CHAPTER 663
TORT ACTIONS

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Note

As to procedural statutes superseded by the rules of court, see note preceding Title 32.

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Case Notes

County fulfilled its duty of providing adequate warning of extremely dangerous shorebreak present at beach park on date of accident. 122 F. Supp. 2d 1140 (2000).

Plaintiff's claims of neglect, abuse, and failure to provide a safe home against care home defendants did not constitute "medical torts" within the meaning of §671-1; thus, plaintiff was not required to submit plaintiff's claims to a medical claims conciliation panel (MCCP) pursuant to §§671-12 and 671-16 as a condition for plaintiff to file suit against defendants, and the circuit court erred in dismissing plaintiff's suit based on plaintiff's failure to submit plaintiff's claims to a MCCP. 128 H. 405 (App.), 289 P.3d 1041 (2012).

"PART I. LIABILITY; SURVIVAL OF ACTIONS

§663-1 Torts, who may sue and for what. Except as otherwise provided, all persons residing or being in the State shall be personally responsible in damages, for trespass or injury, whether direct or consequential, to the person or property of others, or to their spouses or reciprocal beneficiaries, children under majority, or wards, by such offending party, or the offending party's child under majority, or by the offending party's command, or by the offending party's animals, domestic or wild; and the party aggrieved may prosecute therefor in the proper courts. [CC 1859, §1125; RL 1925, §2365; RL 1935, §4049; RL 1945, §10485; RL 1955, §246-1; HRS §663-1; am L 1972, c 144, §2(a) and c 189, §1; gen ch 1985; am L 1997, c 383, §65]

Cross References

Guardian ad litem, see §551-2.
Natural guardian; liability for torts of child, see §577-3.
Suits by and against, see §572-28.

Rules of Court

Guardian ad litem, see HRCP rule 17(c); DCRCP rule 17(c).
Affirmative defenses, see HRCP rule 8(c); DCRCP rule 8(c).

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Case Notes

Generally.

Where plaintiffs argued that State waived its Eleventh Amendment immunity through the enactment of §353-14 and the State's Tort Claims Act [sic], §662-2 and this section, no express consent or applicable waiver provisions found. 940 F. Supp. 1523 (1996).

Where the proper inquiry in this jurisdiction for the assignability of a claim for relief is whether the cause of action alleges a personal injury or an injury to property, and the complaint asserted non-personal injuries, the professional malpractice, breach of fiduciary duty, and fraud claims were assignable. 113 H. 373, 153 P.3d 444 (2007).

Insurer's preferred provider plan did not manifest an intent by the parties to submit to arbitration insured's claims seeking monetary damages for breach of contract, bad faith, and intentional or negligent infliction of emotional distress where, considering all its relevant parts, the plan's provisions (only) meant that arbitration was one of two options an insured may select--arbitration or review by a panel appointed by the insurance commissioner--to challenge or dispute the insurer's determination, action or decision that the insured seeks to change. 124 H. 172 (App.), 238 P.3d 699 (2010).

Bad faith.

Hawaii supreme court, seeking to avoid inequitable or absurd result, would allow plaintiff's bad faith claim, where plaintiff submitted claims to defendant insurer for losses suffered as a third-party beneficiary of insurance contract. 947 F. Supp. 429 (1996).

Independent cause of action for breach of covenant of good faith and fair dealing would not lie, where there was no coverage liability on underlying insurance policy. 955 F. Supp. 1218 (1997).

Where defendant contended that claim for breach of implied covenant of good faith and fair dealing was barred by two-year statute of limitations governing damage to persons and property (§657-7), since there is no element in the cause of action for bad faith that requires a plaintiff to suffer personal injury, it is not in reality a cause of action based upon a "personal injury", and the applicable statute of limitations is six years and is found in the catchall provision of §657-1 (§657-1(4)). 986 F. Supp. 1334 (1997).

Limitations period applicable to cause of action for bad faith, discussed; where complaint was not filed until almost one year after the limitations period had lapsed, to the extent that complaint alleged a claim for the tort of bad faith denial of benefits, summary judgment granted in favor of defendant as to plaintiff's claim for tort of bad faith. 11 F. Supp. 2d 1204 (1998).

Violations of the unfair settlement provision, §431:13-103(a), may be used as evidence to indicate bad faith in accordance with the guidelines of Best Place, Inc. v. Penn America Ins. Co. 27 F. Supp. 2d 1211 (1998).

Plaintiff failed to exhaust the administrative remedies provided to plaintiff by chapter 386; prior to filing a separate suit for bad faith denial of benefits or payments, plaintiff must first exhaust all available administrative remedies before the department of labor and industrial relations, disability compensation division. 28 F. Supp. 2d 588 (1997).

Insurer's motion granted to extent it sought summary judgment as to claims against defendant, where uncontradicted evidence was that defendant was the claims handler for subject insurance policy; defendant did not have a contract with plaintiffs; defendant could not be liable to plaintiffs for bad faith. 74 F. Supp. 2d 975 (1999).

Insurer's motion for summary judgment granted on defendant's counterclaim alleging that insurer acted in tortious breach of implied covenant of good faith and fair dealing by, among other things, its failure to pay underinsured motorist policy benefits, improper use of "excuse" that defendant violated consent-to-settle clause, and wrongful pursuit of its offset theory. 176 F. Supp. 2d 1005 (2001).

Hawaii's Best Place bad faith tort is law that impacts insurance, but does not solely regulate it; therefore, plaintiff's claim as stated arising under Best Place bad faith tort did not fit within Employee Retirement Income Security Act's (ERISA) saving clause. Controlling precedent mandated that plaintiff's claim was related to the processing of a claim and was preempted by ERISA because ERISA's civil remedy was plaintiff's sole avenue of relief. 242 F. Supp. 2d 752 (2002).

Where insured alleged that insurer breached covenant of good faith and fair dealing by initiating action for declaratory judgment, insured would be unable to prove by a preponderance of the evidence that insurer's filing of lawsuit was based on an interpretation of disability insurance policy that was unreasonable; among other things, a reasonable jury could decide issue of fraud in insurer's favor based upon insured's failure to include 1990 surgery on insured's application for the policy. 248 F. Supp. 2d 974 (2003).

Insurance company did not breach the duty of good faith and fair dealing when it decided not to defend the operator of a concrete recycling plant or indemnify the owner where, inter alia, it appeared that plaintiffs did not disagree with insurance company's assertion that at a minimum, there was a genuine dispute as to whether coverage existed under the insurance policy. 307 F. Supp. 2d 1170 (2004).

Insurer's refusal to indemnify was not bad faith, where insurer denied coverage based on an unsettled question of law and, based on the court's ruling, was not ultimately obligated to indemnify insured; it was premature to ascertain whether insurer's refusal to defend was bad faith. 504 F. Supp. 2d 998 (2007).

Controlling date for the purpose of calculating the statute of limitations for plaintiff's claims of tortious breach of contract and bad faith denial of insurance benefits was two years after the last payment of motor vehicle insurance benefits; the date of plaintiff's receipt of payment, within three days of the date on which the payment was mailed, was the date on which the statute of limitations began to run. 520 F. Supp. 2d 1212 (2007).

Plaintiff's claim for bad faith denial of insurance benefits, which arose out of defendants' decision to seek arbitration, failed as a matter of law; any delay that was caused was reasonable in light of plaintiff's actions and did not amount to bad faith conduct. 520 F. Supp. 2d 1212 (2007).

Hawaii courts have not recognized the tort of bad faith outside the insurance context; however, even assuming a bad faith tort exists outside the insurance context, plaintiffs' tort claim for bad faith based upon a mortgage contract fails because plaintiffs' allegations concern pre-contract activities; moreover, even if plaintiffs are attempting to assert bad faith in the performance of a contractual right to foreclose, "[t]he covenant [of good faith] does not 'impose any affirmative duty of moderation in the enforcement of legal rights'". 810 F. Supp. 2d 1125 (2011).

It is well-settled that a defendant "cannot breach the covenant of good faith and fair dealing before a contract is formed"; accordingly, because plaintiff's allegations concerned pre-contract activities (failing to disclose terms, failing to conduct proper underwriting, making an improper loan to plaintiffs), defendants could not be liable for bad faith. 814 F. Supp. 2d 1042 (2011).

The tort of bad faith based upon a mortgage loan contract has not been recognized in Hawaii; moreover, although commercial contracts for "sale of goods" also contained an obligation of good faith in their performance and enforcement, this obligation

did not create an independent cause of action. 850 F. Supp. 2d 1120 (2012).

Where the majority of the alleged failures to act in good faith dealt with past-loan consummation activities, even if Hawaii law did recognize such a claim, plaintiff cannot establish a breach of the covenant of good faith and fair dealing with actions prior to contract formation. 907 F. Supp. 2d 1165 (2012).

Bad faith cause of action may be brought by first-party insured for insurer misconduct. 82 H. 120, 920 P.2d 334 (1996).

Breach of implied contractual duties owed by workers' compensation insurer to employee, including duty to handle and pay claims in good faith, gives rise to independent tort cause of action by employee, the intended third-party beneficiary. 83 H. 457, 927 P.2d 858 (1996).

Where insured presented evidence that raised genuine issue of material fact as to insurer's liability for bad faith if insurer's law firm's conduct of defense breached law firm's duties towards insured and breach was causally induced by insurer's actions, summary judgment erroneously entered in favor of insurer on insured's bad faith claim. 90 H. 39, 975 P.2d 1159 (1999).

Any formal recognition of a claim for relief in favor of an injured claimant against a third-party tortfeasor's insurance company for bad faith settlement practices would require the assignment of the insured tortfeasor's rights arising from an underlying insurance contract to the injured plaintiff; the tort of bad faith settlement practices arises only from a contract of insurance. 105 H. 112, 94 P.3d 667 (2004).

Where there was no underlying insurance contract from which the duty of good faith settlement practices could arise, injured third-party claimant had no right to sue self-insured car rental company for bad faith. 105 H. 112, 94 P.3d 667 (2004).

Where insurer's denial of plaintiff's claim for no-fault benefits was based upon an open question of law--whether "the reasons" as used in §431:10C-304(3)(B) means "all reasons"--there was no bad faith on the part of insurer for not having stated all the reasons for its denial of plaintiff's claim. 109 H. 537, 128 P.3d 850 (2006).

Where plaintiff alleged that insurer handled the denial of plaintiff's claim for no-fault benefits in bad faith, plaintiff was not precluded from bringing bad faith claim even where there was no coverage liability on the underlying policy; thus, trial court erred in determining that, because plaintiff's breach of contract claim failed, plaintiff's bad faith claim must fail. 109 H. 537, 128 P.3d 850 (2006).

Where the question of whether the underinsured motorist benefits settlement from non-party insurer would trigger the two-year statute of limitations under §431:10C-315(a) (1993) for plaintiff's claim against defendant insurer was an open question of law until this case, there was no bad faith on the part of defendant insurer for having denied plaintiff's claim for no-fault benefits on the basis of the statute of limitations. 109 H. 537, 128 P.3d 850 (2006).

Appellate court erred in affirming trial court's grant of partial summary judgment on plaintiff's bad faith claim where there were genuine issues of material fact as to whether insurer breached its duty of good faith by: (1) denying consent to settle on the ground that tortfeasor was financially secure; and (2) unreasonably interpreting its policy as requiring that the plaintiffs pursue tortfeasor to judgment as a precondition to receiving underinsured motorist coverage. 118 H. 196, 187 P.3d 580 (2008).

If a first-party insurer commits bad faith, an insured need not prove that the insured suffered economic or physical loss caused by the bad faith in order to recover emotional distress damages caused by the bad faith. 126 H. 165, 268 P.3d 418 (2011).

Petitioner, who was assigned by the state insurance joint underwriting program bureau to respondent under the assigned claim procedure, was owed a duty of good faith by respondent given that: (1) under the assigned claims procedure, respondent owed the same rights and obligations to petitioner as respondent would owe to an insured to whom respondent had issued a motor vehicle mandatory public liability and property insurance policy; and (2) respondent's good faith covenant implied in motor vehicle policies applied to claimants under the assigned claim procedure irrespective of the absence of a written insurance policy. 129 H. 478, 304 P.3d 619 (2013).

As action for bad faith against insurer is an independent tort, the proper limitation provision for bringing an action should not be that provided in the insurance policy, but rather that provided in §657-7, which limits causes of action for torts to two years. 88 H. 442 (App.), 967 P.2d 639 (1998).

Where insured's bad faith claim was not "any issue referable to arbitration under an agreement in writing" under §658-5, and action for bad faith in the first-party insurance context is independent of the policy, an ongoing appraisal process did not bar insured from bringing a lawsuit alleging bad faith handling of insured's claim. 88 H. 442 (App.), 967 P.2d 639 (1998).

Where claimant failed to make a counteroffer or attempt to engage in meaningful settlement discussions with workers' compensation insurer regarding insurer's offer before suing

insurer for bad faith refusal to settle, failure was fatal to claimant's bad faith claim as it left claimant with nothing more than speculation to support claimant's allegations. 112 H. 195 (App.), 145 P.3d 738 (2006).

Where workers' compensation insurer's settlement offer simply stated that the amount offered "would be for closure of your entire workers' compensation claim", offer could not reasonably be interpreted as requiring workers' compensation claimant to release insurer from tort liability. 112 H. 195 (App.), 145 P.3d 738 (2006).

In the context of the Hawaii workers' compensation scheme, a physician is an incidental beneficiary rather than an intended third-party beneficiary of the employer's workers' compensation insurance policy; thus, as physician was not an intended third-party beneficiary of insurer's insurance policy, physician did not have a cause of action in tort for bad faith against insurer. 114 H. 122 (App.), 157 P.3d 561 (2007).

Causation.

Motion to dismiss count of plaintiffs' third amended complaint alleging that the design, manufacture, and/or production of subject chemicals by certain defendants constituted an ultrahazardous activity granted; the complaint was devoid of any allegation that plaintiffs' claimed injuries flowed directly from the act of manufacturing the subject chemicals, nor could plaintiffs make such causation allegations. 293 F. Supp. 2d 1140 (2002).

Defendant's motion for summary judgment denied in part where a genuine issue of material fact existed regarding whether or not defendant company's tofu caused plaintiff's immediate illness; no evidence that plaintiff ate anything else other than the tofu; reasonable to infer that eating the tofu caused plaintiff to become ill due to the immediate reaction plaintiff had from eating the tofu; medical testimony is not necessary to support the inference that tofu caused these symptoms where an individual has eaten only tofu and then suffers an upset stomach and diarrhea. 819 F. Supp. 2d 1132 (2011).

Defendant's motion for summary judgment granted in part where plaintiff failed to establish a genuine issue of material fact that any of plaintiff's injuries beyond plaintiff's immediate upset stomach and diarrhea were caused by eating defendant company's tofu; medical testimony is necessary to support plaintiff's allegations that the tofu caused plaintiff later alleged injuries beyond plaintiff's diarrhea and immediate sickness. 819 F. Supp. 2d 1132 (2011).

Intervening negligence and proximate causation. 45 H. 128, 363 P.2d 969 (1961).

Negligence; causation construed. 57 H. 460, 558 P.2d 1018 (1977).

Where causation is a primary issue, it is plain and reversible error for a trial court not to explain the meaning of "legal cause" to a jury. 77 H. 282, 884 P.2d 345 (1994).

When read as a whole, or when considering both jury instruction where trial court used term "legal cause" as opposed to "substantial factor" and instruction that properly defined "legal cause", the instructions given were not prejudicially insufficient, erroneous, inconsistent, or misleading. 78 H. 230, 891 P.2d 1022 (1995).

Where department of education's (DOE) negligent acts contributed to the conditions that facilitated the teacher's molestation of the girl students, the DOE's negligence was a substantial factor in causing the plaintiff parents' injuries; thus, trial court did not err in finding that the DOE's negligence legally caused the plaintiff parents' various psychological injuries. 100 H. 34, 58 P.3d 545 (2002).

Based upon the fact that the perpetrator of minor's injuries had not been determined, department of human services social worker's willingness and rush to entrust the care of minor to mother, complete disregard of the medical evidence, and lenient verbal service agreement, and that minor suffered injuries while in mother's care and custody, the trial court properly concluded that department's conduct legally caused minor to sustain the injuries. 117 H. 262, 178 P.3d 538 (2008).

Circuit court wrongly granted judgment as a matter of law to plaintiffs on negligent treatment where (1) evidence existed from which a jury could have concluded that patient's myopathy was not caused by physician's steroid treatment, but by patient's preexisting lupus or some other undetermined cause, and (2) the jury could have found that although prescribing a four-week steroid treatment was negligent, the three-week treatment actually administered was not. 125 H. 253, 259 P.3d 569 (2011).

In breach of express warranty actions based on seller's failure to deliver goods in conformance with an express promise, affirmation of fact, or description, "substantial factor" test proper standard to apply in determining proximate cause. 86 H. 383 (App.), 949 P.2d 1004 (1997).

Evidence fell short of providing the causal nexus between any alleged negligence of defendants and patient's death where there was no expert medical testimony that negligence by defendants caused patient's death "to a reasonable medical probability", leaving the jury to speculate that defendants' "action or inaction might or could have" resulted in patient's death

seventeen months later. 119 H. 136 (App.), 194 P.3d 1098 (2008).

Where the causal link between any alleged negligence and patient's death seventeen months after the surgeries was not within the realm of "common knowledge", and the role that preexisting conditions and/or subsequent complications played in patient's death was not within the knowledge of the average layperson, patient sustained a "sophisticated injury", and a jury needed expert medical testimony to determine whether any alleged negligence by defendants contributed to patient's death; plaintiffs were thus required to present expert medical testimony on the causal link between any alleged negligence and patient's death. 119 H. 136 (App.), 194 P.3d 1098 (2008).

Children.

Liability of infant for damages to hired chattel resulting from infant's immoderate use of the chattel. 8 H. 237 (1891).

Father not liable for act of infant unemancipated from childish instincts. 8 H. 715 (1891).

Parent liable for tort of minor child when child would be liable. 15 H. 124 (1903); 23 H. 541, 543 (1916).

Contributory negligence of mother of six-year old child not imputed to child. 29 H. 604 (1927). See 47 H. 281, 287, 386 P.2d 872 (1963).

Degree of care toward children on highway. 40 H. 417 (1953).

Child has no cause of action for injuries to parent not resulting in death. 41 H. 634 (1957); 244 F.2d 604 (1957).

A six-year old may be capable of contributory negligence; minor's standard of care. 47 H. 281, 386 P.2d 872 (1963).

Minor children liable in tort to parents, when. 51 H. 74, 450 P.2d 998 (1969).

Minor children may sue their parents for negligence. 51 H. 484, 462 P.2d 1007 (1969).

Negligence; standard of care for children. 54 H. 611, 513 P.2d 487 (1973).

Parent may recover damages for loss of filial consortium of an injured adult child. 71 H. 1, 780 P.2d 566 (1989).

Damages.

Defendant insurance company's motion for summary judgment granted as to plaintiff's claim for punitive damages, where plaintiff alleged that defendant's conduct was wanton and oppressive; there was not sufficient evidence to reach clear and convincing standard, and thus the question of punitives could not be put to a jury. 999 F. Supp. 1369 (1998).

If plaintiff succeeded on bad faith claim, and plaintiff could show that plaintiff's emotional distress damages were

proximately caused by defendant insurance company's actions, plaintiff could recover damages for plaintiff's emotional distress as incidentally flowing from the breach. 999 F. Supp. 1369 (1998).

Any recovery of damages for loss of consortium by (former) spouse limited to duration of plaintiffs' (i.e., patient and patient's spouse) marriage. 125 F. Supp. 2d 1249 (2000).

Plaintiff failed to assert damages which were not speculative; plaintiff's claims requiring the element of actual damages were dismissed. 522 F. Supp. 2d 1272 (2007).

Where plaintiff was seriously injured while attending an expo at a hotel when a registration booth fell on plaintiff, punitive damages claims against the defendant that owned and operated the hotel and the defendant that provided and assembled the booth, discussed. 634 F. Supp. 2d 1130 (2009).

Defendant's motion for partial summary judgment on plaintiffs' claim for punitive damages denied, where defendant argued that summary judgment should be granted because it complied with government regulations and/or industry customs such that the record as a whole did not support a finding of punitive damages, and it did not act with the requisite culpability because side airbags were an emerging technology and it was simply cautious in rolling out the technology. 692 F. Supp. 2d 1256 (2010).

Economic loss rule did not preclude plaintiff's professional negligence claim which arose from a sufficiently alleged breach of a duty arising from a professional relationship, not from a contract; defendant's motion to dismiss on this issue denied. 693 F. Supp. 2d 1192 (2010).

Punitive damages not allowed against principal unless principal participated in the wrongful act or authorized or approved it. 8 H. 411 (1892); 24 H. 579 (1918); 29 H. 524 (1926).

Punitive damages may be awarded though actual damages nominal. 40 H. 492 (1954).

Explosives, concussion damage. 42 H. 353 (1958).

Use of mathematical formula to compute damages for pain and suffering improper. 47 H. 408, 390 P.2d 740 (1964); 48 H. 22, 395 P.2d 365 (1964). But see §635-52.

Defendant title company was liable to plaintiffs only for damages limited to the transaction for which certificate of title search was intended to influence, that is, only for damages plaintiffs suffered in the transaction wherein they purchased the property; defendant's negligence was not the proximate cause of the loss of anticipated profits. 51 H. 462, 462 P.2d 905 (1969).

Plaintiff has duty to mitigate damages. 56 H. 507, 542 P.2d 1265 (1975).

Clear and convincing standard of proof adopted for all punitive damage claims. 71 H. 1, 780 P.2d 566 (1989).

Punitive damages may be awarded in products liability action based on underlying theory of strict liability where plaintiff proves requisite aggravating conduct on part of defendant. 71 H. 1, 780 P.2d 566 (1989).

Mental distress damages may be recovered in a products liability implied warranty action. 74 H. 1, 837 P.2d 1273 (1992).

Apportionment of damages, discussed, where plaintiff had a preexisting condition, had been injured or plaintiff's condition had been aggravated by independent acts of successive tortfeasors, and had allegedly caused some of plaintiff's own injuries after the accident from which plaintiff had brought suit. 77 H. 282, 884 P.2d 345 (1994).

Circuit court correctly granted plaintiff-appellee's motion for directed verdict as to punitive damages regarding interference with contract claim, where defendants-appellants failed to show actual damages. 78 H. 40, 890 P.2d 277 (1995).

