a court may decide that B's promise to pay the price is unenforceable on grounds of public policy. Cf. Illustration 12 to § 178.

c. When refusal to enforce may frustrate policy. In some instances, refusal to enforce a term may frustrate rather than further public policy. This is likely to be the case where legislation was enacted to protect a class of persons to which the promisee belongs in transactions of the kind involved. In such instances, there is no policy against the enforcement of the promise by one who belongs to that class.

Illustrations:

3. A, a corporation, makes an agreement to do work for B, a city. C, an official of B, is also a principal shareholder of A, and a statute prohibits the making of such agreements and subjects those who make them to penalties. A's performance of the agreement is defective. Since the statute was enacted to protect a class of persons to which B belongs against a class to which A belongs, enforcement of A's promise is not precluded on grounds of public policy and B can recover damages from A for breach of contract.

4. A, an insurance company, issues a policy of fire insurance to B on his house. The policy differs from that required by a state statute prescribing a standard fire policy. B's house is destroyed by fire. Since the statute was enacted to protect a class of persons to which B belongs against a class to which A belongs, enforcement of A's promise is not precluded on grounds of public policy and B can recover the insurance proceeds from A.

5. A employs B to work in his factory and promises to pay him double for the overtime if B works ten hours a day instead of the usual eight. A state statute, designed to protect the health of workers in such factories, provides a maximum period of employment of eight hours a day and makes violation a crime for both employer and employee. B works ten hours a day but A refuses to pay him extra for the overtime. A court may decide that the statute was enacted to protect a class of persons to which B belongs against a class to which A belongs and that therefore enforcement of A's promise is not precluded on grounds of public policy.

6. A, a bank, invests in a real estate mortgage. A statute prohibits it from making such investments and subjects it to penalties for doing so. Since otherwise the creditors and shareholders of the bank, for whose protection the statute was enacted, would be injured, enforcement of the mortgage debt is not precluded on grounds of public policy and the bank may recover on the debt and foreclose the mortgage.

d. Change of circumstances. Whether a promise is unenforceable on grounds of public policy is determined as of the time that the promise is made and is not ordinarily affected by a subsequent change of circumstances, whether of fact or law. If, however, both parties were excusably ignorant of facts or of legislation of a minor character that made it unenforceable, a change as to these may make the promise enforceable. Compare § 180.

REPORTER'S NOTES

This Section is based on former §§ 512 and 580. See 6A Corbin, Contracts §§ 1373-78 (1962 & Supp. 1980); 14 Williston, Contracts §§ 1628-30 (3d ed. 1972).

Comment a. For cases in which courts discarded public policies as obsolete, see *Marvin v. Marvin, 18 Cal.3d 660, 134 Cal. Rptr. 815, 557 P.2d 106 (1976); Davis v. Boston Mut. Life Ins. Co., 370 Mass. 602, 351 N.E.2d 207 (1976).* Illustration 1 is based on *Garden State Plaza Corp. v. S.S. Kresge Co., 78 N.J. Super. 485, 189 A.2d 448 (1963).*

Comment b. For an elaborate analysis of legislative purpose, see *Homestead Supplies v. Executive Life Ins. Co., 81 Cal. App.3d 978, 147 Cal. Rptr. 22 (1978).* That the fact that similar statutes say "void" or "unenforceable" may be relevant, see *Murphy v. Mallos, 59 A.2d 514 (D.C. Ct. App. 1948); Shepard v. Finance Assoc., 366 Mass. 182, 316 N.E.2d 597 (1974).* Illustration 2 is based on *United States v. Acme Process Equip. Co., 385 U.S. 138 (1966).* In *Marriage of Dawley, 17 Cal.3d 342, 131 Cal. Rptr. 3, 551 P.2d 323 (1976),* the court considered statutes, case law and changing social patterns in determiningthe public policy relating to antenuptial agreements.

Comment c. Illustration 3 is based on Illustration 2 to former § 601. Illustration 4 is based on Illustration 5 to former § 601. Illustration 5 is based on *Gates v. Rivers Constr. Co., 515 P.2d 1020 (Alaska 1973),* and on criticism of *Short v. Bullion-Beck and Champion Mining Co., 20 Utah 20, 57 P. 720 (1899),* in Gellhorn, Contracts and Public Policy, 35 Colum. L. Rev. 679, 688 (1935), and Furmston, The Analysis of Illegal Contracts, 16 U. Toronto L.J. 267, 280 (1966). See also *Nizamuddowlah v. Bengal Cabaret, 92 Misc.2d 220, 399 N.Y.S.2d 854 (1977)* (illegal alien). But cf. Illustration 3 to former § 580. Illustration 6 is based on Illustration 1 to former § 601.

Comment d. This Comment is based on former § 609. In *Mazda Motors of America v. Southwestern Motors, 36 N.C. App. 1, 243 S.E.2d 793 (1978),* the court applied a regulatory statute retroactively to invalidate a contract provision arguably entered into before the statute's effective date. Compare the dictum in *Di Giacomo v. City of New York, 58 A.D.2d 347, 355, 397 N.Y.S.2d 632, 638 (1977).* In *Continental Mortgage Investors v. Sailboat Key, Inc., 354 So.2d 67 (Fla. Dist. Ct. App. 1977),* a statute deemed criminal in nature provided for forfeiture in usurious transactions. The court refused to apply the statute retroactively.

Cross Reference

ALR Annotations:

Validity of contract for sale of "good will" of law practice. *79 A.L.R.3d 1243.*

Failure of vendor to comply with statute or ordinance requiring approval or recording of plat prior to conveyance of property as rendering sale void or voidable. *77 A.L.R.3d 1058.*

Law of forum against wagering transactions as precluding enforcement of claim based on gambling transactions valid under applicable foreign law. *71 A.L.R.3d 178.*
Comment Note. -- Validity and duration of contract purporting to be for permanent employment. *60 A.L.R.3d 226.*
Validity of agreement to pay royalties for use of patented articles beyond patent expiration date. *3 A.L.R.3d 770.*
Attorney's recovery in quantum meruit for legal services rendered under a contract which is illegal or void as against public policy. *100 A.L.R.2d 1378.*
Validity and effect of contractual waiver of trial by jury. *73 A.L.R.2d 1332.*
Conditions printed on confirmation slips as binding on customers of stock or commodity broker. *71 A.L.R.2d 1089.*
Right to recover money lent for gambling purposes. *53 A.L.R.2d 345.*
Validity and effect of agreement controlling the vote of corporate stock. *45 A.L.R.2d 799.*
Validity and enforceability of agreement to drop or compromise will contest or withdraw objections to probate, or of agreement to induce others to do so. *42 A.L.R.2d 1319.*
Validity and effect of promise not to make a will. *32 A.L.R.2d 370.*
Enforceability of option to purchase, consideration for which is payment of rentals exceeding rent control law maximum. *28 A.L.R.2d 1204.*
Validity and effect of side agreement affecting cost of property covered by veteran's loan under Servicemen's Readjustment Act. *19 A.L.R.2d 836.*
Contract provisions for deduction of union dues from wages of employees and their payment to union as within statute prohibiting or regulating assignment of future earnings or wages. *14 A.L.R.2d 177.*
Application of federal antitrust laws to professional sports. *18 A.L.R.Fed. 489.*
Provisions of franchise agreement as constituting unlawful tying arrangements under federal antitrust laws. *14 A.L.R.Fed. 473.*
Validity or enforceability, under carriage of goods by Sea Act *(46 U.S.C. § 1300* et seq.), of clauses in bill of lading or shipping contract as to jurisdiction of foreign courts or applicability of foreign law. *2 A.L.R.Fed. 963.*
Validity, under the Federal Antitrust Laws *(15 U.S.C. § 1* et seq.), of agreements between employers or employer associations imposing restrictions on employment. *2 A.L.R.Fed. 839.*

Digest System Key Numbers:

Contracts 108

Lydiard v. Wingate

Supreme Court of Minnesota

December 17, 1915

Nos. 19,417 - (81)

Reporter
131 Minn. 355; 155 N.W. 212; 1915 Minn. LEXIS 854

L. A. LYDIARD v. W. S. WINGATE AND OTHERS

Prior History: [***1] Action in the district court for Hennepin county against W. S. Wingate, C. O. Lundquist, G. A. Gruman, B. T. Allen and George B. Safford, to recover $28,000 for malicious publication of the letter which is quoted in the opinion. From an order, Leary, J., overruling the demurrer of defendants to the complaint on the ground that the facts stated therein did not constitute a cause of action, defendants appealed. Reversed.

Core Terms

libelous, elect, demurrer, League, newspapers, plot, public official, damages, leaders

Case Summary

Procedural Posture
Defendant alleged libelers appealed from an order of the District Court for Hennepin County (Minnesota), which overruled the alleged libelers' demurrer to plaintiff's action to recover for malicious publication of a letter.

Overview
Plaintiff alleged that the alleged libelers published in certain newspapers a libelous letter about him with regard to political issues. No special damages were pleaded; and no innuendoes applied the article to plaintiff. The trial court overruled the alleged libelers' demurrer to the complaint. On appeal, the court held that no one was seriously misled by exaggerations usually incident to political campaigns. The court found that it could not curb criticism of party leaders or officials unless it clearly appeared that the criticisms, if false, accused the individual of a positive wrong. The court found that the letter did not bring upon plaintiff the hatred or contempt of the general public. It contained nothing reflecting upon his private character, or calling, and imputed to him no act of a nature generally regarded as disreputable or discreditable in political tactics. The court found that the letter was not libelous per se, therefore, the demurrer should have been sustained.

Outcome
The court reversed the trial court's order.

LexisNexis® Headnotes

Torts > ... > Defamation > Defenses > Fair Comment & Opinion

Torts > Intentional Torts > Defamation > Libel

Torts > ... > Defamation > Public Figures > Voluntary Public Figures

HN1 A libel should not be too readily seen in publications relating to criticisms or opinions concerning the acts of public officials.

Syllabus

Libel -- retraction by publisher of newspaper.

1. Defendants caused a circular letter to be published in certain newspapers of which they were neither owners nor publishers. It is held: The defendants are not within the provision of G.S. 1913, § 7901, requiring a demand for retraction before suit will lie.

Criticism of public officials.

2. The interest which every citizen has in good government requires that the right be not unduly curtailed to express his opinion upon public officials and political leaders, to seek and convey information concerning their plans and purposes, and to freely criticise proposed methods and measures.

Libel -- words not libelous per se.

3. The article set forth in the complaint does not charge plaintiff with any moral [***2] or legal delinquency, nor does it reflect upon his character, and the acts and purposes imputed to him as a member elect of the legislature and as a political leader are neither corrupt nor such as are regarded by the public generally as dishonorable or discreditable from the viewpoint of practical politics, therefore the publication is not libelous per se.

Counsel: Norton & Norton and John N. Berg, for appellants.

Healy & La Du, for respondent.

Opinion by: HOLT

Opinion

[*356] [**212] HOLT, J.

The court in overruling a demurrer to the complaint herein certifies the question involved to be important and doubtful. The action is for libel. The complaint after alleging that defendants maliciously published by circular letter and in certain named papers in Minnesota, "and in other newspapers generally circulated in the state * * * of and concerning plaintiff, these words": (omitting the caption of the letter head showing that it came from the headquarters [**213] of the Anti-Saloon League and naming the officers thereof)

"Brewers' Plot Promptly Unearthed.

"Scarcely had the votes, cast in the recent election, been counted before the selfish influences which controlled the legislature [***3] of 1911 began active work to secure absolute control of the machinery of the next House. Mr. L. O. Lydiard, an old hand at the business and a man who had been consistently wrong on every matter in which the interests of the people were involved, is the leader in the movement.

"If the newly elected members could be lined up and organized in such a way as to place men favorable to the brewery interests and their allies in control, they would be able to stifle practically all legislation inimical to their supposed interests. They would be able to obtain control of every appointment and would be able to use the patronage club effectively on every weak-kneed member.

"We feel that the people of the state should know what is going on so that they and the men recently elected to the House may be warned in due season and be on their guard against the plausible proposals of these reactionaries. The particular plot they were caught hatching appears to be to capture the Hennepin delegation of eighteen members, band them together under the unit rule, elect Mr. Lydiard chairman and eventually vote the entire eighteen for a speaker who could be trusted to organize the House in the interests [***4] of brewery control.

"It is imperative, therefore, for good citizens and good legislators to [*357] use all proper means to drag this secret plot out to the light of day and prevent its success.

"Yours for an unfettered legislature,

"Geo. B. Safford,

"State Superintendent.

"Minneapolis, Minn., November 7, 1914.

"Please publish the above at the earliest possible moment. Late returns show a county option majority in both houses."

The first point raised by appellants is that the only publication alleged is in newspapers, and there is no averment of demand for retraction -- a condition precedent to the maintenance of suit. *Clementson v. Minnesota Tribune Co. 45 Minn. 303, 47 N.W. 781*. Defendants are not the owners or publishers of the newspapers in which

the alleged libel was published, hence cannot bring themselves within the provisions of G.S. 1913, § 7901.

No special damages are pleaded. No innuendoes apply the article, or any part thereof, to plaintiff. The application must be made from the article alone. By inference it may be assumed that plaintiff was a member elect of the legislature. It may also be gathered from the publication that for some time the [***5] saloon question has engaged the attention of the public; dividing it into two contending factions or parties; each party seeking to elect members of the legislature who would support the cause it espouses and enact laws favorable thereto. It is common knowledge that the legal voters of the state, and of the several communities thereof, are somewhat evenly divided on the proposition. When a question of this character reaches the stage where the inhabitants of the state become intensely interested in solving it by means of legislation, we have a political question similar in every respect to any political issue ever fought over by the great political parties of the land; and we may expect the fight to be carried on in the same manner. It is perhaps true that the old maxim (of doubtful ethical worth): "The end justifies the means," is sadly overworked in practical politics, and this apparently with no conscientious scruples, unless thereby aid or comfort has come to the opposition. While this is to be deplored, we must nevertheless recognize that the practice and rules of war are to some degree applicable to political controversies. It is necessary to [*358] plan political campaigns. [***6] These plans are not always announced from the housetops. Often their success depends upon keeping them from the knowledge of the opposition. Concert of action between those of the same political faith is aimed at both in elections and in legislation. Such being the case, it follows that if one party thinks it has discovered some plan or plot to its undoing, formulated and about to be sprung by its antagonist, the alarm is at once sounded, and steps taken to avert the threatened danger. To impel its own members to effective effort and intimidate those of the opposition the alarm is, as a rule, excessively noisy and exaggerated. What would have been styled a fair and legitimate plan of action, had it been adopted in furthering its own purpose, is denounced as a conspiracy, plot or cabal when employed by the opposition. No one is seriously misled by these exaggerations, usually incident to political campaigns for votes and legislative measures. It is doubtful whether courts can assist good government by a ready attempt to curb criticism of party leaders or officials, unless it clearly appears that the criticisms, if false, accuse the individual of a positive wrong. For aught [***7] that appears in the letter published, plaintiff had a perfect right to ally himself with the opposition to the Anti-Saloon League; to seek the chairmanship of the Hennepin delegation; band it together under the unit rule, and try to elect a speaker that could be trusted as far as his side was concerned. That is all there is to the plot referred to in the heading -- practically the only word in the article to which a meaning of mischief may sometimes attach. As political work goes there is nothing meriting the scorn or contempt of the public in all this. Even the patronage club has always been used by the party in power to further extend and secure its sway, regrettable though it be. Designating the opposition as the party under "brewery control" is but similar to the appellation given by any of the great political parties to its opponent, namely, that it is dominated by corporate interests. It may express a fact, but more often is a mere opinion. There is no allegation that plaintiff had secured his election by posing as a friend of the Anti-Saloon League; on the contrary, the publication conveys the idea that he had always been an avowed and [**214] consistent foe. The [***8] opinion expressed, that plaintiff "has been consistently wrong on every matter in which the interests of the people were [*359] involved," voices merely the sentiment of a political organization having but one issue, and which consequently deems every one in the wrong who refuses to support that issue regardless of every other consideration. In short, the article imputes to plaintiff no moral or legal delinquency, nor any unworthy act even as viewed from the standpoint of a fair political opponent.

In good government and in laws to be enacted in furtherance thereof, all persons have an interest. They have a right to be informed, and to inform others concerning plans and purposes of organizations or parties whose work affects

legislation. Therefore too strict censure cannot be drawn upon the right of free speech in such matters. It may be true that the publication tends to subject plaintiff to the hatred of some of the more rabid Anti-Saloon League adherents, but we must not forget that it also assures him the plaudits of those bitterly opposed to the activity of the league. It will not do to assume that none but violators of law and those of disreputable tendencies are [***9] found in the ranks of the opposition to the Anti-Saloon League, or that the league has gathered in all the moral, law-abiding citizens. Looked at broadly we do not think the article tends to bring upon plaintiff the hatred or contempt of the general public. It contains nothing reflecting upon his private character, or calling, and imputes to him no act of a nature generally regarded as disreputable or even discreditable in political tactics.

In *Sillars v. Collier, 151 Mass. 50, 23 N.E. 723, 6 L.R.A. 680*, words spoken of a representative were: "I am sorry that the representative from this district has had a change of heart. Sometimes a change of heart comes from the pocket." By proper innuendoes it was stated that thereby the defendant intended to express that from corrupt considerations the plaintiff had changed his position. The reasoning of the court in sustaining a demurrer is applicable here, although it is to be noticed that the case was one of slander. The opinion, after stating it to be assumed that plaintiff was elected to the House of Representatives, and that the words were spoken of him as an official, proceeds: "This being so, no averment of special damages was necessary, [***10] provided the words are defamatory, and to make them defamatory it is not necessary that they should import a charge of crime. It would be sufficient [*360] if they imported such misconduct as would expose him to expulsion, or even to censure, from the House, and we are inclined to think also that it would be sufficient if they imported such conduct as would, by the general sense of the community, be deemed immoral, or discreditable in such a way as clearly to impair his influence and lessen his position and standing as a public man, and thus to affect him injuriously as a member of the legislature. * * * The expression of the defendant's opinion that the plaintiff as a member of the legislature is of such a disposition, wavering in mind, and open to change his course from improper motives and inducements, is not actionable, without averment and proof of special damages. It is one of the infelicities of public life, that a public officer is thus exposed to critical and often to unjust comments; but these, unless they pass the bounds of what the law will tolerate, must be borne for the sake of maintaining free speech."

The second published article considered in *Shaw v. Crandon* [***11] *Printing Co. 154 Wis. 601, 143 N.W. 698*, appears more damaging in its insinuations than the publication here involved, and still the court held it not libelous. See also *Ruhland v. Cole, 143 Wis. 367, 127 N.W. 959*; *Arnold v. Ingram, 151 Wis. 438, 138 N.W. 111*, Ann. Cas. 1914C, 976, holding that ***HN1*** a libel should not be too readily seen in publications relating to criticisms or opinions concerning the acts of public officials. To the same effect may be cited the decisions of this court in *Herringer v. Ingberg, 91 Minn. 71, 97 N.W. 460*; *Wilcox v. Moore, 69 Minn. 49, 71 N.W. 917*; and *Marks v. Baker, 28 Minn. 162, 9 N.W. 678*.

Cases relating to publications which attack the private character of a plaintiff therein or belittle and ridicule him as a member of the community, or those charging crime or corruption in office, or the use of falsehood and dishonorable means by an official in matters pertaining to his office or calling are not in point. Under this category come the following cases cited by plaintiff: *Larrabee v. Minnesota Tribune Co. 36 Minn. 141, 30 N.W. 462*; *Petsch v. Dispatch Printing Co. 40 Minn. 291, 41 N.W. 1034*; *Bram v. Aitken, 65 Minn. 87, 67 N.W. 807*; *Wilcox v. Moore,* [***12] *69 Minn. 49, 71 N.W. 917*; *Sharpe v. Larson, 67 Minn. 428, 70 N.W. 1, 554*; *State v. Shippman, 83 Minn. 414, 86 N.W. 431*; *Craig v. Warren, 99 Minn. 246, 109 N.W. 231*; *Tawney v. Simonson, W. & H. Co. 109 Minn. 341, 124 N.W. 229, 27 L.R.A. (N.S.)* [*361] *1035*; *Cole v. Millspaugh, 111 Minn. 159, 126 N.W. 626, 28 L.R.A. (N.S.) 152, 137 Am. St. 546, 20 Ann. Cas. 717*; *Palmerlee v. Nottage, 119 Minn. 351, 138 N.W. 312, 42 L.R.A. (N.S.) 870*; *Tillson v. Robbins, 68 Me. 295, 28 Am. Rep. 50*; *Eviston v. Cramer, 47 Wis. 659, 3 N.W. 392*; *Morse v. Times-Republican Printing Co. 124 Iowa, 707, 100 N.W. 867*.

Our conclusion is that the article is not per se libelous, therefore the demurrer should have been sustained.

Order reversed.

Cherne Industrial, Inc. v. Grounds & Associates, Inc.

Supreme Court of Minnesota

April 6, 1979

No. 48046

Reporter
278 N.W.2d 81; 1979 Minn. LEXIS 1476; 205 U.S.P.Q. (BNA) 854

Cherne Industrial, Inc., Respondent, v. Grounds & Associates, Inc., et al, Appellants

Prior History: [**1] Appeal from District Ramsey David E. Marclen, St. Paul.

