STATE OF MINNESOTA
RETAIL COMPENDIUM OF LAW

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RETAIL, RESTAURANT, AND HOSPITALITY GUIDE TO MINNESOTA PREMISES LIABILITY

Introduction

A. The Minnesota Court System

The trial-level court in Minnesota is the district court. Minnesota's 87 counties are divided into ten judicial districts. Hennepin and Ramsey counties, which contain Minneapolis and St. Paul respectively, are single-county districts. By contrast, the sparsely-populated ninth judicial district spans a seventeen-county area. Almost all actions with a value greater than $10,000 are filed in district court in Minnesota.[1]

Appeals from the district court are heard by the intermediate Court of Appeals. The court's 19 judges sit in panels of three and occasionally travel throughout Minnesota to hear oral arguments.

The Minnesota Supreme Court consists of seven justices. Currently, the supreme court receives about 900 petitions for review each year and grants certiorari in 1 out of 8 cases.

Minnesota judges may come to serve on the bench by either being elected to that position by the general public or by being appointed by the Governor. An elected judge has a term of six years. When a judge is appointed by the Governor, MINN. CONST. art. VI, § 8 provides that the judge must stand for district-wide election in the next general election that is more than one year after the swearing-in date.

The Minnesota Rules of Civil Procedure control practice in Minnesota courts. These rules largely are modeled after the federal rules.

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[1] Litigants seeking less than $15,000 have the option to file in conciliation (small claims) court. Appeals from conciliation court are heard in the district courts.

B. Minnesota Federal Court

Minnesota has only one federal judicial district – the District of Minnesota. Minnesota federal courthouses are located in Minneapolis, St. Paul, Duluth, and Fergus Falls. The District of Minnesota is part of the 8th Circuit.

Negligence

A. General Negligence Principles

Negligence is the failure to use reasonable care. Reasonable care is the care a reasonable person would use in the same or similar circumstances.[2] Liability for negligence requires an act or omission that breaches a duty to another person, causing damages. The mere fact that an accident occurs does not mean that anyone has been negligent.

Premises liability is a type of negligence that arises from a landowner's duty to maintain the premises with reasonable care. Minnesota has adopted the Restatement definition of a landowner, or "possessor of land." A "possessor" is:

(a) a person who is in occupation of the land with intent to control it, or
(b) a person who has been in occupation of land with intent to control it, if no other person has subsequently occupied it, or
(c) a person who is entitled to immediate occupation of the land, if no other person is in possession under clauses (a) and (b).[3]

For example, a group renting part of a resort for a retreat is likely not a "possessor of land," because the owner of the resort retains control of the land.[4] But where a group not only has permission to use the land but assumes the duty of inspecting the land for hazards and promises to supervise the activities, that group may be in sufficient control of the land to impose a landowner's duty.[5]

In Minnesota, liability to persons entering the land of another depends on the relationship between the entrant and the landowner. Minnesota recognizes two classes of persons on a

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[2] CIVJIG 25.10.
[3] *Ironwood Springs Christian Ranch, Inc. v. Walk to Emmaus*, 801 N.W.2d 193, 198 (Minn. Ct. App. 2011) (citing Restatement (Second) Torts § 328E (1965)).
[4] *See Ironwood*, 801 N.W.2d at 198.
[5] *Isler v. Burman*, 205 Minn. 288, 295, 232 N.W.2d 818, 821 (1975).

premises: entrants and trespassers.[6] To entrants, a landowner owes a duty of reasonable care.[7] A landowner has an on-going duty to inspect and repair the premises, and to warn persons using the premises of unreasonable risks of harm.[8] By contrast, a landowner generally owes no duty to trespassers.[9] But the law has carved out exceptions where the injury to trespassers is foreseeable, where the dangerous condition is hidden, and where the trespasser is a child.[10] Generally, landowners owe no duty to warn of or protect entrants from injury caused by third parties.[11] But common carriers, innkeepers, and possessors of land who hold it open to the public have a special relationship with their guests, giving rise to an affirmative duty to warn of foreseeable dangers.[12]

B. Elements of a Cause of Action for Premises Liability

Minnesota has abolished the distinction between invitees and licensees.[13] Minnesota law, however, still determines a landowner's duty based on the status of the entrant.

1. For Trespassers

A trespasser is someone who enters or remains on the land without the express or implied consent of the owner.[14] An entrant may become a trespasser by moving beyond the scope of the landowner's permission.[15]

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[6] *Foss v. Kincade*, 766 N.W.2d 317, 320-21 (Minn. 2009); *Peterson v. Balach*, 294 Minn. 161, 173-74, 199 N.W.2d 639, 647 (1972).
[7] *Id.*
[8] *Olmanson v. LeSueur Cnty.*, 673 N.W.2d 506, 513 (Minn. Ct. App. 2004) (holding that 10 year statute of repose for improvements to real property in Minn. Stat. § 541.051 is inapplicable to premises liability claims).
[9] *Sirek by Beaumaster v. State Dep't of Nat. Res.*, 496 N.W.2d 807, 809 (Minn. 1993).
[10] *Id.* at 810.
[11] *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 673 (Minn. 2001).
[12] *Harper v. Herman*, 499 N.W.2d 472, 474 (Minn. 1993).
[13] *Peterson v. Balach*, 294 Minn. 161, 173-74, 199 N.W.2d 639, 647 (1972).
[14] *Reider v. City of Spring Lake Park*, 480 N.W.2d 662, 666 (Minn. Ct. App. 1992).
[15] *Rieger v. Zackoski*, 321 N.W.2d 16, 20 (Minn. 1982).

Minnesota has adopted the Restatement (Second) of Torts standard for duty owed to trespassers. A landowner is subject to liability for bodily harm to a trespasser caused by an artificial condition on the land if:

> (a) the condition
> (i) is one which the possessor has created or maintains and
> (ii) is, to his knowledge, likely to cause death or serious bodily harm to such trespassers and
> (iii) is of such a nature that he has reason to believe that such trespassers will not discover it and,
>
> (b) the possessor has failed to exercise reasonable care to warn such trespassers of the condition and the risk involved.[16]

This standard requires actual knowledge of the condition, and actual knowledge that the condition is likely to cause serious injury or death.[17]

A hidden condition may itself be visible; the focus is on whether the "dangerous condition" is visible.[18] Thus where the metal edging on a staircase is visible, but the fact that the edging was raised above the tread such that it would cause a person to trip was not readily visible, the "dangerous condition" was not visible.[19] Visibility depends on an objective standard, not on whether the person saw the dangerous condition: "[i]f a brief inspection would have revealed the condition, it is not concealed."[20]

2. For Child Trespassers

Minnesota follows the restatement standard for a landowner's duty to child trespassers:

> A possessor of property who keeps a structure or other artificial condition on property that injures a trespassing child is negligent if:

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[16] *Schaffer v. Spirit Mountain Rec. Area Auth.*, 541 N.W.2d 357, 360 (Minn. Ct. App. 1995).
[17] *Prokop v. Ind. Sch. Dist. No. 625*, 754 N.W.2d 709, 714 (Minn. Ct. App. 2008).
[18] *Unzen v. City of Duluth*, 683 N.W.2d 875, 880 (Minn. Ct. App. 2004).
[19] *Id.*
[20] *Spirit Mountain*, 541 N.W.2d at 360.