Punitive damages may not be awarded in bad faith tort case unless evidence reflects something more than the conduct necessary to establish the tort. 82 H. 120, 920 P.2d 334 (1996).

Emotional distress damages resulting from breach of contract recoverable only where parties specifically provide for them in the contract or where the nature of the contract clearly indicates that such damages are within the parties' contemplation or expectation in the event of a breach. 89 H. 234, 971 P.2d 707 (1999).

Tort recovery, including recovery of punitive damages, is not allowed under Hawaii law for breach of contract in the absence of conduct that: (1) violates a duty that is independently recognized by principles of tort law; and (2) transcends the breach of the contract. 89 H. 234, 971 P.2d 707 (1999).

Where plaintiff alleging defamation failed to prove "actual damages" caused by newspaper's negligence, summary judgment for newspaper properly granted. 89 H. 254, 971 P.2d 1089 (1999).

Where a person is deprived of the use of his or her property due to the tortious conduct of another, he or she may recover "loss of use" damages; such damages are, as a general matter, limited to the period of time reasonably necessary to obtain a replacement, to effect repairs, or the date upon which the property is returned. 97 H. 38, 33 P.3d 204 (2001).

Under Hawaii law, a party is not immune from liability for civil damages based upon that party's fraud engaged in during prior litigation proceedings. 102 H. 149, 73 P.3d 687 (2003).

Where award of general damages, consisting of damages to credit, general reputation, and loss of business opportunities, were personal to aircraft lessors, appellate court erred by holding that general damages were assignable. 102 H. 189, 74 P.3d 12 (2003).

The collateral source rule prohibits reducing a plaintiff's award of medical special damages to reflect the discounted amount paid by medicare/medicaid; the amounts billed in excess of the medicare/medicaid amount paid are not irrelevant or inadmissible on the issue of medical special damages. 106 H. 81, 101 P.3d 1149 (2004).

Where damages alleged by association of apartment owners against masonry subcontractor consisted of purely economic losses not recoverable in negligence, the association's negligence claims based on violations of contract specifications were barred by the economic loss rule. 115 H. 232, 167 P.3d 225 (2007).

As question of whether defendant's fraudulent misrepresentation caused damage to plaintiffs by preventing them from receiving the "fair compromise value" of their claims was one upon which the trier of fact must be guided by expert legal testimony, trial court did not err in concluding that "expert lawyer testimony directed to the numerous compromise factors, and how they would apply to each plaintiff's case", was required. 116 H. 277, 172 P.3d 1021 (2007).

Where plaintiffs, in their settlement fraud claim, did not seek rescission of their settlement agreements in their complaint, but based on the allegations of their complaint, "unequivocally and knowledgeably" elected to affirm their settlement agreements and pursue an action for fraud, trial court did not err in concluding that the measure of damages for the plaintiffs' fraud action was "the fair compromise value of the claim at the time of the settlement". 116 H. 277, 172 P.3d 1021 (2007).

Where unsubstantiated conclusions of plaintiffs' experts were insufficient to raise a genuine issue of material fact that would preclude summary judgment, trial court properly concluded that plaintiffs were "unable to prove the fact or amount of settlement fraud damages as a matter of law" and was thus correct in granting summary judgment in favor of defendants. 116 H. 277, 172 P.3d 1021 (2007).

Appellate court erred in concluding as a matter of law that any unreasonable interpretation of the policy by insurer would not have prejudiced plaintiffs where there were genuine issues of material fact as to whether (1) insurer's persistent reliance on an unreasonable interpretation of its underinsured motorist policy caused an unreasonable delay in payment of benefits and

(2) insurer's initial refusal to consider a potentially available and expedient avenue of resolving the plaintiff's tort claim caused the controversy to drag on longer than necessary, causing the plaintiffs to incur both pre-lawsuit attorney's fees and loss of interest on principal. 118 H. 196, 187 P.3d 580 (2008).

Where a jury awarded special damages but returned a zero general damages award for pain and suffering, it was not an abuse of discretion for the court to instruct the jury that the verdict was inconsistent, and to direct the jury to continue deliberations on the amount of general damages to be awarded; when, after resubmittal, the jury returned a general damages award of $1 that was the symbolic equivalent of no award in light of its special damages award of $12,280, the verdict was inconsistent; thus, under the circumstances of the case, a new trial on damages had to be granted. 125 H. 446, 263 P.3d 726 (2011).

Punitive damages, when recoverable. 1 H. App. 312, 617 P.2d 1230 (1980).

Inconsistent for jury not to award pain and suffering general damages where it awarded special damages for medical expenses and lost wages. 80 H. 188 (App.), 907 P.2d 774 (1995).

"Pure" comparative negligence principles should be applied to reduce a plaintiff's recovery in those tort actions for breach of express warranty where a plaintiff is found to be negligent. 86 H. 383 (App.), 949 P.2d 1004 (1997).

Respondent's conduct was sufficient to give rise to tort liability and some award of punitive damages based on respondent's intentional conduct, but did not rise to the high degree of reprehensibility necessary to warrant the amount of punitive damages awarded to petitioner by the circuit court in violation of respondent's due process rights. 130 H. 58 (App.), 305 P.3d 474 (2013).

Defamation.

Defendants' statements implying attorney's poor client representation constitutionally protected speech and not defamatory where general and specific contexts in which statements were made did not imply assertion of an objective fact and statements were incapable of being proved true or false. 56 F.3d 1147 (1995).

Totality of the circumstances revealed that statements by president of labor organization were a call to arms, not assertions of objective fact; the statements were not defamatory, and therefore were fully protected by federal labor law. 302 F.3d 998 (2002).

Plaintiff was not a public figure for purposes of its defamation claim. 833 F. Supp. 802 (1993).

Statements in editorial about plaintiff (when plaintiff was mayor) were protected by First Amendment and thus, not actionable. 930 F. Supp. 1403 (1995).

Where alleged defamatory statements occurred during a conversation between an employee of defendant and representatives of defendant's temporary disability insurer, there was a qualified privilege as defendant and its insurer shared a common interest, their business relationship; an employer who communicates information to its insurance carrier is acting, at the very least, to promote the private interest of the companies; questions remained regarding potential abuse of the privilege. 26 F. Supp. 2d 1241 (1998).

Defendant magazine's motion for judgment on the pleadings, or in the alternative, for summary judgment granted, where, inter alia, plaintiff complained of general taint of magazine article and plaintiff's complaint also identified specific statements in the article that plaintiff took to be defamatory. 190 F. Supp. 2d 1192 (2001).

Preemption by Fair Credit Reporting Act of plaintiff's defamation and negligence claims against furnishers of credit information and consumer reporting agencies, discussed. 293 F. Supp. 2d 1167 (2003).

Summary judgment granted for defendants on plaintiff's defamation claim, where, inter alia, the allegedly defamatory statement was true by plaintiff's own admission. 409 F. Supp. 2d 1206 (2005).

Plaintiff was a general public figure in the limited context of the surfing community; because plaintiff was a public figure, plaintiff would be required to prove by clear and convincing evidence that defendants acted with "actual malice". 528 F. Supp. 2d 1081 (2007).

Plaintiff gamer's defamation claim sufficient where plaintiff alleged that plaintiff was falsely accused of being involved in real money transfers, that those statements were published to other players, that defendants were negligent in their investigation and in publishing that accusation, and that plaintiff had suffered injuries; defendants' motion to dismiss denied. 730 F. Supp. 2d 1213 (2010).

Portions of plaintiff's defamation claim based on defendant's 2007 report and alleged 2007 statements were time-barred, where plaintiff filed the action in 2010. 892 F. Supp. 2d 1245 (2012).

Public official. 50 H. 648, 448 P.2d 337 (1968).

Qualified privilege; publication. 52 H. 366, 477 P.2d 162 (1970).

Libel per se; qualified privilege. 53 H. 456, 497 P.2d 40 (1972).

Broadcast charging falsely that person is communist is libel per se. 56 H. 522, 543 P.2d 1356 (1975).

Qualified privilege discussed. 57 H. 390, 557 P.2d 1334 (1976).

Trial court clearly erred, to defendant's prejudice, by leaving to jury determination of existence of a qualified privilege. 76 H. 310, 876 P.2d 1278 (1994).

Defendant's statement not false or defamatory where statement was rhetorical hyperbole--figurative or hyperbolic language that would negate the impression that defendant was asserting an objective fact about plaintiff; statement thus was constitutionally protected. 88 H. 94, 962 P.2d 353 (1998).

Where plaintiff in defamation action failed to prove that newspaper had acted with actual malice when it erroneously published story naming plaintiff as the target of an investigation, summary judgment for newspaper properly granted. 89 H. 254, 971 P.2d 1089 (1999).

Compelled self-publication of the reason for termination by a former employee to prospective employers does not satisfy the requirement of publication to a third party necessary to sustain a claim for defamation. 100 H. 149, 58 P.3d 1196 (2002).

Union shop steward's claim for defamation was not preempted by the National Labor Relations Act where steward pled that employer's statements impugned steward's reputation and held steward up to scorn and ridicule and feelings of contempt and execration in the community at large, that the statements were untrue and that employer knew that they were untrue at the time, and that the statements were made with malice. 109 H. 520, 128 P.3d 833 (2006).

Trial court properly granted summary judgment in favor of defendant magazine and article's author on plaintiff's defamation claim where, when magazine article was considered as a whole, it did not state or infer that plaintiff was in fact the serial killer or that plaintiff was very likely the serial killer; the plain meaning of the article was that plaintiff was considered a suspect in the attacks, a circumstance that the plaintiff readily conceded. 121 H. 120 (App.), 214 P.3d 1110 (2009).

Trial court properly granted summary judgment in favor of defendant newspaper and article's author on plaintiff's defamation claim where, when newspaper article was considered as a whole, it did not go beyond accurately characterizing plaintiff as someone that the police considered to be a "serious suspect" in the three attacks, and the author's reference to plaintiff as fitting the "general description" of the

perpetrator that was provided by the victim could not rationally be understood as an assertion that plaintiff was, in fact, the serial killer. 121 H. 120 (App.), 214 P.3d 1110 (2009).

Defenses.

Fact that manufacturers of blood clotting agent followed industry standards in negligence action by hemophiliac patients who tested positive for HIV did not necessarily immunize defendants from liability. 971 F.2d 375 (1992).

Where defendant contended that claim for breach of implied covenant of good faith and fair dealing was barred by two-year statute of limitations governing damage to persons and property (§657-7), since there is no element in the cause of action for bad faith that requires a plaintiff to suffer personal injury, it is not in reality a cause of action based upon a "personal injury", and the applicable statute of limitations is six years and is found in the catchall provision of §657-1 (§657-1(4)). 986 F. Supp. 1334 (1997).

It could not be disputed that by the time the underinsured motorist benefits were paid, plaintiff either knew or should have known that defendant's alleged refusal to engage in settlement negotiations caused plaintiff injury; any claims for emotional distress were time-barred. 11 F. Supp. 2d 1204 (1998).

Limitations period applicable to cause of action for bad faith, discussed; where complaint was not filed until almost one year after the limitations period had lapsed, to the extent that complaint alleged a claim for the tort of bad faith denial of benefits, summary judgment granted in favor of defendant as to plaintiff's claim for tort of bad faith. 11 F. Supp. 2d 1204 (1998).

Plaintiffs' claims against certain defendants were time-barred, where those defendants were first named as parties in first amended complaint filed more than two years after plane crash and the claims did not relate back to the date the original complaint was filed. 289 F. Supp. 2d 1197 (2003).

Defendant automobile manufacturer may assert a defense of comparative negligence to plaintiff's negligence and strict liability claims regarding injuries stemming from the "second collision" between plaintiff's head and the steering column that occurred due to the failure of the airbags to deploy. 370 F. Supp. 2d 1091 (2005).

General Aviation Revitalization Act (GARA) rolling statute of repose discussed in dispute arising from a helicopter crash: among other things, the impeller which was modified was protected by the GARA and no liability could be imposed upon defendants for the impeller. 457 F. Supp. 2d 1112 (2006).

Defendants' motion for partial summary judgment granted as to plaintiff's claim that defendants misappropriated and used plaintiff's name and likeness in an unfavorable publication without plaintiff's authorization; the published article, photographs, and liner notes were newsworthy and relevant. 528 F. Supp. 2d 1081 (2007).

Where defendants argued that the intentional infliction of emotional distress/negligent infliction of emotional distress claims were time-barred because the time began to run on the date of discharge, there was a triable issue of fact as to when plaintiffs-intervenors discovered the cause of their alleged emotional distress. 535 F. Supp. 2d 1149 (2008).

Portions of plaintiff's defamation claim based on defendant's 2007 report and alleged 2007 statements were time-barred, where plaintiff filed the action in 2010. 892 F. Supp. 2d 1245 (2012).

Illegal act of plaintiff not related to tortious act of defendant is no defense. 5 H. 140 (1884).

Unavoidable accident. 47 H. 408, 390 P.2d 740 (1964); 48 H. 330, 402 P.2d 289 (1965).

Contributory negligence. 48 H. 22, 395 P.2d 365 (1964).

Assumption of risk. 49 H. 1, 406 P.2d 887 (1965); 49 H. 351, 417 P.2d 816 (1966).

Comparative negligence applies only to claims accruing after July 14, 1969, and the rule of contributory negligence continues on claims that accrued before that date. 52 H. 129, 471 P.2d 524 (1970).

Interspousal tort immunity upheld. 63 H. 653, 634 P.2d 586 (1981).

In implied warranty and strict products liability tort actions, express assumption of risk is available as separate defense that may bar recovery; implied assumption of risk is defense only when plaintiff's assumption of risk is a form of contributory negligence. 74 H. 1, 837 P.2d 1273 (1992).

Assumption of risk defense generally applied to tort claims for relief. 74 H. 85, 839 P.2d 10 (1992).

By plaintiff's participation in the sport of golfing, plaintiff assumed all of the ordinary dangers incident to the game, i.e., the inherent risks, including the inherent risk that golf participants will be hit by errant shots; as a co-participant, defendant's errant shot was neither intentional nor reckless, and defendant had no duty to warn plaintiff of the errant ball; thus, the doctrine of primary implied assumption of risk applied to bar plaintiff's claim against defendant. 110 H. 367, 133 P.3d 796 (2006).

In complaints alleging intentional interference with contractual relations and prospective economic advantage,

tortious inducement of breach of fiduciary duty and tortious interference with contractual relations, where there were no allegations that indicated that lawyers "possessed a desire to harm which is independent of the desire to protect their clients", and the complaints were devoid of any allegations that the lawyers "acted for personal gain or with ill-will towards" plaintiffs, lawyers' management of the inspection and review process of plaintiff's books and records fell within the purview of the litigation privilege. 113 H. 251, 151 P.3d 732 (2007).

Where defendant lawyers' conduct at issue occurred during a quasi-judicial proceeding (arbitration), notwithstanding the fact that the proceeding was temporarily stayed, litigation privilege was applicable to appeal. 113 H. 251, 151 P.3d 732 (2007).

Where conduct plaintiff sought to enjoin was the intentional tort of battery, plaintiff was not required to exhaust plaintiff's remedies under the collective bargaining agreement; also, where plaintiff claimed defendant was causing plaintiff "psychological stress", the infliction of emotional distress was also a cognizable tort claim that constituted an exception to the general rule that plaintiff was required to exhaust plaintiff's contractual remedies under the collective bargaining agreement before seeking judicial relief. 121 H. 1, 210 P.3d 501 (2009).

UCC statute of limitations applies to breach of express warranty claim for personal injury. 86 H. 383 (App.), 949 P.2d 1004 (1997).

Primary implied assumption of risk is a discrete and complete defense in sports injury cases where the defendant's conduct at issue is an inherent risk of the sports activity; in determining whether the defendant's conduct is an inherent risk of the sports activity, the nature of the activity, the relationship of the defendant to the activity and the relationship of the defendant to the plaintiff must be considered. 96 H. 51 (App.), 25 P.3d 826 (2001).

The circuit court's findings that defendants, state-employed prison doctors, were negligent pertained to the exercise of purely medical discretion because they involved strictly medical diagnosis and treatment, and the decisions made did not involve policy making or any other type of governmental discretion; thus, defendants were not entitled to qualified immunity, and the court did not err when it denied their motion for summary judgment. 131 H. 239 (App.), 317 P.3d 683 (2013).

Dram shop.

Person injured by intoxicated person may recover from tavern which supplied liquor to the intoxicated person in violation of statute. 62 H. 131, 612 P.2d 533 (1980).

Duty.

Plaintiff failed to demonstrate facts to establish duty owed by defendant, where, inter alia, no evidence found of custody or control of plaintiff's employer's machinery or employees that would create special relationship between defendant and plaintiff's employer or plaintiff. 863 F. Supp. 1193 (1994).

In case arising out of alleged assault on airplane, tort claim for breach of duty of reasonable care preempted by Airlines Deregulation Act. 905 F. Supp. 823 (1995).

Evidence demonstrated that plaintiffs had never had a relationship with defendant; without a relationship between plaintiffs and defendant, there could be no legal duty. 920 F. Supp. 1080 (1996).

Defendant, which acted as custodian, granted summary judgment on counts where plaintiff alleged that defendant acted in a negligent or grossly negligent manner by permitting securities to be substituted into custodial account and by releasing cash as alleged. 30 F. Supp. 2d 1255 (1997).

Plaintiff's negligence claim failed as a matter of law; there was no "duty" to not arrest without probable cause. 127 F. Supp. 2d 1129 (2000).

In a case arising out of a plane crash where passengers killed in the crash had obtained discounted tour ticket vouchers in exchange for attending a time-share presentation and purchasing a time-share, defendants (companies connected with the time-share presentation and the selling of the ticket vouchers) owed no duty to them. 289 F. Supp. 2d 1197 (2003).

Plaintiffs' negligence claims were dismissed with prejudice; there was no basis for allowing derivative litigation over claims that an opponent's prior litigation conduct in another case amounted to negligence. 330 F. Supp. 2d 1101 (2004).

Defendant's motion for summary judgment denied, where the court found the existence of a designated driver duty within the Restatement (Second) of Torts §324A framework, and there were critical genuine issues of material fact regarding all four of the elements required to sustain a negligence claim. 415 F. Supp. 2d 1163 (2006).

Where defendant did not make a promise to the effect that defendant would serve as the designated driver for motorist, defendant could not be liable to third persons for the negligent undertaking of a duty as outlined in the Restatement (Second) of Torts §324A. 488 F. Supp. 2d 1062 (2006).

Where defendant hospital conceded it had a duty to reasonably care for plaintiffs' son's remains but contended that plaintiffs failed to establish that defendant breached that duty as a matter of law, defendant was liable for negligence for the loss of plaintiffs' son's remains as a matter of law, and there was a genuine issue of material fact as to whether defendant's delay regarding the birth and death certificates was reasonable. 597 F. Supp. 2d 1100 (2009).

Plaintiff, who appeared to have sold its option to purchase property to an alleged buyer, sufficiently alleged a professional negligence claim against defendant, who was retained by buyer to prepare an environmental summary and report on property that would be used by both plaintiff and buyer; the facts, if proven, would establish that defendant was aware that the report would be used by both buyer and plaintiff in negotiations over the property's value and for obtaining financing, and that defendant intended plaintiff to benefit directly from its summary and report; the facts, if proven, would establish a duty. 693 F. Supp. 2d 1192 (2010).

Plaintiff gamer's negligence and/or gross negligence claim sufficient where plaintiff alleged that defendants acted with negligence or gross negligence in designing, developing, manufacturing, inspecting, testing, marketing, advertising, promoting, selling, distributing, maintaining, revising, servicing, administrating, and overseeing the game in question; plaintiff further alleged defective product claims and that defendant failed to warn which were distinct from plaintiff's fraud allegations; defendants' motion to dismiss denied. 730 F. Supp. 2d 1213 (2010).

Defendants were entitled to qualified immunity where, even if they violated the standard of care in failing to ensure that pregnant pre-trial detainee plaintiff received testing and consultation as ordered, there was no evidence that would support a finding that defendants acted with malice; defendant's motion for summary judgment on plaintiff's negligence claim granted. 760 F. Supp. 2d 970 (2010).

Defendant city and county of Honolulu's motion to dismiss plaintiff's negligence claim based on immunity denied where it was plausible to infer that, as alleged by plaintiff, the police officer who shot plaintiff with a taser without provocation, punched and kicked plaintiff, and arrested plaintiff, and the police officer who assisted the arresting officer, were acting with malice. 761 F. Supp. 2d 1080 (2010).

Plaintiffs could not allege that defendants owed them a duty of care sounding in negligence when plaintiffs only dealt with defendants in a borrower and lender capacity. 795 F. Supp. 2d 1098 (2011).

Whether hotel operator had an affirmative obligation to post a lifeguard at its pool where a hotel guest nearly drowned, and whether the failure to do so constituted unreasonable risk of harm were questions of material fact for a jury; thus, summary judgment was denied. 911 F. Supp. 2d 907 (2012).

Where plaintiff asserted that the police department owed plaintiff a duty of due care to establish and maintain written personnel policies that conformed to applicable laws and standards, even if the court were to rule that the police department had the duty described, plaintiff presented no evidence that the police department breached that duty. 937 F. Supp. 2d 1220 (2013).

No finding of negligence where defendants had no duty to protect plaintiff from criminal acts of third person. 73 H. 158, 829 P.2d 512 (1992).

Publisher of work of general circulation that neither authored nor guaranteed the contents of its publication had no duty to warn public of accuracy of contents of its publication. 73 H. 359, 833 P.2d 70 (1992).

Trial court correctly refused to recognize new tort duty on part of motorcyclists to wear protective headgear. 74 H. 308, 844 P.2d 670 (1993).

Section 281-78(a)(2)(A) (1989) imposes a duty to innocent third parties upon a liquor licensee who sells alcohol to a minor; the duty includes the situation where an innocent third party has been injured by an intoxicated minor other than the minor to whom the liquor was sold, subject to determinations by the trier of fact on the issue of reasonable foreseeability. 76 H. 137, 870 P.2d 1281 (1994).

Circuit court erred in granting defendants' motion for summary judgment where plaintiff was a business visitor of hotel and there was a genuine issue of material fact regarding issue of reasonable foreseeability. 79 H. 110, 899 P.2d 393 (1995).

Insurer has legal duty, implied in first- and third-party insurance contracts, to act in good faith in dealing with insured; breach of that duty gives rise to independent tort cause of action. 82 H. 120, 920 P.2d 334 (1996).