Disposition: Affirmed.

Core Terms

manuals, injunction, trial court, customers, confidential information, confidential, covenant, punitive damages, compete, consulting engineer, contracts, damages, attorney's fees, defendants', employment agreement, trade secret, prepare, profits, lists, prospective customer, services rendered, district court, engineering, breached, firms, hired, products, remedies, counterclaims, restraining

Case Summary

Procedural Posture

Defendants appealed from a judgment of the Ramsey County District Court (Minnesota) awarding plaintiff compensatory damages, punitive damages, and a permanent injunction restraining defendants from rendering services for a period of years to plaintiff's former or prospective customers; plaintiff filed a notice of review concerning the denial of attorneys fees.

Overview

Plaintiff brought this action to enjoin defendants from using confidential information and unfairly competing with it and to obtain damages. Defendants asserted counterclaims. Those counterclaims were stricken by the district court as sham and frivolous. Plaintiff prevailed at a trial without a jury and was awarded an injunction and compensatory and punitive damages. The district court did not award plaintiff its attorneys fees. Defendants appealed. The Minnesota Supreme Court affirmed the district court's judgment. The court held that since the district court reasonably concluded that defendants breached both their covenant not to compete and their obligation not to use confidential information, the awarding of damages in addition to the injunction was within the district court's discretion and appropriate to compensate plaintiff for past injury. An award of attorneys fees was not warranted, since the parties' disputes over the contract interpretation were genuine and not frivolous or vexatious.

Outcome

The judgment awarding plaintiff a permanent injunction restraining defendants from rendering services for a period of years to plaintiff's former or prospective customers, denying attorneys fees to plaintiff, and granting compensatory and punitive damages was affirmed.

LexisNexis® Headnotes

Contracts Law > Defenses > Ambiguities & Mistakes > General Overview

Contracts Law > Formation of Contracts > Mistake > General Overview

HN1 Where the terms of a contract are ambiguous, the trial court is to ascertain the parties' intent by looking at the document as a whole and at the surrounding circumstances.

Contracts Law > Defenses > Ambiguities & Mistakes > General Overview

Contracts Law > Formation of Contracts > Mistake > General Overview

HN2 It is well-established that any ambiguity in a contract will be resolved against the draftsman.

Labor & Employment Law > ... > Conditions & Terms > Trade Secrets & Unfair Competition > Trade Secrets

Trade Secrets Law > Trade Secret Determination Factors > General Overview

Trade Secrets Law > Trade Secret Determination Factors > Business Use

Trade Secrets Law > Protected Information > Customer Lists

Trade Secrets Law > Protected Information > Machines

Trade Secrets Law > Protected Information > Manufacturing Processes

HN3 "Trade secret," seemingly has no universally recognized definition; however, a generally accepted one is any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula or a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. Certain common elements can be distilled from these definitions and fashioned into a workable test encompassing both concepts. The elements comprising that test are: (1) the protected matter is not generally known or readily ascertainable, (2) it provides a demonstrable competitive advantage, (3) it was gained at expense to the employer, and (4) it is such that the employer intended to keep it confidential.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > General Overview

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

HN4 The granting of an injunction generally rests within the sound discretion of the trial court, and its action will not be disturbed on appeal unless, based upon the whole record, it appears that there has been an abuse of such discretion.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > General Overview

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN5 Because a preliminary injunction is granted prior to a complete trial on the merits, a showing of irreparable harm is required to prevent undue hardship to the party against whom the injunction is issued, whose liability has not yet been determined. If irreparable harm can be inferred from an alleged breach for purposes of a temporary injunction, it can be inferred from a trial court's actual finding of a breach by the defendant. Moreover, where a trial court has determined that the prevailing party is entitled to relief, it may fashion such remedies, legal and equitable, as are necessary to effectuate such relief.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > General Overview

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

Constitutional Law > State Sovereign Immunity > General Overview

Governments > State & Territorial Governments > General Overview

HN6 The First and Fourteenth Amendments guarantee against abridgment of speech and expression by state governments; they do not provide protection or redress against abridgment by private individuals or corporations.

Contracts Law > ... > Types of Damages > Compensatory Damages > General Overview

Contracts Law > Types of Contracts > Covenants

Labor & Employment Law > Employment Relationships > Employment Contracts > Breaches

Labor & Employment Law > ... > Conditions & Terms > Trade Secrets & Unfair Competition > Noncompetition & Nondisclosure Agreements

Torts > Remedies > Damages > General Overview

HN7 Although damages for breach of contract are traditionally measured by the nonbreaching party's loss of expected benefits under the contract, where an employee wrongfully profits from the use of information obtained from his employer, the measure of damages may be the

employee's gain. Also, the violator of a covenant not to compete may be required to account for his profits, and such illegal profits may properly measure the damages.

Contracts Law > Breach > General Overview

Contracts Law > ... > Types of Damages > Compensatory Damages > General Overview

Contracts Law > Remedies > Equitable Relief > Injunctions

Labor & Employment Law > Employment Relationships > Employment Contracts > Breaches

Labor & Employment Law > ... > Conditions & Terms > Trade Secrets & Unfair Competition > General Overview

Labor & Employment Law > ... > Conditions & Terms > Trade Secrets & Unfair Competition > Trade Secrets

Trade Secrets Law > Breach of Contract > General Overview

Trade Secrets Law > Breach of Confidence > General Overview

Trade Secrets Law > Civil Actions > Remedies > General Overview

Trade Secrets Law > ... > Remedies > Damages > General Overview

Trade Secrets Law > ... > Remedies > Injunctions > General Overview

HN8 In general, a plaintiff who successfully establishes that the defendant has breached an employment contract or has wrongfully taken and used trade secrets or confidential information may obtain both injunctive relief and damages. Whether a plaintiff receives either or both remedies depends upon what is necessary to recompense him for past injury and to prevent future injury.

Business & Corporate Law > Cooperatives > General Overview

Civil Procedure > Remedies > Costs & Attorney Fees > General Overview

HN9 Generally attorneys fees may not be awarded to a successful litigant absent specific contractual or statutory authority.

Civil Procedure > Remedies > Costs & Attorney Fees > General Overview

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Bad Faith Awards

HN10 Minnesota law allows recovery of attorneys fees where the unsuccessful party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. *Minn. Stat. § 549.21*.

Syllabus

1. There was ample evidence defendants breached their employment agreements by competing with plaintiff after they had left plaintiff's employment, and the trial court acted within its authority to grant an injunction and award damages for such breach.

2. The injunction may issue forbidding future conduct as a remedy for past use of confidential information even though the information had otherwise lost its confidential status.

3. The issuance of the injunction in this case does not violate defendants' First Amendment rights of free speech and expression.

4. The compensatory damages and punitive damages awarded by the district court were amply supported by the facts and the law in this case.

5. The trial court acted within its authority in refusing attorneys fees in this case.

Counsel: Oppenheimer, Wolff, Foster, Shepard & Donnelly and Elmer B. Trousdale, St. Paul, Minnesota, for Appellants.

Lapp, Lazar, Laurie & Smith and Gerald T. Laurie, Minneapolis, Minnesota, for Respondent.

Judges: Heard before Rogosheske, Peterson, and Yetka, JJ., and considered and decided by the court en banc.

Opinion by: YETKA

Opinion

[2]** **[*85]** This is an appeal by defendants Grounds, Watkins, Peterson, and Grounds & Associates, Inc., from judgment ordered by

Ramsey County District Court on June 10, 1977, and entered on July 28, 1977, awarding plaintiff Cherne Industrial, Inc., a permanent injunction restraining defendants from rendering services for a period of 2 years to Cherne's former or prospective customers, compensatory damages in the amount of $39,322.50, and punitive damages in the amount of $10,000 (against Grounds and Grounds & Associates, Inc.). The injunction was amended on July 7, 1977 to include only seven specifically named firms. Plaintiff-respondent filed a notice of review concerning the district court's denial of attorneys fees. We affirm.

The legal issues raised on this appeal are as follows:

1. Did the defendants breach their employment agreements by competing with plaintiff after termination of their employment?

2. Did the trial court err in finding that defendant had used confidential data and trade secret data taken from plaintiff?

3. May an injunction to enforce a covenant not to compete be issued after the contractual period of the covenant has expired?

4. May an injunction forbidding **[**3]** future conduct be used as a remedy for past use of confidential information where that information has lost its confidential character?

5. May an injunction forbidding future conduct be granted without a specific finding of irreparable injury?

6. Does an injunction limiting future preparation of operations and maintenance manuals operate as a prior restraint on defendants' First Amendment rights of free speech and expression?

7. Were the compensatory damages awarded to plaintiff consistent with the law and supported by the evidence?

8. Was the award of punitive damages against two of the defendants consistent with the law and supported by the evidence?

9. Was plaintiff entitled to attorneys fees as part of its recovery?

Plaintiff Cherne Industrial, Inc., was incorporated in 1960 and is involved in producing and distributing various products and services related to the sewage treatment industry. In 1969, after a Federal law was enacted requiring all newly constructed sewage treatment plants to have an operations and maintenance manual ("O & M manual"), Cherne began to develop the business of producing and marketing these manuals. It was one of the first entrants into this business **[**4]** on a national basis.

Cherne developed its own general format for the O & M manuals and internal standards for production. Federal regulations at that time were only one page in length. Cherne drafted a sample specification for its manuals and distributed it to consulting engineers, who purchased the manuals for the sewage treatment plants they designed.

To market O & M manuals, Cherne relied on its national network of independent representatives to compile lists of consulting engineers who might purchase an O & M manual from Cherne. Over a number of years, Cherne isolated and categorized engineers who were customers or prospective customers for O & M manuals.

Cherne was in the O & M manual business about 2 years before receiving its first order. During each of its first 5 years in the O & M manual business, from 1970 through 1974, Cherne lost money; its total loss was $141,224.12. Not until 1975 did Cherne make a profit in its O & M manual division.

In August or September of 1971, Cherne hired defendant Harry C. Grounds as a part-time consultant on various matters, including O & M manuals. Grounds is an engineer, registered in Minnesota and in three other states, and has a Bachelor **[**5]** of Science degree in civil engineering. Prior to working for Cherne, Grounds had never prepared an entire O & M manual and had never been in the specific business of preparing **[*86]** O & M manuals. On January 8, 1972, Grounds began working full-time for Cherne as an engineer and

eventually became a vice president in charge of the O & M manuals division. Grounds' full-time employment at Cherne lasted until February 4, 1974, when he went into his own business; he served as a part-time consultant to Cherne on O & M manuals until June 20, 1974.

Defendant Paul R. Watkins was hired by Cherne on February 3, 1973, and became national sales coordinator for the O & M manual business. As national sales coordinator, Watkins was involved in supervising approximately 35 independent representatives of Cherne who were involved in selling O & M manuals. Watkins went with the representatives to call on customers and developed and taught methods of merchandising the O & M manuals. During the course of his employment, Watkins had extensive contacts with customers, Cherne representatives, and state and Federal regulatory agencies with approval authority over O & M manuals. Prior to working for Cherne, **[**6]** Watkins had no experience in the O & M manual business. Watkins voluntarily terminated his employment at Cherne on or about October 1, 1974, and went to work for Grounds on or about November 12, 1974.

Defendant Bruce Peterson was employed at Cherne Industrial, Inc., from October 16, 1972. He was hired as a coordinator for the O & M manual department at Cherne, and at the time of his termination he was a project manager of the technical production of O & M manuals. Peterson had no prior experience in the O & M manual area before going to work for Cherne. Peterson went to work for Grounds on or about March 12, 1975.

It was Cherne's policy to have its key employees sign an employment agreement requiring them never to use or disclose any confidential information, prohibiting them from taking such information from Cherne upon termination of employment, and restricting their right to compete with Cherne for 2 years with respect to its products or services. All three defendants signed such an agreement. These agreements were identical, except that Grounds' included an exception covering services rendered as a consulting engineer. The clause containing this exception was written by Grounds' **[**7]** attorney. Grounds signed the agreements of Watkins and Peterson as a witness.

While employed at Cherne, Watkins, Peterson, and Grounds had access to all of the records pertaining to Cherne's O & M manual business. All three took information from Cherne when they left.

Grounds testified that he had the following documents in his office from Cherne: a list of Cherne customers, a list of Cherne representatives, letters, memoranda, slides, two Cherne O & M manuals, territory evaluations, representative evaluations, and letter and phone reports pertaining to Cherne customers. Some of the memos written by Grounds were labeled "confidential."

When Watkins left Cherne, he took with him customer lists, lists of representative evaluations stamped "confidential," lists of territorial evaluations stamped "confidential," price lists stated to be confidential, costs and pricing data, technical data, correspondence and phone memoranda concerning customers, advertising materials, and an extensive chronological file of letters and documents, statistical information, financial data, a personal list of representatives of Cherne and other materials. Some or all of this confidential information was **[**8]** used by Watkins while soliciting business for Grounds. Watkins stated that he would not want certain confidential matters, such as prices, to fall into the hands of a competitor or a regulatory agency.

When Peterson left Cherne, he took a large volume of material such as correspondence with customers, regulatory agencies, and others, memoranda, age analysis of Cherne's accounts receivable, technical data, his chronological file, and other documents. Peterson testified that he had used some or all of this information while employed at Grounds. No one at Cherne authorized Peterson to take any information from Cherne.

[*87] Grounds and his employees developed a mailing list to solicit their own O & M manual business. Watkins used his Cherne contacts and other sources to develop this list. After joining Grounds, Peterson added to this list the names

of firms and people with whom he had worked while employed at Cherne, taking these names from his chronological files. Peterson said that he, Watkins, or Grounds had contacted some of the firms on the list.

Early in 1975, a list of planned projects for which O & M manuals might be needed became available from the EPA. Defendant Watkins [**9] stated that he used such a list to compile lists of customer prospects.

On June 19, 1973, Grounds and Watkins, while both employed at Cherne, entered into a written "memorandum of understanding." The memorandum, signed by Watkins and Grounds, said, in part:

> "We the undersigned, therefore mutually agree to collect and interchange data of any nature that will protect our positions and reputation should the use of such data become necessary. It is understood that such data shall not be used unless the undersigned both so agree."

Watkins said that he and Grounds had two discussions reminding each other to be conscientious about collecting data under the memorandum.

While still employed full-time at Cherne, Grounds was hired, without Cherne's knowledge or consent, to serve in a part-time capacity as an expert witness in environmental litigation that Grounds admitted could have proved embarrassing to Cherne. Grounds subcontracted some of the litigation work to his subordinate, Watkins. Some of this work may have been done by Grounds and Watkins at Cherne's office facilities at night. Grounds also did other unauthorized outside work while employed by Cherne. In addition, [**10] Grounds had contact with Dawson, Minnesota, regarding its sewage treatment plant. After he concluded his employment with Cherne, Grounds obtained a Federal grant to study the Dawson, Minnesota, plant, a grant that Cherne had been interested in obtaining. The total amount of this grant exceeded $70,000.

Prior to leaving Cherne, Grounds told all of the key personnel in Cherne's O & M manual department that if at anytime Cherne were no longer interested in the O & M manual business, and if he were in that business, he would be interested in having them join him. He also informed many, if not all, of the employees of Cherne's O & M manual division that he would assist them in finding other employment.

When he first went into his own business, Grounds operated that business as a sole proprietorship under the names of Harry C. Grounds, P.E., or Grounds & Associates. On December 16, 1975, Grounds & Associates, Inc., was formed with Grounds and his wife owning 95 percent of the stock and Paul Watkins, Bruce Peterson, and Howard Veldhuizen owning the other 5 percent of the stock. Watkins, Peterson, and Grounds were the directors of the corporation in December of 1975. The individual officers [**11] of Grounds & Associates, Inc., are Harry C. Grounds, president; Paul Watkins, vice-president; Bruce Peterson, vice-president; and June Grounds, secretary-treasurer.

During the period from April 1, 1975, when Grounds obtained his first contract to produce an O & M manual, through May 23, 1977, Grounds and Grounds & Associates, Inc., entered into O & M manual contracts in the amount of $486,675. Many of these contracts were with customers or prospective customers of Cherne about which Watkins, Grounds, or Peterson learned while employed at Cherne. The first 20 contracts and a total of 23 of the total of 40 contracts obtained by Grounds or Grounds & Associates, Inc., for O & M manuals were with Cherne's customers or prospective Cherne customers. Cherne did not submit bids on most of these contracts.

Plaintiff Cherne brought this action to enjoin defendants from using confidential information and unfairly competing with it in the marketing and production of O & M manuals and to obtain damages. Defendants asserted counterclaims totaling more than $50 million. Those counterclaims were [*88] stricken by the district court as sham and frivolous under Rules 11 and 12, Rules of Civil [**12] Procedure. Plaintiff prevailed at a trial without a jury and was awarded an injunction and compensatory and punitive damages. The district court did not award plaintiff its attorneys fees.

1. Breach of the covenant not to compete.

The employment agreement signed by the individual defendants provides, in part:

> "E. FOR a period of two years after termination of my employment by 'C'.
>
> (a) If I have been or am employed by 'C' in a sales capacity, I will not render services, directly or indirectly, to any CONFLICTING ORGANIZATION in connection with the sale merchandising or promotion of CONFLICTING PRODUCTS to any customer of 'C' upon whom I called, or whose account I supervised on behalf of 'C' at any time during the last two years of my employment by 'C'.
>
> (b) If I have been or am employed by 'C' in a non-sales capacity, I will not render services to any manufacturer or merchandiser of a product which competes in the sales market with a 'C' product."

Plaintiff argues that O & M manuals are products and, therefore, defendants' providing of O & M manuals constitutes a breach of the employment agreement. Defendants contend that authoring these manuals under **[**13]** subcontract to consulting engineers is a service and therefore not forbidden by the agreement. A question is thus raised whether the term "product" as used in the agreement applies to the O & M manuals.

HN1 Where the terms of a contract are ambiguous, the trial court is to ascertain the parties' intent by looking at the document as a whole and at the surrounding circumstances. [1] In the instant case, each side presented evidence to support its own interpretation of the contract and also cited numerous references by its opponent to the O & M manuals in terms contrary to the opponent's position at trial. Plaintiff, for example, produced letters written by defendant Grounds in which he alluded to the O & M manuals as a "product" and pointed to a similar characterization by him in a deposition. Defendants pointed out that plaintiff's complaint stated in various paragraphs that the O & M manual is a service and that plaintiff's advertising and contracts made similar statements. Although the evidence was not decisive, the trial court was satisfied that "there is ample evidence here each of the participants viewed the manuals as 'products' as between themselves, Cherne representatives, and others." **[**14]** Under Rule 52.01, Rules of Civil Procedure, "findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." In order to overturn a trial court's findings, this court must be left with a definite and firm conviction that a mistake has been made, notwithstanding the evidence to support such findings. *Greer v. Kooiker, 312 Minn. 499, 253 N.W.2d 133 (1977)*; *In re Trust Known as Great Northern Iron Ore Properties, 308 Minn. 221, 243 N.W. 2d 302 (1976)*; *In re Estate of Balafas, 293 Minn. 94, 198 N.W. 2d 260 (1972)*.

Since there was support for the trial court's finding that the manuals are products within the terms of the contract and since the evidence against this finding was not sufficient to give this court a definite and **[**15]** firm conviction that a mistake has been made, the trial court's finding will be affirmed. Since the clause prohibits competition among "products" and the trial court found the manuals to be products, defendants are automatically prevented by the contract from competing with plaintiff with respect to the O & M manuals. [2]

[16]** **[*89]** Defendant Grounds contends that the production of the O & M manual is a

---

[1] *Midway Center Assoc. v. Midwest Center, Inc.*, 306 Minn. 352, 356, 237 N.W. 2d 76, 78 (1975); *Donnay v. Boulware*, 275 Minn. 37, 45, 144 N.W. 2d 711, 715 (1966).

[2] Although restrictive covenants are usually strictly construed, they will be enforced to the extent they are reasonable. See, *Hedberg v. State Farm Mutual Automobile Ins. Co.*, 350 F.2d 924 (8 Cir. 1965); *Naftalin v. John Wood Co.*, 263 Minn. 135, 147, 116 N. W. 2d 91, 100 (1962); *Combined Ins. Co. of America v. Bode*, 247 Minn. 458, 77 N.W. 2d 533 (1956). Although the trial court did not address this issue, the facts on the record indicate that any restraint imposed by this contract was reasonable. Because plaintiff has only about

consulting engineer service and that under the terms of his contract he can freely prepare the manuals. He cites a clause contained only in his contract, which reads: "Nothing herein shall prevent me from undertaking employment as a consulting engineer after termination of employment with 'C'."