1. The possessor knows, or has reason to know, children are likely to trespass on the property at the place where the condition exists, and

2. The possessor knows, or has reason to know, that this condition exists, and

3. The possessor realizes or should realize that this condition involves an unreasonable risk of death or serious injury to children, and

4. The children are too young at the time of the accident to understand the risk of playing with, or being near, the hazard or do not discover the condition, and

5. The benefits to the possessor of keeping the structure or artificial condition as it and the burden of eliminating it are slight compared with the risk to the children, and

6. The possessor does not use reasonable care to get rid of the danger or protect the children.[21]

Minnesota courts strictly construe the requirement that the landowner must know or have reason to know that children are likely to trespass.[22]

A "child" is usually under the age of 16, but whether this section applies may vary depending on the circumstances.[23] The child-trespasser rule does not apply to dangers which "may reasonably be expected to be understood and appreciated by any child of an age to be allowed at large."[24]

3. For Entrants

Any person who has express or implied permission to be on the premises is an "entrant" on land.[25] An entrant who exceeds the scope of permission, however, can become a trespasser.[26]

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[21] *Croaker ex rel Croaker v. Mackenhausen*, 592 N.W.2d 857, 860 (Minn. 1999) (quoting Restatement (Second) Torts § 339); CIVJIG 85.19.
[22] *Croaker*, 592 N.W.2d at 860.
[23] *Hughes v. Quarve & Anderson Co.*, 338 N.W.2d 422, 424-25 (Minn. 1983).
[24] *Sirek v. Beaumaster, v. State Dep't of Nat'l Resources*, 496 N.W.2d 807, 810 (Minn. 1993) (quoting Restatement (Second) Torts § 339, cmt. j); *see also Schaffer v. Spirit Mountain Rec. Area Auth.*, 541 N.W.2d 357, 360 (Minn. Ct. App. 1995) (applying adult trespasser standard to 14-year-old skier).
[25] CIVJIG 85.22.

A possessor of land has a duty to use reasonable care to protect entrants from harm caused by the condition of the premises.[27] An entrant has a corresponding duty to exercise reasonable care for his or her own safety.[28] The landowner's duty of care is modified according to the expected use of the land.[29]

If the landowner did not create the condition, that landowner must have either actual or constructive knowledge of a dangerous condition before liability will be imposed.[30] But a landowner has no liability where the activity or condition of the land is known or obvious to the entrant, "unless the [landowner] should anticipate the harm despite such knowledge or obviousness."[31]

Factors that might be considered in a reasonability analysis include:

- The circumstances under which the entrant enters the land;
- Foreseeability or possibility of harm;
- Duty to inspect, repair, or warn;
- Reasonableness of inspection or repair; and
- Opportunity and ease of repair and correction.[32]

The landowner's duty includes an ongoing duty to inspect and maintain the property to ensure that entrants are not exposed to an unreasonable risk of harm.[33] If a dangerous condition on the

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[26] *Rieger v. Zackoski*, 321 N.W.2d 16, 20 (Minn. 1982).
[27] CIVJIG 85.25.
[28] *Id.*
[29] *Foss v. Kincade*, 766 N.W.2d 317, 321 (Minn. 2009).
[30] *Rinn v. Minn. State Agr. Soc.*, 611 N.W.2d 361, 364 (Minn. Ct. App. 2000).
[31] *Louis v. Louis*, 636 N.W.2d 314, 319 (Minn. 2001).
[32] *Id.* at 320-21; *Louis v. Louis*, 636 N.W.2d 314, 319 (Minn. 2001).
[33] *Presbrey v. James*, 781 N.W.2d 13, 18 (Minn. Ct. App. 2010).

premises could be discovered by reasonable efforts of the landowner, the landowner has a duty to warn entrants about the danger or to repair the condition.[34]

C. Defenses

1. Obviousness

A landowner's duty of reasonable care does not include warning or protecting a plaintiff from known or obvious risks, unless the landowner should anticipate the harm despite the obviousness of the risk.[35] This determination must be made before a court considers primary assumption of the risk, because if no duty exists, there is no need to determine if plaintiff assumed the risk, thereby relieving the defendant of a duty.[36]

A possessor of land has no duty to warn an entrant if the anticipated harm "involves dangers so obvious that no warning is necessary."[37] For example, courts have found no duty to warn for danger to pedestrians caused by clearly visible, low-hanging branches;[38] for danger to pedestrians posed by obviously steep hills;[39] or for the trip-and-fall danger caused by a large planter.[40] The rationale for this rule is that "no one needs notice of what he knows or reasonably may be expected to know."[41] If, however, the harm should be anticipated despite the obviousness of the danger, the landowner is not relieved of the duty to warn.[42] The presence of

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[34] *Id.*
[35] *Prokop v. Ind. Sch. Dist. No. 625*, 754 N.W.2d 709, 716 (Minn. Ct. App. 2008); *Snilsberg v. Lake Washington Club*, 614 N.W.2d 738, 744 (Minn. Ct. App. 2000).
[36] *Louis v. Louis*, 636 N.W.2d 314, 321 (Minn. 2001); *Baber v. Dill*, 531 N.W.2d 493, 495 (Minn. 1995).
[37] *Baber*, 531 N.W.2d at 496.
[38] *Sperr v. Ramsey Cnty.*, 429 N.W.2d 315, 316-17 (Minn. Ct. App. 1988).
[39] *Lawrence v. Hollerich*, 394 N.W.2d 853, 856 (Minn. Ct. App. 1986).
[40] *Bisher v. Homart Dev. Co.*, 328 N.W.2d 731, 733-34 (Minn. 1983).
[41] *Baber*, 531 N.W.2d at 496.
[42] *Baber*, 531 N.W.2d at 496 (noting the fine distinction between a condition for which a landowner should anticipate harm and a condition so obvious that no harm need be anticipated).