Plaintiff's allegations stated a claim that potentially could warrant relief under a theory based on duty by defendant wife to refrain from conduct that would create an unreasonable risk of harm to another through husband's conduct. 82 H. 293, 922 P.2d 347 (1996).

Where deceased was not in the custody of defendant, a special relationship did not exist to impose a duty on defendant to prevent deceased's suicide. 83 H. 154, 925 P.2d 324 (1996).

Manufacturer not negligent in failing to warn of "blind zone" danger where danger involved in using straddle carrier was

obvious and apparent, discernible by casual inspection, and generally known and recognized. 85 H. 336, 944 P.2d 1279 (1997).

Manufacturers are not subject in Hawaii to an independent, continuing duty to retrofit its products, subsequent to their manufacture and sale, with post-manufacture safety devices that were unavailable at the time of manufacture. 85 H. 336, 944 P.2d 1279 (1997).

No duty by insurance agent to advise insured of option to stack coverage where no evidence agent had informed insureds in the past of changes in insurance laws such that insured would rely on agent to inform them of changes in available coverage without their inquiry. 87 H. 307, 955 P.2d 100 (1998).

As dangers of riding unrestrained in open cargo bed of pickup truck are obvious and generally known to ordinary user, truck manufacturer had no duty to warn potential passengers of those dangers. 87 H. 413, 958 P.2d 535 (1998).

Hawaii civil rights commission is subject to a duty to follow its own administrative rules, utilizing reasonable care, and was potentially negligent for instituting legal action barred by its own administrative rules. 88 H. 85, 962 P.2d 344 (1998).

Where police department did not have "special relationship" with victim, department did not have duty to protect victim or victim's parents from harm caused by assailant. 89 H. 315, 972 P.2d 1081 (1999).

Tire manufacturer and distributor and inner tube manufacturer and distributor did not have duty to warn of dangers of multi-piece rim assembly where neither manufacturer contributed to the alleged defect, had no control over it, and did not produce it. 92 H. 1, 986 P.2d 288 (1999).

Where no evidence that road grader owner knew or had reason to know of dangerous condition of tire rim assembly and that condition created a foreseeable risk of harm to tire repairman, plaintiff failed to establish genuine issue of material fact as to whether owner was negligent for failure to discharge its duty of ordinary care or had either actual or constructive notice of possible danger of lock ring exploding. 92 H. 1, 986 P.2d 288 (1999).

Because a commercial establishment should be aware of the potentially hazardous conditions that arise from its mode of operation, an injured plaintiff need not prove that the defendant had actual notice of the specific instrumentality causing his or her injury; notice is imputed from the establishment's mode of operation; application of this mode of operation rule limited to circumstances such as in this case. 93 H. 417, 5 P.3d 407 (2000).

The duty to use reasonable care in the preparation of a body for funeral, burial, or crematory services, or in the rendition of those services, runs to the decedent's immediate family members who are aware of the services and for whose benefit the services are being performed; immediate family members are defined as the decedent's surviving spouse, reciprocal beneficiary, children, parents, siblings, or any other person who in fact occupies an equivalent status. 96 H. 147, 28 P.3d 982 (2001).

A physician does not owe a duty to non-patient third parties injured in an automobile accident caused by the patient's adverse reaction to a medication that is not a controlled substance and negligently prescribed by the physician three days earlier where the alleged negligence involves such "prescribing decisions" as whether to prescribe the medication in the first instance, which medication to prescribe, and the dosage prescribed. 98 H. 296, 47 P.3d 1209 (2002).

A physician owes a duty to non-patient third parties injured in an automobile accident caused by an adverse reaction to a medication prescribed three days earlier where the physician has negligently failed to warn the patient that the medication may impair driving ability and where the circumstances are such that the reasonable patient could not have been expected to be aware of the risk without the physician's warning. 98 H. 296, 47 P.3d 1209 (2002).

Department of education breached the duty it owed to molested students' parents by: (1) reinstating teacher without conducting a reasonable investigation to ascertain another student's allegation; (2) failing to supervise or restrict teacher's contact with children after principal became aware or should have become aware that teacher resumed molestation conduct; and (3) principal's interviewing and inducing students to disclose molestation and failing to notify students' parents of that disclosure. 100 H. 34, 58 P.3d 545 (2002).

The duty of care that the department of education (DOE) owes to students and their parents is, on a general level, a duty to take whatever precautions are necessary reasonably to ensure the safety and welfare of the children entrusted to its custody and control against harms that the DOE anticipates, or reasonably should anticipate; this duty arises from the "special relationship" that the DOE shares with its students and their parents. 100 H. 34, 58 P.3d 545 (2002).

Appellate court erred in concluding as a matter of law that because privately owned road had been impliedly dedicated to the public, the public had an easement over the road, which would have subjected the owner of the easement to the duty to keep it in repair and to liability for injuries caused by such failure;

whether an implied easement exists depends on the parties' intent and was a question of fact for the jury. 103 H. 385, 83 P.3d 100 (2004).

While the fact that the privately owned road was platted on a subdivision map, that §265A-1 authorized counties to repair and maintain private streets, and §46-16 authorized counties to regulate traffic on private streets, and each of these factors was significant in determining which party or parties had control of the private roadway, appellate court erred in concluding as a matter of law that defendant property owners did not control roadway and thus had no duty to maintain, repair, or warn of a dangerous condition; the issue of control of the roadway was a question of fact for the jury. 103 H. 385, 83 P.3d 100 (2004).

Under Act 190, L 1996, the State is required to warn of "extremely dangerous" ocean conditions (1) that occur at "public beach parks", (2) if these conditions are typical for the specific beach, and (3) if they present a risk of serious injury or death; as the Keʻanae Landing area was not a public beach park, the State, as the owner and occupier of Keʻanae Landing and its surrounding ocean water, did not have a duty to warn of any "extremely dangerous" ocean conditions at Keʻanae Landing. 109 H. 198, 124 P.3d 943 (2005).

Where Act 190, L 1996, imposed no duty upon the State to warn of dangerous natural ocean conditions at "beach accesses, coastal accesses, or in areas that are not public beach parks", trial court correctly concluded that Act 190 relieved the State of any duty to warn plaintiffs of any dangerous ocean conditions at the Keʻanae Landing area. 109 H. 198, 124 P.3d 943 (2005).

County did not have a duty to warn plaintiff of any dangers associated with diving in Queen's Bath, an ocean tide pool, and did not voluntarily assume a duty to warn by virtue of its signs pertaining to hazardous ocean and trail conditions; any duty that county may have had towards plaintiff because of the signs did not give rise to liability to plaintiff. 110 H. 189, 130 P.3d 1054 (2006).

Even if Queen's Bath is deemed a "de facto" beach park, no liability on the part of the State or county arose because: (1) the dangers found in Queen's Bath are natural conditions, which do not trigger a duty to warn on the part of the State and county; and (2) the provision of L 1996, Act 190, expressly exempt the State and county from liability for failing to warn of dangerous natural conditions. 110 H. 189, 130 P.3d 1054 (2006).

Inasmuch as the issue of foreseeability in the context of duty was a question of law for the court to resolve, the court, not the trier of fact, had to determine the existence and scope of

duty, if any, owed by defendant to plaintiffs. 112 H. 3, 143 P.3d 1205 (2006).

Where evidence clearly established that the risk or hazard of the buried cement bag being propelled in the air during a future excavation was not what made the failure to remove the cement bag and to comply with the contract specifications by defendant unreasonably dangerous, defendant's general duty to use reasonable care did not include within its scope the protection of plaintiff from the particular risk that plaintiff encountered; thus, trial court did not err in granting summary judgment to defendant. 112 H. 3, 143 P.3d 1205 (2006).

Where, after construction of the highway was completed, there were complaints of water creating a potentially dangerous condition, the State then had a duty to maintain the highway in a reasonably safe condition, which included the duty to mitigate and warn of known hazards; the State breached this duty and trial court erred in finding that the State's breach of duty was not a substantial factor in causing plaintiff's death. 113 H. 332, 152 P.3d 504 (2007).

Where plaintiff's attorney did not owe defendants an actionable duty, trial court did not err in dismissing defendants' third-party claim against attorney alleging negligent handling of a settlement between attorney's client and defendants resulting in damage to defendants. 114 H. 202, 159 P.3d 814 (2007).

Based upon statutory and regulatory mandates, the legislature created a duty flowing to children specifically identified to the department of human services as being the subject of suspected abuse; thus, the department had a duty to protect the minor under the circumstances of the case. 117 H. 262, 178 P.3d 538 (2008).

In child abuse case, based upon the credible testimony of child protective services expert, and undisputed findings of fact relating to department of human services social worker's failure to properly and timely complete investigation into minor's injury, trial court correctly concluded that the department--through its social worker--breached the duty to use the same degree of care, skill, and ability as an ordinarily careful professional in the social worker's field would have exercised under similar circumstances. 117 H. 262, 178 P.3d 538 (2008).

Where plaintiffs did not assert any constitutional violations, their claims were grounded in common law principles of negligence, and the case did not involve involuntary commitment or custodial care, trial court erred to the extent that it believed that the Youngberg professional judgment standard applied to case involving the department of human services'

improper investigation and failure to protect abuse victim from future harm. 117 H. 262, 178 P.3d 538 (2008).

Appellate court erred in concluding that defendant title insurance company did not have a duty to defend plaintiffs against the State's escheat claim in the specific, unique circumstances of the case where the State's escheat reservation contained in its answer and answer to amended petition qualified as an "escheat claim" which asserted an interest in and claims against the plaintiffs' property that triggered coverage under the plaintiffs' title insurance policy. 126 H. 448, 272 P.3d 1215 (2012).

Pursuant to §314A of the Restatement (Second) of Torts, as a possessor of land who held its land open to the public, respondent mall owner owed members of the public who entered the mall in response to its invitation a duty to take reasonable action to give first aid after it knew or had reason to know that such persons were ill or injured, and to care for such persons until they could be cared for by others. 130 H. 262, 308 P.3d 891 (2013).

Pursuant to §388 of the Restatement (Second) of Torts, and as adopted by the Hawaii supreme court, as a possessor of land in immediate control of the heat, smoke, and gases emanating from stoves in the food court into the exhaust duct, and knowing of decedent's (who somehow accessed the rooftop of respondent mall owner's mall, entered into and became trapped in an exhaust duct above the food court, and later died) presence in dangerous proximity to those forces, respondent had a duty to exercise reasonable care to control those forces to prevent them from doing harm to decedent. 130 H. 262, 308 P.3d 891 (2013).

By providing large amounts of hard liquor to a fifteen-year-old minor, defendant knew or should have known that defendant created an unreasonable risk of harm to the minor and thus assumed the duty to prevent the harm from occurring. Having failed to prevent physical harm from occurring, and in fact having caused the harm, defendant had the duty to prevent further harm from occurring. Thus, while defendant otherwise would have no duty to protect minor from physical harm, defendant's affirmative acts of providing alcohol and failing to render or summon aid after minor became visibly ill while on defendant's property and at defendant's party placed defendant into a relationship with minor in which defendant owed minor a duty of reasonable care. 130 H. 282, 308 P.3d 911 (2013).

Because of the obvious danger to young children, it was unreasonable to require that swimming pool manufacturer furnish labels with its pools warning of that danger; swimming pool manufacturer's duty to put a safe product on the market includes duty to take such measures in manufacturing and marketing the

pool as will reasonably protect against injury to young children arising from their use of the pool. 10 H. App. 547, 879 P.2d 572 (1994).

An accountant may be held liable to third parties under §552(2) of Restatement of Torts for negligence in the preparation of an audit report. 86 H. 301 (App.), 949 P.2d 141 (1997).

As neither a tenant nor a subtenant is a "business visitor" of a landlord's office building, no "special relationship" duty existed between subtenant and office building landlord. 104 H. 500 (App.), 92 P.3d 1010 (2004).

Circuit court correctly concluded that absent a special relationship between the motorist and the hotel or security guard service, the hotel and security guard service did not have a duty to protect the motorist from the acts of a third party (non-guest who committed suicide by jumping from hotel roof) and absent a special relationship between the non-guest and the hotel or security guard service, neither the hotel nor the security guard service had a duty to prevent the non-guest from committing suicide. 122 H. 389 (App.), 227 P.3d 555 (2010).

Government.

State which holds open a public thoroughfare for travel has duty to maintain it in condition safe for travel. 50 H. 497, 443 P.2d 142 (1968).

A nonjudicial government officer has no immunity from suit and is liable if officer was motivated by malice and not by an otherwise proper purpose. 55 H. 499, 522 P.2d 1269 (1974).

A public official can be held liable for damages for the malicious exercise of discretion. 2 H. App. 176, 628 P.2d 634 (1981).

Nonjudicial government official can be held liable for general, special, and punitive damages if official maliciously exercised official discretion or maliciously committed a tort. 2 H. App. 221, 629 P.2d 635 (1981).

Interference.

Defendant's motion to dismiss count regarding tortious interference with contract denied, where defendant alleged that a director or officer may not be liable for tortiously interfering with corporation's contract unless the director or officer acted solely for personal benefit; plaintiffs stated a claim for tortious interference with contract. 895 F. Supp. 1365 (1995).

Plaintiffs failed to demonstrate that their claim for tortious interference with contract had any factual basis. 920 F. Supp. 1080 (1996).

Plaintiff's claim for tortious interference with contractual relations and business (containing separate torts of tortious interference with contractual relations and tortious interference with a prospective business advantage) failed as a matter of law. 190 F. Supp. 2d 1192 (2001).

Plaintiff's claim for damages resulting from defendants' allegedly tortious interference with plaintiff's contractual relations with its customers was preempted, where any determination of the applicability of state tort law would require consideration of the scope of various provisions of the collective bargaining agreement between plaintiff and defendant union; even if the claim were not preempted, it would still be dismissed. 250 F. Supp. 2d 1244 (2003).

Summary judgment denied, where there was a genuine issue of material fact as to each of the factors of intentional interference and proper justification of the tortious interference with prospective contractual relations claim. 458 F. Supp. 2d 1153 (2006).

Defendant's motion to dismiss count of complaint alleging tortious interference with a prospective economic advantage denied, where plaintiffs sufficiently alleged the "improper interference" element of the tort. 679 F. Supp. 2d 1203 (2009).

No interference with prospective business advantage where plaintiff, due to plaintiff's own failure to properly execute two options independently, caused plaintiff's investor contracts to fail and resulted in plaintiff's loss of financing; defendants' motion for summary judgment regarding this issue granted. 710 F. Supp. 2d 1036 (2010).

No interference with prospective contractual relations where plaintiff, due to plaintiff's own failure to properly execute two options independently, caused plaintiff's investor contracts to fail and resulted in plaintiff's loss of financing; defendants' motion for summary judgment regarding this issue granted. 710 F. Supp. 2d 1036 (2010).

By alleging an induced breach of a confidentiality agreement or a non-disclosure agreement, plaintiff has also alleged that defendants improperly acquired trade secret information; these claims are sufficiently related to plaintiff's allegations of trade secret misappropriation to warrant preemption of plaintiff's tortious interference with existing contracts claim under the Hawaii Uniform Trade Secrets Act; defendants' motion to dismiss granted. 780 F. Supp. 2d 1061 (2011).

Plaintiff resort employees' claim of tortious interference with prospective business advantage was not preempted by §301 of the Labor Management Relations Act, 29 U.S.C. §185(a) where defendant resort's use of the collective bargaining agreement (agreement) between defendant and plaintiffs did not render the

claim dependent on the agreement, and furthermore where there was no argument set forth by plaintiffs that interpretation as opposed to mere consultation of the agreement would be necessary. 818 F. Supp. 2d 1240 (2010).

Plaintiff hotel employees' intentional interference with contractual and/or advantageous business relationships claim was not preempted by §301 of the Labor Management Relations Act, 29 U.S.C. §185(a) because the claim was independent of any right conferred by the collective bargaining agreement (agreement); agreement did not confer or deny plaintiffs the right to maintain business relations with customers; and there was no indication that any interpretation of the terms or provisions of the agreement was necessary to support or defend against this claim. 835 F. Supp. 2d 914 (2011).

Plaintiffs' intentional interference with prospective economic advantage claims dismissed; among other things, the amended complaint failed to allege a sufficiently definite prospective economic benefit, such as the rental or sale of plaintiffs' properties, prior to defendant's allegedly interfering conduct. 1 F. Supp. 3d 1106 (2014).

Where defendants-appellants brought interference with contract claim against plaintiff-appellee, there was no evidence that plaintiff-appellee intentionally induced [third party] to breach agreement with defendants-appellants, and defendants-appellants failed to prove damages resulting from the alleged breach. 78 H. 40, 890 P.2d 277 (1995).

Hawaii law does not recognize tortious breach of contract actions in the employment context. 89 H. 234, 971 P.2d 707 (1999).

Tort recovery, including recovery of punitive damages, is not allowed under Hawaii law for breach of contract in the absence of conduct that: (1) violates a duty that is independently recognized by principles of tort law; and (2) transcends the breach of the contract. 89 H. 234, 971 P.2d 707 (1999).

Conspiracy to commit tortious interference with prospective business advantage between certain "common purpose" defendant corporations and also officer/shareholder of those corporations; claim failed for insufficient evidence. 91 H. 224, 982 P.2d 853 (1999).

Tortious interference with prospective business advantage recognized; elements. 91 H. 224, 982 P.2d 853 (1999).

Where complaint asserted that an actual, ongoing prospective economic relationship existed between the physician-plaintiff/members and their patients; members expected a reasonable future economic benefit from that relationship; by requiring members to enter into participating physician agreements, defendant was aware or should have been reasonably

aware of their expectancy of a future economic benefit; defendant maliciously and intentionally disrupted their relationships with their patients by delaying, denying, and reducing reimbursement; and such disruption imposed serious financial hardships upon the members, thereby causing damage. Plaintiffs satisfied the rudimentary pleading requirement for their claims of tortious interference with prospective economic advantage. 113 H. 77, 148 P.3d 1179 (2006).

In complaints alleging intentional interference with contractual relations and prospective economic advantage, tortious inducement of breach of fiduciary duty and tortious interference with contractual relations, where there were no allegations that indicated that lawyers "possessed a desire to harm which is independent of the desire to protect their clients", and the complaints were devoid of any allegations that the lawyers "acted for personal gain or with ill-will towards" plaintiffs, lawyers' management of the inspection and review process of plaintiff's books and records fell within the purview of the litigation privilege. 113 H. 251, 151 P.3d 732 (2007).

Plaintiffs established the elements of their claim of tortious interference with prospective business advantage, including the existence of damages, where defendants banned plaintiffs from working at certain city-owned facilities. 131 H. 167, 317 P.3d 1 (2013).

A plaintiff alleging the tort of interference with prospective contractual relations must plead and prove six elements. 87 H. 394 (App.), 957 P.2d 1076 (1998).

Under circumstances of case, defendant's communication of information to prospective employer's manager was privileged because it was truthful; thus, defendant could not be held liable as a matter of law for any alleged intentional interference with plaintiff's prospective employment contract with prospective employer. 87 H. 394 (App.), 957 P.2d 1076 (1998).

Where loan broker did not present evidence showing that bank pursued an improper objective of harming broker or used wrongful means that caused injury in fact, trial court did not err in granting summary judgment in favor of bank on broker's tortious interference with prospective business advantage claim. 109 H. 35 (App.), 122 P.3d 1133 (2005).

Without evidence of an act of intentional inducement, loan broker had no basis for its claim that bank tortiously interfered with broker's contractual relationship with borrower; evidence merely of a breached contract was insufficient to sustain a tortious interference with contractual relations claim; thus, trial court did not err in granting summary judgment in favor of bank on broker's tortious interference with

contractual relations claim. 109 H. 35 (App.), 122 P.3d 1133 (2005).

Landowner.

Plaintiffs' claim for nuisance denied, where parties in the lawsuit owned neighboring oceanfront lots in a luxury subdivision and plaintiffs alleged that defendants' use of property created an unreasonable and substantial interference with plaintiffs' use and enjoyment of their lot and was thereby a nuisance. 338 F. Supp. 2d 1106 (2004).

Where plaintiff was seriously injured while attending an expo at a hotel when a registration booth fell on plaintiff, there was a genuine issue of material fact as to whether the defendant that owned and operated the hotel, should have known that the booth was susceptible to being blown over by the strong winds. 634 F. Supp. 2d 1130 (2009).

Liability of wife who is joint owner of land with husband for collapse of retaining wall. 47 H. 149, 384 P.2d 303 (1963).

Occupier of land has duty to use reasonable care for the safety of all persons reasonably anticipated to be on premises, regardless of status of individual. 51 H. 134, 452 P.2d 445 (1969); 51 H. 299, 459 P.2d 198 (1969).

Liability of landowner for injuries caused by landowner's dog to trespassers discussed. 57 H. 620, 562 P.2d 779 (1977).

Occupier of land--extent of duty to warn of dangers on premises. 60 H. 32, 586 P.2d 1037 (1978).

If a condition exists upon land which poses an unreasonable risk of harm to persons using the land, then the possessor of the land, if the possessor knows, or should have known of the unreasonable risk, owes a duty to persons using the land to take reasonable steps to eliminate the unreasonable risk, or adequately to warn users against it. 70 H. 415, 772 P.2d 693 (1989).

Where plaintiff was injured on motocross track, an area of raceway park not thrown open for admission of the public, Restatement (Second) of Torts §359 could not be a basis for lessor's liability; lessor not liable under Restatement (Second) of Torts §358, where plaintiffs failed to adduce any facts demonstrating that lessees or sublessees did not know or have reason to know track's lighting was dangerously inadequate. 76 H. 77, 869 P.2d 216 (1994).

Chapter 520, the Hawaii recreational use statute, was not intended to have created a universal defense available to a commercial establishment such as landowner hotel, which has opened its land to the public for commercial gain, against any and all liability for personal injury merely because there is a

"recreational" component to the establishment's operation. 93 H. 477, 6 P.3d 349 (2000).

Plaintiffs, by averring in their affidavits that they were on landowner's land for a commercial purpose at the time plaintiff was injured, generated a genuine issue of material fact whether they were on the land for a commercial purpose, in which case this chapter would not immunize the landowner from liability, or whether they were present for an exclusively recreational purpose, in which case this chapter would be available to landowner as a defense to plaintiff's negligence claim. 93 H. 477, 6 P.3d 349 (2000).