There was much testimony on this issue. Leo McCable, manager of the O & M manuals for plaintiff and producer of about 20 such manuals, testified that one need not possess an engineering degree to prepare the manuals and that a nonengineer, because of his less technical background, is better able to communicate the information to the laypersons who operate the equipment. Maurice Robbins, a chemical engineer who has written O & M manuals for plaintiff, agreed that they need not be done by engineers and stated that in certain respects the manuals are more appropriately the work of journalists. J. Thomas Kirk, an engineer in an engineering firm for which defendant Grounds prepared an O & M manual, testified that he considered defendant Grounds to have furnished consulting engineering work when he produced the manual. **[**17]** He admitted, however, that it is permissible for a nonengineer to prepare the manuals. From this testimony, it is clear that although consulting engineers can prepare the O & M manuals, the work is not necessarily that of consulting engineers. [3]

HN2 It is well-established **[**18]** that any ambiguity in a contract will be resolved against the draftsman. [4] Since defendant Grounds' attorney drafted the clause in question, if defendant intended to include the production of manuals within the scope of the clause, he could have made that clear. [5]

2. Use of confidential data and trade secret data taken from plaintiff.

In order to determine whether the defendants used **[**19]** confidential information or trade secrets belonging to plaintiff, it is necessary to define two central concepts. The first, "confidential information," is defined in the contract as--

> "* * * information not generally known, about 'C' processes and products, including information relating to research, development, manufacture, purchasing, accounting, engineering, marketing, merchandising and selling."

HN3 The other key term, "trade secret," seemingly has no universally recognized definition; however, a generally accepted one is--

> "* * * any formula, pattern, device or compilation of information which **[*90]** is used in one's business, and which gives him an opportunity to obtain an

---

2 percent of the sales in the O & M manual market, defendants can solicit business from that portion of the other 98 percent with which plaintiff is not doing or seeking to do business.

[3] Defendant Grounds contends that the trial court's finding that the preparation and sale of O & M manuals "is neither inherent nor common consulting engineer work" is inconsistent with its finding that as a registered professional engineer he had violated his fiduciary duty by failing to abide by the Rules of Professional Conduct and the Code of Ethics. These rules, however, apply to more than engineering work. They extend, for example, to such matters as confidentiality of the business affairs of clients and employers. In that respect they are similar to the Code of Professional Responsibility, which governs behavior of attorneys even when they are not involved in a lawyering activity. See, *In re Williams*, 221 Minn. 554, 561, 23 N.W. 2d 4, 8 (1946).

[4] See, e.g., *Security Mut. Cas. Co. v. Luthi*, 303 Minn. 161, 226 N.W. 2d 878 (1975); *Stuart v. Secrest*, 170 N.W. 2d 878 (N.D. 1969); *Bacon v. Karr*, 139 So. 2d 166 (Fla. 1962).

[5] Two other factors are consistent with a determination that preparation of O & M manuals is not included within the exemption. First, in 1971, before defendant Grounds began working for plaintiff, he was already interested in entering the O & M manual business. Second, defendant Grounds has admitted that he himself was confused about the meaning of the clause. It would be unfair, therefore, to expect plaintiff to understand its meaning.

> advantage over competitors who do not know or use it. It may be a formula or a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers * * *. " *Elcor Chemical Corp. v. Agri-Sul, Inc., 494 S.W. 2d 204, 211 (Tex. Civ. App. 1973)* (quoting *Restatement, Torts, § 757*).

Certain common elements can be distilled from these definitions and fashioned into a workable test encompassing both concepts. The **[**20]** elements comprising that test are: (1) the protected matter is not generally known or readily ascertainable, (2) it provides a demonstrable competitive advantage, (3) it was gained at expense to the employer, and (4) it is such that the employer intended to keep it confidential.

It is commonly recognized that--

> "* * * matters of general knowledge within the industry may not be classified as trade secrets or confidential information entitled to protection." *Whitmyer Bros. v. Doyle, 58 N.J. 25, 33, 274 A. 2d 577, 581 (1971)*.

The fundamental question here is whether the names of the consulting engineers gleaned by the plaintiff were protected under the employment agreement or were matters of general knowledge that may not be classified as confidential. Defendants argue that the customers' names are not protected because early in 1975, prior to Grounds' receiving his first contract for an O & M manual, Watkins started receiving computer printouts from state and Federal environmental agencies that publish the names of municipalities that have received grants for sewage treatment projects and information regarding the size and type of those projects. Although the printouts **[**21]** only occasionally name the consulting engineer for the project, that information can be obtained from city clerks. Defendants claim that they compiled their list of prospective customers from these printouts.

However, the existence and alleged use of these printouts are not sufficient to establish that the information was "readily ascertainable." There are about 10,000 potential customers (consulting engineers working on projects), and O & M manual preparers must learn the names of these engineers. In late 1974, Grounds had not yet received the printouts and had to rely in part on contacts he had made in the past. Also, even though it may be possible to obtain the names of consulting engineers from city clerks, plaintiff's information provided more detail regarding these prospects. Furthermore, even assuming the presence of an alternate means of obtaining the names of consulting engineers, this, without more, is not sufficient to establish that the information is generally ascertainable.

By inference, there is a reasonable basis to find that a demonstrable competitive advantage could be obtained through use of plaintiff's customer information. As the trial court found--

> "The **[**22]** first 20 contracts and a total of 23 of the total of 40 contracts obtained by Grounds or Grounds & Associates, Inc., for O & M Manuals were either with Cherne's customers or prospective Cherne customers. Either Watkins, Grounds or Peterson had contact with the contract purchasers while employed at Cherne. The names of many of these contract purchasers appear in the confidential information taken by Grounds, Watkins and Peterson from Cherne."

There is also the fact that 624 documents were taken from plaintiff's business by the defendants. There would be little purpose in taking such a quantity of documents if defendants did not believe the information was valuable. Plaintiff was the first entrant into the O & M manual business and had compiled a great deal of experience and information. The lists and materials defendants took could only work to enhance their business. Consequently, the information would afford one a demonstrable competitive advantage.

It is clear that the information was gained at expense to the plaintiff. From 1970 to 1974 plaintiff lost $141,224. Part of that cost was attributable to soliciting customers, **[*91]**

compiling a list, and hiring company [**23] representatives.

The evidence suggests that plaintiff sought to keep the information confidential. At various times, plaintiff mailed advertisements about his business; yet, plaintiff never published a list of consulting engineers who purchased the O & M manuals. Plaintiff's manuals were open to public inspection; however, the information as to prospective customers was not available. Therefore, although the names of consulting engineers appeared on the face of the manuals, plaintiff did not reveal his prospective clients. The names of customers for the seven projects involved in this suit were part of the information plaintiff wished to keep confidential.

In *Elcor Chemical Corp. v. Agri-Sul, Inc. supra*, defendants developed in a garage a process for manufacturing fertilizer and did not disclose the discovery to their employer as required by their employment contract. In ruling against the defendants, the court declared:

> "* * * It does not matter that Miller and Kruse could have gained their knowledge from a study of books and magazines. The fact is that they did not do so. Instead, they gained this knowledge from ELCOR by way of their confidential relationship and in so [**24] doing they incurred a duty not to use it to ELCOR's detriment. This duty was breached by them and because of this breach, we are compelled by equity to extend to ELCOR adequate injunctive relief." *494 S.W. 2d at 213*.

Likewise, even if the consulting engineers' names were otherwise available, the defendants' reliance on information gained from their relationship with plaintiff would still make them liable. Watkins admits calling on plaintiff's customers or prospective customers, and using people he knew to make up in part the list of prospects for Grounds.

Defendants also challenge the district court's finding that other information taken by defendants from the plaintiff was confidential. This information included letters, phone reports, and records regarding customers and potential customers; lists and evaluations of Cherne representatives and territories; price lists; production information; and financial information. It appears that the trial court may have been overinclusive in finding that all of this information was confidential. In framing the remedies, however, the court focused on the taking and use of the customer lists. The damages were based on profits gained on [**25] contracts with Cherne customers or prospective customers; the injunction restricted rendering services to seven firms that Cherne had previously contacted. Because a finding that the customer lists are confidential was reasonably supported by the evidence, it is not necessary that this court remand for reconsideration of whether the other information is confidential.

3. The injunction.

In the instant case, the trial court granted plaintiff a permanent injunction restraining defendants--

> "from rendering services directly or indirectly, to any former Cherne customer or organization to which Cherne had submitted a proposal prior to March 8, 1975, * * * during a period ending two years from and after entry of judgment herein."

Defendants argue that the injunction was inappropriate because (1) there was no finding that, absent the injunction, plaintiff would suffer irreparable injury, (2) the information wrongfully taken and used by defendants had lost its confidential character, (3) the 2-year period of restriction in the covenant not to compete had expired, (4) the injunction is a prior restraint on their First Amendment rights of free speech.

HN4 The granting of an injunction [**26] generally rests within the sound discretion of the trial court, and its action will not be disturbed on appeal unless, based upon the whole record, it appears that there has been an abuse of such discretion. *AMF Pinspotters, Inc. v. Harkins Bowling, Inc., 260 Minn. 499, 504, 110 N.W. 2d 348, 351 (1961)*. [*92] The party seeking the injunction must establish that his legal remedy is not adequate, see, *id. at 504, 110 N.W. 2d at*

351, and that the injunction is necessary to prevent great and irreparable injury. North Central Public Service Co. v. Village of Circle Pines, 302 Minn. 53, 60, 224 N.W. 2d 741, 746 (1974) (quoting AMF Pinspotters, Inc. v. Harkins Bowling, Inc., 260 Minn. 499, 504, 110 N.W. 2d 348, 351 (1961)).

In Thermorama, Inc. v. Buckwold, 267 Minn. 551, 125 N.W. 2d 844 (1964), we ruled that where the plaintiff alleged that the defendant had breached a covenant not to compete, the plaintiff was entitled to a preliminary injunction restraining the defendant from competitive conduct, finding that, under the circumstances, some irreparable harm could be inferred. Subsequently, we cited the *Thermorama* decision as indicating that "an inherent threat **[**27]** of irreparable injury may be inferred from the breach of an otherwise valid and enforceable restrictive covenant [not to compete or not to disclose trade secrets], sufficient to invoke at least temporary equitable relief." Eutectic Welding Alloys Corp. v. West, 281 Minn. 13, 16 n. 4, 160 N.W. 2d 566, 569 n. 4 (1968) (dictum).

HN5 Because a preliminary injunction is granted prior to a complete trial on the merits, a showing of irreparable harm is required to prevent undue hardship to the party against whom the injunction is issued, whose liability has not yet been determined. If irreparable harm can be inferred from an alleged breach for purposes of a temporary injunction, it can be inferred from a trial court's actual finding of a breach by the defendant. Moreover, where a trial court has determined that the prevailing party is entitled to relief, it may fashion such remedies, legal and equitable, as are necessary to effectuate such relief.

In the present case, the trial court determined that the defendants had breached their employment agreements with Cherne by wrongfully taking and using confidential information. At the posttrial hearing, the trial court, in response to defendants' **[**28]** contention that it had failed to make any finding of irreparable injury, stated that it had adopted plaintiff's proposed finding of fact 120(a) to (d) "in principle." That finding stated that plaintiff "has suffered and will continue to suffer loss and damage." It also outlined some specific types of injury likely to be suffered by plaintiff. The trial court reasonably concluded that an injunction restraining defendants from using that information was necessary to prevent further injury to plaintiff's competitive position.

The trial court's statement that the information wrongfully taken and used by defendants eventually lost the quality of confidentiality may affect the scope of the injunction but does not affect its validity as a remedy for defendants' wrongful conduct. A trial court may issue an injunction against a party who has, in violation of an explicit agreement or a common law duty, wrongfully used confidential information or trade secrets obtained from his employer. See, e.g., Equipment Advertiser, Inc. v. Harris, 271 Minn. 451, 136 N.W. 2d 302 (1965). Where the information has, subsequent to the wrongful taking and use, become generally available, the initial conduct **[**29]** is still wrongful and the employer is still entitled to relief for any injury suffered as a result of the wrongful use.

In Winston Research Corp. v. Minnesota Mining and Manufacturing Co., 350 F.2d 134 (9 Cir. 1965), the court of appeals upheld the district court's granting of--

> "* * * an injunction for the period which it concluded would be sufficient both to deny [the defendant] unjust enrichment and to protect [the plaintiff] from injury from the wrongful disclosure and use of [its] trade secrets by its former employees prior to public disclosure." Id. at 142.

Since trade secrets and confidential information are both subject to the same duty not to disclose, see, Restatement, Agency (2d) § 396, the same rule regarding remedies available when the information has become generally known applies. Since the trial court determined here that defendants **[*93]** had wrongfully taken and used confidential information of the plaintiff, the district court could, in its discretion, issue an injunction restraining defendants from using and profiting from that information. Although the trial court further determined that the information was no longer confidential, **[**30]**

the injunction could be fashioned to ensure that plaintiff was reasonably protected against further injury from the wrongful taking and that defendants were not unjustly enriched by their prior misconduct. [6]

[31]** The trial court did not make a specific finding as to when the information lost its confidential character. Absent that specific finding, there are two possible bases for a 2-year injunction. First, if the information is considered to have lost its public quality at the time of trial (May 1977), then the 2-year injunction might be considered reasonable to counteract the defendants' wrongful use of the information in obtaining contracts between April 1975 and May 1977, a period of slightly over 2 years. [7] **[**32]** Second, since development of the confidential information took plaintiff 5 years, defendant would normally have been required to work 5 years from the time it began business in October or November 1974 [8] to acquire similar information. If the information became public in May 1977, or earlier, defendants would have had to spend about 2 1/2 years acquiring the information. Thus, the injunction of 2 years would be a reasonable remedy for the defendants' wrongful use prior to public disclosure of the information. We find that either, or both, of these bases justifies the 2-year injunction.

Defendants argue that if the injunction was intended as a remedy for violation of the covenant not to compete, the issuance of the injunction after the expiration of the 2-year period of restriction in the covenant was improper. Generally, injunctive relief based on a contract must be coextensive with the terms of the contract. See, e.g., *Wagner v. A & B Personnel Systems, Ltd., 473 P. 2d 179, 180 (Colo. App. 1970)*. Thus, if the restrictive period of a covenant not to compete has expired, an injunction will not be granted to enforce the covenant. See, e.g., *Hayes v. Altman, 438 Pa. 451, 455, 266 A. 2d 269, 271 (1970)*; *Elcor Chemical Corp. v. Agri-Sul, Inc., 494 S.W. 2d 204, 213*. Nevertheless, there may be situations where injunctive relief extending beyond the expiration of the period established by the covenant is appropriate. See, *American* **[**33]** *Eutectic Welding Alloys Sales Co. v. Rodriguez, 480 F.2d 223* (1 Cir. 1973); *Premier Industrial Corp. v. Texas Industrial Fastener Co., 450 F.2d 444* (5 Cir. 1971). Since we have determined that the injunction in this case could be issued as a remedy for a breach of the duty not to use confidential information, we need not decide whether this injunction could be issued as a remedy for the breach of the covenant not to compete.

[*94] Finally, defendants argue that the injunction prohibiting them from rendering services to potential customers is an unlawful restraint on expression and violates their First

---

[6] A trial court has authority to draft an injunction so that it provides an adequate remedy without imposing unnecessary hardship on the enjoined party. Here defendants argue that the injunction against rendering services to seven named firms is not clearly tailored to remedy any injury sustained as a result of the wrongful use of confidential information. Because the trial court found that defendants had wrongfully taken customer lists, it might reasonably have found that, apart from the covenant not to compete, defendants had wrongfully used this information to solicit business from the seven firms named in the injunction and, in order to provide an adequate remedy to plaintiff and to prevent defendants from profiting unjustly from their misconduct, an injunction against seeking new business with those firms for 2 years was necessary.

[7] The trial court's limitation of the injunction to seven firms contacted by Cherne prior to March 8, 1975 (the day after Peterson left), and its limitation in the calculation of damages to contracts entered by defendants between April 1, 1975, and May 23, 1977, implies that the court determined that defendants had only been in business for approximately 2 years, from March 1975 to May 1977. Thus, the 2-year injunction would correspond to the 2 years of misconduct.

[8] Watkins resigned from Cherne in October 1974 and entered into an employment agreement with Grounds in November 1974. It appears the trial court could reasonably conclude that Grounds' entry into the O & M manual business began at that time.

Amendment rights. [9] [**34] ***HN6*** The First and Fourteenth Amendments guarantee against abridgment of speech and expression by state governments; they do not provide protection or redress against abridgment by private individuals or corporations. *Hudgens v. NLRB, 424 U.S. 507, 513, 96 S. Ct. 1029, 1033, 47 L. Ed. 2d 196, 202 (1976)*; *Lloyd Corp. v. Tanner, 407 U.S. 551, 92 S. Ct. 2219, 33 L. Ed. 2d 131 (1972)*. [10]

The injunction here is based upon a contract between private parties. The purpose of the contract was to protect plaintiff's legitimate business interest in the information [**35] it had developed for the preparation and marketing of the O & M manuals. Defendants had both contractual and common law duties not to disclose this information and not to use it to harm plaintiff's business. The protection to which plaintiff was entitled is similar to that provided to the holder of a copyright. Both are protected from the unauthorized use of their ideas, ideas that, in many cases, they have spent significant time, skill, and money in developing. Conduct that infringes upon a copyright has been found not to be entitled to First Amendment protection. *Sid & Marty Krofft Television Productions, Inc. v. McDonald's Corp., 562 F.2d 1157, 1171* (9 Cir. 1977). By analogy, a former employee's use of confidential information or trade secrets of his employer in violation of a contractual or fiduciary duty is not protected by the First Amendment. Given the public interest in preserving the ability of parties freely to enter contracts and to seek judicial enforcement of such contracts and in providing judicial remedies for breaches of fiduciary duties imposed by law, any infringement by the injunction on defendants' First Amendment rights is tolerable and justified. [11]

[**36] 4. Compensatory damages.

Defendants argue that the trial court's use of defendants' profits, rather than plaintiff's loss, as the measure of damages was improper. [12] ***HN7*** Although damages for breach of contract are traditionally measured by the nonbreaching party's loss of expected benefits under the contract, see, Dobbs, Remedies § 12.1, where an employee wrongfully profits from the use of information obtained from his employer, the measure of damages may be the employee's gain, see, id. § 10.5, at 693. Also, this court has specifically found that the [*95] violator of a covenant not to compete may be required to account for his profits, and such illegal profits may properly measure the damages. *Peterson v. Johnson Nut Co., 209 Minn. 470, 477, 297 N.W. 178, 182 (1941)*; cf. *National School Studios, Inc. v. Superior School Photo Service, Inc., 40*

---

[9] The injunction does not fit within the traditional definition of prior restraint. "Prior restraint" usually refers to judicial suppression, prior to publication, of expression alleged to be "dangerous" or "defamatory." See, e.g., *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 51 S. Ct. 625, 75 L. Ed. 1357 (1931). In this case, the defendants have already published; a court, after a full trial on the merits, has determined that defendants wrongfully used confidential information belonging to plaintiff in preparing and marketing those publications and that plaintiff has thereby been injured. Enjoining further publication, therefore, does not operate as an unlawful prior restraint.

[10] The United States Supreme Court has found that court enforcement of a private agreement is state action within the meaning of the Fourteenth Amendment. *Shelley v. Kraemer*, 334 U.S. 1, 14, 68 S. Ct. 836, 842, 92 L. Ed. 1161, 1181 (1948). But the court's holdings in *Hudgens v. NLRB*, 424 U.S. 507, 96 S. Ct. 1029, 47 L. Ed. 2d 196 (1976), and *Lloyd Corp. v. Tanner*, 407 U.S. 551, 92 S. Ct. 2219, 33 L. Ed. 2d 131 (1972), imply that not every judicial enforcement of a private agreement or regulation that may interfere with free expression will be considered an unconstitutional abridgment of First Amendment rights. In both of these latter cases, there were only threats to arrest the picketers and demonstrators. Nevertheless, the court, by finding that the shopping centers could exclude the picketers and demonstrators, implied that actual enforcement through an injunction or criminal prosecution would have been upheld.

[11] By its terms, the injunction only restricts defendants from dealing with seven firms. Thus, they have not been totally deprived of their First Amendment rights or of an opportunity to prepare O & M manuals.

[12] Plaintiff was awarded $39,322.50 in compensatory damages. This figure represents 10 percent of defendants' revenue from contracts with former or prospective customers of Cherne.

Wash. 2d 263, 242 P. 2d 756 (1952) (not using defendants' profit where methods of doing business were dissimilar).

[37]** Defendants contend that the trial court did not clarify whether the damage award was based upon breach of the employment agreement or use of the confidential information. ***HN8*** In general, a plaintiff who successfully establishes that the defendant has breached an employment contract or has wrongfully taken and used trade secrets or confidential information may obtain both injunctive relief and damages. See, e.g., *Orkin Exterminating Co. (Arwell Division) v. Burnett, 160 N.W. 2d 427 (Iowa 1968)*; *Peterson v. Johnson Nut Co. supra*, *209 Minn. 478, 297 N.W. 182*; *Elcor Chemical Corp. v. Agri-Sul, Inc. supra*; *Vermont Electric Supply Co. v. Andrus, 132 Vt. 195, 315 A. 2d 456 (1974)*. Whether a plaintiff receives either or both remedies depends upon what is necessary to recompense him for past injury and to prevent future injury.

Since the trial court reasonably concluded that the defendants breached both their covenant not to compete and their obligation not to use confidential information, the awarding of damages in addition to the injunction was within the trial court's discretion and appropriate to compensate the plaintiff for past injury.

Defendants also argue that the trial court **[**38]** erred by finding that a reasonable profit figure for Grounds was 10 percent. Although 10 percent may be a reasonable profit figure, the trial court could have attempted to determine defendants' actual profits. The method used, however, is not clearly erroneous. Also, because the amount is reasonable given defendants' enormous gross revenues resulting from use of plaintiff's material and plaintiff's losses of over $141,000 in start-up costs during the first 5 years of business, this court will not reverse the trial court's award.