distractions may be a factor in determining whether a plaintiff should notice the dangerous condition.[43]

2 Primary Assumption of the Risk

Primary assumption of risk relates initially to the issue of whether the "defendant was negligent at all--that is, whether the defendant had any duty to protect the plaintiff from a risk of harm."[44] Under the doctrine of primary assumption of the risk, a plaintiff consents to relieve the defendants of any obligation to act reasonably.[45]

Specifically, a landowner has no duty to protect an entrant from a risk of harm when the entrant assumes a well-known incidental risk.[46] Primary assumption of the risk arises where the plaintiff (1) had actual knowledge of the risk, (2) had an appreciation of the risk, and (3) "voluntarily chose to take the risk when faced with a choice of avoiding it."[47] Primary assumption of the risk has limited application, most commonly involving sports and recreational activities, because they present well-known risks that are well known to the public.[48] Primary assumption of the risk may not apply to situations where the defendant enlarged the risk to the plaintiff by defendant's own negligence.[49] Enlargement of the risk involves a "new risk" and "only a limited time to react."[50]

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[43] *Gilmore v. Walgreen Co.*, 759 N.W.2d 433, 435 (Minn. Ct. App. 2009).
[44] Steenson, Mike, *The Role of Primary Assumption of the Risk in Civil Litigation in Minnesota*, 30 WM. MITCHELL L. REV. 115, 137 (2003) (analyzing *Jepsen v. Noren*, 308 N.W.2d 812 (Minn. 1981)).
[45] Steenson, *supra* n. 44 at p. 137.
[46] *Alwin v. St. Paul Saints Baseball Club, Inc.*, 672 N.W.2d 570, 572 (Minn. Ct. App. 2003).
[47] *Snilsberg v. Lake Washington Club*, 614 N.W.2d 738, 746 (Minn. Ct. App. 2000).
[48] *Daly v. McFarland*, 812 N.W.2d 113 (Minn. 2012); *See, e.g., Grisim v. TapeMark Charity Pro-Am Golf Tournament*, 415 N.W.2d 874 (Minn. 1987) (golf); *Modec v. City of Evelyth*, 224 Minn. 556, 29 N.W.2d 453 (1947) (hockey); *Grady v. Green Acres, Inc.*, 826 N.W.2d 547 (Minn. Ct. App. 2013) (snow tubing); *Alwin v. St. Paul Saints Baseball Club, Inc.*, 672 N.W.2d 570 (Minn. Ct. App. 2003) (baseball).
[49] *Grady v. Green Acres, Inc.*, 826 N.W.2d 547, 552 (Minn. Ct. App. 2013).
[50] *Id.*

3. Secondary Assumption of the Risk

The Minnesota Supreme Court has merged the defenses of secondary assumption of the risk and comparative fault.[51] Secondary assumption of the risk occurs where the plaintiff voluntarily encounters a known risk without relieving the defendant of his duty of care.[52] The inquiry includes whether the plaintiff was negligent in regard to his or her own safety under the circumstances.[53] A defendant must show (1) that the plaintiff had knowledge of the risk; (2) that the plaintiff appreciated the risk; (2) that the plaintiff had a choice to avoid the risk and voluntarily chose to chance it; and (4) that the person was negligent in taking the risk.[54]

Secondary assumption of the risk is not a complete bar to a plaintiff's recovery. The definition of "fault" in Minnesota's Comparative Fault Act encompasses secondary assumption of the risk, or "unreasonable assumption of risk not constituting an express consent or primary assumption of risk."[55] Under Minnesota's Comparative Fault Act, contributory fault does not bar recovery, "if the contributory fault was not greater than the fault of the person against whom recovery is sought, but any damages allowed must be diminished in proportion to the amount of fault attributable to the person recovering."[56]

4. Lack of Notice

A landowner must either create the dangerous condition, or have actual or constructive knowledge of the condition before a duty will be imposed.[57] In many cases, it may be a defense to liability to show that the landowner did not know that a condition existed, or that it was dangerous.

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[51] *Springrose v. Willmore*, 292 Minn. 23, 192 N.W.2d 826 (1971).
[52] *Rieger v. Zackoski*, 321 N.W.2d 16, 23 (Minn. 1982).
[53] *Springrose*, 292 Minn. at 26, 192 N.W.2d at 828.
[54] CIVJIG 28.25.
[55] MINN. STAT. § 604.01, subd. 2 (2013).
[56] MINN. STAT. § 604.01, subd. 1 (2013).
[57] *Rinn v. Minn. State Agr. Soc.*, 611 N.W.2d 361, 364 (Minn. Ct. App. 2000).

5. Statute of Limitations

Generally, premises liability claims against landowners are subject to the six-year statute of limitations for negligence claims.[58] In some cases, landowners are protected by the two-year statute of limitations and ten-year statute of repose for claims "arising out of the defective and unsafe condition of an improvement to real property."[59] This two-year statute of limitations, however, does not apply to a landowner's common law duty to warn of an unsafe condition.[60] Nor does it apply to "actions for damages resulting from negligence in the maintenance, operation or inspection of the real property improvement against the owner or other person in possession."[61]

6. Recreational Use Immunity

Municipalities are generally responsible for their torts. A municipality is not, however, responsible for:

> Any claim based upon the construction, operation, or maintenance of any property owned or leased by the municipality that is intended or permitted to be used as a park, as an open area for recreational purposes, or for the provision of recreational services, or from any claim based on the clearing of land, removal of refuse, and creation of trails or paths without artificial surfaces, if the claim arises from a loss incurred by a user of park and recreation property or services.[62]

Nevertheless, a municipality is still liable for "conduct that would entitle a trespasser to damages against a private person."[63]

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[58] Minn. Stat. § 541.05 (2013); *Sullivan v. Farmers & Merchants State Bank of New Ulm*, 398 N.W.2d 592, 595 (Minn. Ct. App. 1986).
[59] Minn. Stat. § 541.051, subd. 1(a) (2013) (stating that no claim "shall be brought. . . against the owner of the real property more than two years after discovery of the injury, nor in any event shall such a cause of action accrue more than ten years after substantial completion of the construction").
[60] *Sullivan*, 398 N.W.2d at 595.
[61] Minn. Stat. § 541.051, subd. 1(4) (2013); *Olmanson v. Le Sueur Cnty.*, 673 N.W.2d 506, 513 (Minn. Ct. App. 2004).
[62] Minn. Stat. § 466.03, subd. 6(e) (2013).
[63] *Id.*