Under Act 190, L 1996, the State is required to warn of "extremely dangerous" ocean conditions (1) that occur at "public beach parks", (2) if these conditions are typical for the specific beach, and (3) if they present a risk of serious injury or death; as the Keʻanae Landing area was not a public beach park, the State, as the owner and occupier of Keʻanae Landing and its surrounding ocean water, did not have a duty to warn of any "extremely dangerous" ocean conditions at Keʻanae Landing. 109 H. 198, 124 P.3d 943 (2005).

Where Act 190, L 1996, imposed no duty upon the State to warn of dangerous natural ocean conditions at "beach accesses, coastal accesses, or in areas that are not public beach parks", trial court correctly concluded that Act 190 relieved the State of any duty to warn plaintiffs of any dangerous ocean conditions at the Keʻanae Landing area. 109 H. 198, 124 P.3d 943 (2005).

Pursuant to §314A of the Restatement (Second) of Torts, as a possessor of land who held its land open to the public, respondent mall owner owed members of the public who entered the mall in response to its invitation a duty to take reasonable action to give first aid after it knew or had reason to know that such persons were ill or injured, and to care for such persons until they could be cared for by others. 130 H. 262, 308 P.3d 891 (2013).

Pursuant to §388 of the Restatement (Second) of Torts, and as adopted by the Hawaii supreme court, as a possessor of land in immediate control of the heat, smoke, and gases emanating from stoves in the food court into the exhaust duct, and knowing of decedent's (who somehow accessed the rooftop of respondent mall owner's mall, entered into and became trapped in an exhaust duct above the food court, and later died) presence in dangerous proximity to those forces, respondent had a duty to exercise reasonable care to control those forces to prevent them from doing harm to decedent. 130 H. 262, 308 P.3d 891 (2013).

Summary judgment was properly granted on petitioner decedent's estate general premises liability claim against respondent mall owner as a possessor of land because respondent owed no duty to

a person not reasonably anticipated to be on the mall's rooftop and, based on the admissible evidence, decedent could not have reasonably been anticipated to be on the rooftop. Further, even if respondent should have reasonably anticipated decedent's presence on the rooftop, it could not have been held liable because decedent's entry into the exhaust vent, where decedent became trapped and later died, was not reasonably foreseeable. 130 H. 262, 308 P.3d 891 (2013).

To recover in negligence, it must be shown that owner or occupant of premises knew or should have known of the hazard causing the injuries. 1 H. App. 554, 623 P.2d 446 (1981).

Continuing-tort exception, which tolls running of statute of limitations under §662-4, adopted; thus, where an actor continuously diverts water over which he or she has direct control onto another's land, and the diversion causes continuous and substantial damage to that person's property and the actor knows of this damage, such an act may present evidence of a continuous tort. 88 H. 241 (App.), 965 P.2d 783 (1998).

Malicious prosecution.

Summary judgment granted in favor of defendants on plaintiff's malicious prosecution claim, where defendant police officer and defendant resident manager had probable cause to arrest plaintiff for harassment. 855 F. Supp. 1167 (1994).

Defendants' motion for summary judgment denied in malicious prosecution action, where there was a question of fact as to whether the underlying civil actions were terminated in plaintiff's favor when the actions were voluntarily dismissed with prejudice. 150 F. Supp. 2d 1058 (2001).

Where plaintiff alleged that defendants were liable for malicious prosecution for deliberately providing false information to police to cause plaintiff's arrest, defendants' motion to dismiss for failure to state a claim denied with regard to the claim. 475 F. Supp. 2d 1041 (2007).

5 H. 609 (1886); 6 H. 300 (1881); 7 H. 346 (1888); 7 H. 569 (1889); 10 H. 588 (1897); 43 H. 321 (1959); 49 H. 416, 421 P.2d 289 (1966).

In actions for malicious prosecution and false imprisonment, district court conviction conclusively establishes probable cause even if conviction is reversed. 56 H. 383, 538 P.2d 320 (1975).

Appellants' state tort claims for false arrest, false imprisonment, and malicious prosecution failed as a matter of law because appellants did not contest the preliminary hearing determination of probable cause and their commitment to circuit court for trial. Appellants failed to cite to any persuasive or relevant authority in support of their contention that where

actions or inactions of the prosecutor subsequent to a preliminary hearing "erodes" probable cause, an action for false arrest, false imprisonment, or malicious prosecution arises. 76 H. 219, 873 P.2d 98 (1994).

Union shop steward's claim for malicious prosecution was preempted by the National Labor Relations Act where steward's allegations directly implicated factual conduct covered under the Act; thus, the claim presented a realistic risk of interference with the National Labor Relations Board's primary jurisdiction to enforce the statutory prohibition against unfair labor practices. 109 H. 520, 128 P.3d 833 (2006).

Summary judgment for defendants proper where defendants met their burden of showing the absence of any genuine issue as to all material facts of whether plaintiff was prosecuted with malice by pointing to the files and records of related cases of which the trial court took judicial notice, and plaintiff then failed to meet plaintiff's burden of raising a genuine issue of material fact as to whether plaintiff's prosecution was initiated with malice, which was an essential element of plaintiff's malicious prosecution claim. 111 H. 462, 143 P.3d 1 (2006).

Trial court did not err in granting summary judgment in favor of law firm on terminated associate's malicious prosecution claim, as language of Hawaii supreme court rules, rule 2.8 was clear and unambiguous--that complaints to the office of disciplinary counsel are absolutely privileged and "no lawsuit of any kind, including a claim for malicious prosecution, may be predicated thereon". 117 H. 92, 176 P.3d 91 (2008).

Appeals court correctly affirmed respondent's summary judgment motion on the issue of whether there was probable cause to initiate the prosecution of petitioner where: (1) attorney demonstrated that attorney subjectively believed the facts upon which the complaint was based; (2) attorney's belief in the existence of those facts was reasonable as the facts were the result of a multi-year investigation; and (3) the facts reasonably supported attorney's belief that it was appropriate to bring a claim against petitioner for engaging in deceptive trade practices. 128 H. 423, 290 P.3d 493 (2012).

Continuing to prosecute an action in the absence of probable cause is included in the tort of malicious prosecution; the standard for continuing a malicious prosecution would be: (1) that the prior proceedings were terminated in the plaintiff's favor; (2) that the prior proceedings were maintained without probable cause; and (3) that the prior proceedings were maintained with malice. 128 H. 423, 290 P.3d 493 (2012).

Based on attorney's uncontested declaration, summary judgment was proper as to the first notice of pendency of action (NOPA);

where attorney did not file the second NOPA, summary judgment was proper as to the second NOPA; therefore, the only claim that remained was the malicious prosecution claim to the extent it arose from allegations related to the mechanic's lien action, but excluding matters pertaining to the second NOPA. 127 H. 368 (App.), 279 P.3d 33 (2012).

Malpractice.

Where plaintiffs sought to use certain statements made by defendant physician and the defendants' experts at deposition to show causation, there was insufficient testimony to create a genuine issue of material fact regarding causation; summary judgment in favor of the defendants was appropriate. 289 F.3d 600 (2002).

Defendant not required to [obtain] informed consent because of defendant's status as a consulting physician and because defendant did not gratuitously undertake to obtain informed consent. 125 F. Supp. 2d 1249 (2000).

Hospital's motion for summary judgment on issue of informed consent granted, where plaintiffs argued, inter alia, that because hospital provided doctors with consent forms (which bore hospital's name) and had an institutional policy regarding informed consent, hospital injected itself in consent process, thereby becoming subject to liability. 125 F. Supp. 2d 1249 (2000).

Liability of a hospital for allegedly negligent acts of its independent contractor doctors, discussed. 125 F. Supp. 2d 1249 (2000).

Patient's spouse could not recover on a theory of lack of informed consent. 125 F. Supp. 2d 1249 (2000).

Where there was no express attorney-client contract formed between plaintiff and defendant, there was a genuine issue of material fact as to whether an attorney-client relationship existed regarding the drafting of the prenuptial agreement. 522 F. Supp. 2d 1272 (2007).

Manufacturer's package insert, in and of itself, may not establish the relevant standard of care in a medical negligence action. 78 H. 287, 893 P.2d 138 (1995).

The question of part (b) causation in an action based on doctrine of informed consent is to be judged by an objective standard, that is, whether a reasonable person in plaintiff-patient's position would have consented to the treatment that led to his or her injuries had plaintiff-patient been properly informed of the risk of the injury that befell him or her. 79 H. 362, 903 P.2d 667 (1995).

A consulting physician does not owe a duty to a patient to warn of the inherent risks of a proposed treatment or surgery;

however, a physician tendering a second opinion has an obligation to inform a patient of the nature of the proposed treatment or surgery, its risks, and alternatives. 87 H. 183, 953 P.2d 561 (1998).

Court erred in holding that plaintiff was required to prove by expert testimony that a dentist owes a duty to disclose the risks or potential complications of surgery. 87 H. 183, 953 P.2d 561 (1998).

Where physician retained degree of participation in treatment, by way of control, consultation and otherwise, physician had continuing responsibility to properly advise patient of the risks and alternatives to the proposed surgery. 87 H. 183, 953 P.2d 561 (1998).

Where the relationship between an attorney and a non-client is such that a duty of care would be recognized, the non-client may proceed under either negligence or contract theories of recovery. 95 H. 247, 21 P.3d 452 (2001).

Where defendant doctor never properly established at trial the "therapeutic privilege exception" to the requirement that informed consent be obtained before starting patient on antipsychotic medication, trial court erred in refusing to instruct jury concerning the tort of negligent failure to provide informed consent. 98 H. 470, 50 P.3d 946 (2002).

The collateral source rule prohibits reducing a plaintiff's award of medical special damages to reflect the discounted amount paid by medicare/medicaid; the amounts billed in excess of the medicare/medicaid amount paid are not irrelevant or inadmissible on the issue of medical special damages. 106 H. 81, 101 P.3d 1149 (2004).

Attorney representing a client may be personally liable to an adverse party or a third person as a result of attorney's intentional tortious act. 1 H. App. 379, 620 P.2d 733 (1980).

Evidence fell short of providing the causal nexus between any alleged negligence of defendants and patient's death where there was no expert medical testimony that negligence by defendants caused patient's death "to a reasonable medical probability", leaving the jury to speculate that defendants' "action or inaction might or could have" resulted in patient's death seventeen months later. 119 H. 136 (App.), 194 P.3d 1098 (2008).

Where the causal link between any alleged negligence and patient's death seventeen months after the surgeries was not within the realm of "common knowledge", and the role that preexisting conditions and/or subsequent complications played in patient's death was not within the knowledge of the average layperson, patient sustained a "sophisticated injury", and a jury needed expert medical testimony to determine whether any

alleged negligence by defendants contributed to patient's death; plaintiffs were thus required to present expert medical testimony on the causal link between any alleged negligence and patient's death. 119 H. 136 (App.), 194 P.3d 1098 (2008).

The circuit court did not err in finding that defendants, state-employed prison doctors, caused plaintiff inmate's infertility, where testimonies and medical reports of multiple expert witnesses provided substantial evidence in support of the court's findings of fact. 131 H. 239 (App.), 317 P.3d 683 (2013).

The circuit court's findings that defendants, state-employed prison doctors, were negligent pertained to the exercise of purely medical discretion because they involved strictly medical diagnosis and treatment, and the decisions made did not involve policy making or any other type of governmental discretion; thus, defendants were not entitled to qualified immunity, and the court did not err when it denied their motion for summary judgment. 131 H. 239 (App.), 317 P.3d 683 (2013).

See 43 H. 289 (1959).

Master and servant.

Negligence claim against employer for failure to conduct adequate investigation of misconduct allegation against employee preempted by Labor Management Relations Act. 817 F. Supp. 850 (1992).

In action arising out of citizen's arrest of plaintiff by defendant resident manager, summary judgment granted in favor of defendant association of apartment owners on both negligent employment and supervision causes of action where plaintiff presented no evidence that defendant association knew or had any reason to know that defendant resident manager posed a threat to plaintiff. 855 F. Supp. 1167 (1994).

Defendant's motion for summary judgment granted with respect to plaintiff's claim for negligent training and supervision, where no evidence in the record to suggest that the assault on plaintiff was foreseeable to defendant. 126 F. Supp. 2d 1299 (1998).

Police officer was an independent contractor, not an employee of defendant that employed the officer as a special duty officer to direct traffic at defendant's construction site on date of incident; defendant could not be held liable under respondeat superior for torts committed by police officer while the officer was performing the officer's public duty as a police officer. 126 F. Supp. 2d 1299 (1998).

Exclusivity provision (§386-5) of the workers' compensation law barred plaintiff's negligence-based counts against defendants, where the counts arose "on account" of a work injury

suffered by plaintiff; exception provided in exclusivity provision did not afford plaintiff a cause of action, where plaintiff did not allege sexual harassment or sexual assault. 266 F. Supp. 2d 1233 (2003).

Defendant city and county of Honolulu's motion to dismiss plaintiff's false arrest on respondeat superior grounds claim based on immunity denied where it was plausible to infer that, as alleged by plaintiff, the police officer who shot plaintiff with a taser without provocation, punched and kicked plaintiff, and arrested plaintiff, and the police officer who assisted the arresting officer, were acting with malice. 761 F. Supp. 2d 1080 (2010).

Defendant city and county of Honolulu's motion to dismiss plaintiff's negligent supervision claim granted where plaintiff failed to allege that the police officers who arrested plaintiff were acting outside the scope of their employment. 761 F. Supp. 2d 1080 (2010).

Plaintiff's respondeat superior claim against defendant sufficient where plaintiff alleged, inter alia, that city police officer assaulted plaintiff without cause, illegally arrested plaintiff without probable cause and used excessive force in doing so intentionally and injuring plaintiff in the process. 762 F. Supp. 2d 1246 (2011).

Defendant mortgagee and loan servicer's motion to dismiss plaintiff mortgagor's respondeat superior liability claim granted where plaintiff's complaint did not include any allegations even suggesting the plausibility that defendant mortgage broker was defendant lender's agent; in general, a lender is not liable for the actions of a mortgage broker unless "there is an agency relationship between the lender and the broker". 850 F. Supp. 2d 1120 (2012).

Discussion of master-servant relationship. 8 H. 168 (1890). Master liable for servants' negligence. 3 H. 170 (1869); 29 H. 604 (1927); 30 H. 17 (1927); see 32 H. 246 (1931), aff'd 66 F.2d 929 (1933); 30 H. 452 (1928). Employer's liability for false imprisonment. 8 H. 411 (1892). Employer not liable for tort of employee committed while driving car furnished by employer for employee's personal use and so used. 32 H. 246 (1931), aff'd 66 F.2d 929 (1933). Detour of four hundred feet from route by servant does not necessarily relieve master from liability. 30 H. 457 (1928). Administrator personally liable for negligence of servant even though committed within scope of estate's business. 11 H. 557 (1898).

Master's liability for theft by employee. 50 H. 477, 442 P.2d 460 (1968). Various bases for holding employer liable for torts of employee discussed. 50 H. 628, 446 P.2d 821 (1968).

Liability of employer for negligence of employees hired out to third persons; doctrine of loaned servant. 52 H. 379, 477 P.2d 611 (1970).

Where statutory employer secured workers' compensation coverage as required under chapter 386 by paying a fee for that purpose to the lending employer, and employee received a statutory award for work-connected injuries, statutory employer was entitled to tort immunity. 88 H. 140, 963 P.2d 349 (1998).

Hawaii law does not recognize tortious breach of contract actions in the employment context. 89 H. 234, 971 P.2d 707 (1999).

Section 386-5, the exclusive remedy provision of the workers' compensation law, bars neither a minor's tort claims for the minor's in utero injuries, nor any otherwise valid claims of any other party that allegedly derive from the minor's injuries. 91 H. 146, 981 P.2d 703 (1999).

Where plaintiffs did not allege that contractor was acting outside the scope of its alleged employment with defendant, the plaintiffs' complaint could not be said to state a claim for negligent supervision; thus, trial court did not err in granting summary judgment in favor of defendant. 112 H. 3, 143 P.3d 1205 (2006).

Evidence did not support conclusion that employment relationship existed between defendants; even if employment relationship existed, defendant was not acting in scope of employment. 10 H. App. 298, 869 P.2d 1352 (1994).

Section 386-5, the exclusive remedy provision of the Hawaii workers' compensation law, does not bar a child from bringing a tort action against mother's employer for in utero injuries child personally sustained, allegedly as a result of a work-related accident involving the mother. 91 H. 157 (App.), 981 P.2d 714 (1999).

Mental distress.

Summary judgment granted in favor of defendants on plaintiff's intentional and negligent infliction of emotional distress claims in action arising out of citizen's arrest of plaintiff. 855 F. Supp. 1167 (1994).

Defendant's comments, while certainly distasteful, did not rise to level of outrageousness necessary to maintain intentional infliction of emotional distress claim. 866 F. Supp. 1285 (1994).

Because plaintiffs did not allege physical injury, there could be no recovery for negligent infliction of emotional distress claim; allegations about defendants' acts fell within meaning of outrageous conduct regarding intentional infliction of emotional distress claim. 895 F. Supp. 1365 (1995).

Where damage alleged by plaintiffs was to an expectancy in a life insurance contract, such damage did not qualify as sufficient to give rise to cause of action for negligent infliction of emotional distress; intentional infliction of emotional distress claim dismissed where alleged conduct did not qualify as "outrageous" under Hawaii law. 900 F. Supp. 1339 (1995).

Intentional infliction of emotional distress claim rejected, where editorial about plaintiff (when plaintiff was mayor) contained no false factual assertions and "actual malice" could not be established. 930 F. Supp. 1403 (1995).

If plaintiff succeeded on bad faith claim, and plaintiff could show that plaintiff's emotional distress damages were proximately caused by defendant insurance company's actions, plaintiff could recover damages for plaintiff's emotional distress as incidentally flowing from the breach. 999 F. Supp. 1369 (1998).

Plaintiffs' claims for intentional infliction of emotional distress not barred by Hawaii's Workers' Compensation Act; plaintiffs' claims for negligent infliction of emotional distress barred by the Act. Defendant's motion for summary judgment granted with respect to plaintiffs' claims for negligent and/or intentional infliction of emotional distress, where, inter alia, plaintiffs had not alleged sufficient conduct by defendant to establish a claim for emotional distress. 2 F. Supp. 2d 1295 (1998).

It could not be disputed that by the time the underinsured motorist benefits were paid, plaintiff either knew or should have known that defendant's alleged refusal to engage in settlement negotiations caused plaintiff injury; any claims for emotional distress were time-barred. 11 F. Supp. 2d 1204 (1998).

Plaintiff may rely on events which occurred prior to the limitations period in order to establish intentional infliction of emotional distress claim, as long as the incidents are constant and closely related to the violations which occurred within the period of limitations. 75 F. Supp. 2d 1113 (1999).

Plaintiff could not recover for intentional infliction of emotional distress (IIED) or negligent infliction of emotional distress; among other things, plaintiff had not established an intentional act that supported plaintiff's claim for IIED, where act upon which plaintiff's emotional distress claim was premised was publication of allegedly defamatory magazine article. 190 F. Supp. 2d 1192 (2001).

Exclusive remedy provision of Hawaii's workers' compensation law (§386-5) barred plaintiff's claim for negligent infliction

of emotional distress, where plaintiff did not claim sexual harassment or assault. 284 F. Supp. 2d 1261 (2003).

Summary judgment granted in favor of defendants as to plaintiffs' cause of action for intentional infliction of emotional distress, where plaintiffs failed to produce any evidence or even argument concerning the emotional distress suffered by certain plaintiffs as a result of a defendant's racial slur and acts of discrimination. 300 F. Supp. 2d 1003 (2004).

Genuine issues of material fact existed as to every element of plaintiff's claim of intentional infliction of emotional distress; among other things, a reasonable juror could find that defendant's (which tested plaintiff's urine sample) failure to provide information about plaintiff's urine test to plaintiff in a timely manner, which resulted in plaintiff losing plaintiff's job for two years and allegedly caused plaintiff's depression, was outrageous conduct. 303 F. Supp. 2d 1121 (2004).

Plaintiff failed to allege facts sufficient to maintain intentional infliction of emotional distress claim, where the claim apparently stemmed from an alleged communication between plaintiff's union and one of defendant's (plaintiff's employer) agents, during which the agent informed the union president that plaintiff was not welcome to return to defendant's premises. 353 F. Supp. 2d 1107 (2005).

Plaintiff's claim for negligent infliction of emotional distress denied; defendant, plaintiff's employer, had not caused physical injury to any person or property and reasonable, normally constituted men can and do adequately cope with mental stress engendered by the unfortunate, but not uncommon, experience of losing a job. 353 F. Supp. 2d 1107 (2005).

Plaintiff's intentional infliction of emotional distress claim failed as a matter of law because plaintiff had not alleged that defendant engaged in outrageous conduct or that defendant's conduct caused plaintiff extreme emotional distress. 396 F. Supp. 2d 1138 (2005).

Plaintiff's intentional infliction of emotional distress (IIED) claim against a defendant was not preempted by §301 of the Labor Management Relations Act; plaintiff stated sufficient facts to support an IIED claim with respect to that defendant. 454 F. Supp. 2d 1056 (2006).

Plaintiff neglected to file the intentional infliction of emotional distress claim against defendants within the two-year tort statute of limitations; among other things, the charge plaintiff filed with the Equal Employment Opportunity Commission and the Hawaii civil rights commission charge did not toll the statute of limitations for the claim. 468 F. Supp. 2d 1210 (2006).

Where plaintiff alleged, inter alia, that defendants falsely told police that plaintiff violated a temporary restraining order for the purpose of causing plaintiff's arrest, defendants' motion to dismiss for failure to state a claim denied with regard to the intentional infliction of emotional distress claim. 475 F. Supp. 2d 1041 (2007).

No right of action for negligent infliction of emotional distress for a bystander whose unmarried partner was severely injured. 486 F. Supp. 2d 1156 (2007).

Intentional infliction of emotional distress/negligent infliction of emotional distress claims not preempted by §301 of the Labor Management Relations Act, where the court did not need to interpret the labor agreement to determine whether plaintiffs-intervenors were distressed by discrimination based on their national origin and/or religion. 535 F. Supp. 2d 1149 (2008).

Defendant's motion for partial summary judgment as to plaintiffs' intentional infliction of emotional distress claim denied; among other things, plaintiffs put forth sufficient evidence of severe emotional distress to avoid summary judgment where it was undisputed that defendant misplaced plaintiffs' son's remains. 597 F. Supp. 2d 1100 (2009).