5. Punitive Damages.

Defendants argue that the award of punitive damages was in error. In so arguing, they assume that the punitive damages were assessed because of their assertion of counterclaims that the district court dismissed as sham and frivolous. This assumption is based on the following statement in the memorandum accompanying the trial court's order of June 10, 1977:

> "Punitive damages have been awarded only against defendants Grounds and the defendant corporation. The legal basis for their award has been shown by a variety of his actions. I am satisfied he orchestrated the actions of Watkins and Peterson and indeed has been the impresario throughout **[**39]** all of this bitter transaction. This litigation was itself escalated to unnecessary heights by his actions which were both malicious and reckless."

The wording of this paragraph does not necessarily imply that the punitive damages were assessed because of the counterclaims. A more reasonable reading is that the court considered the counterclaims as one instance of conduct by Grounds that justified punitive damages.

The general rule is that punitive damages are not recoverable in actions for breach of contract. See, *Johnson v. Radde, 293 Minn. 409, 410, 196 N.W. 2d 478, 480 (1972)*. Such damages may be recovered, however, where the breach has resulted from an independent or willful tort and the defendant has acted with malice. This court has defined the "malice" necessary for the imposition of punitive damages as the intentional doing of a harmful act without legal justification. *293 Minn. at 410, 196 N.W. 2d at 480*.

In order to determine whether punitive damages were properly assessed against Grounds and Grounds and Associates, Inc., we must determine whether there was sufficient evidence for the trial court to find that these defendants acted with malice. **[*96]** **[**40]** The conclusions of law on which the court apparently based its assessment of punitive damages are the following:

> "8. The Defendant Grounds tortiously interfered with Cherne's employment contracts with Watkins and Peterson by

hiring them, knowing they had signed such agreements and that the noncompete provisions of the agreement were applicable at the time of hiring, and by availing himself of the confidential information taken by Watkins and Peterson, knowing that the employment agreements prohibited the taking and use of such information.

"9. The Defendant, Grounds & Associates, Inc., tortiously interfered with Grounds', Watkins', and Peterson's employment contracts with Cherne by hiring them, knowing that the noncompete provisions of their employment contracts had not expired, and by condoning and accepting the use of confidential information taken from Cherne, knowing that such taking and use was prohibited under the employment agreements."

These conclusions are supported by the following facts:

(1) Grounds witnessed the signing of the employment agreements by Watkins and Peterson (it is reasonable to assume that he knew the provisions of those contracts);

(2) Grounds **[**41]** hired both Watkins and Peterson within 2 years after the termination of their employment at Cherne;

(3) Grounds, Watkins, and Peterson wrongfully took confidential information from Cherne;

(4) Grounds used the information taken by Watkins and Peterson;

(5) Grounds & Associates was a sole proprietorship owned by Grounds, which was incorporated in December 1975, assuming the assets and liabilities of the proprietorship;

(6) prior to going to work for Cherne, Grounds wanted to go into his own business, including the O & M manual business.

These findings of fact are not clearly erroneous. Grounds, knowing the obligations of Watkins and Peterson to Cherne under the employment agreement, encouraged them to breach that contract by coming to work for him in a business that competed with Cherne's O & M manual business and by bringing with them confidential information that would help Grounds to develop his new business. The trial court reasonably inferred that Watkins and Peterson would not have taken information from Cherne except to help Grounds. Such conduct by Grounds was the "intentional doing of a harmful act"; thus Grounds acted with the malice requisite to imposition of punitive **[**42]** damages. That malice can be imputed to the business he operated as a sole proprietorship, and liability for that malicious conduct may be imposed upon the corporation, which assumed the assets and liabilities of the sole proprietorship. Cf. *Geiger v. Sanitary Farm Dairies, 146 Minn. 235, 238, 178 N.W. 501, 503 (1920)* (new corporation assumes all liabilities of old corporation, including tort liabilities). In addition, to the extent that Grounds acted as an agent of the corporation, the corporation is liable. See, *Eastman v. Leiser Co., 148 Minn. 96, 100, 181 N.W. 109, 111 (1921)* (corporation liable for agents' malicious prosecution).

6. Attorneys fees.

HN9 Generally attorneys fees may not be awarded to a successful litigant absent specific contractual or statutory authority. See, *Fownes v. Hubbard Broadcasting, Inc., 310 Minn. 540, 542, 246 N.W. 2d 700, 702 (1976)*; *State, by Spannaus v. Carter, 300 Minn. 495, 497, 221 N.W. 2d 106, 107 (1974)*; *Benson Cooperative Creamery Association v. First District Association*, 276 Minn. 520, 530, 151 N.W. 2d 422, 428 (1967). Since there is no such authorization here, plaintiff attempts to base its claim for attorneys fees upon an **[**43]** exception, recognized but not applied by this court in *Fownes v. Hubbard Broadcasting, Inc. supra*, ***HN10*** allowing recovery of attorneys fees "where the unsuccessful party has acted 'in bad faith, vexatiously, wantonly, or for oppressive reasons.'" *310 Minn. at 542, 246 N.W. 2d at 702* (quoting 6 **[*97]** Moore, Federal Practice (2d ed.), § 54.77[2] at 1709). [13]

In *Chris/Rob Realty v. Chrysler Realty Corp., 260 N.W. 2d 456 (Minn. 1977)*, we found that

[13] This exception has now been enacted into law. L. 1978, c. 738, § 5 (codified at Minn. St. 549.21).

although a case may be "hard fought and pointedly adversarial," the conduct of the unsuccessful party may not be an instance of bad faith. We also noted that a good faith dispute over the interpretation of a contract is not an appropriate case for the allowance of attorneys fees. *Id. at 459* (citing *Peters v. Fenner, 294 Minn. 488, 489, 199 N.W. 2d 795, 796* [1972]). In the present case, the disputes over contract interpretation were genuine, and the **[**44]** defenses urged by the defendants were not frivolous or advanced vexatiously or for oppressive reasons. On the issue of bad faith, as on the other factual issues, the trial court is in the best position to make a determination.

The trial court is therefore affirmed.

In re Estate of Peterson

Supreme Court of Minnesota

March 31, 1950

No. 35,108

Reporter
230 Minn. 478; 42 N.W.2d 59; 1950 Minn. LEXIS 638; 18 A.L.R.2d 910

In Re Estate of Peter H. Peterson. Hans H. Peterson and Others v. George M. Hovland

Prior History: [***1] Appeal by Hans H. Peterson and others from a judgment of the district court for Freeborn county, Martin A. Nelson, Judge, affirming an order of the probate court admitting to probate the will of Peter H. Peterson.

Disposition: Affirmed.

Core Terms

the will, void, unlicensed, layman, invalid, legislative intent, public policy, provisions, contracts, violating, consequences, practitioner, testator, license, instruments, emergency, penalizes, prohibits, offender, misdemeanor, supervised, preparing, terms, insufficient time, licensed attorney, direct violation, one class, decedent, services, prescribing a penalty

Case Summary

Procedural Posture
Appellant heirs challenged the judgment of the District Court for Freeborn County (Minnesota) affirming an order of the probate court admitting to probate the will of the decedent, the will having been drafted by a layman.

Overview
The decedent, several weeks prior to his death, executed his last will and testament. It had been drawn by the cashier of a bank, a layman, who had never been admitted to the practice of law. The decedent requested his drafting of the will. The trial court specifically found that at the time the will was drawn no emergency existed, nor had the imminence of death left insufficient time, to have the will drawn and its execution supervised by a licensed attorney at law. No provision was made in the will for the heirs. On appeal, the only issue raised by the heirs was whether the will, which was otherwise valid, was invalid and should have been given no legal effect by reason of the sole fact that it was drawn by a layman, who at the time the will was drawn was not admitted and licensed to practice as an attorney at law, in direct violation of *Minn. Stat. § 481.02*. The court held that the will did not become invalid and void because the it was drawn for the testator by a layman in direct violation of *§ 481.02*. Although the draftsman of such a will could be punished, that did not necessarily mean that the will was invalid.

Outcome
The court affirmed the trial court's judgment against the heirs.

LexisNexis® Headnotes

Estate, Gift & Trust Law > Wills > General Overview

Governments > Local Governments > Claims By & Against

Legal Ethics > Unauthorized Practice of Law

HN1 *Minn. Stat. § 481.02* provides that it shall be unlawful for any person or association of persons, except members of the bar of Minnesota admitted and licensed to practice as attorneys at law, for or without a fee or any consideration, to prepare, directly or through another, for another person, any will or testamentary disposition or instrument of trust serving purposes similar to those of a will. Any person or corporation, or

officer or employee thereof, violating any of the foregoing provisions shall be guilty of a misdemeanor; and, upon conviction thereof, shall be punished as by statute provided for the punishment of misdemeanors. It shall be the duty of the respective county attorneys in this state to prosecute violations of this section. In lieu of criminal prosecution above provided for, such county attorney or the attorney general may, proceed by injunction suit against any violator of any of the provisions above set forth to enjoin the doing of any act or acts violating any of said provisions.

Contracts Law > Defenses > Public Policy Violations

HN2 Although the general rule is that a contract executed in violation of a statute which imposes a prohibition and a penalty for the doing of an act -- such as the pursuit of an occupation, business, or profession without being possessed of a license as required by law for the protection of the public -- is void, such rule is not to be applied in any particular case without first examining the statute as a whole to find out whether or not the legislature so intended. It is not an arbitrary rule which is applicable to all instruments executed in violation of statutory prohibitions. Its applicable scope coincides with the reason for its existence, and when that reason ceases the rule itself ceases to have a basis and becomes inoperative. In construing such a statute, the inference is that the legislature did not intend that an instrument executed in violation of its terms should be void unless that be necessary to accomplish its purpose. Usually the rule that a contract so made is void finds application where the acts or things prohibited by statute are malum in se, in that they are by their nature iniquitous and void. No longer, however, is the distinction between acts which are malum in se and those which are merely malum prohibitum controlling in Minnesota in determining the validity of an instrument executed in violation of a statute.

Contracts Law > Defenses > General Overview

Contracts Law > Defenses > Public Policy Violations

HN3 Where contracts or other instruments which are merely malum prohibitum have been made in violation of statutory provisions, they may or may not be void. Generally speaking, a contract is not void as against public policy unless it is injurious to the interests of the public or contravenes some established interest of society. On the other hand, contracts are contrary to public policy if they clearly tend to injure public health or morals, the fundamental rights of the individual, or if they undermine confidence in the impartiality of the administration of justice. These general principles are of little direct aid in a specific case and are but reflections of what the legislature has usually declared public policy to be. Primarily, it is the prerogative of the legislature to declare what acts constitute a violation of public policy and the consequences of such violation. If an act is expressly forbidden and a penalty is imposed for a violation, the intent of the legislature is the controlling factor in determining to what extent, in order to preserve the requirements of public policy, contracts, and other instruments made in connection with such act of violation are to be held illegal, if at all. An inference of invalidity does not necessarily follow from the fact that a statute prescribes a penalty. Each statute must be judged by itself as a whole.

Governments > Legislation > Interpretation

HN4 In construing a statute where the language is not explicit and admits of construction, in determining legislative intent the courts will consider the occasion and the necessity for the law, the mischief to be remedied, the object to be attained, and the consequences of a particular interpretation. *Minn. Stat. § 645.16*.

Governments > Legislation > Interpretation

HN5 When a statute prescribes a penalty for the doing of a specific act, that is prima facie equivalent to an express prohibition; and when the object of such an enactment is deemed to have been the protection of persons dealing with those in respect to whose acts the penalty is declared, or the accomplishment of purposes entertained upon grounds of public policy, not pertaining to mere administrative measures, such as the raising of a revenue, the act thus impliedly prohibited will, in general, be treated as unlawful and void as to the party who is subjected to the penalty. This rule is not, however, without qualification. The question is

one of interpretation of the legislative intention. The imposing of a penalty does not necessarily give rise to an implication of an intention that, where an act is done which subjects a party to the penalty, the act itself shall be void, and of no legal effect; and if it seems more probable, from the subject and the terms of the enactment, and from the consequences which were to be anticipated as likely to result from giving such an effect to the penal law, that it was not the intention of the legislature to make the transaction void, but only to punish the offending party in the manner specified, the law should be so construed.

Governments > Legislation > Interpretation

HN6 In ascertaining legislative intent, courts apply the maxim that the expression of one thing is the exclusion of another.

Governments > Legislation > Interpretation

HN7 Where a statute specifically prohibits and penalizes a certain act by the members of one class for the protection of the members of another class, a statutory construction should not be adopted which attributes to the legislature an intent to bring about a consequence that is inconsistent with the protective purpose for which the law was enacted. Where a penalty is imposed upon one party and not upon the other, they are not to be regarded as in pari delicto.

Estate, Gift & Trust Law > Wills > General Overview

Legal Ethics > Unauthorized Practice of Law

HN8 A testator is not in pari delicto with an unlicensed practitioner. He is a member of the class *Minn. Stat. § 481.02* is designed to protect.

Governments > Legislation > Interpretation

HN9 Protective legislation is to be construed so that it does not become just another hazard for the unwary. Where the legislature has carefully designated the offense, the offender, and the penalty, and has made specific provisions to insure enforcement, the inference is that the legislature has dealt with the subject completely and did not intend, in addition thereto, that drastic consequences of invalidity should be visited upon the victim of the offender by mere implication.

Criminal Law & Procedure > Defenses > General Overview

Estate, Gift & Trust Law > Wills > General Overview

Legal Ethics > Unauthorized Practice of Law

HN10 A will does not become invalid and void by reason of the sole fact that it was drawn for the testator -- when no emergency existed which left insufficient time to have it drawn and its execution supervised by a licensed attorney at law -- by a layman in direct violation of *Minn. Stat. § 481.02*, which prohibits and penalizes as a misdemeanor the act of an unlicensed practitioner in preparing a will for another.

Headnotes/Syllabus

Headnotes

Contract -- validity of instrument executed in violation of statute.

1. Although the general rule is that a contract executed in violation of a statute which imposes a prohibition and a penalty for the doing of an act -- such as the pursuit of an occupation, business, or profession without being possessed of a license as required by law for the protection of the public -- is void, such rule is not to be applied in any particular case without first examining the statute as a whole to find out whether or not the legislature so intended.

Contract -- validity of instrument executed in violation of statute.

2. The distinction between acts which are *malum in se* and those which are merely *malum prohibitum* is no longer controlling in this jurisdiction in determining the validity of an instrument executed in violation of statute.

Contract -- validity of instrument executed in violation of statute -- intent of legislature.

[*2]** 3. If an act is expressly forbidden and a penalty is imposed for a violation, the intent of the legislature is the controlling factor in determining to what extent, in order to preserve the requirements of public policy, contracts and other instruments made in connection with such act of violation are to be held illegal, if at all.

Contract -- validity of instrument executed in violation of statute.

4. An inference of invalidity does not necessarily follow from the fact that a statute prescribes a penalty.

Statute -- construction -- provisions prohibiting and penalizing acts of one class of persons for protection of members of another.

5. Where a statute specifically prohibits and penalizes a certain act by the members of one class for the protection of the members of another class, a statutory construction should not be adopted which attributes to the legislature an intent to bring about a consequence that is inconsistent with the protective purpose for which the law was enacted.

Statute -- construction -- provisions prohibiting and penalizing acts of one class of persons for protection of members of another.

6. Where the legislature has carefully **[***3]** designated the *offense*, the *offender*, and the *penalty* and *has made specific provisions to insure enforcement*, the inference is that the legislature has dealt with the subject completely and did not intend, in addition thereto, that drastic consequences of invalidity should be visited upon the victim of the offender by mere implication.

Court -- decisions -- scope of authoritative value.

7. No decision has authoritative value beyond the proportions established by its controlling facts.

Will -- validity -- will drawn by layman in absence of emergency.

8. A will does not become invalid and void by reason of the sole fact that it was drawn for the testator -- when no emergency existed which left insufficient time to have it drawn and its execution supervised by a licensed attorney at law -- by a layman in direct violation of M.S.A. 481.02, which prohibits and penalizes as a misdemeanor the act of an unlicensed practitioner in preparing a will for another.

Counsel: *Moonan, Moonan & Friedel*, for appellants.

Peterson & Peterson, for respondent.

Judges: Matson, Justice. Mr. Justice Frank T. Gallagher took no part in the consideration or decision **[***4]** of this case.

Opinion by: MATSON

Opinion

[*480] **[**61]** Appeal from a district court judgment affirming an order of the probate court allowing decedent's last will and testament.

Peter H. Peterson, decedent, on September 7, 1948, which was several weeks prior to his death, executed his last will and testament, which, upon his request, had been drawn by the cashier of the Twin Lakes State Bank, a layman, who had never been admitted to the practice of law. The trial court specifically found that at the time the will was drawn "no emergency existed nor had the imminence of death left insufficient time to have this will drawn and its execution supervised by a licensed attorney at law."

Appellants are heirs at law for whom no provision was made in the will. The only issue raised is whether a will which is otherwise valid is invalid and should be given no legal effect by reason of the *sole* fact that it was drawn by a layman -- who at the time the will was drawn was not admitted and licensed to practice as an attorney at law -- in direct violation of ***HN1*** M.S.A. 481.02, which provides:

Subd. 1. "It shall be unlawful for any person or association of persons, except members of the bar **[***5]** of Minnesota admitted and licensed to practice as attorneys at law, * * * *for or without a fee or any consideration*, to prepare, directly or through another, for another person, * * * any will or testamentary disposition or

instrument of trust serving purposes similar to those of a will, * * *." [2] (Italics supplied.)

Subd. 8. "Any person or corporation, or officer or employee thereof, violating any of the foregoing provisions *shall be guilty of a* [*481] *misdemeanor*; and, upon conviction thereof, shall be punished as by statute provided for the punishment of misdemeanors. *It shall be the duty of the respective county attorneys in this state to prosecute violations of this section*, * * *.

"In [**62] lieu of criminal prosecution above provided for, such county attorney or the attorney general may, * * * proceed by injunction suit against any violator of any of the provisions above set forth to enjoin the doing of any act or acts violating any of said provisions." (Italics supplied.)

[***6] Does it follow that the will itself is tainted with such illegality as to be void by reason of having been drafted in a prohibited manner? Did the testator, in employing an unlicensed layman, so participate in the performance of a crime that his attempt to make a will resulted in a nullity? In considering the issue, it should be borne in mind that the direct violator of the statute, the unlicensed scrivener, is not a beneficiary under the will and is not a party to this litigation. He is in no manner seeking a fee for his services or any other benefit from his unlawful act. In other words, we are not asked to aid the wrongdoer himself. See, 5 Williston, Contracts (Rev. ed.) § 1630; *Bosshard v. County of Steele, 173 Minn. 283, 217 N.W. 354*; *Goodrich v. N.W. Tel. Exch. Co. 161 Minn. 106, 201 N.W. 290*. A different situation arises where an unlicensed practitioner seeks to recover fees for his performance of legal services. See, Annotations, 4 A.L.R. 1087 and 42 A.L.R. 1228; *Giont v. Crown Motor Freight Co. 128 N.J.L. 407, 26 A. (2d) 282*.

In most instances, decisions concerned with the validity of instruments executed in violation of a statute involve the issue of the enforceability [***7] or nonenforceability of contracts. Where an attempt is made to enforce a contract which was made in violation of a statute, many considerations enter which are not present where the validity of a will is assailed on the sole ground that it was drawn by an unlicensed scrivener. Nevertheless, the contract cases are illustrative of certain fundamental principles which are controlling. See, 5 Williston, Contracts (Rev. ed.) § 1630.

[*482] 1-2-3-4. ***HN2*** Although the general rule is that a contract executed in violation of a statute which imposes a prohibition and a penalty for the doing of an act -- such as the pursuit of an occupation, business, or profession without being possessed of a license as required by law for the protection of the public -- is void, such rule is not to be applied in any particular case without first examining the statute as a whole to find out whether or not the legislature so intended. [3] It is not an arbitrary rule which is applicable to all instruments executed in violation of statutory prohibitions. [***11] Its applicable scope coincides with the reason for its existence, and when that reason ceases the rule itself ceases to have a basis and becomes inoperative. [***8] See, *Webster v. U.S.I. Realty Co. 170 Minn. 360, 363, 212 N.W. 806, 807*; cf. *Restatement, Contracts, §§ 598-604*. In construing such a statute, the inference is that the legislature did not intend that an instrument executed in violation of its terms should be void unless that be necessary to accomplish its purpose. *Barriere v. Depatie, 219 Mass. 33, 106 N.E. 572*. Usually the rule that a contract so made is void finds application where the acts or things prohibited by statute are *malum in se*, in that they are by their nature iniquitous and void. *Laun v. Pacific Mut. L. Ins. Co. 131 Wis. 555, 111 N.W. 660, 9 L.R.A.(N.S.) 1204*; *Walter A. Wood Mowing, etc.,*

---

[2] Subd. 3 of said statute permits a layman to draw a will for another in an emergency wherein the imminence of death leaves insufficient time to have the same drawn and its execution supervised by a licensed attorney at law.