Private actors who are "agents" of the municipality are also granted recreational use immunity under the statute. Courts will apply a five-factor test, focusing on the degree of control exercised, to determine whether a person is an agent or independent contractor.[64]

In addition, the Minnesota legislature has enacted a set of statutes to encourage landowners to open privately held lands and waters for public recreational purposes.[65] Under these statutes, a landowner who gives written or oral permission for the use of land for recreational purposes without charge:

> (1) owes no duty of care to render or maintain the land safe for entry or use by other persons for recreational purpose;
>
> (2) owes no duty to warn those persons of any dangerous condition on the land, whether patent or latent;
>
> (3) owes no duty of care toward those persons except to refrain from willfully taking action to cause injury; and
>
> (4) owes no duty to curtail use of the land during its use for recreational purpose.[66]

The landowner is still liable for conduct that would entitle a trespasser to damages.[67] This grant of immunity does not apply if the landowner charges for use of the land.[68]

Finally, unless otherwise agreed in writing, these standards also apply to:

> (1) land leased to the state or any political subdivision for recreational purpose; or
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> (2) idled or abandoned, water-filled mine pits whose pit walls may slump or cave, and to which water the public has access from a water access site operated by a public entity;

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[64] *Unzen v. City of Duluth*, 683 N.W.2d 875, 881 (Minn. Ct. App. 2004).
[65] MINN. STAT. § 604A.20.
[66] MINN. STAT. § 604A.22.
[67] MINN. STAT. § 604A.25(1).
[68] MINN. STAT. § 604A.25(2)

(3) land of which a municipal power agency is an owner and that is used for recreational trail purposes, and other land of a municipal power agency which is within 300 feet of such land if the entry onto such land was from land that is dedicated for recreational purposes or recreational trail use; or

(4) land leased to the state or otherwise subject to an agreement or contract for purposes of a state-sponsored walk-in access program.[69]

Examples of Negligence Claims

A. Slip and Fall Type Cases

"A shopkeeper is not an insurer of the safety of [his patrons], but . . . owes those expressly or impliedly invited upon his premises the duty to keep and maintain his premises in a reasonably safe condition."[70]

1. Snow and Ice

Minnesota is known for its cold weather, so it is not surprising that many slips and falls are caused by weather conditions.

Absent extraordinary circumstances, reasonable care requires that a landowner must remove the snow and ice from its outside entrances and walkways within a "reasonable time" after a storm ends.[71] This rule recognizes that the exercise of reasonable care "requires neither the impossible nor the impractical, and that during a freezing rain, sleet, or snowstorm it is impractical to remove icy and slippery conditions or to take other corrective actions, such as spreading sand or salt.[72] The duty does not change if a landowner attempts to take corrective measures during the course of a storm.[73] If, however, the hazardous condition (such as ice on a

[69] MINN. STAT. § 504A.24.
[70] *Wolvert v. Gustafson*, 275 Minn. 239, 241, 146 N.W.2d 172, 173 (1966).
[71] *Mattson v. St. Luke's Hosp. of St. Paul*, 252 Minn. 230, 233, 89 N.W.2d 743, 745 (1958).
[72] *Id.*
[73] *Id.*

sidewalk) existed before a storm begins, that may be an "extraordinary circumstance," which may provide an exception to the general rule.[74]

It can sometimes be difficult to tell when one storm ends and another begins. In these cases, the issue of when a storm ended is submitted to a jury as factfinder.[75]

2. Entrances

Landowners have a duty to provide visitors with a safe access to buildings, but generally they do not have a duty to maintain or close off all possible access routes.[76] If it is foreseeable that pedestrians will use a path, landowners have a duty to ensure either that the path is reasonably safe, provide warnings, or block off the area.[77]

Thus a landowner had no duty to foresee that a pedestrian would chose to take an asphalt slope covered with wet leaves rather than an available staircase, and therefore had no duty to maintain the slope. [78] But where a pedestrian's choice was between a snowy slope that provided direct access and a longer route which required walking along a heavily traveled street with no sidewalk, the landowner should have foreseen that pedestrians would choose the shorter route, and a duty of reasonable care could be imposed.[79]

Landowners have no duty to maintain sidewalks or walkways adjacent to their properties but not owned by them, unless the landowner created a hazard on the unowned property.[80] If a

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[74] *Johnson v. Alford & Neville, Inc.*, 397 N.W.2d 591, 593 (Minn. Ct. App. 1986). *C.f. Niemann v. Northwestern College*, 389 N.W.2d 260, 262 (Minn. Ct. App. 1986) (holding that a steep sidewalk is not an "extraordinary circumstance" that creates an exception to the general rule).
[75] *Frykman v. Univ. of Minnesota-Duluth*, 611 N.W.2d 379, 381 (Minn. Ct. App. 2000).
[76] *Strong v. Richfield State Agency*, 460 N.W.2d 106, 108 (Minn. Ct. App. 1990); *McIlrath v. College of St. Catherine*, 399 N.W.2d 173, 174 (Minn. Ct. App. 1987).
[77] *Peterson v. W.T. Rawleigh Co.*, 274 Minn. 495, 497-97, 144 N.W.2d 555, 558 (1966); *Kantorowicz v. VFW Post, No. 230*, 349 N.W.2d 597, 599 (Minn. Ct. App. 1984).
[78] *Strong v. Richfield State Agency, Inc.*, 460 N.W.2d 106, 108 (Minn. Ct. App. 1990).
[79] *Kantorowicz*, 349 N.W.2d at 599.
[80] *Strong*, 460 N.W.2d at 108.

landowner creates a hazard on an abutting sidewalk or property, then a duty may be imposed on the landowner to take reasonable care for the safety of pedestrians.[81]

3. Floors

Injury may be caused by slipping on a well-polished floor, but the mere fact that a business waxes its floors is not sufficient to impose liability.[82] A plaintiff must show that the business was negligent in the care and maintenance of its floors, such as by demonstrating the improper application of cleaning products.[83]

Patrons may also trip when a floor changes level. The general rule holds that the existence of a clearly visible change in the level of adjacent floors, without more, is not evidence of negligence.[84] Nevertheless, if the change in elevation is not easily visible, or if surrounding displays cause a distraction, a defendant may be negligent in failing to warn of a change in level of the floor.[85]

4. Objects and Puddles

If a defendant creates the condition, such as by leaving a pallet in the middle of an aisle, the scope of defendant's duty of reasonable care is defined by considering the surrounding circumstances, including (1) for what purpose the plaintiff entered the premises; (2) the foreseeability or possibility of harm; (3) the defendant's duty to inspect, repair, or warn; (4) the reasonableness of inspection or repair; and (5) opportunity and ease of repair or correction.[86]