Plaintiff could not maintain the present action where plaintiff had agreed to "forever release, acquit, and discharge" the claims in the mutual release and settlement agreement in plaintiff's first action. 686 F. Supp. 2d 1079 (2010).

Hawaii Workers' Compensation Act does not bar claims based on the intentional conduct of an employer or employee because such claims are not based on "accidents" related to employment; plaintiff's intentional infliction of emotional distress claim not barred by chapter 386. 721 F. Supp. 2d 947 (2010).

Plaintiff gamer's negligent infliction of emotional distress and intentional infliction of emotional distress claim sufficient where those claims were not grounded in fraud such that both claims would be dismissed for lack of particularity; defendants' motion to dismiss denied. 730 F. Supp. 2d 1213 (2010).

Defendants' alleged failure to follow up on the outside care ordered for pregnant pre-trial detainee plaintiff does not constitute outrageous conduct for the purposes of establishing an intentional infliction of emotional distress claim; defendants' motion for summary judgment as to this issue granted. 760 F. Supp. 2d 970 (2010).

While "a lender may owe to a borrower a duty of care sounding in negligence when the lender's activities exceed those of a conventional lender", plaintiff's claim for negligent infliction of emotional distress failed with regard to the element of

establishing that defendant engaged in negligent conduct where plaintiff only dealt with defendant in a borrower and lender capacity. 814 F. Supp. 2d 1042 (2011).

In action arising from the loan origination and eventual mortgage foreclosure upon plaintiffs' property, moving defendants were entitled to judgment as a matter of law on plaintiffs' negligent infliction of emotional distress and intentional infliction of emotional distress claims. 911 F. Supp. 2d 916 (2012).

Where plaintiff asserted that defendant wrongly failed to select plaintiff for a position based on discriminatory conduct and, as such, was guilty of outrageous conduct, defendant was entitled to summary judgment on plaintiff's intentional infliction of emotional distress claim. 919 F. Supp. 2d 1101 (2013).

Summary judgment granted to defendant former supervisor as to plaintiff's claim of intentional infliction of emotional distress; while the alleged actions may well have distressed plaintiff, the court was not pointed to any evidence indicating that defendant's conduct was outrageous. 937 F. Supp. 2d 1237 (2013).

Infliction of mental suffering. 39 H. 370 (1952).

Negligent infliction of mental distress, actionable when. 52 H. 156, 472 P.2d 509 (1970); 55 H. 398, 520 P.2d 758 (1974).

Negligent infliction of mental distress: plaintiff must be within reasonable distance of scene of accident. 56 H. 204, 532 P.2d 673 (1975).

Negligent v. intentional infliction of emotional distress. 64 H. 464, 643 P.2d 532 (1982).

Trial court did not err in awarding damages for emotional distress to parents, where appellants claimed parents not entitled to recover damages for emotional distress because they were not present at scene of son's accident and did not suffer any physical manifestations of emotional distress. 71 H. 1, 780 P.2d 566 (1989).

Mental distress damages may be recovered in a products liability implied warranty action. 74 H. 1, 837 P.2d 1273 (1992).

Jury instruction concerning negligent infliction of emotional distress should contain the requirement of physical injury to a person, if plaintiff was able to demonstrate such injury. 76 H. 310, 876 P.2d 1278 (1994).

Because plaintiff failed to adduce any evidence that defendant acted unreasonably in the course of discharging plaintiff, plaintiff's claim for intentional infliction of emotional distress was properly dismissed on summary judgment; circuit court properly entered summary judgment in favor of defendant on

plaintiff's negligent infliction of emotional distress claim, where plaintiff presented no evidence of any physical injury to plaintiff or anyone else. 76 H. 454, 879 P.2d 1037 (1994).

Defendant father's statement to sister of childhood sexual abuse victim defendant allegedly abused was not so unreasonable or outrageous as to give rise to cause of action by victim for intentional infliction of emotional distress. 83 H. 28, 924 P.2d 196 (1996).

Negligent infliction of emotional distress claim denied where plaintiffs failed to furnish evidence of greater mental stress than transient "concern", "worry", and "upset". 85 H. 336, 944 P.2d 1279 (1997).

Claim for negligent and/or intentional infliction of emotional distress against Hawaii civil rights commission not barred under §662-15(1), as acts of investigating complaint, instituting suit based on finding of reasonable cause, and sending demand letter were part of routine operations of commission and did not involve broad policy considerations encompassed within the discretionary function exception. 88 H. 85, 962 P.2d 344 (1998).

No intentional infliction of emotional distress as commission's act of sending official letter to settle complaint if appellant paid monetary damages and took out newspaper ad not "outrageous". 88 H. 85, 962 P.2d 344 (1998).

Where appellant's counterclaim lacked any allegation of physical injury to appellant or another as a result of the conduct of the Hawaii civil rights commission, action for negligent infliction of emotional distress could not be maintained. 88 H. 85, 962 P.2d 344 (1998).

Emotional distress damages resulting from breach of contract recoverable only where parties specifically provide for them in the contract or where the nature of the contract clearly indicates that such damages are within the parties' contemplation or expectation in the event of a breach. 89 H. 234, 971 P.2d 707 (1999).

A claim of negligent infliction of emotional distress for which relief may be granted is stated, inter alia, where the negligent behavior of a defendant subjects an individual to an actual, direct, imminent, and potentially life-endangering threat to his or her physical safety by virtue of exposure to HIV. 91 H. 470, 985 P.2d 661 (1999).

A plaintiff states a claim of negligent infliction of emotional distress for which relief may be granted where he or she alleges, inter alia, actual exposure to HIV-positive blood, whether or not there is a predicate physical harm; assuming that the other elements of negligent infliction of emotional distress

are proved, a plaintiff is entitled to a recovery if such actual exposure is proved as well. 91 H. 470, 985 P.2d 661 (1999).

The elements of the tort of intentional infliction of emotional distress are (1) that the act allegedly causing the harm was intentional or reckless, (2) that the act was outrageous, and (3) that the act caused (4) extreme emotional distress to another. 102 H. 92, 73 P.3d 46 (2003).

Union shop steward's claim for intentional infliction of emotional distress was not preempted by the National Labor Relations Act where employer's alleged conduct designed to threaten steward's liberty and reputation went beyond mere "threat, or actuality, of employment discrimination" stemming from a union-related dispute; to the extent that steward could show that those acts were done in a particularly abusive manner, they were outside the purview of preemption. 109 H. 520, 128 P.3d 833 (2006).

Where manner in which insurer denied plaintiff's claim for no-fault benefits was not in bad faith and insurer's conduct was thus reasonable, and there was nothing in the record to indicate that plaintiff suffered any extreme emotional distress as a result of insurer's conduct, plaintiff failed to show that a genuine issue of material fact existed with respect to plaintiff's intentional infliction of emotional distress claim and trial court did not err in granting summary judgment in favor of insurer. 109 H. 537, 128 P.3d 850 (2006).

Trial court correctly determined that the department of human services, which had a duty to protect minor and breached that duty, was liable to father and grandfather for negligent infliction of emotional distress where father was told by Maui hospital emergency room personnel that minor had several broken bones, bruising to her body and was in serious condition, later being told that there was a chance of minor "expiring", after flying to Oahu hospital where minor was transferred after surgery, again being informed that daughter may die, and father personally witnessing minor's suffering and terrorizing nightmares. 117 H. 262, 178 P.3d 538 (2008).

Trial court erred in dismissing plaintiff's intentional infliction of emotional distress claim where, in light of plaintiff's ultimate award of over $250,000, insurer's promise "to make an appropriate offer of compensation", and insurer's highest pre-jury offer of $5,300, reasonable people could differ as to whether insurer acted without just cause or excuse and beyond all bounds of decency in the underlying case, and average members of our community might indeed exclaim "Outrageous!"; trial court should thus have left the question of outrageousness to the jury. 119 H. 403, 198 P.3d 666 (2008).

Where conduct plaintiff sought to enjoin was the intentional tort of battery, plaintiff was not required to exhaust plaintiff's remedies under the collective bargaining agreement; also, where plaintiff claimed defendant was causing plaintiff "psychological stress", the infliction of emotional distress was also a cognizable tort claim that constituted an exception to the general rule that plaintiff was required to exhaust plaintiff's contractual remedies under the collective bargaining agreement before seeking judicial relief. 121 H. 1, 210 P.3d 501 (2009).

Emotional distress for failure to make payments on time under a real estate sale contract. 2 H. App. 188, 628 P.2d 214 (1981).

An employee may bring action against employer for intentional infliction of emotional distress caused by discrimination in violation of §378-2, and this action is not barred by exclusivity provision of §386-5. 87 H. 57 (App.), 951 P.2d 507 (1998).

Circuit court's granting of summary judgment to defendant employers as to plaintiff's intentional infliction of emotional distress (IIED) claim affirmed where nothing in the record showed that defendants' manner of terminating plaintiff rose to the level of outrageousness; case law was clear that termination alone, even if based on discrimination, was not sufficient to support an IIED claim without a showing of something outrageous about the manner or process of termination. 130 H. 325 (App.), 310 P.3d 1026 (2013).

Motor vehicles.

Defendant's motion for summary judgment denied, where the court found the existence of a designated driver duty within the Restatement (Second) of Torts §324A framework, and there were critical genuine issues of material fact regarding all four of the elements required to sustain a negligence claim. 415 F. Supp. 2d 1163 (2006).

Where defendant did not make a promise to the effect that defendant would serve as the designated driver for motorist, defendant could not be liable to third persons for the negligent undertaking of a duty as outlined in the Restatement (Second) of Torts §324A. 488 F. Supp. 2d 1062 (2006).

Defendant's motion for partial summary judgment on plaintiffs' claim for punitive damages denied, where defendant argued that summary judgment should be granted because it complied with government regulations and/or industry customs such that the record as a whole did not support a finding of punitive damages, and it did not act with the requisite culpability because side

airbags were an emerging technology and it was simply cautious in rolling out the technology. 692 F. Supp. 2d 1256 (2010).

Duty of driver to guest. 31 H. 123 (1929).

Guest's duty of care. 31 H. 123 (1929).

Negligence of driver of automobile not imputed to guests. 31 H. 750 (1931).

Automobile rear-end collision. 48 H. 411, 405 P.2d 323 (1965).

Employers not liable for acts of employees resulting in automobile accident under theories of respondeat superior, negligent entrustment, or general negligence. 72 H. 387, 819 P.2d 84 (1991).

Driving vehicle with blood alcohol level above legal limit does not establish actionable or contributory negligence unless causal relationship is established between driver's alleged intoxication and accident. 73 H. 385, 834 P.2d 279 (1992).

Where appellants alleged that defendant was liable for deaths caused by drunk driving of one of its employees, appellants presented colorable claim of liability under theory of respondeat superior and viable claim for negligent failure to control an employee under Restatement (Second) of Torts §317. 76 H. 433, 879 P.2d 538 (1994).

Products liability.

Appellants failed to raise genuine issue of material fact as to whether raw material manufacturer had duty to warn appellants of dangers posed by use of raw material in production of implant devices. 82 F.3d 894 (1996).

Contractor not liable under strict products liability doctrine absent evidence that contractor was in product chain of title. 789 F. Supp. 1521 (1991).

Because court could not make factual determination as to whether brushless exciter and generator were one "product", court would not grant summary judgment to the effect that all damages claimed under tort and strict liability theories were barred by doctrine of economic loss. 838 F. Supp. 1390 (1992).

Device implanted in plaintiff's leg had no requirements imposed upon it by Medical Device Amendments to Federal Food, Drug, and Cosmetic Act or Food and Drug Administration which would preempt state tort claims. 841 F. Supp. 327 (1993).

Defendants' motion for partial summary judgment on plaintiff's claim for strict product liability granted, where defendants did not play integral role in production or marketing of lanai tile, and tile did not constitute a "product" under Hawaii law. 841 F. Supp. 986 (1994).

Plaintiffs failed to meet burden of proving that defendant placed defective product in the stream of commerce. 844 F. Supp. 590 (1994).

There was no legal basis for requiring raw material supplier to warn ultimate consumers of implant. 844 F. Supp. 590 (1994).

Economic loss doctrine applied to tort actions in the case, barring any cause of action in tort and strict liability, where plaintiff suffered only pecuniary injury as result of defendants' alleged conduct and was limited to recovery under law of contract. 955 F. Supp. 1213 (1996).

Strict liability design defect, breach of implied warranty, and failure to warn claims, and certain negligence claims, e.g., negligent labeling and packaging and negligent design, against certain defendants were preempted by the Federal Insecticide, Fungicide, and Rodenticide Act. 272 F. Supp. 2d 1112 (2003).

Defendant automobile manufacturer may assert a defense of comparative negligence to plaintiff's negligence and strict liability claims regarding injuries stemming from the "second collision" between plaintiff's head and the steering column that occurred due to the failure of the airbags to deploy. 370 F. Supp. 2d 1091 (2005).

Where plaintiff was seriously injured while attending an expo at a hotel when a registration booth fell on plaintiff, there were: (1) a question of fact as to whether the defendant that provided and assembled the booth, relinquished possession of the booth during the expo, which precluded a determination of whether the defendant leased the booth as well as whether the strict products liability doctrine applied to the defendant; and (2) a genuine issue of material fact as to whether the defendant could have reasonably foreseen that the booth would be used in an area that was subject to strong gusts of wind. 634 F. Supp. 2d 1130 (2009).

Combat activities exception to the federal Tort Claims Act did not shield private defense contractor from liability for an alleged defective mortar cartridge which exploded unexpectedly during an army training exercise. 696 F. Supp. 2d 1163 (2010).

Defendant's motion to dismiss for lack of personal jurisdiction denied; among other things, defendant, which manufactured high pressure turbine blades, purposefully availed itself of the privilege of conducting business in Hawaii with respect to plaintiff's negligence, strict liability, and negligent misrepresentation claims. 942 F. Supp. 2d 1035 (2013).

Plaintiff asserted state law claims based on injuries sustained after undergoing spinal surgery in which plaintiff's surgeon used defendants' class III prescription medical device in an off-label manner not approved by the Food and Drug

Administration. Express and implied preemption of the claims discussed, where the court granted defendants' motion to dismiss, with leave for plaintiff to amend certain claims. 15 F. Supp. 3d 1021 (2014).

Genuine issues of material fact existed with respect to defendant franchisor's degree of control over the sandwich consumed by plaintiff and defendant franchisee's restaurant, thus, summary judgment was inappropriate for defendant franchisor on the claims of strict products liability, duty to warn, and implied warranty of merchantability. 15 F. Supp. 3d 1043 (2014).

Strict products liability--adoption of doctrine, proof of defect, parties in chain of distribution. 52 H. 71, 470 P.2d 240 (1970).

In strict products liability action, state-of-the-art evidence not admissible to establish whether seller knew or should have known of dangerousness of product. 69 H. 287, 740 P.2d 548 (1987); 960 F.2d 806 (1992).

Punitive damages may be awarded in products liability action based on underlying theory of strict liability where plaintiff proves requisite aggravating conduct on part of defendant. 71 H. 1, 780 P.2d 566 (1989).

Publication is not a "product". 73 H. 359, 833 P.2d 70 (1992).

To bring implied warranty of merchantability action for personal injury, plaintiff must show product unmerchantability sufficient to avoid summary judgment on issue of defectiveness in a tort strict products liability suit. 74 H. 1, 837 P.2d 1273 (1992).

Economic loss rule applies to bar recovery of pure economic loss in actions based on products liability but does not bar actions based on negligent misrepresentation or fraud. 82 H. 32, 919 P.2d 294 (1996).

Manufacturer not negligent in failing to warn of "blind zone" danger where danger involved in using straddle carrier was obvious and apparent, discernible by casual inspection, and generally known and recognized. 85 H. 336, 944 P.2d 1279 (1997).

Negligence and strict products liability claims against defendants for defective manufacture or design of fungicide not preempted by Federal Insecticide, Fungicide, and Rodenticide Act. 86 H. 214, 948 P.2d 1055 (1997).

Where defendants voluntarily assumed express warranty on fungicide label, and though express warranty on label was EPA approved it was not mandated under Federal Insecticide, Fungicide, and Rodenticide Act, Act did not preempt plaintiffs'

claims for breach of express warranty. 86 H. 214, 948 P.2d 1055 (1997).

As dangers of riding unrestrained in open cargo bed of pickup truck are obvious and generally known to ordinary user, truck manufacturer had no duty to warn potential passengers of those dangers. 87 H. 413, 958 P.2d 535 (1998).

Escalator was not a "product" for purposes of strict liability claim against department store where it was located, but was a "product" for purposes of strict liability claims against manufacturer and distributor. 89 H. 204, 970 P.2d 972 (1998).

Where jurors could conclude either that design of tire rim assembly was cause of tire repairman's death or repairman's own negligence was sole legal cause of death, trial court erred in granting summary judgment for tire manufacturer on issue of tire manufacturer's strict liability for defective design of tire rim assembly. 92 H. 1, 986 P.2d 288 (1999).

Where owner of road grader was itself a user and consumer of the wheel components, was not in the business of selling or leasing the tire rim assembly, and did not introduce the harmful product into the stream of commerce, it was not strictly liable for tire repairman's death and was not under a duty to warn of possible dangers associated with the wheel assembly. 92 H. 1, 986 P.2d 288 (1999).

It is not always necessary to produce the specific instrumentality causing the accident to prove a case in products liability. 1 H. App. 111, 615 P.2d 749 (1980).

Negligence and strict liability principles, discussed. 10 H. App. 547, 879 P.2d 572 (1994).

In breach of express warranty actions based on seller's failure to deliver goods in conformance with an express promise, affirmation of fact, or description, "substantial factor" test proper standard to apply in determining proximate cause. 86 H. 383 (App.), 949 P.2d 1004 (1997).

UCC statute of limitations applies to breach of express warranty claim for personal injury. 86 H. 383 (App.), 949 P.2d 1004 (1997).

Taken together, the factors on which the trial court based its finding that defendant knew the seatbelt was susceptible to inertial and inadvertent release did not amount to clear and convincing evidence that defendant had notice of such susceptibility, yet acted with an "entire want of care which would raise the presumption of a conscious indifference to consequences"; thus, trial court abused its discretion in denying the portion of defendant's judgment as a matter of law pertaining to the punitive damages award. 121 H. 143 (App.), 214 P.3d 1133 (2009).

Trial court erred in instructing the jury on the latent danger theory of defect and negligent failure to warn where plaintiffs presented no evidence that a failure to warn in any way caused motorist's injuries; even if the seatbelt buckle had a potential for inertial and inadvertent release and defendant had a duty to warn motorist about such, which duty defendant failed to fulfill, there was nothing motorist could have done as a result to prevent motorist's injuries. 121 H. 143 (App.), 214 P.3d 1133 (2009).

Res ipsa loquitur.

Doctrine of res ipsa loquitur under Hawaii tort law did not apply in action under Federal Tort Claims Act for injuries suffered by hand grenade thrown in restaurant parking lot. 938 F.2d 158 (1991).

Where inference of negligence raised by res ipsa loquitur is so strong that jury could not reasonably reject it, court may enter judgment n.o.v. 57 H. 279, 554 P.2d 1137 (1976).

Instruction. 59 H. 319, 582 P.2d 710 (1978).

Doctrine of res ipsa loquitur did not create an inference of negligence and did not apply where decedent somehow accessed the rooftop of respondent mall owner's mall, entered into and became trapped in an exhaust duct above the food court, then died from hyperthermia and respiratory compromise. 130 H. 262, 308 P.3d 891 (2013).

Elements were not established satisfactorily so as to warrant application of the doctrine; invocation of the doctrine does not establish a presumption of negligence or shift the burden of proof. 77 H. 269 (App.), 883 P.2d 691 (1994).

See 40 H. 198 (1953); 43 H. 289 (1959), reh'g den. 43 H. 330 (1959); 48 H. 330, 335, 402 P.2d 289 (1965); 49 H. 77, 412 P.2d 669 (1966), reh'g den. 49 H. 267, 414 P.2d 428 (1966).

Other torts.

Defendants' statements implying attorney's poor client representation did not place attorney in false light where general and specific contexts in which statements were made did not imply assertion of an objective fact and statements were incapable of being proved true or false. 56 F.3d 1147 (1995).

District court did not err in rejecting appellants' trademark claim, since appellants could offer no evidence that trademark holder voluntarily licensed its trademark to manufacturer or that trademark holder had significant involvement in design, manufacture, or distribution of manufacturer's implant. 82 F.3d 894 (1996).

Regardless of whether chapter 387 can form the basis of a Parnar action, Hawaii law indicated that appellants (ramp

supervisor and ramp agent who contended that they were terminated by airline in connection with ramp supervisor's wage and hour complaint, in violation of public policy) had not produced sufficient evidence to survive summary judgment on such a claim, even if it did exist. 281 F.3d 1054 (2002).

Action for interfering with terminable at-will contract allowed. 808 F. Supp. 736 (1992).

Plaintiffs' argument that since manufacturer improperly used defendant's trademark, and defendant failed to prevent this improper use, defendant was liable for alleged defective nature of implant, rejected. 844 F. Supp. 590 (1994).

Plaintiff could not prevail on false imprisonment claim, where defendant police officer and defendant resident manager had probable cause to arrest plaintiff for harassment. 855 F. Supp. 1167 (1994).

In case arising out of alleged assault on airplane, tort claims for assault and battery preempted by Airlines Deregulation Act. 905 F. Supp. 823 (1995).

Plaintiff's motion for partial summary judgment as to conversion claim granted, where defendant converted bill of lading to defendant's own use by sending it to defendant's attorney in Japan to ensure payment of invoice for defendant's services. 101 F. Supp. 2d 1315 (1999).

Preemption by Fair Credit Reporting Act of plaintiff's defamation and negligence claims against furnishers of credit information and consumer reporting agencies, discussed. 293 F. Supp. 2d 1167 (2003).

Where plaintiff asserted viable claims against defendants under 42 U.S.C. §1981, Title VII, and chapter 378, and each of the statutes provided a sufficient remedy such that the court did not need to fashion any further remedy under the public policy exception, defendants' motion for partial summary judgment granted on plaintiff's claim for violation of public policy. 322 F. Supp. 2d 1101 (2004).

Count of plaintiff's complaint sounding in common law wrongful termination in violation of public policy failed to state a claim; there could be no statutorily-based Parnar common law claims where, as with the federal Pregnancy Discrimination and Family and Medical Leave Acts, the statutes themselves provided comprehensive remedial schemes to vindicate their public policies. 324 F. Supp. 2d 1144 (2004).