[3] Solomon v. Dreschler, 4 Minn. 197 (278); Miller v. Ammon, 145 U.S. 421, 12 S. Ct. 884, 36 L. ed. 759; Harris v. Runnels, 53 U.S. (12 How.) 79, 13 L. ed. 901; Pangborn v. Westlake, 36 Iowa 546; Barriere v. Depatie, 219 Mass. 33, 106 N.E. 572; see, 2 Dunnell, Dig. & Supp. § 1873; Annotations, 30 A.L.R. 834 and 42 A.L.R. 1226.

Co. v. Caldwell, 54 Ind. 270, 23 Am. R. 641. No longer, however, is the distinction between acts which are *malum in se* and those which are merely *malum prohibitum* controlling in this jurisdiction in determining the validity of an instrument executed in violation of a statute. Holland v. Sheehan, 108 Minn. 362, 122 N.W. 1, 23 L.R.A. (N.S.) 510, 17 Ann. Cas. 687; 2 Dunnell, Dig. & Supp. § 1868. ***HN3*** [**63] Where contracts or other instruments which are merely *malum prohibitum* have been made in violation of statutory [***9] provisions -- [*483] as in the instant case -- they may or may not be void. [4] Generally speaking, a contract is not void as against public policy unless it is injurious to the interests of the public or contravenes some established interest of society. On the other hand, contracts are contrary to public policy if they clearly tend to injure public health or morals, the fundamental rights of the individual, or if they undermine confidence in the impartiality of the administration of justice. See, Solomon v. Dreschler, 4 Minn. 197 (278); 2 Dunnell, Dig. & Supp. § 1870. These general principles are of little direct aid in a specific case and are but reflections of what the legislature has usually declared public policy to be. Primarily, it is the prerogative of the legislature to declare what acts constitute a violation of public policy and the consequences of such violation. Mathison v. Minneapolis St. Ry. Co. 126 Minn. 286, 148 N.W. 71, L.R.A. 1916D, 412. If an act is expressly forbidden and a penalty is imposed for a violation, the intent of the legislature is the controlling factor in determining to what extent, in order to preserve the requirements of public policy, [***10] contracts and other instruments made in connection with such act of violation are to be held illegal, if at all. 3 Sutherland, Statutory Construction (3 ed.) § 5608. An inference of invalidity does not necessarily follow from the fact that a statute prescribes a penalty. De Mers v. Daniels, 39 Minn. 158, 39 N.W. 98. Each statute must be judged by itself as a whole. Solomon v. Dreschler, 4 Minn. 197 (278); Bowditch v. New England Mut. L. Ins. Co. 141 Mass. 292, 4 N.E. 798, 55 Am. R. 474. ***HN4*** In construing a statute where the language is not explicit and admits of construction, in determining legislative intent the courts will consider the occasion and the necessity for the law, the mischief to be remedied, [*484] the object to be attained, and the consequences of a particular interpretation. M.S.A. 645.16.

Section 481.02 had its origin with G.S. 1866, c. 88, § 8, which simply prohibited any person not a lawyer to appear, to maintain, or defend in any proceeding in court. [5] Although the wording was changed from time to time in certain inconsequential particulars, no major change was made until the enactment of L. 1901, c. 282, when it was made unlawful for an unlicensed practitioner not only to appear in court but also to hold himself out as competent to furnish legal services or to perform any legal services for a consideration. Undoubtedly [***12] this amendment by its application generally to the practice of law made it unlawful for a layman to prepare another's will for a fee. It was not, however, until the enactment of L. 1931, c. 114, § 1, that this statute was amended to apply in *express* terms to wills. Undoubtedly, the necessity for expressly prohibiting any person not licensed to practice as an attorney at law from preparing a will for another, *whether for or without a fee*, arose out of the deplorable situation frequently created for widows and children of testators whose wills had been drawn by laymen who meant well but had only a superficial knowledge of law. Through the bungling use of legal terms and an improper knowledge of estate planning, poorly drawn wills frequently were held invalid, specific bequests

---

[4] De Mers v. Daniels, 39 Minn. 158, 39 N.W. 98; Pangborn v. Westlake, 36 Iowa 546; John E. Rosasco Creameries, Inc. v. Cohen, 276 N.Y. 274, 278, 11 N.E. (2d) 908, 909, 118 A.L.R. 641 (wherein a milk dealer was permitted to recover sale price of milk sold without having statutory license); Hartford F. Ins. Co. v. Knight, 146 Miss. 862, 867, 111 So. 748; Irwin v. Curie, 171 N.Y. 409, 64 N.E. 161, 58 L.R.A. 830; Niemeyer v. Wright, 75 Va. 239, 40 Am. R. 720; Warren People's Market Co. v. Corbett & Sons, 114 Ohio 126, 151 N.E. 51; 2 Dunnell, Dig. & Supp. § 1873.

[5] Derivation of M.S.A. 481.02: Mason St. 1940 Supp. § 5687-1; L. 1931, c. 114, § 1; Mason St. 1927, § 5687; G.S. 1923, § 5687; G.S. 1913, § 4947; R.L. 1905, § 2280; L. 1901, c. 282; G.S. 1894, § 6179; L. 1891, c. 36, § 8; G.S. 1878, c. 88, § 8; G.S. 1866, c. 88, § 8.

failed, estates were needlessly depleted by burdensome taxation, or the testator's intent was otherwise defeated. [**64] Incompetency was accompanied by irresponsibility, in that these laymen, unlike members of the bar, by reason of their unlicensed status were not subject to the direct supervision and discipline of the courts. See, *Matter of Co-operative Law Co. 198 N.Y. 479, 92 N.E. 15, 32 L.R.A.(N.S.)* [***13] 55, 139 A.S.R. 839, 19 Ann. Cas. 879; cf. *State v. Nowicki, 256 Wis. 279, 40 N.W. (2d) 377*. The need for remedial legislation was acute. It was met by the enactment of an [*485] express statutory prohibition and penalty, *not against any act of the testator or against the drafting or making of wills generally*, but solely against the act of the *unlicensed* will draftsman, whose unskilled services and irresponsible status could no longer be tolerated. As a result, we have a typical example of legislation designed to protect one class of the public, those persons in need of a will, from imposition by another class, those individuals who, without adequate legal training, offer their services to the unwary. Similar protective legislation is not new to this jurisdiction. [6] In *De Mers v. Daniels, 39 Minn. 158, 39 N.W. 98*, we held a contract for the sale of certain lots to be valid and enforceable though the vendor was subject to a statutory penalty for having failed to execute and file the townsite plat as required by G.S. 1878, c. 29. In the De Mers case we said (*39 Minn. 159, 39 N.W. 99*):

HN5 "It must be conceded to be an established principle of law that when a statute prescribes [***14] a penalty for the doing of a specific act, that is *prima facie* equivalent to an express prohibition; and that, *when the object of such an enactment is deemed to have been the protection of persons dealing with those in respect to whose acts the penalty is declared*, or the accomplishment of purposes entertained upon grounds of public policy, not pertaining to mere administrative measures, such as the raising of a revenue, the act thus impliedly prohibited will, in general, be treated as *unlawful and void as to the party who is subjected to the penalty*. This rule is not, however, without qualification. The question is one of interpretation of the legislative intention. *The imposing of a penalty does not necessarily give rise to an implication of an intention that, where an act is done which subjects a party to the penalty, the act itself shall be void, and of no legal effect*; and if it seems more probable, from the subject and the terms of the enactment, and from the consequences which were to be anticipated as likely to result from giving such an effect to the penal law, that it was not the intention [*486] of the legislature to make the transaction void, but [***15] only to punish the offending party in the manner specified, the law should be so construed. * * * *The fact that no penalty, forfeiture, or disability is declared with respect to purchasers, under any circumstances, is worthy of being considered* in this connection." (Italics supplied.)

In the De Mers case, as in the instant case, a specific penalty was imposed for the wrongful act of one party, but the statute was silent as to the consequences to the other party and as to the validity of a written instrument executed in connection with or in reliance upon such wrongful act. ***HN6*** In ascertaining legislative intent under such circumstances, we may well apply the maxim that "the expression of one thing is the exclusion of another." *Sacketts Harbor Bank v. Codd, 18 N.Y. 240*; *Laun v. Pacific Mut. L. Ins. Co. 131 Wis. 555, 111 N.W. 660, 9 L.R.A.(N.S.) 1204*; 6 Dunnell, Dig. & Supp. § 8980. As indicative of legislative intent to rely upon the penalty alone for accomplishing the statutory purpose, without holding the will itself void, is the statutory emphasis placed upon the enforcement of the penalty. By express terms, the statute declares it to be the positive duty of county attorneys [***16] to institute criminal proceedings against any unlicensed practitioners who draw wills -- in the absence of an actual emergency when no lawyer is available. The only alternative in lieu of criminal prosecution is the initiation of proceedings to enjoin future acts of violation.

5-6. ***HN7*** Where a statute specifically prohibits and penalizes a certain act by the members of one class for the protection of the members of

---

[6] De Mers v. Daniels, 39 Minn. 158, 39 N.W. 98; Webster v. U.S.I. Realty Co. 170 Minn. 360, 212 N.W. 806.

another class, a statutory [**65] construction should not be adopted which attributes to the legislature an intent to bring about a consequence that is inconsistent with the protective purpose for which the law [***17] was enacted. Where a penalty is imposed upon one party and not upon the other, they are not to be regarded as *in pari delicto*. Irwin v. Curie, 171 N.Y. 409, 414, 64 N.E. 161, 162, 58 L.R.A. 830. ***HN8*** A testator is not *in pari delicto* with an unlicensed practitioner. He is a member of the class the statute was designed to protect. See, Webster v. U.S.I. Realty Co. 170 Minn. 360, 212 N.W. 806. [*487] ***HN9*** Protective legislation is to be construed so that it does not become just another hazard for the unwary. If, by implication, we were to attribute to the legislature an intent that a will drawn by an unlicensed practitioner should in all cases be void, we would visit upon the unfortunate victims of unskilled draftsmen a penalty far greater than, and out of all proportion to, the penalty imposed upon the wrongdoer himself. Where the legislature has carefully designated the *offense*, the *offender*, and the *penalty* and *has made specific provisions to insure enforcement*, the inference is that the legislature has dealt with the subject completely and did not intend, in addition thereto, that drastic consequences of invalidity should be visited upon the victim of the [***18] offender by mere implication. See, Laun v. Pacific Mut. L. Ins. Co. 131 Wis. 555, 570-571, 111 N.W. 660, 665, 9 L.R.A.(N.S.) 1204; Bowditch v. New England Mut. L. Ins. Co. 141 Mass. 292, 4 N.E. 798, 55 Am. R. 474.

Appellants cite Buckley v. Humason, 50 Minn. 195, 52 N.W. 385, 16 L.R.A. 423, 36 A.S.R. 637, in support of their contentions. In that case the plaintiff, who conducted a Chicago real estate brokerage business without having the license required by an ordinance of that city, was denied the right to recover his brokerage commissions, on the ground that where a business is made unlawful for unlicensed persons any contract made in such business is void. In the Buckley case, the wrongdoer himself was seeking, *to his own advantage*, to enforce a contract made in violation of law. In the instant matter we do not have that situation. It is also significant that the earlier De Mers decision (39 Minn. 158, 39 N.W. 98) was not called to the attention of or considered by the court. In a much later decision, Vercellini v. U.S.I. Realty Co. 158 Minn. 72, 196 N.W. 672, the court, after citing Buckley v. Humason, supra, expressly took notice of the error in the assumption [***19] that all contracts made in violation of law are necessarily void. In that case, the purchaser of certain lands under an investment contract made in violation of the blue sky law (L. 1917, c. 429, as amended by L. 1919, c. 105) was permitted to recover what he had paid. The court said therein that the purchaser was a member of the protected class and that [*488] he was not *in pari delicto* with the seller, who was the only party guilty of violating the statute. See, also, Marin v. Olson, 181 Minn. 327, 232 N.W. 523.

7. Our attention is directed to In re Estate of Calich, 214 Minn. 292, 8 N.W. (2d) 337, wherein this court discussed the serious losses resulting to innocent people from the unlicensed practice of law by laymen, and then, after vigorously condemning such unlawful practice, urged the prompt and aggressive prosecution of all violators. This court therein expressed a reluctance to give effect to a will drawn by a layman in violation of the statute, but it is significant to note that the alleged will was drawn by a layman who stood to profit by his own wrongful act, in that he was the sole beneficiary. What is of more significance is that the actual decision [***20] therein was not based upon any illegality resulting from an unauthorized practice of law, but on a determination that the finding of the trial court that no will had ever been executed was sustained by the evidence. It is elementary that no decision has any authoritative value beyond the proportions established by its controlling facts. [7]

[***21] [**66] Appellants cite certain cases wherein unlicensed practitioners have appeared

[7] Certain cases cited by appellants should be distinguished. In Waddell v. Traylor, 99 Colo. 576, 64 P. (2d) 1273, involving a suit upon a promissory note which, in violation of a penal statute, prescribed an unlawful rate of interest, the court held the note invalid *only* to the extent of the unlawful interest and allowed a recovery of the money actually loaned, together with lawful interest thereon. The court refused to increase

in court, and in consequence thereof the proceedings have been set aside and spoken of as void. These cases illustrate the confusion which results when the distinction between the words "void" and "voidable" is not observed. They also illustrate that the authoritative value of a decision is limited to the scope of its controlling or decisive facts. In practically all these [*489] decisions, the courts have either granted a new trial or taken other steps to protect the rights of the wrongdoer's clients and the interest of opposing parties. No purpose will be served by attempting to distinguish or discuss such decisions, in that the task has already been ably performed in Schifrin v. Chenille Mfg. Co. Inc. 117 F. (2d) 92. In certain instances, court proceedings have failed for want of jurisdiction where the only effort made to invoke the court's jurisdiction has been by the issuance of a summons which was fatally defective in not having been subscribed by the plaintiff or by an officer of the court in his behalf, as required by statute. See, *Jacobs v. Queen Ins. Co. 51 S.D. 249, 213 N.W.* [***22] 14.

8. It follows that ***HN10*** a will does not become invalid and void by reason of the sole fact that it was drawn for the testator -- when no emergency existed which left insufficient time to have it drawn and its execution supervised by a licensed attorney at law -- by a layman in direct violation of *§ 481.02*, which prohibits and penalizes as a misdemeanor the act of an unlicensed practitioner in preparing a will for another. [8]

[***23] The judgment of the trial court is affirmed.

Affirmed.

---

the penalty beyond that expressly prescribed by the statute. In Hancock Co. Inc. v. Stephens, 177 Va. 349, 14 S.E. (2d) 332, the wrongdoer himself, an unlicensed real estate broker, was denied a right of recovery. Cf. ***Restatement, Contracts, §§ 598-604***.

[8] There is a question whether appellants are in a position to raise the issue of illegality. Usually the issue or defense of illegality may be raised only by the parties or those claiming under them and not by third parties. See, Marx v. Lining, 231 Ala. 445, 165 So. 207; Ferris v. Snively, 172 Wash. 167, 19 P. (2d) 942, 90 A.L.R. 278; White v. Little, 131 Okl. 132, 268 P. 221; Matta v. Katsoulas, 192 Wis. 212, 212 N.W. 261, 50 A.L.R. 291.

Perkins v. Hegg

Supreme Court of Minnesota

May 8, 1942.

No. 33,179.

Reporter
212 Minn. 377; 3 N.W.2d 671; 1942 Minn. LEXIS 632

WM. D. PERKINS v. F. N. HEGG.

Prior History: [***1] Appeal by defendant from a judgment of the district court for Scott county entered pursuant to an award of Douglas Larson as arbitrator holding an enrollment agreement and membership registration in a property tax reduction club not violative of public policy. Affirmed.

Core Terms

property taxes, enrollment, reduction, membership, violative of public policy, violate public policy, public policy, registration, Contracts, arbitrator's

Case Summary

Procedural Posture
Defendant club member appealed a judgment from the District Court for Scott County (Minnesota), which was entered pursuant to an arbitrator's award holding that an enrollment agreement and membership registration in a property tax reduction club was not violative of public policy.

Overview
A club was organized as a charitable corporation for the purpose of promoting legislation and education designed to reduce property taxes and to substitute taxes not destructive of property values. The trial court rendered a judgment based on an arbitrator's award that held that an enrollment agreement and membership registration in a property tax reduction club was not violative of public policy. On appeal, defendant contended that the enrollment agreement upon which the award was based was contrary to public policy and not enforceable. The trial court's judgment was affirmed. The court held that the enrollment agreement and membership registration in the property tax reduction club did not violate public policy. The court held that there was no public policy that required the court to refuse enforcement of the agreement to pay dues to the property tax reduction club. Further, the court held that it was not against the law for citizens to organize and to persuade the public to support a particular drive to effect the legislatures.

Outcome
The court affirmed the trial court's judgment upholding the arbitrator's award holding that an enrollment agreement and membership registration in a property tax reduction club was not violative of public policy.

LexisNexis® Headnotes

Contracts Law > Defenses > General Overview

Contracts Law > Defenses > Public Policy Violations

Governments > Courts > Judicial Precedent

HN1 Contracts, the subject, operation, or tendency of which violates public policy or the established interest of society, are not enforceable. However, freedom of contract should not be unduly restricted by ill-advised application of a doctrine necessarily rather vague and uncertain in its limitations. Before a charge of invalidity should be upheld, either law or precedent should mark out clearly that a particular contract violates public policy, or at least a court of justice should with certainty be

able to say that enforcement of the contract would be hurtful to the public welfare.

Syllabus

Contract -- tax reduction club membership agreement not violative of public policy.

Enrollment agreement containing a promise to pay dues in a property tax reduction club, organized for the purpose of obtaining legislative support for lower property taxes and the substitution of more equitable methods of taxation, is not violative of public policy.

Counsel: *A. L. Hankowsky,* for appellant.

T. M. Erickson, for respondent.

Opinion by: HILTON

Opinion

[671]** **[*377]** HILTON, JUSTICE.

The single question presented by this appeal from a judgment entered pursuant to an arbitration award is whether an enrollment agreement with and membership registration in the property tax reduction club are violative of public policy. Sought to be avoided here is the payment of dues. **[**672]** The club was organized in 1931 as a charitable corporation for the declared purpose of promoting legislation and education designed **[***2]** to reduce property taxes and to substitute therefor taxes not destructive of property values. Management was given to trustees who were elected from life members. The enrollment of and dues for non-life members was authorized by the articles and prescribed by the by-laws.

Appellant became a member of the club by subscribing to an enrollment agreement executed September 30, 1931. Therein, he enrolled as a "Tax" member, paid a two-dollar membership fee, and **[*378]** "in lieu of all dues until 1936," fixed at two dollars per month by the by-laws, appellant "agree[d] to pay to you or order half the amount of property taxes I save during the first tax year or year you designate after the enactment of any Minnesota law or laws reducing property taxes, if before 1936, * * *." In addition to promising to pay dues, appellant agreed to furnish a legal description of his property upon request. He did neither. After joining, he took no active part in the organization but never made any effort to resign.

The award imposed liability upon appellant for two amounts, $29.70, representing one-half of his property tax saving for 1935, and $58.60, representing unpaid dues from January 1, **[***3]** 1936, to June 9, 1938, the expiration day of the original charter.

In effectuating its purpose of substituting taxation upon a more equitable basis for oppressive real property levies, the club engaged widely in educational and informational activities. In the press, over the radio, through lectures and questionnaires, and by other recognized methods of communication, a program of public enlightenment upon the subject of property taxation was conducted. The political effectiveness of the club depended wholly upon its capacity to send publicity containing its views to every part of the state. Unless the legislators could become apprised of a public sentiment adverse to current tax methods, the organization could scarcely be more than a handful of ineffective dissenters. Necessarily, the extent of its financial support would largely determine the success of the educational program. Having no capital stock or other assets, the club was financed solely from the dues of members and whatever contributions it received. Upon dissolution, remaining funds were to be distributed pro rata to members, or used to further the purposes of the club, or distributed to specified charities.

[*4]** It is contended that the enrollment agreement upon which the award was based is contrary to public policy and should not be enforced. ***HN1*** Contracts, the subject, operation, or tendency of which violates public policy or the established interest of society, are not **[*379]** enforceable. 12 Am. Jur., Contracts, § 167; *Equitable Holding Co. v. Equitable B. & L. Assn. 202 Minn. 529, 536, 279 N.W. 736*. However, freedom of contract should not be unduly restricted by ill-advised application of a doctrine

necessarily rather vague and uncertain in its limitations. See *Granger v. Craven, 159 Minn. 296, 299, 199 N.W. 10, 52 A.L.R. 1356*. Before a charge of invalidity should be upheld, either law or precedent should mark out clearly that a particular contract violates public policy, or at least a court of justice should with certainty be able to say that enforcement of the contract would be hurtful to the public welfare. This is not a field for the play of individual notions of public policy. Rather, it is only those indisputable public interests standing in opposition to what the contract seeks to accomplish that should be permitted to strike down its enforceability.

Certainly, there is **[***5]** no public policy which requires this court to refuse enforcement of appellant's agreement to pay dues to the property tax reduction club. Appellant has failed in his task of bringing this agreement within that group of cases refusing to enforce contracts to receive compensation for obtaining the passage of favor legislation or influencing government officials in a manner personally advantageous to the promisor. *Houlton v. Dunn, 60 Minn. 26, 61 N.W. 898, 30 L.R.A. 737*, 51 A.S.R. 493; *Goodrich v. N.W. Tel. Exchange Co. 161 Minn. 106, 201 N.W. 290*; *cf. Hollister v. Ulvi, 199 Minn. 269, 271 N.W. 493*. Because of their tendency to corrupt, such contracts are bad even apart from a consideration of whether improper means were employed in the particular case.