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[81] *Id.* For an example of an sidewalk hazard, *see Feeney v. Mehlinger*, 136 Minn. 42, 161 N.W.2d 220 (1917) (holding that a defendant who rightfully ejected a drunk from his saloon was liable to a child standing rightfully in the public street into whom the drunk collided).
[82] *Flagg v. Fairview Ridges Hosp.*, No. C2-98-1959, 1999 WL 326184 (Minn. Ct. App. May 25, 1999).
[83] *Lyon v. Dr. Scholl's Foot Comfort Shops, Inc.*, 251 Minn. 285, 285, 87 N.W.2d 651, 653 (1958).
[84] *Krengel v. Midwest Automatic Photo, Inc.*, 295 Minn. 200, 205, 203 N.W.2d 841, 845 (1973).
[85] *Id.* at 206-07, 203 N.W.2d at 845.
[86] *Bisher v. Homart Dev. Co.*, 328 N.W.2d 731, 733 (Minn. 1983); *Gilmore v. Walgreen Co.*, 759 N.W.2d 433, 435 (Minn. Ct. App. 2009).

If a defendant does not create the dangerous condition, the plaintiff must demonstrate that the owner or operator of the premises had actual or constructive knowledge of the condition.[87] Constructive notice may be demonstrated by showing that the dangerous condition had existed for a sufficient amount of time that the owner or its employees should have known about the condition.[88] Constructive notice also may be demonstrated by surrounding circumstances, such as the presence of a wet-floor sign, or knowledge that when it snows outside the entrance tends to get slippery and wet.[89] Speculation about who caused a condition or how long it had been there is not sufficient to carry this burden of proof.[90]

5. Elevators and Escalators

Landowners with multi-story buildings are subject to the standard duty to use reasonable care to protect entrants from harm caused by the elevators or escalators. Plaintiffs claiming the landowners were negligent must provide evidence of such negligence: Minnesota courts have repeatedly rejected a res ipsa loquitor theory in the context of an elevator service claim.[91]

B. Liability for Violent Crime

To prove a case of negligence against a property owner for attack by a third person, a plaintiff must demonstrate (1) that the proprietor had a duty to protect the plaintiff; (2) that the proprietor had notice of the offending party's dangerous propensities; (3) that the proprietor

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[87] *Wolvert v. Gustafson*, 275 Minn. 239, 241, 146 N.W.2d 172, 173 (1966); .
[88] *Rinn. v. Minn. Agric. Soc.*, 611 N.W.2d 361, 365 (Minn. Ct. App. 2000).
[89] *See, e.g.*, *Smith v. Target Corp.*, No. A10-831, 2011 WL 206163 (Minn. Ct. App. Jan. 25, 2011); *Pikula v. Wal-Mart*, No. CX-01-456, 2001 WL 1328575 (Minn. Ct. App. Oct. 30, 2001).
[90] *Rinn*, 611 N.W.2d at 365.
[91] *See Blackhawk Hotels Co. v. Bonfoey*, 227 F.2d 232 (8th Cir. 1955) (elevator service company cannot be held liable for an elevator accident unless Plaintiff can produce evidence of specific acts of negligence); *see also Otis Elevator Company v. Yager*, 268 F.2d 137 (8th Cir. 1959) (in context of elevator accident, the "mere happening of an accident did not give rise to a presumption of negligence.").

failed to take reasonable steps to protect the injured plaintiff.[92] The existence of a duty is a threshold issue, and the factor on which most cases of this type fail.

Generally, a defendant has no duty to control the conduct of a third person to prevent that person from causing harm to another. Whether a duty exists depends on: (1) the relationship of the parties and (2) the foreseeability of the harm.[93]

1. Special Relationship

Whether a special relationship exists is ultimately a question of policy.[94] A duty to protect will be imposed if (1) plaintiff entrusted his/her safety to defendant; (2) defendant accepted that entrustment; and (3) defendant was in a position to, and should have been expected to, protect plaintiff from an attack.[95] Courts also consider the following policy factors: crime prevention is essentially a government function, not a private duty; criminals are unpredictable; the duty to protect is difficult to define because the question will always be what further security measures should defendant have taken; and the cost of providing security.[96]

Minnesota courts traditionally recognize the following relationships as special relationships that impose a duty to protect: innkeeper-guest; common carrier-passenger; and hospital-patient.[97] Although the term "innkeeper" has been statutorily defined to mean the owner and operator of a facility "held out to the public to be, a place where sleeping or housekeeping accommodations are supplied for pay to guests for transient occupancy,"[98] courts regularly

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[92] *Bjerke v. Johnson*, 742 N.W.2d 660, 664 (Minn. 2007); *Boone v. Martinez*, 567 N.W.2d 508, 510 (Minn. Ct. App. 1997).
[93] *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 673 (Minn. 2001).
[94] *Id.*
[95] *Id.*
[96] *Id.* n.4.
[97] *Errico v. Southland Corp.*, 509 N.W.2d 585, 587 (Minn. Ct. App. 1993).
[98] MINN. STAT. § 327.70, subds. 3, 4 (2013); *Yang v. Voyagaire Houseboats, Inc.*, 701 N.W.2d 783, 790 (Minn. 2005) (holding that defendant who rented houseboats functioned as an innkeeper).

consider negligence claims against taverns and bars under theories of innkeeper liability.[99] The Minnesota Supreme Court has also imposed a duty to use reasonable care to deter criminal activities on commercial parking ramps.[100]

Courts have refused to impose special relationships on merchants generally, stating that the law has been "cautious and reluctant" to impose a duty on business enterprises, and that a "mere merchant-customer relationship" is not enough for a duty to protect.[101] The supreme court also refused to impose a special relationship between a landlord and renter on public policy bases.[102] However, where a commercial landlord voluntarily assumes a duty to protect, such as by hiring a security force and contractually promising its tenants assistance in detaining shoplifters, a special relationship will be imposed.[103] Finally, the supreme court refused to impose liability on an innkeeper for a resident's suicide, holding that it was not the kind of harm from which an innkeeper is in a position to protect.[104]

2. Foreseeability

If a special relationship exists, a harm must still be foreseeable before courts will impose a duty to protect. Harm is foreseeable "if the possibility of an accident was clear to the person of ordinary prudence."[105] Thus, harm is foreseeable where a defendant knows of an offender's