Plaintiffs' spoliation claims failed as a matter of law, where plaintiffs based their spoliation claims on the destruction of plants from the alleged Costa Rica field test; destruction of the plants did not result in plaintiffs' inability to prove the underlying cases. 330 F. Supp. 2d 1101 (2004).

Defendant, an outside auditor hired by pension plan trustees, was entitled to summary judgment as to plaintiff's negligence and negligent misrepresentation claims, where plaintiff was, at most, an incidental beneficiary of defendant's audit and plaintiff's reliance, if any, was not justified. 433 F. Supp. 2d 1181 (2006).

Hawaii law denied an unmarried partner standing to bring a common law loss of consortium claim based upon a severe injury to the other partner. 486 F. Supp. 2d 1156 (2007).

Counterclaimants pled sufficient facts with particularity to state a claim of fraud by omission. 488 F. Supp. 2d 1071 (2006).

Under Restatement of Tort, Agency, or Restitution, counterclaim defendant may be liable for substantially or intentionally assisting or colluding with other counterclaim defendant (OCD) to breach OCD's fiduciary duty to counterclaimants that arose from OCD's role as their agent. 488 F. Supp. 2d 1071 (2006).

Defendants' motion for summary judgment granted as to plaintiff's common law claim for retaliation in violation of state public policy, where, inter alia, the public policy exception under Parnar was not applicable to plaintiff, who was not an at-will employee. 490 F. Supp. 2d 1062 (2007).

Defendants' motion for partial summary judgment granted as to plaintiff's: (1) invasion of privacy claim, where plaintiff failed to set forth facts sufficient to make out an element of the prima facie privacy claim and defendants' publication was privileged; and (2) claim that defendants misappropriated and used plaintiff's name and likeness in an unfavorable publication without plaintiff's authorization, where the published article, photographs, and liner notes were newsworthy and relevant. 528 F. Supp. 2d 1081 (2007).

Summary judgment on the civil conspiracy to defraud claim denied, where, inter alia, plaintiffs raised a genuine issue of fact regarding defendants' intent to conspire to defraud a defendant's creditors. 529 F. Supp. 2d 1190 (2007).

Defendant's alleged tort claims for negligent fulfillment of the contract were thinly veiled contract claims, thus, insofar as defendant's tort claims were premised on third-party defendant's supposed failure to produce a design according to their contract, those claims were barred. 591 F. Supp. 2d 1141 (2008).

Plaintiff was seriously injured while attending an expo at a hotel when a registration booth fell on plaintiff. There appeared to be a genuine issue of material fact regarding plaintiffs' negligent design claim as to whether the danger of

the booth toppling over because of a strong gust of wind was reasonably foreseeable. 634 F. Supp. 2d 1130 (2009).

Defendant's motion for summary judgment as to plaintiffs' claim for wrongful termination in violation of state public policy denied, where issues of material fact existed as to defendant's motivation for removing and terminating plaintiffs. 654 F. Supp. 2d 1122 (2008).

Plaintiff's claim for conversion was preempted by federal copyright law. 673 F. Supp. 2d 1144 (2009).

Count alleging negligence failed to state a claim in a 42 U.S.C. §1983 civil rights lawsuit brought by a former state prisoner and other allegedly similarly-situated plaintiffs primarily seeking damages for "over detention". 678 F. Supp. 2d 1061 (2010).

Plaintiff, who appeared to have sold its option to purchase property to an alleged buyer, sufficiently alleged a negligent misrepresentation claim; all elements of negligent misrepresentation met where plaintiff alleged that defendant supplied false information as a result of defendant's failure to exercise reasonable diligence in investigating the property, plaintiff was the person for whose benefit the information was supplied and as a result suffered a loss, and plaintiff relied on the misrepresentation. 693 F. Supp. 2d 1192 (2010).

Civil claim for conspiracy sufficient where, as alleged by plaintiff, all defendants had an agreement to further the alleged fraud, defendant falsely represented the costs of the loans, defendant hid the fact that there would be two loans, defendant misrepresented plaintiff's income on the loan documents, and defendant misstated the amount that plaintiff was required to pay. 707 F. Supp. 2d 1080 (2010).

Defendants' motion for summary judgment on conversion claim denied where there existed a genuine issue of material fact as to whether or not defendants possessed "a constructive or actual intent to injure plaintiffs"; dispute remained regarding whether or not defendants wrongfully detained escrow funds in bad faith and therefore would be liable to plaintiff. 710 F. Supp. 2d 1036 (2010).

No misrepresentation by defendant where plaintiff clearly failed to rely on the fact that plaintiff had a viable option due to plaintiff's failure to even attempt to exercise such an option; defendants' alleged misrepresentation did not affect plaintiff's actions; defendants' motion for summary judgment on this issue granted. 710 F. Supp. 2d 1036 (2010).

Plaintiff's claim for negligent misrepresentation dismissed where it was grounded in fraud and not pled with specificity. 730 F. Supp. 2d 1213 (2010).

Defendant city and county of Honolulu's motion to dismiss plaintiff's intentional assault and battery claim denied where plaintiff alleged that plaintiff was intentionally shot with a taser, kicked and punched without any provocation, and was, as a result, seriously injured. 761 F. Supp. 2d 1080 (2010).

Defendants' motion to dismiss mortgagors' conspiracy to slander title claim granted where plaintiffs failed to allege an underlying tort for slander of title; it followed that plaintiffs' conspiracy claim premised on that underlying tort also failed. 823 F. Supp. 2d 1061 (2011).

Defendants' motion to dismiss mortgagors' slander of title claim granted where plaintiffs did not have standing to challenge the validity of the terms of the assignment between two of the defendants since they were neither parties nor intended third-party beneficiaries to the contract; further, plaintiffs failed to allege sufficient facts demonstrating that the assignment was false or that two of the defendants acted with malice. 823 F. Supp. 2d 1061 (2011).

Defendant lender's motion for summary judgment denied as to plaintiff borrower's aiding and abetting claim to the extent it relied on a theory that defendant lender breached its duties to plaintiff (by failing to properly complete the notice of right to cancel forms regarding the loan transactions and not disclosing the negative amortization in the first loan) and thus, provided "substantial assistance" to defendant mortgage broker or defendant escrow company, or both, in their alleged commission of chapter 480 violations or fraud. 834 F. Supp. 2d 1061 (2011).

Defendant lender's motion for summary judgment granted on plaintiff borrower's claim of aiding and abetting to the extent that the court relied on a theory that defendant lender knowingly provided assistance to defendant mortgage broker or defendant escrow company, or both, in their alleged commission of chapter 480 violations or fraud. 834 F. Supp. 2d 1061 (2011).

Defendant lender's motion for summary judgment granted on plaintiff borrower's conspiracy claim where plaintiff failed to establish an agreement or understanding between defendant lender and defendant mortgage broker; plaintiff only presented the representations made by defendant mortgage broker about the terms of loans it was offering to plaintiff and plaintiff's declaration of employee of mortgage broker's promise to use employee's connections with defendant lender to obtain financing. 834 F. Supp. 2d 1061 (2011).

Even assuming that defendant lender made false representations about the terms of loans it was offering to plaintiff borrower, the representations were merely promissory in nature or

expressions of intentions; plaintiff could not recover on a fraud claim based on the failure to fulfill those promises unless plaintiff could prove that, when defendant made those representations, it did not have the present intent to fulfill them; defendant's motion for summary judgment on plaintiff's fraud claim granted. 834 F. Supp. 2d 1061 (2011).

Defendant's motion to dismiss for lack of personal jurisdiction denied; among other things, defendant, which manufactured high pressure turbine blades, purposefully availed itself of the privilege of conducting business in Hawaii with respect to plaintiff's negligence, strict liability, and negligent misrepresentation claims. 942 F. Supp. 2d 1035 (2013).

Defendant's motion to dismiss as to wrongful discharge in violation of public policy claim granted; among other things, plaintiff's allegations, taken as true, showed that plaintiff abandoned plaintiff's job. 945 F. Supp. 2d 1133 (2013).

Economic loss rule barred recovery as to plaintiff's negligence, products liability, and negligent representation claims, insofar as plaintiff did not seek damages for injury to its fish. 971 F. Supp. 2d 1017 (2013).

Where defendant franchisor argued that it could not be liable for the counts of negligence because it had no control over defendant franchisee's restaurant, there was an issue of material fact as to whether defendant franchisor retained the requisite control over the sandwich consumed by plaintiff. 15 F. Supp. 3d 1043 (2014).

Assault aboard ship. 2 H. 255 (1860); 29 H. 564 (1927).

Landlord and tenant. 11 H. 395 (1898).

Collision defined. 29 H. 101 (1926). See 29 H. 122 (1926).

Wilful negligence. 30 H. 12 (1927).

Conditional vendee may maintain action for injury to property. 30 H. 44 (1927).

Public contractor. 31 H. 296 (1930).

Landlord, tenant and third party. 31 H. 740 (1931).

Disposal of surface waters, resultant damage. 40 H. 193 (1953); 47 H. 68, 384 P.2d 308 (1963); 47 H. 329, 388 P.2d 214 (1963).

Operator of bathing pools, duty of. 40 H. 513 (1954).

Disposal of surface waters. 52 H. 156, 472 P.2d 509 (1970).

Liability of one who voluntarily undertakes a course of conduct intended to induce another to engage in an action. 58 H. 502, 573 P.2d 107 (1977).

Appellants' state tort claims for false arrest, false imprisonment, and malicious prosecution failed as a matter of law because appellants did not contest the preliminary hearing determination of probable cause and their commitment to circuit

court for trial. Appellants failed to cite to any persuasive or relevant authority in support of their contention that where actions or inactions of the prosecutor subsequent to a preliminary hearing "erodes" probable cause, an action for false arrest, false imprisonment, or malicious prosecution arises. 76 H. 219, 873 P.2d 98 (1994).

Claimant not precluded by exclusivity provision of §386-5 from seeking common law tort remedies against employer's insurer where injuries allegedly caused by insurer's denial of medical benefits and disability payments not "work injuries" within scope of chapter 386. 83 H. 457, 927 P.2d 858 (1996).

In the context of construction litigation regarding the alleged negligence of design professionals, a tort action for negligent misrepresentation alleging damages based purely on economic loss is not available to a party in privity of contract with a design professional; recovery limited to contract remedies. 87 H. 466, 959 P.2d 836 (1998).

Where plaintiff's claims did not arise under chapter 386, the exclusive remedy and original jurisdiction provisions in the workers' compensation statute did not apply, and where plaintiff's claims for relief of tortious conduct on the part of workers' compensation insurer were not within the original jurisdiction of the labor director, trial court erred in granting summary judgment on that basis. 90 H. 407, 978 P.2d 845 (1999).

Trial court's summary judgment in favor of accountant on appellants' negligence claim for accountant malpractice proper where appellants were incidental, not intended, beneficiaries of the relationship between accountant and client. 95 H. 247, 21 P.3d 452 (2001).

Trial court's summary judgment in favor of accountant on appellants' third party beneficiary negligence claim for accountant malpractice proper where appellants were incidental, not intended, beneficiaries of the implied contract between accountant and client. 95 H. 247, 21 P.3d 452 (2001).

Plaintiffs' claim of having spent three to five dollars on gasoline in reliance upon car dealership's advertisement, which they alleged was intended to induce them to visit dealership's lot for the purpose of purchasing an automobile, was a showing of sufficient damages for purposes of maintaining a negligent misrepresentation claim; court thus erred in granting summary judgment in favor of dealership on the basis that plaintiffs' damages were inadequate. 98 H. 309, 47 P.3d 1222 (2002).

The three to five dollars plaintiffs claimed having spent on gasoline responding to car dealership's advertisement, if proved, satisfied the requirement of "substantial pecuniary

loss" necessary to support a claim for relief grounded in fraud. 98 H. 309, 47 P.3d 1222 (2002).

State employees' retirement system board has a fiduciary duty to provide its members with clear, understandable information concerning retirement benefits; where failure to do so in case may have resulted in retiree's unilateral mistake with respect to retiree's chosen mode of retirement and, additionally, constituted negligent misrepresentation, case remanded to board. 108 H. 212, 118 P.3d 1155 (2005).

Union shop steward's claims for abuse of process were preempted by the National Labor Relations Act where, given the circumstances of the case, the State's interest in protecting its citizens from abusive use of the courts and in policing its own court system were insufficient to override the federal labor scheme. 109 H. 520, 128 P.3d 833 (2006).

Union shop steward's claim for false light invasion of privacy was not preempted by the National Labor Relations Act where the National Labor Relations Board in an unfair labor practice proceeding would focus on the effect of the alleged acts on steward's association with the labor union while a state court would focus on infringement of the steward's right to privacy, and the interests of an individual in securing his or her privacy is a primary state concern. 109 H. 520, 128 P.3d 833 (2006).

If plaintiff's claims that ranch tour guide failed to reasonably supervise the equine activities that were the proximate cause of plaintiff's injury were correct, the presumption of non-negligence set forth in §663B-2 would not apply; thus it was error for trial court to apply §663B-2 to the case. 111 H. 254, 141 P.3d 427 (2006).

Where defendant lawyers' conduct at issue occurred during a quasi-judicial proceeding (arbitration), notwithstanding the fact that the proceeding was temporarily stayed, litigation privilege was applicable to appeal. 113 H. 251, 151 P.3d 732 (2007).

A homeowner may pursue a negligence claim against a builder where it is alleged that the builder has violated an applicable building code, despite the fact that the homeowner suffered only economic losses; thus, association of apartment owners' negligence claims based on violations of the uniform building code were not barred by the economic loss rule. 115 H. 232, 167 P.3d 225 (2007).

Where law firm's actions as an employer and law firm were not inconsistent and law firm's status as an employer and law firm involved a single legal entity for purposes of the "dual persona" doctrine, trial court did not err in granting law

firm's motion to dismiss terminated attorney's negligent investigation claim. 117 H. 92, 176 P.3d 91 (2008).

Where §386-5 unambiguously provides that claims for infliction of emotional distress or invasion of privacy are not subject to the exclusivity provision when such claims arise from claims for sexual harassment or sexual assault, in which case a civil action may be brought, and plaintiff alleged a claim for emotional distress (negligent investigation) that did not arise out of sexual harassment or sexual assault, such claim was, pursuant to §386-5, barred. 117 H. 92, 176 P.3d 91 (2008).

Although the first amended complaint sufficiently alleged that the defendants employed processes and that their primary purpose in utilizing those processes was improper, it did not show that the defendants committed a wilful act not proper in the regular conduct of the underlying case; thus, trial court correctly dismissed plaintiff's abuse of process claim. 119 H. 403, 198 P.3d 666 (2008).

Trial court's dismissal of malicious defense claim affirmed, and recognizing the tort of malicious defense unnecessary where: (1) the threat of subsequent litigation will have a chilling effect on a party's legitimate defenses; and (2) existing rules and tort law compensate plaintiffs for the harm that they suffer when defendants' litigation tactics are brought in bad faith. 119 H. 403, 198 P.3d 666 (2008).

Sale by real estate broker of client's property to a party in which broker had pecuniary interest without disclosure to client was constructive fraud. 2 H. App. 188, 628 P.2d 214 (1981).

False imprisonment. 2 H. App. 655, 638 P.2d 1383 (1982).

Sellers' brokers not entitled as a matter of law to a judgment that they were not liable to buyer for tort of negligent misrepresentation. 6 H. App. 188, 716 P.2d 163 (1986).

Where public policy against terminating employee solely because employee suffered a compensable work injury is evidenced in §378-32 and remedy is available under §378-35, judicially created claim of wrongful discharge in violation of public policy could not be maintained. 87 H. 57 (App.), 951 P.2d 507 (1998).

Allowance of intrafamily tort suits in Hawaii does not constitute a public policy which may be used to invalidate household exclusion clauses in a homeowner's policy. 87 H. 430 (App.), 958 P.2d 552 (1998).

In a tort case, the payment of the prevailing defendant's costs by the prevailing defendant's insurer pursuant to the insurance policy is not a valid reason for the trial court to decide not to order the losing plaintiff to pay the costs reasonably incurred by the prevailing defendant. 102 H. 119 (App.), 73 P.3d 73 (2003).

As Hawaii generally does not apply the theory of an implied warranty of habitability to commercial leases, and plaintiff's sublease was a commercial sublease without any special clause, plaintiff's claim on this basis was correctly adjudicated. 104 H. 500 (App.), 92 P.3d 1010 (2004).

Trial court properly granted summary judgment in favor of defendant magazine and article's author on plaintiff's false light invasion of privacy claim where claim was based on the same statements as plaintiff's defamation claim; as defamation claim was dismissed, false light claim, which was a derivative of the defamation claim, also had to be dismissed. 121 H. 120 (App.), 214 P.3d 1110 (2009).

Trial court properly granted summary judgment in favor of defendant magazine and article's author on plaintiff's unreasonable publicity claim regarding magazine article that plaintiff was considered a suspect in attacks against women on Kauai where plaintiff could not prove that the Kauai serial murder investigation was not of legitimate concern to the public. 121 H. 120 (App.), 214 P.3d 1110 (2009).

A fiduciary relationship is not a required element of conspiracy to defraud; thus, shareholders had standing to bring their conspiracy-to-defraud claim against attorney and circuit court erred in finding shareholders lacked standing; however, error was harmless as shareholders failed to show that there was a genuine issue of material fact that attorney committed conspiracy to defraud. 123 H. 82 (App.), 230 P.3d 382 (2009).

In Hawaii, fraud is never presumed, and shareholder's assignor's actual reliance on the alleged misrepresentations and resulting damages were elements of the claim shareholder was required to prove by clear and convincing evidence; where shareholder indisputably failed to adduce any evidence with respect to shareholder's reliance on the alleged fraud, there was no legally sufficient evidentiary basis for a reasonable jury to find in shareholder's favor on shareholder's fraud count; thus, the circuit court did not err in granting defendant's motion for judgment as a matter of law. 123 H. 82 (App.), 230 P.3d 382 (2009).

Under Hawaii law, construction defect claims do not constitute an "occurrence" under a commercial general liability policy; thus, breach of contract claims based on allegations of shoddy performance are not covered under these policies; additionally, tort-based claims, derivative of these breach of contract claims, are also not covered under commercial general liability policies. 123 H. 142 (App.), 231 P.3d 67 (2010).

Because the economic loss doctrine functions to bar the recovery of such losses in negligent design and/or manufacture cases even in the absence of privity of contract, appellants'

claims against design professional were barred. 126 H. 532 (App.), 273 P.3d 1218 (2012).

Where the notice of pendency of actions were filed in the course of judicial proceedings and were related to those proceedings, the absolute litigation privilege applied to the claims for slander of title; thus, the judgment in favor of attorney on the slander of title claim was proper. 127 H. 368 (App.), 279 P.3d 33 (2012).

Plaintiff's claims of neglect, abuse, and failure to provide a safe home against care home defendants did not constitute "medical torts" within the meaning of §671-1; thus, plaintiff was not required to submit plaintiff's claims to a medical claims conciliation panel (MCCP) pursuant to §§671-12 and 671-16 as a condition for plaintiff to file suit against defendants, and the circuit court erred in dismissing plaintiff's suit based on plaintiff's failure to submit plaintiff's claims to a MCCP. 128 H. 405 (App.), 289 P.3d 1041 (2012).

Plaintiffs' claim was sufficient to allege a cause of action for battery against the defendants in their alleged capacity as non-employers of plaintiffs. 132 H. 478 (App.), 323 P.3d 122 (2014).

Miscellaneous.

In class action brought against major cigarette manufacturers, tobacco trade associations, and the industry's public relations firm, first amended complaint asserted violations of federal RICO statutes; Hawaii's RICO statute, §842-2; federal antitrust statutes; Hawaii's antitrust act, chapter 480; various state common-law torts; and false advertising under §708-871; defendants' motion to dismiss for failure to state a claim granted, where injuries alleged by plaintiffs trust funds in first amended complaint were not direct; even if remoteness doctrine did not bar claims, claims failed for other reasons. 52 F. Supp. 2d 1196 (1999).

Where money is tortiously taken claimant may waive tort and sue in assumpsit. 11 H. 270 (1898).

Contract of bailment, duty of bailor. 28 H. 145 (1924); 47 H. 588, 393 P.2d 171 (1964).

Pleading scope of authority. 29 H. 604 (1927); 30 H. 452 (1928).

Last clear chance, essential elements. 52 H. 129, 471 P.2d 524 (1970).

Choice of law. 63 H. 653, 634 P.2d 586 (1981).

" **[§663-1.2] Tort liability for breach of contract; punitive damages.** No person may recover damages, including punitive

damages, in tort for a breach of a contract in the absence of conduct that:

(1) Violated a duty that is independently recognized by principles of tort law; and

(2) Transcended the breach of the contract. [L 1999, c 237, §1]

Law Journals and Reviews

Russ Francis v. Lee Enterprises: Hawai‘i Turns Away From Tortious Breach of Contract. 23 UH L. Rev. 647 (2001).

" **§663-1.3 "Ad damnum" clause prohibited.** (a) Notwithstanding any other provision of law, in any action based on tort, including a medical tort as defined in section 671-1, to recover damages for personal injuries or wrongful death, no complaint, counterclaim, cross claim or third party claim nor any amendment to such pleadings shall specify the amount of damages prayed for but shall contain a prayer for general relief, including a statement that the amount of damages is within the minimum jurisdictional limits of the court in which the action is brought.

(b) If the complaint, counterclaim, cross claim or third party claim or any amendment to such pleadings contains a specified amount of damages, the claim, counterclaim, cross claim or third party claim shall be dismissed by the court without prejudice; provided that, upon the filing of a motion to dismiss a complaint on the grounds of specificity of damages, the court shall allow the pleading to be amended in lieu of dismissal at the request of the claimant. [L 1987, c 38, §1; am L 1988, c 83, §1]

" **[§663-1.4] Payment of reasonable attorney's fees and costs in defense of suit.** In any case brought by one health care professional against another for defamation, damage to reputation, or any other loss resulting from information provided by the second health care professional in any situation relating to a medical peer review proceeding, including the providing of information that may lead to the initiation of such a proceeding, if the second health care professional substantially prevails in the action, and if the action brought by the first health care professional was frivolous, unreasonable, without foundation, or in bad faith, then the court, at the conclusion of the action, shall award to the second health care professional the cost of defending against the action, including a reasonable attorney's fee. [L 1989, c 302, §1]

Cross References

Health care peer review, see chapter 671D.
Vexatious litigants, see chapter 634J.