But in no respect was appellant's promise to pay dues a promise to pay compensation to the club for obtaining tax reduction by use of personal influence with legislators. The club was a nonprofit organization which used its funds in support of its statewide educational program against property taxes. It was stipulated before the arbitrator that the "Club's work was educational, **[**673]** charitable and reformatory of taxation **[***6]** methods, exclusively. It maintained no legislative agents or lobbyists, and did nothing to, **[*380]** or tending to, improperly or corruptly influence legislators or legislation." That being true, it requires no extended argument to demonstrate that the evils inherent in contracts of the type just referred to are not present in an organization which through the democratic process of appeal to reason is attempting to stimulate an inarticulate public sympathy for tax reform into a dynamic, forceful, political movement. It is not for us to pass upon the propriety of the particular program sponsored by the club. It is enough to say that there is no room for the contention that the club's objectives were inimical to the public good. So to hold as to this organization would require a similar rule as to labor unions, pension groups, and all other associations interested in stimulating public support for their particular program of legislative reform. Far from violating public policy, it is essential to the effective functioning of democracy that like-minded citizens be permitted to organize and to persuade the public to support their particular drive to effect the ebb and flow of the **[***7]** legislative waters.

Judgment affirmed.

State ex rel. Olson v. Guilford

Supreme Court of Minnesota

May 25, 1928.

No. 26,696.

Reporter
174 Minn. 457; 219 N.W. 770; 1928 Minn. LEXIS 1175; 58 A.L.R. 607

STATE EX REL. FLOYD B. OLSON v. HOWARD A. GUILFORD AND ANOTHER.

Prior History: [***1] Defendants appealed from an order of the district court for Hennepin county, Baldwin, J. overruling their demurrer to the complaint, the question involved being certified as important and doubtful. Affirmed.

Core Terms

nuisance, scandal, public nuisance, newspaper, liberty of the press, police power, publish, defamation, abate, enjoin, libel, jury trial, indulgence, ends of justice, defamatory, motives, constitutional guaranty, malicious, malice, rights, general welfare, public interest, criminal libel, regulations, guaranty, comfort, customarily, regularly, involves, relates

Case Summary

Procedural Posture
Defendant newspaper sought review of an order from the District Court of Hennepin County (Minnesota), which overruled their demurrer to plaintiffs' complaint that alleged the newspaper was engaged in the business of regularly or customarily publishing a malicious, scandalous, and defamatory newspaper, and it was a public nuisance under 1925 Minn. Laws 285, p. 358.

Overview
The newspaper challenged the constitutionality of the statute. Upon review, the court found that the statute was directed at abating and enjoining an existing nuisance arising out of a continued and habitual indulgence in malice, scandal, and defamation. The court found that the enactment of the statute was within the state legislature's police power to prohibit all things harmful to the comfort, safety, and welfare of society. The court also found that the distribution of scandalous matter was detrimental to public morals and the general welfare because it tended to disturb the peace of the community. The court determined that the statute did not violate the freedom of the press guaranteed by *Minn. Const. art. 1, § 3*. The guaranty of the liberty of the press did not deprive the state of its police power to enact additional laws for the welfare of society. The court concluded that the statute did not violate the newspaper's due process rights because the rights of private property were subservient to the public right to be free from nuisances. The nuisance could be abated without compensation. Because this was an action in equity, the newspaper had no right to a jury trial.

Outcome
The court affirmed the denial of the newspaper's demurrer to plaintiffs' complaint that alleged the newspaper's conduct was a public nuisance under the statute.

LexisNexis® Headnotes

Governments > Police Powers

Real Property Law > Torts > Nuisance > General Overview

Real Property Law > ... > Remedies > Injunctions > General Overview

HN1 1925 Minn. Laws 285, p. 358 reads in part as follows: Any person who shall be engaged in the business of regularly or customarily producing, publishing or circulating, having in possession, selling or giving away a malicious,

scandalous and defamatory newspaper is guilty of a nuisance, and all persons guilty of such nuisance may be enjoined, as hereinafter provided. In actions brought under the above, there shall be available the defense that the truth was published with good motives and for justifiable ends.

Criminal Law & Procedure > ... > Nuisances > Alcohol & Drug Nuisances > General Overview

Criminal Law & Procedure > ... > Nuisances > Alcohol & Drug Nuisances > Elements

Governments > Police Powers

Real Property Law > Torts > Nuisance > General Overview

HN2 The word "nuisance" is sufficiently comprehensive to include the alleged unlawful business which necessarily works harm, injury and prejudice to the individual and is prejudicial to the public welfare. If it annoys, injures, and endangers the comfort and repose of a considerable number of persons, it is a nuisance within Minn. Gen. Stat. § 10241(1) (1923).

Civil Procedure > ... > Equity > Maxims > Libel Principle

Governments > Police Powers

Real Property Law > ... > Remedies > Injunctions > General Overview

Real Property Law > ... > Remedies > Injunctions > Jurisdiction

Torts > ... > Defamation > Remedies > Injunctions

HN3 1925 Minn. Laws 285, p. 358 is directed at an existing nuisance arising out of a continued and habitual indulgence in malice, scandal, and defamation. Such is the declared purpose of the statute. Equity has always had jurisdiction to enjoin and abate public nuisances.

Governments > Police Powers

HN4 In the exercise of the police power of the state, the legislature must resort to measures which tend to accomplish the desired purpose and on the other hand must not exceed the reasonable demands of the occasion. Police power involves the imposition of such restrictions upon private rights as are practically necessary for the general welfare, i.e. the public interest, and it must be limited to such matters.

Constitutional Law > ... > Case or Controversy > Constitutionality of Legislation > General Overview

Governments > Police Powers

HN5 There can be no doubt that the police power includes all regulations designed to promote public convenience, happiness, general welfare, and prosperity, an orderly state of society, the comfort of the people, and peace, and that it extends to all great public needs as well as to regulations designed to promote public health, morals, or safety. It is the prerogative of the legislature to determine not only what the public interests require but also the measures necessary to protect such interests. It has no right arbitrarily to declare something to be a nuisance which is clearly not one. But in that regard a great deal must be left to its discretion, and if the object to be accomplished is conducive to public interests, it may exercise a large liberty of choice in the means employed. The determination of the legislature is ordinarily final, presumptively valid; but the presumption is not conclusive. It is sufficient that a state of facts could exist which would justify this legislation. The court's inquiry relates to the power, not to the expediency. Every reasonable presumption must be indulged in favor of the validity of the statute. Unless its invalidity clearly appears, it must be sustained. The courts will interfere only where the regulations adopted are arbitrary, oppressive, and unreasonable.

Criminal Law & Procedure > ... > Miscellaneous Offenses > Nuisances > General Overview

Governments > Police Powers

HN6 The courts have uniformly sustained the constitutionality of statutes conferring upon courts of equity power to restrain public nuisances although the acts constitute crime and the plaintiff's property rights are not involved.

Constitutional Law > ... > Freedom of Speech > Free Press > General Overview

HN7 The liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right. *Minn. Const. art. 1, § 3*. The liberty of the press consists in the right to publish the truth with impunity, with good motives and for justifiable

ends; liberty to publish with complete immunity from legal censure and punishment for the publication, so long as it is not harmful in its character when tested by such standards as the law affords.

Constitutional Law > ... > Freedom of Speech > Free Press > General Overview

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

Governments > Police Powers

HN8 It is not a violation of the liberty of the press or of the freedom of speech for the legislature to provide a remedy for their abuse. Nor does the constitutional guaranty of the liberty of the press deprive the state of its police power to enact additional laws for the welfare of society such as hereinbefore stated.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > General Overview

Constitutional Law > Substantive Due Process > Scope

Governments > Police Powers

Real Property Law > ... > Nuisance > Types of Nuisances > Public Nuisances

HN9 The due process clause in the Minnesota Constitution was never intended to limit the subjects on which the police power of a state may lawfully be exerted. This guaranty has never been construed as being incompatible with the principle, equally vital because essential to peace and safety, that all property is held under the implied obligation that the owner's use of it shall not be injurious to the community. Indeed the police power of the state includes the right to destroy or abate a public nuisance. Property so destroyed is not taken for public use, and therefore, there is no obligation to make compensation for such taking. The rights of private property are subservient to the public right to be free from nuisances which may be abated without compensation. 1925 Minn. Laws 285, p. 358 does not violate the due process of law guaranty.

Constitutional Law > ... > Freedom of Speech > Defamation > General Overview

Constitutional Law > Bill of Rights > Fundamental Rights > Trial by Jury in Civil Actions

Criminal Law & Procedure > ... > Miscellaneous Offenses > Nuisances > General Overview

Torts > ... > Defamation > Remedies > Injunctions

HN10 The constitutional guaranty of a jury trial relates only to actions at law. *Minn. Const. art. 1, § 4*; *U.S. Const. amend. VI* and *VII*. It has been said that persons dealing in intoxicating liquors have no vested right in a jury trial in order to determine whether or not their places of business are public nuisances. Persons dealing in scandal and defamation have no greater right.

Syllabus

Violation of 1925 act is a public nuisance.

1. A newspaper business conducted in violation of L. 1925, c. 285, is a public nuisance.

Equity may abate a public nuisance.

2. Equity has jurisdiction to enjoin and abate public nuisances.

Legislature may declare publication of defamatory newspaper a public nuisance.

3. The inherent nature of the business of regularly and customarily publishing and circulating a malicious, scandalous and defamatory newspaper bears such a relation to the social and moral welfare that the legislature, in the legitimate exercise of the police power, may declare it to be a public nuisance.

Constitutional liberty of the press defined.

4. The constitutional liberty of the press means the right to publish the truth with impunity, with good motives and for justifiable ends; liberty to publish complete immunity from legal censure and punishment for the publication so long as it is not harmful in its character when tested **[***2]** by such standards as the law affords.

Constitution protects the use but not the abuse of the press.

Such a business conducted in violation of L. 1925, c. 285, is an abuse of the press. It was never the intention of the constitution to afford

protection to a publication devoted to scandal and defamation. It protects the use and not abuse of the press.

Due process of law not violated by 1925 act.

5. Said statute does not violate the due process of law guaranty found in our constitution.

Defendants not entitled to jury trial in equitable actions.

6. Defendants in equitable actions of this character are not entitled to a jury trial.

Jury trial guaranteed only in actions at law.

The constitutional guaranty of a jury trial relates only to actions at law.

Constitutional Law, 12 C.J. p. 952 n. 66, 73, 76; p. 953 n. 86; p. 1197 n. 11; p. 1279 n. 71.

Juries, 35 C.J. p. 150 n. 21; p. 159 n. 33; p. 171 n. 68.

Nuisances, 29 Cyc. p. 1165 n. 88; p. 1197 n. 65, 66; p. 1219 n. 21.

See note in 5 A.L.R. 1474; 22 A.L.R. 542; 10 R.C.L. 270; 2 R.C.L. Supp. 1000; 20 R.C.L. pp. 474-476.

See note in 5 A.L.R. 1480; 16 R.C.L. 209, 211; 3 R.C.L. Supp. 550; 6 R.C.L. **[***3]** Supp. 952.

See 6 R.C.L. pp. 254, 255; 2 R.C.L. Supp. 79; 5 R.C.L. Supp. 333.

Counsel: *Thomas E. Latimer* and *Elsie H. Latimer,* for appellants.

Floyd B. Olson, County Attorney, and *William C. Larson,* Assistant County Attorney, for respondent.

Opinion by: WILSON

Opinion

[770]** **[*458]** WILSON, C.J.

Appeal from an order overruling a demurrer to the complaint, the question involved being certified to this court as doubtful and important. Action to abate and enjoin a nuisance based upon ***HN1*** L. 1925, p. 358, c. 285, which in part reads as follows:

[771]** "Any person who * * * shall be engaged in the business of regularly or customarily producing, publishing or circulating, having in possession, selling or giving away * * * (b) a malicious, scandalous and defamatory newspaper * * * is guilty of a nuisance, and all persons guilty of such nuisance may be enjoined, as hereinafter provided. * * *

"In actions brought under (b) above, there shall be available the defense that the truth was published with good motives and for justifiable ends."

The complaint specifically alleges a violation of the statute in nine issues of the paper between September 24, 1927, and November **[***4]** 19, **[*459]** 1927, inclusive, in which such attacks were made upon one Charles G. Davis, the mayor of Minneapolis, the chief of police of Minneapolis, the county attorney of Hennepin county, the Jewish race, and the members of the grand jury of Hennepin county. For present purposes we must consider the allegations of the complaint to be true. Defendants challenge the validity of this statute.

1. ***HN2*** The word "nuisance" is sufficiently comprehensive to include the alleged unlawful business which necessarily works harm, injury and prejudice to the individual and is prejudicial to the public welfare. Since it annoys, injures and endangers the comfort and repose of a considerable number of persons it is a nuisance within G.S. 1923, § 10241(1). Perhaps it also endangers safety within the meaning of the statute. Moreover, the people speaking through their representatives in the legitimate exercise of the police power have declared such acts a nuisance. Our legislature has declared the following to be nuisances: places where intoxicating liquor is illegally sold, G.S. 1923, § 3200; houses of prostitution, G.S. 1923, § 10199; dogs, G.S. 1923, § 7287; malicious fences, G.S. 1923, **[***5]** § 9581; itinerant carnivals, G.S. 1923, § 10242; lotteries, G.S. 1923, § 10209; and noxious weeds, G.S. 1923, § 6146. This legislative power has been used as to

various things constituting nuisances. 21 Cent. L.J. 305.

2. We are not here concerned with the power of equity to enjoin libel or otherwise to protect personal rights. ***HN3*** The statute is directed at an existing nuisance arising out of a continued and habitual indulgence in malice, scandal and defamation. Such is the declared purpose of the statute. Equity has always had jurisdiction to enjoin and abate public nuisances. *Township of Hutchinson v. Filk, 44 Minn. 536, 47 N.W. 255*; *City of Jordan v. Leonard, 119 Minn. 162, 137 N.W. 740*; *State ex rel. Wilcox v. Ryder, 126 Minn. 95, 147 N.W. 953, 5 A.L.R. 1449*; *City of Marshall v. Cook, 169 Minn. 248, 211 N.W. 328*; *Town of Linden v. Fischer, 154 Minn. 354, 191 N.W. 901*; 29 Cyc. 1219; 35 C.J. 171, § 45. Even sports may sometimes be enjoined as private nuisances. 21 Yale L.J. 414.

3. ***HN4*** In the exercise of the police power of the state the legislature must resort to measures which tend to accomplish the desired purpose **[*460]** and on the other hand must not exceed the **[***6]** reasonable demands of the occasion. Police power involves the imposition of such restrictions upon private rights as are practically necessary for the general welfare, i.e. the public interest, and it must be limited to such matters. *State ex rel. Beek v. Wagener, 77 Minn. 483, 80 N.W. 633, 778, 1134, 46 L.R.A. 442*, 77 A.S.R. 681; *State ex rel. Wilcox v. Ryder, 126 Minn. 95, 107, 147 N.W. 953, 5 A.L.R. 1449*; *Grisim v. South St. Paul L. Exch. 152 Minn. 271, 188 N.W. 729*; *State ex rel. Lachtman v. Houghton, 134 Minn. 226, 158 N.W. 1017*, L.R.A. 1917F, 1050; 1 Dunnell, Minn. Dig. (2 ed.) §§ 1603, 1605.

Under modern authorities ***HN5*** there can be no doubt that the police power includes all regulations designed to promote public convenience, happiness, general welfare and prosperity, an orderly state of society, the comfort of the people, and peace, and that it extends to all great public needs as well as to regulations designed to promote public health, morals or safety. It is the prerogative of the legislature to determine not only what the public interests require but also the measures necessary to protect such interests. It has no right arbitrarily to declare something to be a nuisance **[***7]** which is clearly not one. But in that regard a great deal must be left to its discretion, and if the object to be accomplished is conducive to public interests, as it is here, it may exercise a large liberty of choice in the means employed. *Lawton v. Steele, 152 U.S. 133, 140, 14 S. Ct. 499, 38* L. ed. 385; *State ex rel. Wilcox v. Ryder, 126 Minn. 95, 147 N.W. 953, 5 A.L.R. 1449*. The determination of the legislature is ordinarily final, presumptively valid; but the presumption is not conclusive. *Grisim v. South St. Paul L. Exch. 152 Minn. 271, 188 N.W. 729*. For our purposes it is sufficient that a state of facts could exist which would justify this legislation. Our inquiry relates to the power, not to the expediency. *Munn v. Illinois, 94 U.S. 113, 24* L. ed. 77. Every reasonable presumption must be indulged in favor of the validity of the statute. Unless its invalidity clearly appears it must be sustained. The courts will interfere only where the regulations adopted are arbitrary, oppressive and unreasonable. *Home Tel. & Tel. Co. v. City of Los Angeles, 211 U.S. 265, 29 S. Ct. 50, 53* L. ed. 176; *People v. Weiner, 271 Ill. 74, **[*461]** 110 N.E. 870*, L.R.A. 1916C, 775, Ann. **[***8]** Cas. 1917C, 1016; *State v. Morse, 84 Vt. 387, 80 A. 189, 34 L.R.A.(N.S.) 190*, Ann. Cas. 1913B, 218; *State ex rel. McBride v. Superior Court, 103 Wash. 409, 174 P. 973*; *People ex rel. Barmore v. Robertson, 302 Ill. 422, 134 N.E. 815, 22 A.L.R. 835*; Town of Kinghurst v. International Lbr. Co. supra, p. 305. It must be remembered that the police power is a governmental right in the state which authorizes it to prohibit all things harmful to the comfort, safety **[**772]** and welfare of society. It is to the public what the law of necessity is to the individual. *State v. Mountain Timber Co. 75 Wash. 581, 135 P. 645*, L.R.A. 1917D, 10. The constituent elements of the declared nuisance are the customary and regular dissemination by means of a newspaper which finds its way into families, reaching the young as well as the mature, of a selection of scandalous and defamatory articles treated in such a way as to excite attention and interest so as to command circulation.

In *State v. Pioneer Press Co. 100 Minn. 173, 110 N.W. 867, 9 L.R.A.(N.S.) 480*, 117 A.S.R. 684, 10 Ann. Cas. 351, a statute forbidding publication of details of execution of criminals was sustained as a valid police measure. **[***9]**

In *State v. Holm, 139 Minn. 267, 166 N.W. 181*, L.R.A. 1918C, 304, it was held that the state may deny the right to publish and teach things injurious to society.

In the development and growth of the law and our institutions the tendency is to extend rather than to restrict the police power. *State ex rel. City of Minneapolis v. St. P.M. & M. Ry. Co. 98 Minn. 380, 108 N.W. 261, 28 L.R.A.(N.S.) 298*, 120 A.S.R. 581, 8 Ann. Cas. 1047; *C.M. & St. P. Ry. Co. v. City of Minneapolis, 115 Minn. 460, 133 N.W. 169, 51 L.R.A.(N.S.) 236*, Ann. Cas. 1912D, 1029; *State ex rel. Twin City B. & I. Co. v. Houghton, 144 Minn. 1, 174 N.W. 885, 176 N.W. 159, 8 A.L.R. 585*.

The business at which the statute is directed involves more than libel. Mere libel under the statute does not constitute the nuisance. The statute is not directed at threatened libel but at an existing business which, generally speaking, involves more than libel. The distribution of scandalous matter is detrimental to public morals **[*462]** and to the general welfare. It tends to disturb the peace of the community. Being defamatory and malicious, it tends to provoke assaults and the commission of crime. It has no concern with **[***10]** the publication of the truth, with good motives and for justifiable ends. There is no constitutional right to publish a fact merely because it is true. It is a matter of common knowledge that prosecutions under the criminal libel statutes do not result in efficient repression or suppression of the evils of scandal. Men who are the victims of such assaults seldom resort to the courts. This is especially true if their sins are exposed and the only question relates to whether it was done with good motives and for justifiable ends. This law is not for the protection of the person attacked nor to punish the wrongdoer. It is for the protection of the public welfare. ***HN6*** The courts have uniformly sustained the constitutionality of statutes conferring upon courts of equity power to restrain public nuisances although the acts constitute crime and the plaintiff's property rights are not involved. Anno. 5 A.L.R. 1476, and cases cited. The inherent nature of the business bears such a relation to the social and moral welfare that we hold that the legislature was in the legitimate exercise of the police power when it declared such business to be a public nuisance. The right to do this was **[***11]** forced upon the state in the exercise of its functions, or rather duty, to preserve that equilibrium of relative right which must be preserved in organized society.

4. ***HN7*** "The liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right." *Minn. Const. art. 1, § 3*.