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[99] *See Boone v. Martinez*, 567 N.W.2d 508 (Minn. 1997*); Quinn v. Winkel's Inc.*, 279 N.W.2d 65 (Minn. 1979).
[100] *Erickson v. Curtis Inv. Co.*, 447 N.W.2d 165, 170 (Minn. 1989). In the non-retail context, the supreme court has also imposed a special relationship on a homeowner with a long-term, under-aged houseguest. *Bjerke v. Johnson*, 742 N.W.2d 660, 665-67 (Minn. 2007).
[101] *Errico v. Southland Corp.*, 509 N.W.2d 585, 587 (Minn. Ct. App. 1993) (no special relationship between convenience store and customer); *see also Anders v. Trester*, 562 N.W.2d 45 (Minn. Ct. App. 1997) (no special relationship between fast–food restaurant and customer).
[102] *Funchess*, 632 N.W.2d at 674-75.
[103] *Nickelson v. Mall of America Co.*, 593 N.W.2d 723, 726 (Minn. Ct. App. 1999).
[104] *Donaldson v. Young Women's Christian Ass'n of Duluth*, 539 N.W.2d 789, 792 (Minn. 1995).
[105] *Bjerke v. Johnson*, 742 N.W.2d 660, 667 (Minn. 2007).

aggressive nature;[106] but it is not foreseeable where defendant has no knowledge of an offender's nature and the attack is sudden and unexpected.[107]

C. Claims Arising from the Wrongful Prevention of Thefts

Attempting to stop and detain shoplifters potentially exposes a retailer to a number of claims from the alleged thief, including but not limited to: false imprisonment; defamation; negligent hiring, retention, or supervision of employees; civil rights violations; and malicious prosecution.

1. False Imprisonment

False imprisonment is "any imprisonment which is not legally justifiable."[108] False imprisonment occurs where a defendant intentionally restricts the physical liberty of plaintiff by words or acts and the plaintiff is aware of the restriction or is harmed by it.[109] A private party does not falsely imprison a suspect merely by reporting the crime: "[a] party is not liable for false imprisonment for conveying information about suspected criminal activity unless that party directly persuades or commands the police to detain the suspect."[110]

Minnesota Statutes grant merchants and their employees a qualified privilege to detain a person, if the merchant has reasonable cause to believe that the person is taking merchandise with the intent to steal.[111] Merchants may detain such persons only for the following purposes:

(1) to require the person to provide identification or verify identification;
(2) to inquire as to whether the person possesses unpurchased merchandise taken from the merchant and, if so, to receive the merchandise;
(3) to inform a peace officer; or

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[106] *Quinn v. Winkel's, Inc.*, 279 N.W.2d 65, 68 (Minn. 1979).
[107] *Boone v. Martinez*, 567 N.W.2d at 511.
[108] *Kleidon v. Glascock*, 215 Minn. 471, 425, 10 N.W.2d 394, 397 (1943).
[109] CIVJIG 60.70 (5th ed.).
[110] *Smits v. Wal-Mart Stores*, 525 N.W.2d 554, 558 (Minn. Ct. App. 1994); *see also Ward v. Nat'l Car Rental Sys.*, 290 N.W.2d 441 (Minn. Ct. App. 1980) (finding imprisonment instigated by merchant where manager instructed police to bring suspect to airport).
[111] MINN. STAT. § 629.366, subd. 1(a).

(4) to institute criminal proceedings against the person.[112]

Merchants may not detain suspected shoplifters for more than an hour unless the police are on their way or the suspect is a minor and the parents are on their way.[113] This statute provides qualified immunity only to false imprisonment claims, and only if the merchant has "reasonable cause" for the actions.[114]

2. Defamation

A defamatory statement is on which is (1) communicated to someone other than the plaintiff; (2) false; and (3) tends "to harm the plaintiff's reputation and to lower him in the estimation of the community."[115] Statements are defamatory *per se* if they falsely accuse a person of a crime.[116]

Minnesota recognizes a qualified privilege for good-faith reporting of suspected criminal activity.[117] This privilege only applies, however, when the report is made "in good faith, on a proper occasion, from a proper motive, and based on reasonable cause."[118] Failure to conduct a proper investigation, for example, will waive the privilege.[119]

3. Negligent Hiring, Retention, and Supervision of Employees

An employer is vicariously liable for the torts of its employees that are committed in the course and scope of employment.[120] In addition, Minnesota recognizes three causes of action in which may be directly liable for injuries caused by one of its employees: negligent hiring,

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[112] *Id.*, subd. 1(b).
[113] *Id.*, subd. 1(c).
[114] *Altman v. Knox Lumber Co.*, 381 N.W.2d 858, 862 (Minn. Ct. App. 1986).
[115] *El-Ghazzawy v. Berthiaume*, 708 F. Supp. 2d 874, 885 (D. Minn. 2010).
[116] *Id.* (quoting *Longbehn v. Schoenrock*, 727 N.W.2d 153, 158 (Minn. Ct. App. 2007)).
[117] Minn. Stat. § 604A.34 (2013); *Smits v. Wal-Mart Stores, Inc.*, 525 N.W.2d 554, 557 (Minn. Ct. App. 1994).
[118] *El-Ghazzawy v. Berthiaume*, 708 F. Supp. 2d 874, 888 (D. Minn. 2010).
[119] *Id.* at 887.
[120] *Semrad v. Edina Realty, Inc.*, 493 N.W.2d 528, 535 (Minn. 1992).

negligent retention, and negligent supervision.[121] An employer has a duty of reasonable care in hiring individuals who may pose a threat of injury to members of the public because of the nature of the employment.[122] Similarly, an employer negligently retains an employee if, during the course of employment, the employer becomes aware or should have become aware of problems with the employee that indicate his/her unfitness for the employment.[123] Finally, an employer has a duty to use reasonable care to supervise the activities of the employee while on the premises or while using the employer's chattels.[124]

4. Civil Rights Suits

Occasionally, detained shoppers will bring claims under 28 USC § 1983, claiming that their detention, allegedly on the basis of race, violated their civil rights. Ordinarily, these claims apply only to government actors or those acting under color of law.