" **§663-1.5 Exception to liability.** (a) Any person who in good faith renders emergency care, without remuneration or expectation of remuneration, at the scene of an accident or emergency to a victim of the accident or emergency shall not be liable for any civil damages resulting from the person's acts or omissions, except for such damages as may result from the person's gross negligence or wanton acts or omissions.

(b) No act or omission of any rescue team or physician working in direct communication with a rescue team operating in conjunction with a hospital or an authorized emergency vehicle of the hospital or the State or county, while attempting to resuscitate any person who is in immediate danger of loss of life, shall impose any liability upon the rescue team, the physicians, or the owners or operators of such hospital or authorized emergency vehicle, if good faith is exercised.

This section shall not relieve the owners or operators of the hospital or authorized emergency vehicle of any other duty imposed upon them by law for the designation and training of members of a rescue team or for any provisions regarding maintenance of equipment to be used by the rescue team or any damages resulting from gross negligence or wanton acts or omissions.

(c) Any physician or physician assistant licensed to practice under the laws of this State or any other state who in good faith renders emergency medical care in a hospital to a person, who is in immediate danger of loss of life, without remuneration or expectation of remuneration, shall not be liable for any civil damages, if the physician or physician assistant exercises that standard of care expected of similar physicians or physician assistants under similar circumstances. Any physician who supervises a physician assistant providing emergency medical care pursuant to this section shall not be required to meet the requirements set forth in chapter 453 regarding supervising physicians.

(d) Any person or other entity who as a public service publishes written general first aid information dealing with emergency first aid treatment, without remuneration or expectation of remuneration for providing this public service, shall not be liable for any civil damages resulting from the written publication of such first aid information except as may result from its gross negligence or wanton acts or omissions.

(e) Any person who in good faith, without remuneration or expectation of remuneration, attempts to resuscitate a person in immediate danger of loss of life when administering any automated external defibrillator, regardless of where the automated external defibrillator that is used is located, shall not be liable for any civil damages resulting from any act or omission except as may result from the person's gross negligence or wanton acts or omissions.

Any person, including an employer, who provides for an automated external defibrillator or an automated external defibrillator training program shall not be vicariously liable for any civil damages resulting from any act or omission of the persons or employees who, in good faith and without remuneration or the expectation of remuneration, attempt to resuscitate a person in immediate danger of loss of life by administering an automated external defibrillator, except as may result from a person's or employer's gross negligence or wanton acts or omissions.

(f) Any physician or physician assistant who administers an automated external defibrillator program without remuneration or expectation of remuneration shall not be liable for any civil damages resulting from any act or omission involving the use of an automated external defibrillator, except as may result from the physician's or physician assistant's gross negligence or wanton acts or omissions.

(g) This section shall not relieve any person, physician, physician assistant, or employer of:

(1) Any other duty imposed by law regarding the designation and training of persons or employees;

(2) Any other duty imposed by provisions regarding the maintenance of equipment to be used for resuscitation; or

(3) Liability for any damages resulting from gross negligence, or wanton acts or omissions.

(h) For the purposes of this section:

"Automated external defibrillator program" means an appropriate training course that includes cardiopulmonary resuscitation and proficiency in the use of an automated external defibrillator.

"Good faith" includes but is not limited to a reasonable opinion that the immediacy of the situation is such that the rendering of care should not be postponed.

"Rescue team" means a special group of physicians, basic life support personnel, advanced life support personnel, surgeons, nurses, volunteers, or employees of the owners or operators of the hospital or authorized emergency vehicle who have been trained in basic or advanced life support and have

been designated by the owners or operators of the hospital or authorized emergency vehicle to attempt to provide such support and resuscitate persons who are in immediate danger of loss of life in cases of emergency. [L 1969, c 80, §1; am L 1974, c 44, §1; am L 1979, c 81, §2; am L 1980, c 232, §35; am L 1983, c 33, §1; gen ch 1985; am L 1998, c 160, §2; am L 2004, c 191, §1; am L 2007, c 91, §§2, 3; am L 2009, c 17, §1 and c 151, §§23, 24]

Law Journals and Reviews

Consent for Testing and Treatment of Minors in Hawaii. 13 HBJ, no. 13, at 165 (2009).

Case Notes

Subsection (a) absolves bystanders providing first aid from liability, and did not address the instant situation, where respondent mall owner had an affirmative duty to render aid to decedent after respondent knew or had reason to know that decedent was ill or injured, and to care for decedent until decedent could be cared for by others. 130 H. 262, 308 P.3d 891 (2013).

" **[§663-1.52] Exception to liability for county lifeguard services.** *[Section repealed June 30, 2017. L 2014, c 98, §1.]* (a) For the purpose of this section:

"County lifeguard" means a person employed as a lifeguard by a county of this State.

"Employing county" means the county employing a county lifeguard.

(b) Notwithstanding any other law to the contrary, a county lifeguard, the employing county, and the State shall not be liable for any civil damages resulting from any act or omission of the lifeguard while providing rescue, resuscitative, or other lifeguard services on the beach or in the ocean in the scope of employment as a county lifeguard. This exception from liability, however, shall not apply when the claim for civil damages results from a county lifeguard's gross negligence or wanton act or omission. [L 2002, c 170, §§1, 5; am L 2007, c 152, §4; am L 2009, c 81, §2]

" **[§663-1.53] Liability for operation of a family child care home.** (a) Where a family child care home is authorized and established in compliance with this section, the association shall not be liable for any claims or causes of action for any injury to a child that is subject to the care of the family child care home, or to any of the child's relatives, guardians,

or caretakers, that occur within the family child care home or on the common elements of the condominium project, planned community, or townhouse project in which the family child care home is located.

(b) This section shall not apply to an association that:

(1) Allows the operation of a family child care home that is:

(A) Not operated by an owner-occupant;

(B) Above the fourth floor; or

(C) Not established in compliance with the Equal Opportunity for Individuals with Disabilities Act, (Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., as amended); or

(2) Allows more than three per cent of the total number of apartments subject to the association to be used as a family child care home.

(c) As used in this section:

"Apartment" has the same meaning as set forth in section 502C-1;

"Association" has the same meaning as set forth in section 502C-1;

"Common elements" has the same meaning as set forth in section 502C-1;

"Condominium" has the same meaning as set forth in section 502C-1;

"Family child care home" has the same meaning as set forth in section 502C-1;

"Planned community" has the same meaning as set forth in section 502C-1; and

"Townhouse" has the same meaning as set forth in section 502C-1. [L 1999, c 242, §§2, 8(2); am L 2001, c 225, §3; am L 2005, c 20, §1]

" **[§663-1.54] Recreational activity liability.** (a) Any person who owns or operates a business providing recreational activities to the public, such as, without limitation, scuba or skin diving, sky diving, bicycle tours, and mountain climbing, shall exercise reasonable care to ensure the safety of patrons and the public, and shall be liable for damages resulting from negligent acts or omissions of the person which cause injury.

(b) Notwithstanding subsection (a), owners and operators of recreational activities shall not be liable for damages for injuries to a patron resulting from inherent risks associated with the recreational activity if the patron participating in the recreational activity voluntarily signs a written release waiving the owner or operator's liability for damages for

injuries resulting from the inherent risks. No waiver shall be valid unless:

(1) The owner or operator first provides full disclosure of the inherent risks associated with the recreational activity; and

(2) The owner or operator takes reasonable steps to ensure that each patron is physically able to participate in the activity and is given the necessary instruction to participate in the activity safely.

(c) The determination of whether a risk is inherent or not is for the trier of fact. As used in this section an "inherent risk":

(1) Is a danger that a reasonable person would understand to be associated with the activity by the very nature of the activity engaged in;

(2) Is a danger that a reasonable person would understand to exist despite the owner or operator's exercise of reasonable care to eliminate or minimize the danger, and is generally beyond the control of the owner or operator; and

(3) Does not result from the negligence, gross negligence, or wanton act or omission of the owner or operator. [L 1997, c 129, §1]

Cross References

Hotelkeeper's liability for certain beach and ocean activities and recreational equipment, see §§486K-5.5 and 486K-5.6.

Landowners' liability, see chapter 520.

Ocean recreation and coastal areas programs, see chapter 200.

Law Journals and Reviews

Recreational Activity Liability in Hawai‘i: Are Waivers Worth the Paper on Which They Are Written? 21 UH L. Rev. 715 (1999).

Case Notes

Where defendant's motion for summary judgment argued that plaintiffs signed a valid waiver that released defendant from liability for injuries plaintiffs allegedly suffered when they participated in a recreational horseback riding activity provided by defendant, there were genuine issues of material fact as to whether defendant was negligent, and the release form's validity as a waiver of liability, which depended on whether the horse-biting incident was an "inherent risk" of the

recreational activity that defendant provided to plaintiffs. 315 F. Supp. 2d 1061 (2004).

" **[§663-1.55] Volunteer firefighters; limited liability.** Any volunteer firefighter who in good faith renders firefighting services shall not be liable for any civil damages resulting from the person's acts or omissions occurring during the course of firefighting, except for such damages as may result from the person's gross negligence, or wanton acts or omissions.

For purposes of this section, volunteer firefighter means any person who trains as a volunteer firefighter and who, of the person's own free will, provides firefighting services in a fire emergency without remuneration or expectation of remuneration.

For purposes of this section, good faith includes, but is not limited to, a reasonable opinion that the immediacy of a fire is such that the rendering of firefighting service should not be postponed. [L 1993, c 269, §1]

Cross References

Ratemaking of insurance, see §431:14-103.

" **[§663-1.56] Conclusive presumptions relating to duty of public entities to warn of dangers at public beach parks.** (a) The State or county operating a public beach park shall have a duty to warn the public specifically of dangerous shorebreak or strong current in the ocean adjacent to a public beach park if these conditions are extremely dangerous, typical for the specific beach, and if they pose a risk of serious injury or death.

(b) A sign or signs warning of dangerous shorebreak or strong current shall be conclusively presumed to be legally adequate to warn of these dangerous conditions, if the State or county posts a sign or signs warning of the dangerous shorebreak or strong current and the design and placement of the warning sign or signs has been approved by the chairperson of the board of land and natural resources. The chairperson shall consult the governor's task force on beach and water safety prior to approving the design and placement of the warning sign or signs.

(c) A sign or signs warning of other extremely dangerous natural conditions in the ocean adjacent to a public beach park shall be conclusively presumed to be legally adequate to warn of the dangerous natural conditions, if the State or county posts a sign or signs warning of the extremely dangerous natural condition and the design and placement of the sign or signs have been approved by the chairperson of the board of land and natural resources. The chairperson shall consult the task force

on beach and water safety prior to issuing an approval of the design and placement of a warning sign or signs pursuant to this section.

(d) The State or county operating a public beach park may submit a comprehensive plan for warning of dangerous natural conditions in the ocean adjacent to a public beach park to the chairperson of the board of land and natural resources who shall review the plan for adequacy of the warning as well as the design and placement of the warning signs, devices, or systems. The chairperson shall consult with the task force on beach and water safety prior to issuing an approval of the plan. The task force on beach and water safety may seek public comment on the plan. In the event that the chairperson approves the plan for the particular beach park after consulting with the task force and the State or county posts the warnings provided for in the approved plan, then the warning signs, devices, or systems shall be conclusively presumed to be legally adequate to warn for all dangerous natural conditions in the ocean adjacent to the public beach park.

(e) Neither the State nor a county shall have a duty to warn on beach accesses, coastal accesses, or in areas that are not public beach parks of dangerous natural conditions in the ocean.

(f) Neither the State nor any county shall have a duty to warn of dangerous natural conditions in the ocean other than as provided in this section.

(g) In the event that a warning sign, device, or system posted or established in accordance with this section is vandalized, otherwise removed, or made illegible, the conclusive presumption provided by this section shall continue for a period of five days from the date that the vandalism, removal, or illegibility is discovered by the State or county. The State or county operating a public beach park shall maintain a record regarding each report of vandalism, removal, or illegibility that results in the replacement of a warning sign, device, or system at a State or county public beach park. The record shall include the date and time of the reporting and the replacement of the warning sign, device, or system. The State and county shall provide a copy of the record annually to the chairperson of the board of land and natural resources and the task force on beach and water safety.

(h) The chairperson shall consider the needs of the public to be warned of potentially dangerous conditions in the ocean adjacent to a public beach park prior to issuing an approval for the design and placement of a warning sign or a comprehensive plan. The chairperson may require warning devices or systems in addition to the signing before approving the design and

placement of a warning sign or a comprehensive plan. The approval of the design and placement of a warning sign, device, system or comprehensive plan provided in this section shall be a discretionary decision under chapter 662.

(i) Chapter 91 shall not apply to any process, including any action taken by the chairperson, established or made pursuant to this section.

(j) Nothing in this section shall be construed to have an impact upon governmental liability for the performance of rescue services or duties and responsibilities of lifeguards other than the duty to warn as set forth in this section. [L 1996, c 190, §§2, 7; am L 1999, c 101, §2; am L 2002, c 170, §2; am L 2007, c 152, §3]

Revision Note

In subsection (i), "Hawaii Revised Statutes," deleted pursuant to §23G-15.

" **[§663-1.57] Owner to felon; limited liability.** (a) An owner, including but not limited to a public entity, of any estate or any other interest in real property, whether possessory or nonpossessory, or any agent of the owner lawfully on the premises by consent of the owner, shall not be liable to any perpetrator engaged in any of the felonies set forth in subsection (b) for any injury or death to the perpetrator that occurs upon that property during the course of or after the commission of such felony, or when a reasonable person would believe that commission of a felony as set forth in subsection (b) is imminent; provided that if the perpetrator is injured, the perpetrator is charged with the criminal offense and convicted of the criminal offense or of a lesser included felony or misdemeanor.

(b) This section applies to the following felonies:

(1) Murder in the first or second degree;

(2) Attempted murder in the first or second degree;

(3) Any class A felony as provided in the Hawaii Penal Code, including any attempt or conspiracy to commit a crime classified as a class A felony;

(4) Any class B felony involving violence or physical harm as provided in the Hawaii Penal Code;

(5) Any felony punishable by imprisonment for life;

(6) Any other felony in which the person inflicts serious bodily injury on another person; and

(7) Any felony in which the person personally used a firearm or a dangerous or deadly weapon.

(c) The limitation on liability under this section arises:

(1) At the moment the perpetrator commences the felony to which this section applies; or

(2) At the moment the owner or agent of the owner lawfully on the premises by consent of the owner believes that a commission of a felony under subsection (b) is imminent;

and extends to the moment the perpetrator is no longer upon the property.

(d) The limitation on liability under this section applies only when the perpetrator's conduct in furtherance of the commission of a felony specified in subsection (b) proximately or legally causes the injury or death.

(e) This section does not limit the liability of an owner that otherwise exists for:

(1) Wilful, wanton, or criminal conduct; or

(2) Wilful or malicious failure to guard or warn against a dangerous condition, use, or structure; or

(3) Injury or death caused to individuals other than the perpetrator of the felony.

(f) Except with regard to [subsections] (e)(1) and (e)(3), the limitation of liability under this section shall not be affected by the failure of the owner to warn the perpetrator of the felony that the owner is armed and ready to cause bodily harm or death.

(g) For purposes of this section, "owner" means the owner, the occupant, tenant, or anyone authorized to be on the property by the owner or the occupant, including a guest or a family or household member, employee, or agent of the owner lawfully on the premises.

(h) The limitation on liability provided by this section shall be in addition to any other available defense. [L 2010, c 97, §1]

" **[§663-1.6] Duty to assist.** (a) Any person at the scene of a crime who knows that a victim of the crime is suffering from serious physical harm shall obtain or attempt to obtain aid from law enforcement or medical personnel if the person can do so without danger or peril to any person. Any person who violates this subsection is guilty of a petty misdemeanor.

(b) Any person who provides reasonable assistance in compliance with subsection (a) shall not be liable in civil damages unless the person's acts constitute gross negligence or wanton acts or omissions, or unless the person receives or expects to receive remuneration. Nothing contained in this subsection shall alter existing law with respect to tort liability of a physician licensed to practice under the laws of

this State committed in the ordinary course of the physician's practice.

(c) Any person who fails to provide reasonable assistance in compliance with subsection (a) shall not be liable for any civil damages. [L 1984, c 140, §1]

Case Notes

Section imposes on the perpetrator of a crime a duty to obtain necessary medical aid for the victim. 73 H. 236, 831 P.2d 924 (1992).

Where evidence that child was a victim of battered child syndrome was relevant to show that child's death was not an accident, but the result of an intentional, knowing or reckless criminal act, giving rise to a duty on defendant's part to obtain medical care for child pursuant to this section, trial court did not err in admitting expert testimony that child was a victim of battered child syndrome. 101 H. 332, 68 P.3d 606 (2003).

This section and the Hawaii supreme court's ruling in Moyle v. Y & Y Hyup Shin, Corp. did not apply where decedent accessed the rooftop of respondent mall owner's mall, entered into and became trapped in an exhaust duct above the food court, and later died, because the instant case did not involve actions by a third party. 130 H. 262, 308 P.3d 891 (2013).

Applicable to the perpetrator of a crime. 8 H. App. 506, 810 P.2d 672 (1991).

" **§663-1.7 Professional society; peer review committee; ethics committee; hospital or clinic quality assurance committee; no liability; exceptions.** (a) As used in this section:

"Ethics committee" means a committee that may be an interdisciplinary committee appointed by the administrative staff of a licensed hospital, whose function is to consult, educate, review, and make decisions regarding ethical questions, including decisions on life-sustaining therapy.

"Licensed health maintenance organization" means a health maintenance organization licensed in Hawaii under chapter 432D.

"Peer review committee" means a committee created by a professional society, or by the medical or administrative staff of a licensed hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network, whose function is to maintain the professional standards of persons engaged in its profession, occupation, specialty, or practice established by the bylaws of the society, hospital, clinic, health maintenance organization, preferred provider

organization, or preferred provider network of the persons engaged in its profession or occupation, or area of specialty practice, or in its hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network.

"Preferred provider organization" and "preferred provider network" means a partnership, association, corporation, or other entity which delivers or arranges for the delivery of health services, and which has entered into a written service arrangement or arrangements with health professionals, a majority of whom are licensed to practice medicine or osteopathy.

"Professional society" or "society" means any association or other organization of persons engaged in the same profession or occupation, or a specialty within a profession or occupation, a primary purpose of which is to maintain the professional standards of the persons engaged in its profession or occupation or specialty practice.

"Quality assurance committee" means an interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network, whose function is to monitor and evaluate patient care, and to identify, study, and correct deficiencies and seek improvements in the patient care delivery process.

(b) There shall be no civil liability for any member of a peer review committee, ethics committee, or quality assurance committee, or for any person who files a complaint with or appears as a witness before those committees, for any acts done in the furtherance of the purpose for which the peer review committee, ethics committee, or quality assurance committee was established; provided that:

(1) The member, witness, or complainant acted without malice; and

(2) In the case of a member, the member was authorized to perform in the manner in which the member did.

(c) There shall be no civil liability for any person who participates with or assists a peer review committee or quality assurance committee, or for any person providing information to a peer review committee or quality assurance committee for any acts done in furtherance of the purpose for which the peer review committee or quality assurance committee was established, unless such information is false and the person providing it knew such information was false.

(d) This section shall not be construed to confer immunity from liability upon any professional society, hospital, clinic, health maintenance organization, preferred provider

organization, or preferred provider network, nor shall it affect the immunity of any shareholder or officer of a professional corporation; provided that there shall be no civil liability for any professional society, hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network in communicating any conclusions reached by one of its peer review committees, ethics committees, or quality assurance committees relating to the conformance with professional standards of any person engaged in the profession or occupation of which the membership of the communicating professional society consists, to a peer review committee, an ethics committee, or quality assurance committee of another professional society, hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network whose membership is comprised of persons engaged in the same profession or occupation, or to a duly constituted governmental board or commission or authority having as one of its duties the licensing of persons engaged in that same profession or to a government agency charged with the responsibility for administering a program of medical assistance in which services are provided by private practitioners.

(e) The final peer review committee of a medical society, hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network, or other health care facility shall report in writing every adverse decision made by it to the department of commerce and consumer affairs; provided that final peer review committee means that body whose actions are final with respect to a particular case; and provided further that in any case where there are levels of review nationally or internationally, the final peer review committee for the purposes of this subsection shall be the final committee in this State. The quality assurance committee shall report in writing to the department of commerce and consumer affairs any information which identifies patient care by any person engaged in a profession or occupation which does not meet hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network standards and which results in disciplinary action unless such information is immediately transmitted to an established peer review committee. The report shall be filed within thirty business days following an adverse decision. The report shall contain information on the nature of the action, its date, the reasons for, and the circumstances surrounding the action; provided that specific patient identifiers shall be expunged. If a potential adverse decision was superseded by resignation or other voluntary action that was requested or bargained for in lieu of medical disciplinary action, the report shall so state. The

department shall prescribe forms for the submission of reports required by this section. Failure to comply with this subsection shall be a violation punishable by a fine of not less than $100 for each member of the committee.

(f) In any civil action arising under this section where a party seeks money damages or injunctive relief, or both, against another party, and the case is subsequently decided, the court may, as it deems just, assess against either party, and enter as part of its order, for which execution may issue, a reasonable sum for attorneys' fees, in an amount to be determined by the court upon a specific finding that the party's claim or defense was frivolous.

(g) In determining the award of attorneys' fees and the amounts to be awarded under subsection (f), the court must find in writing that all claims or defenses made by the party are frivolous and are not reasonably supported by the facts and the law in the civil action. [L 1970, c 60, §1; am L 1975, c 170, §2; am L 1976, c 219, §18; am L 1982, c 227, §6; am L 1983, c 231, §1; am L 1984, c 168, §16; gen ch 1985; am L 1986, c 82, §1; am L 1988, c 325, §1; am L 1989, c 216, §1 and c 354, §4; am L 1992, c 47, §2; am L 1997, c 279, §2]

Cross References

Exemption from discovery of proceedings, see §624-25.5.
Health care peer review, see chapter 671D.
Vexatious litigants, see chapter 634J.

Case Notes

Peer review is complete defense to defamation action. 754 F.2d 1420 (1985).

" **[§663-1.8] Chiropractic society; peer review committee; no liability; exceptions.** (a) As used in this section:

"Chiropractic society" or "society" means any association or other organization of persons engaged in the practice of chiropractic, where a primary purpose of the society is to maintain the professional standards of chiropractors.