The liberty of the press consists in the right to publish the truth with impunity, with good motives and for justifiable ends; liberty to publish with complete immunity from legal censure and punishment for the publication, so long as it is not harmful in its character when tested by such standards as the law affords. The constitutional protection meant the abolition of censorship and that governmental permission or license was not to be required; and indeed our constitution, like the *first amendment to the United* **[*463]** *States constitution*, effectually struck down the ancient system or method of fettering the press by a licenser and gave the individual freedom to act -- but to act properly or within legal rules of propriety. In fact such was the rule of common law when our constitution was **[***12]** adopted. 12 C.J. 952, § 467. Our constitutional provisions intended to prevent the restraints upon publications which had been practiced by other governments. *Patterson v. Colorado, 205 U.S. 454, 27 S. Ct. 556, 51* L. ed. 879. In Minnesota no agency can hush the sincere and honest voice of the press; but our constitution was never intended to protect malice, scandal and defamation when untrue or published with bad motives or without justifiable ends. It is a shield for the honest, careful and conscientious press. Liberty of the press does not mean that an evil-minded person may publish just anything any more than the constitutional right of free assembly authorizes and legalizes unlawful assemblies and riots. There is a legal obligation on the part of all who write and publish to do so in such a manner as not to offend against public decency, public morals and public laws. Otherwise our statute of criminal libel would not be valid. In making the publisher responsible for the abuse of the press the legislature is authorized to make laws to bridle the appetites

of those who thrive upon scandal and rejoice in its consequences.

It was never the intention of the constitution to [***13] afford protection to a bublication devoted to scandal and defamation. He who uses the press is responsible for its abuse. He may be required by legislation to have regard for the vital interests of society. Immunity [**773] in the mischievous use of the press is as inconsistent with civil liberty as prohibition of its harmless use. The constitutional rights of the individual are as sacred as the liberty of the press.Newspaper proprietors have no claims to indulgence. They have the same rights that the rest of the community has, and no more. It is the liberty of the press that is guaranteed -- not the licentiousness. The press can be free and men can freely speak and write without indulging in malice, scandal and defamation; and the great privilege of such liberty was never intended as a refuge for the defamer and [*464] the scandalmonger. Defendants stand before us upon the record as being regularly and customarily engaged in a business of conducting a newspaper sending to the public malicious, scandalous and defamatory printed matter. Obviously indulgence in such publications would soon deprave the moral taste of society and render it miserable. A business that [***14] depends largely for its success upon malice, scandal and defamation can be of no real service to society.

HN8 It is not a violation of the liberty of the press or of the freedom of speech for the legislature to provide a remedy for their abuse. *Robison v. H. & R. Employees, 35 Idaho, 418, 207 P. 132, 27 A.L.R. 642*. Nor does the constitutional guaranty of the liberty of the press deprive the state of its police power to enact additional laws for the welfare of society such as hereinbefore stated. 12 C.J. 952, § 468.

The constitutional right of free speech is not violated by a law prohibiting public addresses on public grounds. *Commonwealth v. Davis, 162 Mass. 510, 39 N.E. 113, 26 L.R.A. 712*, 44 A.S.R. 389.

A statute making a publication of a false report of the proceedings of any court a contempt does not violate such constitutional guaranty of liberty of the press. *State ex rel. Haskell v. Faulds, 17 Mont. 140, 42 P. 285*; State ex inf. *Crow v. Shepherd, 177 Mo. 205, 76 S.W. 79*, 99 A.S.R. 624. Nor is a criminal libel statute in derogation of the freedom of the press. *Morton v. State, 3 Tex. App. 510*. A law making it a crime to publish an article inciting or encouraging crime [***15] is not violative of the freedom of the press. *State v. Fox, 71 Wash. 185, 127 P. 1111*; *Fox v. Washington, 236 U.S. 273, 35 S. Ct. 383, 59* L. ed. 573. The constitutional guaranty of a free press cannot be made a shield for the violation of criminal laws. *Tyomies Pub. Co. v. U.S. (C.C.A.) 211 F. 385*. The statute prohibiting the mailing of obscene matter is not in derogation of the liberty of the press. *Id. 211 F. 385*; *Davis v. Beason, 133 U.S. 333, 10 S. Ct. 299, 33* L. ed. 637; *Knowles v. U.S. (C.C.A.) 170 F. 409*. The press cannot justify doing evil on the theory that good may result therefrom. *McDougall v. Sheridan, 23 Idaho, 191, 128 P. 954*. It is the use and not the abuse of the liberty of the press that is [*465] guarded by our fundamental law. *Diener v. Star-Chronicle Pub. Co. 230 Mo. 613, 132 S.W. 1143, 33 L.R.A.(N.S.) 216*. Liberty of the press and freedom of speech under the constitution do not mean the unrestrained privilege to write and say what one pleases at all times and under all circumstances. *Warren v. U.S. 183 F. 718, 33 L.R.A.(N.S.) 800*.

5. ***HN9*** The due process clause in our constitution was never intended to limit the subjects on which the police power of [***16] a state may lawfully be exerted. This guaranty has never been construed as being incompatible with the principle, equally vital because essential to peace and safety, that all property is held under the implied obligation that the owner's use of it shall not be injurious to the community. 12 C.J. 1197, § 962. Indeed the police power of the state includes the right to destroy or abate a public nuisance. Property so destroyed is not taken for public use, and therefore there is no obligation to make compensation for such taking. 6 R.C.L. 480, § 478. The rights of private property are subservient to the public right to be free from nuisances which may be abated without compensation. 12 C.J. 1279, § 1085. The statute involved does not violate the due process of law guaranty. *State ex rel. Robertson v. Wheeler, 131 Minn. 308, 155 N.W. 90*; Anno. *5 A.L.R. 1483*.

6. In equitable actions of this character the defendants are not entitled to a jury trial. *State ex rel. Wilcox v. Ryder, 126 Minn. 95, 147 N.W. 953, 5 A.L.R. 1449*; *Hawley v. Wallace, 137 Minn. 183, 163 N.W. 127*. The authorities are collected in Anno. 5 A.L.R. 1480. As indicated, this kind of an action involves more **[***17]** than a mere libel. The purpose of this statute is to repress the nuisance by a direct attack upon the property involved. It inflicts no personal penalties as punishments for evils involved. The mere fact that the law of libel permits a jury in an action for criminal libel to pass upon the law as well as upon the facts does not mean that, if in an equity action to enjoin a nuisance facts are involved which might in themselves be sufficient to constitute libel, a jury must be had. Indeed in such an action the law of libel as such is not involved, and there is no occasion to ask a jury to serve in its unusual character. The fact that much will frequently have to be established **[*466]** in such an action as this that would have to be established in an action for criminal libel does not invoke and make applicable the peculiar rules of procedure which apply exclusively to such actions for libel. The long established rule which makes the jury the judge of the law and facts in a prosecution for criminal libel does not mean that a court of equity cannot decide what is a libel when it is important only as one of the elements necessary to constitute the particular nuisance. ***HN10*** The constitutional **[***18]** guaranty of a jury trial relates only to actions at law. *Minn. Const. art. 1, § 4*; U.S. **[**774]** Const. Amend. VI and VII; 16 R.C.L. p. 209, § 27, p. 214, § 32. It has been said that persons dealing in intoxicating liquors have no vested right in a jury trial in order to determine whether or not their places of business are public nuisances. *State ex rel. Attorney General v. Stoughton Club, 163 Wis. 362, 158 N.W. 93*. Persons dealing in scandal and defamation have no greater right.

Affirmed.

HILTON, J. took no part.

Minn. Const., Art. I, § 3

This document is current through Chapter 313, 2014 Regular Session

Sec. 3. Liberty of the press.

The liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right.

Annotations

Case Notes

Administrative Law: Agency Rulemaking: Rule Application & Interpretation: General Overview
Civil Procedure: Judgments: Relief From Judgment: Prior Judgment Reversed
Civil Procedure: Remedies: Damages: General Overview
Constitutional Law: Separation of Powers
Constitutional Law: Bill of Rights: General Overview
Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Association
Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Religion: General Overview
Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Speech: General Overview
Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Speech: Defamation: General Overview
Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Speech: Free Press: General Overview
Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Speech: Obscenity
Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Speech: Scope of Freedom
Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom to Petition
Constitutional Law: Bill of Rights: Fundamental Freedoms: Judicial & Legislative Restraints: Overbreadth & Vagueness
Constitutional Law: Bill of Rights: Fundamental Freedoms: Judicial & Legislative Restraints: Prior Restraint
Constitutional Law: Bill of Rights: Fundamental Rights: Eminent Domain & Takings
Constitutional Law: Substantive Due Process: Scope of Protection
Constitutional Law: Equal Protection: General Overview
Constitutional Law: Equal Protection: Scope of Protection
Constitutional Law: Equal Protection: Voting Districts & Representatives
Constitutional Law: State Constitutional Operation
Criminal Law & Procedure: Criminal Offenses: Crimes Against Persons: Violation of Protective Orders: Application & Issuance
Criminal Law & Procedure: Criminal Offenses: Sex Crimes: Child Pornography: General Overview
Criminal Law & Procedure: Criminal Offenses: Sex Crimes: Obscenity: General Overview
Criminal Law & Procedure: Postconviction Proceedings: Sex Offenders: General Overview
Family Law: Child Custody: Visitation: Restrictions
Family Law: Family Protection & Welfare: Cohabitants & Spouses: Abuse, Endangerment & Neglect
Governments: Legislation: Effect & Operation: General Overview
Governments: Legislation: Overbreadth
Governments: Local Governments: Licenses
Governments: Local Governments: Ordinances & Regulations
Labor & Employment Law: Collective Bargaining & Labor Relations: Strikes & Work Stoppages
Real Property Law: Eminent Domain Proceedings: Constitutional Limits & Rights: Public Use

Tax Law: State & Local Taxes: Alcohol & Tobacco Products Tax: General Overview
Torts: Business Torts: Commercial Interference: Employment Relationships: Defenses
Torts: Intentional Torts: Defamation: General Overview
Torts: Intentional Torts: Defamation: Defenses: Privileges: Constitutional Privileges

LexisNexis (R) Notes

CASE NOTES

Administrative Law: Agency Rulemaking: Rule Application & Interpretation: General Overview

1. *Minn. R. 2675.6400, subp. 6.B, regarding the banned solicitation of individuals to join a credit union, is a valid regulation of commercial speech and was properly adopted in compliance with statutory rulemaking procedures; the rule was narrowly drawn to effect its purpose and to prevent possible abuses. Minnesota League of Credit Unions v. Minnesota Dep't of Commerce, 486 N.W.2d 399, 1992 Minn. LEXIS 174 (Minn. 1992).*

Civil Procedure: Judgments: Relief From Judgment: Prior Judgment Reversed

2. Where a trial court enjoined the enforcement of an ordinance prohibiting nudity in liquor establishments, under the trial court's equitable powers and under *Minn. R. Civ. P. 60.02(e), it retained jurisdiction to vacate the injunction four years after the state supreme court declared an identical ordinance constitutional. Jacobson v. County of Goodhue, 539 N.W.2d 623, 1995 Minn. App. LEXIS 1421, 108:279 Fin. & C. 17 (Minn. Ct. App. 1995).*

Civil Procedure: Remedies: Damages: General Overview

3. (Unpublished opinion) In a matter arising out of the alleged release of information during a county's board meeting, the trial court properly dismissed a public official's claims of violation of equal protection, due process, and free speech under Minnesota's Constitution because monetary damages were not recoverable. *Honan v. County of Cottonwood, 2005 Minn. App. Unpub. LEXIS 235, 9 No. 36 Minn. Lawyer 8 (2005).*

Constitutional Law: Separation of Powers

4. (Unpublished Opinion) Because the requirement to register as a predatory offender pursuant to *Minn. Stat. § 243.166 is not part of a defendant's sentence and is imposed under a civil regulatory scheme, the separation-of-powers doctrine is not implicated. State v. Taylor, 2004 Minn. App. LEXIS 284 (Minn. Ct. App. Mar. 22 2004).*

Constitutional Law: Bill of Rights: General Overview

5. Free speech provision of *Minn. Const. art. I, § 3 does not extend any broader protection to speech than is provided in the federal Bill of Rights. State v. Wicklund, 576 N.W.2d 753, 1998 Minn. App. LEXIS 373, 2 No. 15 Minn. Lawyer 31 (1998), affirmed by, remanded by 589 N.W.2d 793, 1999 Minn. LEXIS 136, 3 No. 10 Minn. Lawyer 10 (1999).*

Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Association

6. Regardless of whether Minneapolis, Minn., Civil Service Comm'n R. 4.06(j) and 12.02(q), which required applicants for employment with the City of Minneapolis, Minnesota, to certify that they were not members of any political party or organization that advocated the overthrow of a constitutional form of government in the United States and provided that such membership was sufficient cause for removal, violated his due process rights under U.S. Const. amends. V and XIV and *Minn. Const. art. I, § 2 and § 7 and infringed upon his freedoms of speech, press, and association guaranteed by U.S. Const. amends. I and XIV and Minn. Const. art. I, § 3, it was no justification for his having made intentional and false statements on his application for employment*

and at his discharge hearing in violation of Minn. Stat. § 609.48, subd. 1(1), that he was not such a member when, in fact, he was a dues-paying member of a local chapter of the Communist Party and had served as its treasurer. State v. Forichette, 279 Minn. 76, 156 N.W.2d 93, 1968 Minn. LEXIS 1158, 34 A.L.R.3d 399 (1968).

Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Religion: General Overview

7. Where a stranger interrupted a mass by yelling at a priest during the celebration of communion and disrupting the other persons who were attending the mass, the stranger's conduct breached the peace and was not protected by constitutional free speech under *Minn. Const. art I, § 3 or freedom of religion under Minn. Const. art. I, § 16. State v. Olson, 287 Minn. 300, 178 N.W.2d 230, 1970 Minn. LEXIS 1122 (1970).*

Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Speech: General Overview

8. (Unpublished Opinion) In a case involving an alleged failure to allow a person to speak at a public hearing, a trial court did not err by dismissing an invidious discrimination claim based on a constitutional right to free speech because there was no private cause of action for alleged violations of the Minnesota Constitution; Minnesota did not have an equivalent to *42 U.S.C.S. § 1983,* which allowed a private suit for damages under the federal constitution. There were no statutes cited that authorized a private cause of action for alleged violations of the state constitutional right to free speech or equal protection of the laws. *Davis v. Hennepin County, 2012 Minn. App. Unpub. LEXIS 219 (Minn. Ct. App. Mar. 19 2012).*

9. Where a stranger interrupted a mass by yelling at a priest during the celebration of communion and disrupting the other persons who were attending the mass, the stranger's conduct breached the peace and was not protected by constitutional free speech under *Minn. Const. art I, § 3 or freedom of religion under Minn. Const. art. I, § 16. State v. Olson, 287 Minn. 300, 178 N.W.2d 230, 1970 Minn. LEXIS 1122 (1970).*

Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Speech: Defamation: General Overview

10. Summary judgment dismissing a defamation action arising from a conspiracy-theory dispute was proper because the claimant was a limited purpose public figure, comments on his credentials were relevant, and the comments did not appear to be untruthful. *Bieter v. Fetzer, 2005 Minn. App. LEXIS 24 (Minn. Ct. App. Jan. 18 2005).*

Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Speech: Free Press: General Overview

11. State may no more restrict the right of a private newspaper, or be held accountable for any libel it might publish, than can a state university control or be responsible for possible libels published in its student paper. *Lewis v. St. Cloud State Univ., 693 N.W.2d 466, 2005 Minn. App. LEXIS 272, 33 Media L. Rep. (BNA) 1660, 9 No. 13 Minn. Lawyer 19 (2005), review denied by 2005 Minn. LEXIS 347 (Minn. June 14, 2005).*

12. Neither the First Amendment, *Minn. Const. art. I, § 3, nor the Free Flow of Information Act, conferred a qualified privilege on a news photographer to refuse to testify regarding his personal knowledge about the accused's arrest; thus it was improper to quash the subpoenas absent an in camera interview. State v. Turner, 550 N.W.2d 622, 1996 Minn. LEXIS 440, 109:172 Fin. & C. 14 (Minn. 1996).*

Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Speech: Obscenity

13. Where both defendants were convicted separately of possession of pictorial representations of minors in violation of *Minn. Stat. § 617.247 and both defendants challenged the constitutionality of*

that statute in a consolidated appeal, defendants' convictions were affirmed because Minn. Stat. § 617.246, subd. 1(f)(1), (2)(i), 1(f)(2)(ii) (2000) were not overbroad in that they referred only to depictions of minors or persons under the age of 18, and not to virtual or imaginary children. State v. Fingal, 666 N.W.2d 420, 2003 Minn. App. LEXIS 903, 7 No. 31 Minn. Lawyer 36 (2003), review denied sub nomine State v. Franke, 2003 Minn. LEXIS 671, 7 No. 44 Minn. Lawyer 4 (2003).

14. OObscenity statute, *Minn. Stat. § 617.241, was not unconstitutional in violation of Minn. Const. art. I, § 3 and § 7, as obscenity was not protected speech and the right to privacy did not reach commercial transactions in obscenity. State v. Davidson, 481 N.W.2d 51, 1992 Minn. LEXIS 56 (Minn. 1992).*

Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Speech: Scope of Freedom

15. Because a jury found that a blogger's statement that a university employee was involved with a high-profile fraudulent mortgage was not false, the blogger could not be held liable for tortious interference with the employee's employment contract when the employee was fired. Also, there was insufficient evidence of tortious conduct by the blogger separate from his blog post, which was constitutionally protected speech on a public issue regarding a public figure, to hold the blogger liable. *Moore v. Hoff, 821 N.W.2d 591, 2012 Minn. App. LEXIS 88, 40 Media L. Rep. (BNA) 2177, 16 No. 35 Minn. Lawyer 10 (2012).*

16. Father's rights were not violated by restricting the content of his conversations with his children to not include discussions of law enforcement, prison, the court system, or any other legal issues because the best interests of the children took precedence over the father's First Amendment rights. *County of Dakota v. Kohser, 2008 Minn. App. Unpub. LEXIS 1382, 12 No. 48 Minn. Lawyer 7 (2008).*

17. *Minn. Stat. § 297F.24, imposing tax on cigarettes manufactured by companies that were not a party to the Minnesota tobacco settlement agreement, was not a direct attempt to abridge First Amendment rights because the purpose of § 297F.24 was to require non-settlement manufacturers to pay fees comparable to the costs incurred by the state attributable to the use of cigarettes and to prevent non-settlement manufacturers from flooding the state with cheap cigarettes, thereby undermining the state's policy of discouraging youth smokers, which was a legitimate state interest. Council of Indep. Tobacco Mfrs. of Am. v. State, 685 N.W.2d 467, 2004 Minn. App. LEXIS 983, 8 No. 35 Minn. Lawyer 4 (2004), affirmed by 713 N.W.2d 300, 2006 Minn. LEXIS 118 (Minn. 2006).*

18. Inference cannot be drawn that the framers of the Minnesota Constitution intended the free-speech protection of the *Minn. Const. art. I, § 3 to be more broadly applied than its federal counterpart. State v. Wicklund, 589 N.W.2d 793, 1999 Minn. LEXIS 136 (1999).*

19. Where the conduct that is formally private becomes so entwined with governmental character as to become subject to the constitutional limitations placed on state action, federal constitutional restrictions on conduct can be applied permissibly against private entities; however, more is required under the state constitution than the involvement of state funds or state regulation and mall, where antifur protesters were arrested, is managed by a private company, pays for public services in the same manner as any other private company in the city and there is no evidence of any entanglement between any governmental function or the power, property, and prestige of the state or the city with the actions of the mall. *State v. Wicklund, 589 N.W.2d 793, 1999 Minn. LEXIS 136 (1999).*

20. Neither the presence of public financing by itself nor public financing coupled with an invitation to the public to come onto the property is sufficient to transform privately-owned property into public property for purposes of state action; state action exists only where there is either a symbiotic relationship or a sufficiently close nexus between the government and the private entity such that the power, property, and prestige of the State is put behind the challenged conduct. *State v. Wicklund, 589 N.W.2d 793, 1999 Minn. LEXIS 136 (1999).*

21. Free speech protection of the state constitution did not apply to individuals' expressive conduct at a privately owned mall where the mall was considered a "public forum" for purposes of *Minn. Const. art. I, § 3. State v. Wicklund, 576 N.W.2d 753, 1998 Minn. App. LEXIS 373, 2 No. 15 Minn.*

Lawyer 31 (1998), affirmed by, remanded by 589 N.W.2d 793, 1999 Minn. LEXIS 136, 3 No. 10 Minn. Lawyer 10 (1999).