A store's conduct may be considered state action if the police rely on the store's employees to perform police functions, such as where the police detain a suspect on the word of the employees alone, without performing their own investigation.[125] Additionally, if the store employee detaining the suspect is a member of the local police force, or if the store has a pre-arranged plan to work together with the local police in arresting suspects, a court may find the necessary governmental action.[126]

5. Malicious Prosecution

To prevail on a claim of malicious prosecution, a plaintiff must prove that (1) the suit was brought without probable cause; (2) the suit was instituted and prosecuted with malicious intent;

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[121] *Phillips v. Speedway SuperAmerica LLC*, No. 09-2447, 2010 WL 4323069 (D. Minn. Oct. 22, 2010).
[122] *Ponticas v. K.M.S. Investments*, 331 N.W.2d 907, 911 (Minn. 1983).
[123] *Yunker v. Honeywell, Inc.*, 496 N.W.2d 419, 423 (Minn. Ct. App. 1993) (quoting *Garcia v. Duffy*, 492 So.2d 435, 438-39 (Fla. Dist. Ct. App. 1986)).
[124] *Semrad v. Edina Realty, Inc.*, 493 N.W.2d 528, 534 (Minn. 1992); CIVJIG 55.25 (5th ed.).
[125] *Hanuman v. Groves*, 41 Fed. Appx. 7 (8th Cir. 2002).
[126] *Id.*

and (3) the suit must ultimately terminate in favor of the defendant.[127] Merely instituting a criminal investigation is not sufficient to constitute malicious prosecution; Minnesota courts carefully circumscribe the cause of action because public policy favors good-faith reporting of criminal activity.[128] For malicious prosecution to apply, a formal legal action, such as a criminal charge or an indictment, must be instituted.[129]

D. Food

Food poisoning and contamination claims are usually brought under a theory of product liability, although negligence and breach of warranty may also apply.[130] Minnesota uses a reasonable expectation test to determine if a food product is defective: "a food product is in a defective condition unreasonably dangerous if an ordinary consumer would not reasonably expect the food to contain the object/substance that caused the harm."[131] When a person suffers injury from consuming a food product, the manufacturer, seller, or distributor of the food product is liable to the extent that the injury-causing substance in the food would not be reasonably expected by an ordinary consumer.[132]

E. Construction-Related Accidents

Employers of independent contractors may be liable for any personal negligence on their part which causes injury to an employee of the independent contractor. If the employer retains

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[127] *Stead-Bowers v. Langley*, 636 N.W.2d 334, 338 (Minn. Ct. App. 2001); *see generally Allen v. Osco Drug, Inc.*, 265 N.W.2d 639 (Minn. 1978).
[128] *Stead-Bowers*, 636 N.W.2d at 339.
[129] *Id.* at 341.
[130] *In re Shigellosis Litig.*, 647 N.W.2d 1, 11 (Minn. Ct. App. 2002) (explaining that negligence and breach of warranty claims generally merge into strict liability for product claims).
[131] CIVJIG 75.60 (5th ed.).
[132] *Schafer v. JLC Food Sys., Inc.*, 695 N.W.2d 570, 575 (Minn. 2005).

supervisory control over operations on the job sight, the employer may also be liable for breach of the duty to use reasonable care in supervising the employees of the independent contractor.[133]

In addition to these general negligence principles, an employer may owe a duty of care to the employees of an independent contract as a possessor of land. Generally speaking, a landowner owes a duty of reasonable care to inspect the jobsite and repair or warn of any hazardous conditions before during over the jobsite to the contractor.[134]

Landowners are not liable for harm caused by known or obvious dangers unless the landowner should anticipate the harm despite its obvious nature.[135] Because contractors are generally hired for their expertise in certain areas of construction, it may be reasonable for a landowner to expect that where a danger is obvious, the contractor will take appropriate precautions to guard against the danger.[136]

Indemnification and Insurance-Procurement Agreements

The ability to shift losses varies with the particular circumstances involved and the language of the agreement at issue. The following is an overview of the law covering exculpatory, indemnification, and insurance-procurement agreements.

A. Exculpatory Clauses

An exculpatory clause is a contractual provision in which a person agrees to relieve a landowner for injuries caused by the landowner's negligence. Minnesota law permits exculpatory clauses in limited situations: the clause will not be enforced if it is ambiguous in

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[133] *Conover v. Northern States Power Co.*, 313 N.W.2d 397, 404 (Minn. 1981) (adopting Restatement (Second) Torts § 414).
[134] *Id.* at 401
[135] *Sutherland v. Barton*, 570 N.W.2d 1, 7 (Minn. 1997).
[136] *Id.*

scope or if it purports to relieve the benefited party from liability for intentional, willful, or wanton conduct.[137] Furthermore, exculpatory clauses are not enforceable in contracts of adhesion, where there was a disparity of bargaining power; or in contracts for public or essential services.[138] Essential public services are those generally thought suitable for public regulation, such as common carriers, hospitals, doctors, public utilities, innkeepers, public warehousemen, employers, and services involving extrahazardous activities.[139] Exculpatory clauses have been upheld in contracts for sports activities, recreational activities, and health spas.[140]

B. Indemnification

Indemnity clauses are contractual provisions used to transfer liability from one party to another. A party may be indemnified for its own negligence, but only if the contract is clear and unambiguous, and if the contract does not violate public policy.[141] Indemnity agreements that purport to shift risk for intentional conduct are contrary to public policy and will not be enforced.[142]

Indemnification agreements in construction contracts are regulated by statute. Under this statue, indemnification agreements in building or construction contracts are not enforceable "except to the extent that (1) the underlying injury or damage is attributable to the negligent or otherwise wrongful act or omission . . . of the promisor or the promisor's independent contractors, agents, employees, or delagatees; or (2) an owner . . . agrees to indemnify a

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[137] *Schlobohm v. Spa Petite, Inc.*, 326 N.W2.d 920, 923 (Minn. 1982).
[138] *Id.* at 923-925.
[139] *Id.* at 925.
[140] *Id.*; *see also Yang v. Voyagaire*, 701 N.W.2d 783, 789 (Minn. 2005).
[141] *Yang v. Voyagaire*, 701 N.W.2d 783, 791-92 (Minn. 2005); *Lake Cable Partners v. Interstate Power Co.*, 563 N.W.2d 81, 86 (Minn. Ct. App. 1997).
[142] *Lake Cable*, 563 N.W.2d at 87.

contractor . . . with respect to strict liability under environmental laws."[143] This provision ensures that each party remains responsible for its own negligence.[144]

C. Insurance Procurement Agreements

The legislature has provided a narrow exception to the restriction on indemnity provisions in construction contracts: subcontractors could indemnify a contractor's negligence through an agreement in which the subcontractor provides specific insurance coverage for the benefit of others.[145] The subcontractor's failure to include the general contractor as an additional insured as required by the subcontract does not limit the general contractor's ability to recover from the sub.[146]

Agreements to insure are also common in landlord-tenant relationships.[147] Without an express agreement to insure particular risks in a landlord-tenant relationships, the landlord's insurer may have a right of subrogation against the tenant for damage caused by the tenant's negligence.[148]

D. Duty to Defend

Indemnity agreements occasionally included a provision in which the indemnitor agrees to "defend, indemnify, and hold harmless" the indemnitee.[149] An agreement to defend is