22. Free speech provision of *Minn. Const. art. I, § 3 does not extend any broader protection to speech than is provided in the federal Bill of Rights. State v. Wicklund, 576 N.W.2d 753, 1998 Minn. App. LEXIS 373, 2 No. 15 Minn. Lawyer 31 (1998), affirmed by, remanded by 589 N.W.2d 793, 1999 Minn. LEXIS 136, 3 No. 10 Minn. Lawyer 10 (1999).*

23. Neither the First Amendment, *Minn. Const. art. I, § 3, nor the Free Flow of Information Act, conferred a qualified privilege on a news photographer to refuse to testify regarding his personal knowledge about the accused's arrest; thus it was improper to quash the subpoenas absent an in camera interview. State v. Turner, 550 N.W.2d 622, 1996 Minn. LEXIS 440, 109:172 Fin. & C. 14 (Minn. 1996).*

24. Freedom of expression guaranteed by *Minn. Const. art. I, § 3 is as broad in a liquor establishment as in any other setting; expression that is protected under Minn. Const. art. I, § 3, in a theater or concert hall may not be prohibited in an establishment that serves liquor. Knudtson v. City of Coates, 506 N.W.2d 29, 1993 Minn. App. LEXIS 904 (Minn. Ct. App. 1993), reversed by 519 N.W.2d 166, 1994 Minn. LEXIS 517 (Minn. 1994).*

25. City ordinance prohibiting nudity in liquor establishments was unconstitutional, as the ordinance suppressed the right to free expression as provided by *Minn. Const. art. I, § 3. Knudtson v. City of Coates, 506 N.W.2d 29, 1993 Minn. App. LEXIS 904 (Minn. Ct. App. 1993), reversed by 519 N.W.2d 166, 1994 Minn. LEXIS 517 (Minn. 1994).*

26. City's ordinance was declared unconstitutional under *Minn. Const. art. I, § 3, because it prohibited the performance of any constitutionally protected work that involved the prohibited nudity. Koppinger v. Fairmont, 311 Minn. 186, 248 N.W.2d 708, 1976 Minn. LEXIS 1639 (1976), not followed by Knudtson v. City of Coates, 506 N.W.2d 29, 1993 Minn. App. LEXIS 904 (Minn. Ct. App. 1993).*

27. Regardless of whether Minneapolis, Minn., Civil Service Comm'n R. 4.06(j) and 12.02(q), which required applicants for employment with the City of Minneapolis, Minnesota, to certify that they were not members of any political party or organization that advocated the overthrow of a constitutional form of government in the United States and provided that such membership was sufficient cause for removal, violated his due process rights under U.S. Const. amends. V and XIV and *Minn. Const. art. I, § 2 and § 7 and infringed upon his freedoms of speech, press, and association guaranteed by U.S. Const. amends. I and XIV and Minn. Const. art. I, § 3, it was no justification for his having made intentional and false statements on his application for employment and at his discharge hearing in violation of Minn. Stat. § 609.48, subd. 1(1), that he was not such a member when, in fact, he was a dues-paying member of a local chapter of the Communist Party and had served as its treasurer. State v. Forichette, 279 Minn. 76, 156 N.W.2d 93, 1968 Minn. LEXIS 1158, 34 A.L.R.3d 399 (1968).*

28. Labor union violated *Minn. Stat. § 179.42, which prohibited discrimination against nonunion employees in the absence of an agreement requiring all employees of a unit to belong to a union, by threatening to engage in a strike to coerce the employer into discharging three nonunion employees or to compel them to join the union, and section 179.42 did not violate the union's right to free speech, right of assembly, or the right to petition under Minn. Const. art. I, § 3 or U.S. Const. amend. XIV. Dayton Co. v. Carpet, L. & R. F. D. Union, 229 Minn. 87, 39 N.W.2d 183, 1949 Minn. LEXIS 595, 24 L.R.R.M. (BNA) 2228, 16 Lab. Cas. (CCH) P65252 (1949),* appeal dismissed by *339 U.S. 906, 70 S. Ct. 570, 94 L. Ed. 1334, 1950 U.S. LEXIS 2564, 25 L.R.R.M. (BNA) 2487, 17 Lab. Cas. (CCH) P65642 (1950).*

Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom to Petition

29. Labor union violated *Minn. Stat. § 179.42, which prohibited discrimination against nonunion employees in the absence of an agreement requiring all employees of a unit to belong to a union, by threatening to engage in a strike to coerce the employer into discharging three nonunion employees or to compel them to join the union, and section 179.42 did not violate the union's right*

to free speech, right of assembly, or the right to petition under Minn. Const. art. I, § 3 or U.S. Const. amend. XIV. Dayton Co. v. Carpet, L. & R. F. D. Union, 229 Minn. 87, 39 N.W.2d 183, 1949 Minn. LEXIS 595, 24 L.R.R.M. (BNA) 2228, 16 Lab. Cas. (CCH) P65252 (1949), appeal dismissed by *339 U.S. 906, 70 S. Ct. 570, 94 L. Ed. 1334, 1950 U.S. LEXIS 2564, 25 L.R.R.M. (BNA) 2487, 17 Lab. Cas. (CCH) P65642 (1950).*

Constitutional Law: Bill of Rights: Fundamental Freedoms: Judicial & Legislative Restraints: Overbreadth & Vagueness

30. Where both defendants were convicted separately of possession of pictorial representations of minors in violation of *Minn. Stat. § 617.247 and both defendants challenged the constitutionality of that statute in a consolidated appeal, defendants' convictions were affirmed because Minn. Stat. § 617.246, subd. 1(f)(1), (2)(i), 1(f)(2)(ii) (2000) were not overbroad in that they referred only to depictions of minors or persons under the age of 18, and not to virtual or imaginary children. State v. Fingal, 666 N.W.2d 420, 2003 Minn. App. LEXIS 903, 7 No. 31 Minn. Lawyer 36 (2003), review denied sub nomine State v. Franke, 2003 Minn. LEXIS 671, 7 No. 44 Minn. Lawyer 4 (2003).*

Constitutional Law: Bill of Rights: Fundamental Freedoms: Judicial & Legislative Restraints: Prior Restraint

31. (Unpublished Opinion) Harassment restraining order (HRO) prohibiting respondent from any repeated, intrusive, or unwanted acts, words, or gestures intended to adversely affect petitioner's safety, security, or privacy; any contact, direct or indirect, with petitioner in person, by telephone, by email, or by other means or persons; and any email or other electronic message contact with third parties (such as petitioner's family, friends, and co-workers) that contained any material concerning petitioner that affected or was intended to adversely affect her safety, security, or privacy was not an unconstitutional prior restraint, and the court rejected respondent's contention that his blogging was comparable to publishing pamphlets and leaving them on doorsteps for public consumption. The record amply demonstrated that respondent's repeated electronic messages and promotion of his blog were not merely attempts to publish his thoughts and ideas to an audience but shared sensitive information about petitioner, his ex-girlfriend, in a manner that substantially and adversely affected her privacy interests; respondent's posts and communications with petitioner's family, friends, and co-workers were calculated to and did reach petitioner, and the content of respondent's speech did not implicate matters of public concern but was harassing to petitioner. *Johnson v. Arlotta, 2011 Minn. App. Unpub. LEXIS 1059 (Minn. Ct. App. Dec. 12 2011), writ of certiorari denied by 133 S. Ct. 156, 184 L. Ed. 2d 33, 2012 U.S. LEXIS 7531, 81 U.S.L.W. 3161 (U.S. 2012).*

Constitutional Law: Bill of Rights: Fundamental Rights: Eminent Domain & Takings

32. Order granting the county title and possession of the landowners' property under *Minn. Stat. § 117.042, was affirmed because the district court's finding that a bicycle trail should be deemed a public purpose was not clearly erroneous, when the landowners cited no authority for their implied assertion that a recreational purpose was not a public purpose, and the district court's finding that the taking was reasonably necessary to further a public purpose was not clearly erroneous, when the district court found that since the existing highway was a curvy road with moderate to heavy traffic and lots of trucks, a bicycle trail placed on the right of way would be too narrow and too dangerous, and would not accomplish the goal of providing safe transportation. Mower County v. Heimer, 2007 Minn. App. Unpub. LEXIS 720, 11 No. 30 Minn. Lawyer 14 (2007).*

Constitutional Law: Substantive Due Process: Scope of Protection

33. OObscenity statute, *Minn. Stat. § 617.241, was not unconstitutional in violation of Minn. Const. art. I, § 3 and § 7, as obscenity was not protected speech and the right to privacy did not reach commercial transactions in obscenity. State v. Davidson, 481 N.W.2d 51, 1992 Minn. LEXIS 56 (Minn. 1992).*

34. Regardless of whether Minneapolis, Minn., Civil Service Comm'n R. 4.06(j) and 12.02(q), which required applicants for employment with the City of Minneapolis, Minnesota, to certify that they were not members of any political party or organization that advocated the overthrow of a constitutional form of government in the United States and provided that such membership was sufficient cause for removal, violated his due process rights under U.S. Const. amends. V and XIV and *Minn. Const. art. I, § 2 and § 7 and infringed upon his freedoms of speech, press, and association guaranteed by U.S. Const. amends. I and XIV and Minn. Const. art. I, § 3, it was no justification for his having made intentional and false statements on his application for employment and at his discharge hearing in violation of Minn. Stat. § 609.48, subd. 1(1), that he was not such a member when, in fact, he was a dues-paying member of a local chapter of the Communist Party and had served as its treasurer. State v. Forichette, 279 Minn. 76, 156 N.W.2d 93, 1968 Minn. LEXIS 1158, 34 A.L.R.3d 399 (1968).*

Constitutional Law: Equal Protection: General Overview

35. (Unpublished Opinion) In a case involving an alleged failure to allow a person to speak at a public hearing, a trial court did not err by dismissing an invidious discrimination claim based on a constitutional right to free speech because there was no private cause of action for alleged violations of the Minnesota Constitution; Minnesota did not have an equivalent to *42 U.S.C.S. § 1983,* which allowed a private suit for damages under the federal constitution. There were no statutes cited that authorized a private cause of action for alleged violations of the state constitutional right to free speech or equal protection of the laws. *Davis v. Hennepin County, 2012 Minn. App. Unpub. LEXIS 219 (Minn. Ct. App. Mar. 19 2012).*

Constitutional Law: Equal Protection: Scope of Protection

36. (Unpublished opinion) In a matter arising out of the alleged release of information during a county's board meeting, the trial court properly dismissed a public official's claims of violation of equal protection, due process, and free speech under Minnesota's Constitution because monetary damages were not recoverable. *Honan v. County of Cottonwood, 2005 Minn. App. Unpub. LEXIS 235, 9 No. 36 Minn. Lawyer 8 (2005).*

Constitutional Law: Equal Protection: Voting Districts & Representatives

37. (Unpublished opinion) District court properly determined that a claim was nonjusticiable and lacked a judicial remedy where a voter alleged that a redistricting plan violated his rights under *Minn. Const. art I, § 2; Minn. Const. art I, § 3; and Minn. Const. art. VII, § 1 where the plan gave a city majorities of voters in three of five commissioner districts despite the fact that city residents were not a majority in the county; the issue the voter raised was essentially a political gerrymandering claim without proof of impact on a suspect class or fundamental right because classification of city versus non-city, or urban versus rural, is not a suspect classification. Krueger v. McLeod County, 2006 Minn. App. Unpub. LEXIS 511, 10 No. 22 Minn. Lawyer 21 (2006).*

Constitutional Law: State Constitutional Operation

38. (Unpublished opinion) In a matter arising out of the alleged release of information during a county's board meeting, the trial court properly dismissed a public official's claims of violation of equal protection, due process, and free speech under Minnesota's Constitution because monetary damages were not recoverable. *Honan v. County of Cottonwood, 2005 Minn. App. Unpub. LEXIS 235, 9 No. 36 Minn. Lawyer 8 (2005).*

39. City ordinances prohibiting nudity in licensed liquor establishments were a reasonable exercise of a city's police power and did not violate a bar owner's right to freedom of expression as guaranteed by the *Minnesota Constitution. Knudtson v. City of Coates, 519 N.W.2d 166, 1994 Minn. LEXIS 517 (Minn. 1994).*

Criminal Law & Procedure: Criminal Offenses: Crimes Against Persons: Violation of Protective Orders: Application & Issuance

40. (Unpublished Opinion) Harassment restraining order (HRO) prohibiting respondent from any repeated, intrusive, or unwanted acts, words, or gestures intended to adversely affect petitioner's safety, security, or privacy; any contact, direct or indirect, with petitioner in person, by telephone, by email, or by other means or persons; and any email or other electronic message contact with third parties (such as petitioner's family, friends, and co-workers) that contained any material concerning petitioner that affected or was intended to adversely affect her safety, security, or privacy was not an unconstitutional prior restraint, and the court rejected respondent's contention that his blogging was comparable to publishing pamphlets and leaving them on doorsteps for public consumption. The record amply demonstrated that respondent's repeated electronic messages and promotion of his blog were not merely attempts to publish his thoughts and ideas to an audience but shared sensitive information about petitioner, his ex-girlfriend, in a manner that substantially and adversely affected her privacy interests; respondent's posts and communications with petitioner's family, friends, and co-workers were calculated to and did reach petitioner, and the content of respondent's speech did not implicate matters of public concern but was harassing to petitioner. *Johnson v. Arlotta, 2011 Minn. App. Unpub. LEXIS 1059 (Minn. Ct. App. Dec. 12 2011), writ of certiorari denied by 133 S. Ct. 156, 184 L. Ed. 2d 33, 2012 U.S. LEXIS 7531, 81 U.S.L.W. 3161 (U.S. 2012).*

Criminal Law & Procedure: Criminal Offenses: Sex Crimes: Child Pornography: General Overview

41. Where both defendants were convicted separately of possession of pictorial representations of minors in violation of *Minn. Stat. § 617.247 and both defendants challenged the constitutionality of that statute in a consolidated appeal, defendants' convictions were affirmed because Minn. Stat. § 617.246, subd. 1(f)(1), (2)(i), 1(f)(2)(ii) (2000) were not overbroad in that they referred only to depictions of minors or persons under the age of 18, and not to virtual or imaginary children. State v. Fingal, 666 N.W.2d 420, 2003 Minn. App. LEXIS 903, 7 No. 31 Minn. Lawyer 36 (2003), review denied sub nomine State v. Franke, 2003 Minn. LEXIS 671, 7 No. 44 Minn. Lawyer 4 (2003).*

Criminal Law & Procedure: Criminal Offenses: Sex Crimes: Obscenity: General Overview

42. OObscenity statute, *Minn. Stat. § 617.241, was not unconstitutional in violation of Minn. Const. art. I, § 3 and § 7, as obscenity was not protected speech and the right to privacy did not reach commercial transactions in obscenity. State v. Davidson, 481 N.W.2d 51, 1992 Minn. LEXIS 56 (Minn. 1992).*

Criminal Law & Procedure: Postconviction Proceedings: Sex Offenders: General Overview

43. (Unpublished Opinion) Because the requirement to register as a predatory offender pursuant to *Minn. Stat. § 243.166 is not part of a defendant's sentence and is imposed under a civil regulatory scheme, the separation-of-powers doctrine is not implicated. State v. Taylor, 2004 Minn. App. LEXIS 284 (Minn. Ct. App. Mar. 22 2004).*

Family Law: Child Custody: Visitation: Restrictions

44. Father's rights were not violated by restricting the content of his conversations with his children to not include discussions of law enforcement, prison, the court system, or any other legal issues because the best interests of the children took precedence over the father's First Amendment rights. *County of Dakota v. Kohser, 2008 Minn. App. Unpub. LEXIS 1382, 12 No. 48 Minn. Lawyer 7 (2008).*

Family Law: Family Protection & Welfare: Cohabitants & Spouses: Abuse, Endangerment & Neglect

45. Fifty-year extension under *Minn. Stat. § 518B.01, subd. 6a(b), of an order for protection precluding a father from contacting his wife or their children did not violate free speech or due process principles. Rew v. Bergstrom, 812 N.W.2d 832, 2011 Minn. App. LEXIS 151, 16 No. 1 Minn. Lawyer 10 (2011), affirmed in part and reversed in part by, remanded by 845 N.W.2d 764, 2014 Minn. LEXIS 201 (Minn. 2014).*

Governments: Legislation: Effect & Operation: General Overview

46. Free speech provision of *Minn. Const. art. I, § 3 does not extend any broader protection to speech than is provided in the federal Bill of Rights. State v. Wicklund, 576 N.W.2d 753, 1998 Minn. App. LEXIS 373, 2 No. 15 Minn. Lawyer 31 (1998), affirmed by, remanded by 589 N.W.2d 793, 1999 Minn. LEXIS 136, 3 No. 10 Minn. Lawyer 10 (1999).*

Governments: Legislation: Overbreadth

47. *Minn. Stat. § 181.75 is neither overbroad nor vague. Gawel v. Two Plus Two, Inc., 309 N.W.2d 746, 1981 Minn. LEXIS 1405, 30 Empl. Prac. Dec. (CCH) P33229, 94 Lab. Cas. (CCH) P55351 (Minn. 1981).*

Governments: Local Governments: Licenses

48. Where a trial court enjoined the enforcement of an ordinance prohibiting nudity in liquor establishments, under the trial court's equitable powers and under *Minn. R. Civ. P. 60.02(e), it retained jurisdiction to vacate the injunction four years after the state supreme court declared an identical ordinance constitutional. Jacobson v. County of Goodhue, 539 N.W.2d 623, 1995 Minn. App. LEXIS 1421, 108:279 Fin. & C. 17 (Minn. Ct. App. 1995).*

Governments: Local Governments: Ordinances & Regulations

49. Where a trial court enjoined the enforcement of an ordinance prohibiting nudity in liquor establishments, under the trial court's equitable powers and under *Minn. R. Civ. P. 60.02(e), it retained jurisdiction to vacate the injunction four years after the state supreme court declared an identical ordinance constitutional. Jacobson v. County of Goodhue, 539 N.W.2d 623, 1995 Minn. App. LEXIS 1421, 108:279 Fin. & C. 17 (Minn. Ct. App. 1995).*

Labor & Employment Law: Collective Bargaining & Labor Relations: Strikes & Work Stoppages

50. Labor union violated *Minn. Stat. § 179.42, which prohibited discrimination against nonunion employees in the absence of an agreement requiring all employees of a unit to belong to a union, by threatening to engage in a strike to coerce the employer into discharging three nonunion employees or to compel them to join the union, and section 179.42 did not violate the union's right to free speech, right of assembly, or the right to petition under Minn. Const. art. I, § 3 or U.S. Const. amend. XIV. Dayton Co. v. Carpet, L. & R. F. D. Union, 229 Minn. 87, 39 N.W.2d 183, 1949 Minn. LEXIS 595, 24 L.R.R.M. (BNA) 2228, 16 Lab. Cas. (CCH) P65252 (1949),* appeal dismissed by *339 U.S. 906, 70 S. Ct. 570, 94 L. Ed. 1334, 1950 U.S. LEXIS 2564, 25 L.R.R.M. (BNA) 2487, 17 Lab. Cas. (CCH) P65642 (1950).*

Real Property Law: Eminent Domain Proceedings: Constitutional Limits & Rights: Public Use

51. Order granting the county title and possession of the landowners' property under *Minn. Stat. § 117.042, was affirmed because the district court's finding that a bicycle trail should be deemed a public purpose was not clearly erroneous, when the landowners cited no authority for their implied assertion that a recreational purpose was not a public purpose, and the district court's finding that the taking was reasonably necessary to further a public purpose was not clearly erroneous, when*

the district court found that since the existing highway was a curvy road with moderate to heavy traffic and lots of trucks, a bicycle trail placed on the right of way would be too narrow and too dangerous, and would not accomplish the goal of providing safe transportation. Mower County v. Heimer, 2007 Minn. App. Unpub. LEXIS 720, 11 No. 30 Minn. Lawyer 14 (2007).

Tax Law: State & Local Taxes: Alcohol & Tobacco Products Tax: General Overview

52. *Minn. Stat. § 297F.24, imposing tax on cigarettes manufactured by companies that were not a party to the Minnesota tobacco settlement agreement, was not a direct attempt to abridge First Amendment rights because the purpose of § 297F.24 was to require non-settlement manufacturers to pay fees comparable to the costs incurred by the state attributable to the use of cigarettes and to prevent non-settlement manufacturers from flooding the state with cheap cigarettes, thereby undermining the state's policy of discouraging youth smokers, which was a legitimate state interest. Council of Indep. Tobacco Mfrs. of Am. v. State, 685 N.W.2d 467, 2004 Minn. App. LEXIS 983, 8 No. 35 Minn. Lawyer 4 (2004), affirmed by 713 N.W.2d 300, 2006 Minn. LEXIS 118 (Minn. 2006).*

Torts: Business Torts: Commercial Interference: Employment Relationships: Defenses

53. Because a jury found that a blogger's statement that a university employee was involved with a high-profile fraudulent mortgage was not false, the blogger could not be held liable for tortious interference with the employee's employment contract when the employee was fired. Also, there was insufficient evidence of tortious conduct by the blogger separate from his blog post, which was constitutionally protected speech on a public issue regarding a public figure, to hold the blogger liable. *Moore v. Hoff, 821 N.W.2d 591, 2012 Minn. App. LEXIS 88, 40 Media L. Rep. (BNA) 2177, 16 No. 35 Minn. Lawyer 10 (2012).*

Torts: Intentional Torts: Defamation: General Overview

54. (Unpublished Opinion) Citizen did not fit into any of the classes of public figures; therefore, the organization's statements about him did not receive the constitutional protection that expressions of opinion were otherwise entitled to. *Dedefo v. Wake, 2003 Minn. App. LEXIS 646 (Minn. Ct. App. May 27 2003).*

Torts: Intentional Torts: Defamation: Defenses: Privileges: Constitutional Privileges

55. Summary judgment dismissing a defamation action arising from a conspiracy-theory dispute was proper because the claimant was a limited purpose public figure, comments on his credentials were relevant, and the comments did not appear to be untruthful. *Bieter v. Fetzer, 2005 Minn. App. LEXIS 24 (Minn. Ct. App. Jan. 18 2005).*

Research References & Practice Aids

Hierarchy Note: CONSTITUTION OF THE STATE OF MINNESOTA

Adopted October 13, 1857 Generally Revised November 5, 1974