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[143] MINN. STAT. § 337.02 (2013).
[144] *Katzner v. Kelleher Constr.*, 545 N.W.2d 378, 381 (Minn. 1996).
[145] MINN. STAT. § 337.05 (2013); *Van Vickle v. C.W. Scheurer & Sons, Inc.*, 556 N.W.2d 238, 241 (Minn. Ct. App. 1996). *But see Eng'g & Constr. Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695, 704-07 (Minn. 2013) (holding that phrase "caused by acts or omissions of [subcontractor]" in indemnification provision means that only coverage for vicarious liabilty is provided); *Hurlburt v. Northern States Power Co.*, 549 N.W.2d 919, 922 (Minn. 1996) (where subcontractor agreed to insure only for its own negligence, coverage was not provided to general contractor).
[146] *Van Vickle*, 556 N.W.2d at 241.
[147] *See, e.g., Best Buy Stores, L.P. vl Benderson-Wainburg Assoc.*, 668 F.3d 1019 (8th Cir. 2012); *Ram Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1 (Minn. 2012).
[148] *Rohde*, 820 N.W.2d at 11 (adopting a case-by-case approach based on the reasonable expectations of the parties to determine the availably of subrogation where the parties have not expressly agreed who will be responsible for a loss).
[149] *See, e.g., Christenson v. Eagn Cos.*, No. A09-1539, 2010 WL 2161822 (Minn. Ct. App. June 1, 2010).

separate and apart from an agreement to provide insurance.[150] This language imposes on the indemnitor the duty to defend the indemnitee against lawsuits. The duty to defend is broader than the duty to indemnify, and will often require the indemnitor to pay for all costs associated with the defense of a plaintiff's action.

Under an insurance policy, an insurer's "duty to defend extends to every claim that 'arguably' falls within the scope of coverage[, and] the duty to defend one claim creates a duty to defend all claims."[151] To determine whether a duty exists, the allegations in the underlying complaint and the surrounding facts will be compared with the relevant language in the insurance policy.[152] However, if the insurer has knowledge of facts outside the complaint, it can use these to determine coverage.[153] Only where all parts of the cause of action fall outside the scope of coverage is there no duty to defend.[154]

Damages in Premises Liability Cases

A. Introduction

At the conclusion of a trial, Minnesota juries are asked to give a figure for damages regardless of whether they determine the defendant is liable. Juries may be asked to give a single figure for damages, but usually the parties present the jury with a special verdict form, asking the jury to itemize types of damages.

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[150] *Howard Homes, Inc., v. Keeler Stucco, Inc.*, No. A06-2036, 2007 WL 4234628 (Minn. Ct. App. Dec. 4, 2007).
[151] *Wooddale Builders, Inc. v. Md. Cas. Co.*, 722 N.W.2d 283, 302 (Minn.2006); *Jostens, Inc. v. Mission Ins. Co.*, 387 N.W.2d 161, 165 (Minn.1986).
[152] *Haarstad v. Graff*, 517 N.W.2d 582, 584-85 (Minn.1994).
[153] *Id.*
[154] *Metro. Prop. & Cas. Ins. Co. v. Miller*, 589 N.W.2d 297, 299 (Minn.1999).

Damages may be categorized as economic or non-economic, and an award for damages may consist of both. Minnesota does not have a statutory cap on the amount of recovery available in a suit except those against a municipality.[155]

B. Compensatory Damages

Because no statute defines compensatory damages, compensatory damages are generally synonymous with actual damages.[156] Actual damages are a sum of money that will fairly and adequately compensate an injured person.[157] Damages may include past and future harm, but plaintiff has the burden to prove that future harm is reasonably certain to occur.[158]

Compensatory damages include general (non-economic) and special (economic) damages. General damages "are the natural, necessary and usual result of the wrongful act or occurrence in question.[159] General damages include pain and suffering.[160] Special damages are those "which are the natural, but not the necessary and inevitable result of the wrongful act."[161] They include past and future medical expenses, and lost wages, among others.[162]

C. Punitive Damages

Punitive damages are monetary penalties in excess of the compensation necessary to make a plaintiff whole. The two primary purposes of punitive damages are to punish defendants and to deter others from similar conduct.[163]

Punitive damages may be sought in any civil action upon a showing of "clear and convincing evidence," that "the acts of the defendant show deliberate disregard for the rights or

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[155] *See* MINN. STAT. § 466.04 (2008).
[156] *Phelps v. Commonwealth Land Title Ins. Co.*, 537 N.W.2d 271, 275 (Minn. 1995)
[157] CIVJIG 90.10
[158] *Id.*
[159] *Ray v. Miller Meester Adver., Inc.*, 684 N.W.2d 404, 407 (Minn. 2004) (internal citation omitted).
[160] *Ward v. Ward*, 453 N.W.2d 729, 732 (Minn. Ct. App. 1990).
[161] *Phelps*, 537 N.W.2d at n.2.
[162] *Johnson v. St. Farm Mut. Auto. Ins. Co.*, 574 N.W.2d 468, 470, 472 (Minn. Ct. App. 1998).
[163] *Johnson v. Ramsey Cnty.*, 424 N.W.2d 800, 806-07 (Minn. Ct. App. 1988).

safety of others."[164] Deliberate disregard exists where a defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the rights of others and deliberately proceeds to act in conscious or intentional disregard of or with indifference to the rights of others.[165]

Minnesota Statutes allow punitive damages to be sought only by motion to the court requesting leave to amend the pleading to add punitive damages.[166] According to the statute, leave may only be granted upon a finding of *prima facie* evidence in support of the motion. The moving party must submit prima facie evidence that the defendant's acts constituted deliberate disregard for the rights or safety of others.[167] Previously, the standard was one of "willful indifference"; this changed in 1990 to "deliberate disregard," which resulted in a 'heightened standard' for punitive damages."[168]

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[164] MINN. STAT. § 549.20 (2013).
[165] *Gamma-10 Plastics, Inc. v. Am. President Lines, Ltd.*, 32 F.3d 1244, 1255 (8th Cir. 1994).
[166] MINN. STAT.§ 549.20 (2013).
[167] *See* MINN. STAT. §§ 549.191, 549.20.
[168] *See McCloud v. Norwest Bank Minn., N.A.*, No. C4-96-601, 1996 WL 509846, at *5 (Minn. Ct. App. Sept. 10, 1996) (citing *Bougie v. Sibley Manor, Inc.*, 504 N.W.2d 493, 500 n.4 (Minn. Ct. App. 1993)).