"Peer review committee" or "committee" means a committee created by a chiropractic society, whose function is to maintain the professional standards established by the bylaws of the society.

"Relevant" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the information.

(b) There shall be no civil liability for any member of a peer review committee for any acts done in furtherance of the purpose for which the committee was established; provided that:

(1) The member was authorized to perform in the manner in which the member did; and

(2) The member acted without malice after having made a reasonable effort to ascertain the truth of the facts upon which the member acted.

(c) This section shall not be construed to confer immunity from liability upon any chiropractic society, nor shall it affect the immunity of any shareholder or officer of a chiropractic corporation; provided that there shall be no civil liability for any chiropractic society in communicating any conclusions reached by one of its peer review committees relating to the conformance with professional standards of any person engaged in the same profession or occupation as the members of the communicating chiropractic society to a peer review committee of another chiropractic society whose membership is comprised of persons engaged in the same profession or occupation, or to the board of chiropractic examiners having as one of its duties the licensing of persons engaged in the practice of chiropractic or to a government agency charged with the responsibility for administering a program of chiropractic assistance in which services are provided by private practitioners.

(d) The final peer review committee of a chiropractic society shall report in writing every adverse decision made by it to the board of chiropractic examiners. The report shall be filed within thirty business days following an adverse decision. The report shall contain information on the nature of the action, its date, the reasons for, and the circumstances surrounding the action; provided that specific patient identifiers shall be expunged. If prior to an adverse decision there is a resignation or other voluntary action by the person under investigation as may have been requested or bargained for in lieu of chiropractic disciplinary action, the report shall so state. The board shall prescribe forms for the submission of reports required by this section. Failure to comply with this subsection shall be a violation punishable by a fine of not less than $100 for each member of the committee.

(e) A committee, in writing, may request an insurance company or employer to release to the committee relevant information or evidence deemed important to the committee and relating to the matters within its jurisdiction.

(f) After having received a written request from a company or person providing information to the committee, the committee

shall provide to the company or person the results of their decision within thirty business days following a decision.

(g) Any insurance company or person acting on its behalf or employer who releases information to the committee, whether in written or oral form, pursuant to subsection (e), shall be immune from any civil or criminal liability. [L 1984, c 241, §1]

" **§663-1.9 Exception to liability for health care provider, authorized person withdrawing blood or urine at the direction of a police officer.** (a) Any health care provider who, in good faith in compliance with section 291E-21, provides notice concerning the alcohol concentration of a person's blood or drug content of a person's blood or urine shall be immune from any civil liability in any action based upon the compliance. The health care provider also shall be immune from any civil liability for participating in any subsequent judicial proceeding relating to the person's compliance.

(b) Any authorized person who properly withdraws blood or collects urine from another person at the written request of a police officer for testing of the blood's alcohol concentration or drug content or the drug content of the urine, and any hospital, laboratory, or clinic, employing or utilizing the services of such person, and owning or leasing the premises on which the tests are performed, shall not be liable for civil damages resulting from the authorized person's acts or omissions in withdrawing the blood or collecting urine, except for such damages as may result from the authorized person's gross negligence or wanton acts or omissions.

(c) For the purpose of this section:

"Authorized person" means a person authorized under section 291E-12 to withdraw blood at the direction of a police officer.

"Health care provider" has the same meaning as in section 291E-21. [L 1986, c 196, §1; am L 1997, c 101, §2; am L 2000, c 189, §26]

" **[§663-1.95 Employers' job reference immunity.]** (a) An employer that provides to a prospective employer information or opinion about a current or former employee's job performance is presumed to be acting in good faith and shall have a qualified immunity from civil liability for disclosing the information and for the consequences of the disclosure.

(b) The good faith presumption under subsection (a) shall be rebuttable upon a showing by a preponderance of the evidence that the information or opinion disclosed was:

(1) Knowingly false; or

(2) Knowingly misleading.

(c) Nothing in this section shall affect rights, obligations, remedies, liabilities, or standards of proof under chapters 89, 92F, 368, and 378. [L 1998, c 182, §1]

Revision Note

Section heading renamed pursuant to §23G-15.

" **§663-2 Defense of lawful detention.** [(a)] In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, or invasion of civil rights, brought by any person by reason of having been detained on or in the immediate vicinity of the premises of a retail mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise, or a motion picture theater for the purpose of investigation or questioning as to an unauthorized audiovisual recording of a motion picture, it shall be a defense to the action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a police officer or by the owner of the retail mercantile establishment or motion picture theater, the owner's authorized employee, or agent, and that such police officer, owner, employee, or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit larceny of merchandise or unauthorized audiovisual recording of a motion picture on the premises.

[(b)] As used in this section:

"Motion picture theater" means a movie theater, screening room, or other venue in use primarily for the exhibition of a motion picture at the time of the unauthorized audiovisual recording of a motion picture.

"Reasonable grounds" includes, but is not limited to, knowledge that a person has concealed possession of unpurchased merchandise of the retail mercantile establishment or has made an unauthorized audiovisual recording of a motion picture taken at a motion picture theater.

"Reasonable time" means the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment or motion picture theater relative to the ownership of the merchandise or making of an unauthorized audiovisual recording of a motion picture.

"Retail mercantile establishment" means a place where goods, wares, or merchandise are offered to the public for sale.

[(c)] This section applies to legal actions resulting from detentions occurring after May 21, 1967, for retail merchant

establishments, and after May 18, 2005, for motion picture theaters. [L 1967, c 107, §1; HRS §663-2; am L 1972, c 144, §2(b); gen ch 1985; am L 2005, c 59, §2]

Revision Note

"May 18, 2005" substituted for "the effective date of this Act".

Cross References

As affirmative defense to unlawful imprisonment, see §707-722 and commentary.

" **§663-3 Death by wrongful act.** (a) When the death of a person is caused by the wrongful act, neglect, or default of any person, the deceased's legal representative, or any of the persons enumerated in subsection (b), may maintain an action against the person causing the death or against the person responsible for the death. The action shall be maintained on behalf of the persons enumerated in subsection (b), except that the legal representative may recover on behalf of the estate the reasonable expenses of the deceased's last illness and burial.

(b) In any action under this section, such damages may be given as under the circumstances shall be deemed fair and just compensation, with reference to the pecuniary injury and loss of love and affection, including:

(1) Loss of society, companionship, comfort, consortium, or protection;
(2) Loss of marital care, attention, advice, or counsel;
(3) Loss of care, attention, advice, or counsel of a reciprocal beneficiary as defined in chapter 572C;
(4) Loss of filial care or attention; or
(5) Loss of parental care, training, guidance, or education, suffered as a result of the death of the person;

by the surviving spouse, reciprocal beneficiary, children, father, mother, and by any person wholly or partly dependent upon the deceased person. The jury or court sitting without jury shall allocate the damages to the persons entitled thereto in its verdict or judgment, and any damages recovered under this section, except for reasonable expenses of last illness and burial, shall not constitute a part of the estate of the deceased. Any action brought under this section shall be commenced within two years from the date of death of the injured person, except as otherwise provided. [L 1923, c 245, §1; RL 1925, §2681; am L 1931, c 16, §1; am L 1933, c 139, §1; RL 1935,

§4052; RL 1945, §10486; am L 1955, c 205, §1; RL 1955, §246-2; HRS §663-3; am L 1972, c 144, §2(c); am L 1997, c 383, §20]

Rules of Court

See HRCP rule 17.

Law Journals and Reviews

Hawaii's Loss of Consortium Doctrine: Our Substantive, Relational Interest Focus. VII HBJ, no. 13, at 59 (2003).

Masaki v. General Motors Corp.: Negligent Infliction of Emotion Distress and Loss of Filial Consortium. 12 UH L. Rev. 215 (1990).

Punitive Damages in Hawaii: Curbing Unwarranted Expansion. 13 UH L. Rev. 659 (1991).

Extending Loss of Consortium to Reciprocal Beneficiaries: Breaking the Illogical Boundary Between Severe Injury and Death in Hawai‘i Tort Law. 28 UH L. Rev. 429 (2006).

Case Notes

Action barred in Hawaii district courts under Death on the High Seas Act. 230 F.2d 780 (1955).

Section does not authorize punitive damages. 644 F.2d 594 (1981).

No recovery on the facts, by father and sister of victim of shell explosion. 158 F. Supp. 394 (1958).

Parents may bring an action for wrongful death of a viable fetus. 745 F. Supp. 1573 (1990).

Cause of action existed for child's loss of consortium despite non-fatal injury to parent. 781 F. Supp. 1487 (1992).

Damages parents entitled to for loss of son, discussed. 823 F. Supp. 778 (1993).

Limitations period in section applied, where defendants argued that plaintiff's wrongful death action was derivative of the claims of the estate and therefore barred by applicable statutes of limitation; statute of limitations governing plaintiff's claim should begin to run when plaintiff experienced plaintiff's injury, not when plaintiff's husband knew of husband's injury. 854 F. Supp. 702 (1994).

Plaintiffs' claims against certain defendants were time-barred, where those defendants were first named as parties in first amended complaint filed more than two years after plane crash and the claims did not relate back to the date the original complaint was filed. 289 F. Supp. 2d 1197 (2003).

Where plaintiffs contended that most of their claims were governed by §657-7, all of plaintiffs' claims were governed by the limitations period established in this section; the statute of limitations began to run, as per the terms of this section, upon the death of plaintiffs' wife and mother. 396 F. Supp. 2d 1150 (2005).

Defendant county police officers' and public safety aid's motion for summary judgment on the basis of immunity for plaintiff's 42 U.S.C. §1983 claim denied where a reasonable jury could find that they acted with an improper purpose or in reckless disregard of the law when they subjectively realized that decedent pre-trial detainee faced a substantial risk of harm but failed to check on decedent pre-trial detainee or summon help. 727 F. Supp. 2d 898 (2010).

Section 657-20 is limited to causes of action mentioned in part I of chapter 657 or this section, and therefore does not apply to plaintiff's claim brought pursuant to chapter 480. 777 F. Supp. 2d 1224 (2011).

Prior to this enactment, no action maintainable by parent for death of adult daughter by wrongful act. 27 H. 626 (1923). There was a common-law action for death of spouse or minor child. 2 H. 209 (1860); 16 H. 615 (1905). Common-law action based on relationship of husband and wife and parent and child not abrogated by this section prior to 1955 amendments. 37 H. 571 (1947). See 45 H. 373, 394, 369 P.2d 96 (1961), reh'g den. 45 H. 440, 369 P.2d 114 (1962), as to effect of 1955 amendments. Child has no cause of action for injuries to parent not resulting in death. 41 H. 634 (1957); 244 F.2d 604 (1957).

Effect of Workmen's Compensation Law prior to 1931 amendments. 32 H. 61 (1931); 32 H. 153 (1931).

Parties, prior to 1933 amendment. 32 H. 611 (1933). See 135 F. Supp. 376 (1955); 244 F.2d 604 (1957).

Dependents, who are. 34 H. 426, 442 (1938).

Action against employer barred where dependent of decedent has remedy for compensation under Workmen's Compensation Act. 41 H. 403 (1956); 42 H. 518 (1958).

Relationship between this section and §663-7 discussed. 45 H. 373, 369 P.2d 96 (1961).

The limitations period is tolled by §657-13 during minority of surviving children. 63 H. 273, 626 P.2d 182 (1981); 69 H. 410, 745 P.2d 285 (1987).

If decedent had no cause of action, survivors had none. 69 H. 95, 735 P.2d 930 (1987).

Since claims were derivative in nature and arose from a single person, defendant was not underinsured. 70 H. 42, 759 P.2d 1374 (1988).

Section does not distinguish between minor and adult children. 71 H. 1, 780 P.2d 566 (1989).

Section entitles any person wholly or partially dependent on deceased to raise claims for both pecuniary injuries and loss of love and affection. 75 H. 544, 867 P.2d 220 (1994).

A breach of express warranty action could be a basis for a derivative wrongful death action brought pursuant to this section. 86 H. 383 (App.), 949 P.2d 1004 (1997).

As cause of action for punitive damages survives the death of the decedent under §663-7, punitive damages are not recoverable in an action under this section. 87 H. 273 (App.), 954 P.2d 652 (1998).

Claims brought under this section must relate to the general loss of love and affection suffered by the designated survivors. 87 H. 273 (App.), 954 P.2d 652 (1998).

Damages. 34 H. 5 (1936); 34 H. 426 (1938); 40 H. 691 (1955). Damages to widow and children for loss of support and loss of love, care, affection and guidance. 282 F.2d 599 (1960). Although trial court may not have been completely accurate in certain particulars in awarding damages, not set aside if the total award is reasonable. 499 F.2d 866 (1974). Recovery for loss of support, computation of. 245 F. Supp. 981, 1012-1016 (1965), aff'd 381 F.2d 965 (1967). Recovery by widow and child of decedent for loss of consortium and parental care. 245 F. Supp. 981, 1017-1018 (1965), aff'd 381 F.2d 965 (1967).

Cited: 349 F.2d 693, 698 (1965); 351 F. Supp. 185, 187 (1972); 41 H. 603, 604 (1957); 45 H. 443, 444, 369 P.2d 96 (1961).

" **§663-4 Actions which survive death of wrongdoer or other person liable.** All rights of action arising out of physical injury to the person or out of the death of a person as provided by section 663-3, shall survive, notwithstanding the death of the wrongdoer or any other persons who may be liable for damages for such physical injury or death. [L 1953, c 206, pt of §1; am L 1955, c 205, pt of §3; RL 1955, §246-3; HRS §663-4]

Cross References

Abatement and revival, see chapter 634, pt V.

Probate, claims, see chapter 560.

Rules of Court

Substitution of parties, see HRCP rule 25.

Case Notes

Does not provide for survival of defamation actions. 1 H. App. 517, 620 P.2d771 (1980).

Judgments for punitive damages may be entered against the estate of a deceased tortfeasor. 104 H. 241 (App.), 87 P.3d 910 (2003).

Cited: 45 H. 373, 383, 369 P.2d 96 (1961).

" **§663-5 Death of defendant, continuance of action.** In any case where the wrongdoer or other person who may be liable for damages for physical injury or death as provided by section 663-3 dies after action has been instituted against the wrongdoer or other person therefor, the action may be continued against the legal representative of the wrongdoer's or other person's estate in accordance with chapter 634. [L 1953, c 206, pt of §1; am L 1955, c 205, pt of §3; RL 1955, §246-4; HRS §663-5; am L 1972, c 144, §2(d); gen ch 1985]

Cross References

Abatement and revival, see chapter 634, pt V.
Probate, claims, see chapter 560.

Rules of Court

Substitution of parties, see HRCP rule 25; DCRCP rule 25.

" **§663-6 Death of wrongdoer or other person liable prior to suit, time for commencing action against the estate.** In any case where the wrongdoer or other person who may be liable for damages for physical injury or death as provided in section 663-3 dies before an action has been brought against the wrongdoer or other person, the action may be brought against the legal representative of the wrongdoer's or other person's estate; provided that every such action shall be commenced within two years after the death of the injured person in any action brought under section 663-3 or within two years after the date of physical injury in all other cases, except as otherwise provided. [L 1953, c 206, pt of §1; am L 1955, c 205, pt of §3; RL 1955, §246-5; am L 1967, c 108, §1; HRS §663-6; am L 1972, c 144, §2(e); gen ch 1985]

Cross References

Abatement and revival, see chapter 634, pt V.
Probate, claims, see chapter 560.

" **§663-7 Survival of cause of action.** A cause of action arising out of a wrongful act, neglect, or default, except a cause of action for defamation or malicious prosecution, shall not be extinguished by reason of the death of the injured person. The cause of action shall survive in favor of the legal representative of the person and any damages recovered shall form part of the estate of the deceased. [L 1955, c 205, §2; RL 1955, §246-6; HRS §663-7; am L 1972, c 144, §2(f)]

Cross References

Abatement and revival, see chapter 634, pt V.
Probate, claims, see chapter 560.

Case Notes

Recovery by estate of decedent for decedent's pain and suffering. 245 F. Supp. 981, 1015 (1965), aff'd 381 F.2d 965 (1967).

Because decedent would have had an action for punitive damages had decedent survived, estate is entitled to recover punitive damages under this section. 551 F. Supp. 110 (1982).

Recovery for decedent's conscious pain and suffering, discussed. 823 F. Supp. 778 (1993).

In action under Federal Tort Claims Act, where plaintiffs argued, inter alia, that remaining individual plaintiffs were all legally entitled to assert a survivorship claim on behalf of estate under this section because they were all deceased's heirs, remaining individual plaintiffs' status as heirs did not, by itself, entitle them to be legal representatives of estate. 125 F. Supp. 2d 1243 (2000).

Probable earnings of decedent during decedent's lost years are not a proper item of damages. 54 H. 231, 505 P.2d 1169 (1973). But for present statutory rule, see §663-8.

A person named in will of decedent to be the executrix deemed "legal representative" and would have been proper person to be substituted for decedent in action brought by decedent. 60 H. 125, 588 P.2d 416 (1978).

As murder victim would have had a claim for punitive damages had murder victim survived, under this section, victim's claim for punitive damages survived victim's death; as this claim survives victim's death, punitive damages are not recoverable in an action under §663-3. 87 H. 273 (App.), 954 P.2d 652 (1998).

Where murder victim would have had cause of action for loss of enjoyment of life and other nonpecuniary losses under §663-8.5 had murder victim survived, under this section, victim's claim

survived victim's death and victim's estate may sue for such damages. 87 H. 273 (App.), 954 P.2d 652 (1998).

" **§663-8 Damages, future earnings.** Together with other damages which may be recovered by law, the legal representative of the deceased person may recover where applicable under section 663-7 the future earnings of the decedent in excess of the probable cost of the decedent's own maintenance and the provision the decedent would have made for the decedent's actual or probable family and dependents during the period of time the decedent would have likely lived but for the accident. [L 1973, c 213, §3; am L 2016, c 55, §46]

Case Notes

Recovery by decedent's estate, discussed. 823 F. Supp. 778 (1993).

" **[§663-8.3] Loss or impairment of earning capacity; damages.** (a) In all tort cases where damages are awarded for loss or impairment of earning capacity, the amount of probable future earnings shall be determined by taking into account the effect of probable taxes.

(b) Nothing in this section shall be construed to limit or restrict the use of other factors deemed appropriate by a court in calculating damages awarded for loss or impairment of earning capacity. [L Sp 1986, c 2, §18]

" **[§663-8.5] Noneconomic damages; defined.** (a) Noneconomic damages which are recoverable in tort actions include damages for pain and suffering, mental anguish, disfigurement, loss of enjoyment of life, loss of consortium, and all other nonpecuniary losses or claims.

(b) Pain and suffering is one type of noneconomic damage and means the actual physical pain and suffering that is the proximate result of a physical injury sustained by a person. [L Sp 1986, c 2, §19]

Law Journals and Reviews

Hawaii's Loss of Consortium Doctrine: Our Substantive, Relational Interest Focus. VII HBJ, no. 13, at 59 (2003).

Case Notes

Where murder victim would have had cause of action for loss of enjoyment of life and other nonpecuniary losses under this

section had murder victim survived, under §663-7, victim's claim survived victim's death and victim's estate may sue for such damages. 87 H. 273 (App.), 954 P.2d 652 (1998).
Cited: 77 H. 282, 884 P.2d 345 (1994).

" **[§663-8.7] Limitation on pain and suffering.** Damages recoverable for pain and suffering as defined in section 663-8.5 shall be limited to a maximum award of $375,000; provided that this limitation shall not apply to tort actions enumerated in section 663-10.9(2). [L Sp 1986, c 2, §20; am L 1989, c 300, §2; am L 1991, c 62, §1; am L 1993, c 238, §1; am L 1995, c 130, §1]

Law Journals and Reviews

Medical Malpractice in Hawai‘i: Tort Crisis or Crisis of Medical Errors? 30 UH L. Rev. 167 (2007).
Kanahele v. Han: Economic Sufferings Legally Implies Non-Economic Sufferings. 34 UH L. Rev. 611 (2012).

" **[§663-8.9] Serious emotional distress arising from property damage; cause of action abolished; exception for physical injury.** (a) No party shall be liable for the negligent infliction of serious emotional distress or disturbance if the distress or disturbance arises solely out of damage to property or material objects.
(b) This section shall not apply if the serious emotional distress or disturbance results in physical injury to or mental illness of the person who experiences the emotional distress or disturbance. [L Sp 1986, c 2, §22]

Case Notes

Defendants' motion for summary judgment on all negligent infliction of emotional distress claims granted, where plaintiffs-intervenors had not even alleged physical injury or a diagnosed illness. 535 F. Supp. 2d 1149 (2008).
Because a corpse is neither "property" nor a "material object" for purposes of this section, this section does not apply to negligent infliction of emotional distress claims arising from the negligent mishandling of a corpse. 96 H. 147, 28 P.3d 982 (2001).
Cited: 895 F. Supp. 1365 (1995).
Mentioned: 900 F. Supp. 1339 (1995); 907 F. Supp. 2d 1165 (2012).

" **[§663-9] Liability of animal owners.** (a) The owner or harborer of an animal, if the animal proximately causes either

personal or property damage to any person, shall be liable in damages to the person injured regardless of the animal owner's or harborer's lack of scienter of the vicious or dangerous propensities of the animal.

(b) The owner or harborer of an animal which is known by its species or nature to be dangerous, wild, or vicious, if the animal proximately causes either personal or property damage to any person, shall be absolutely liable for such damage. [L 1980, c 218, §2]

Cross References

Actions for removal or destruction of dogs biting humans, see §142-75.

Equine activities, see chapter 663B.

Liability of dog owner, see §142-74.

Case Notes

Subsection (b) does not impose strict liability on dog owners. 6 H. App. 485, 727 P.2d 1131 (1986).

" **[§663-9.1] Exception of animal owners to civil liability.** (a) As used in this section:

(1) "Premises" includes any building or portion thereof or any real property owned, leased, or occupied by the owner or harborer of an animal.

(2) "Enter or remain unlawfully" means to be in or upon premises when the person is not licensed, invited, or otherwise privileged to be upon the premises. A person is not licensed or privileged to enter or remain in or upon a premises if a warning or warnings have been posted reasonably adequate to warn other persons that an animal is present on the premises. A person who, regardless of the person's intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless the person defies a lawful order not to enter or remain, personally communicated to the person by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude

intruders, does so with license and privilege unless notice against trespass is personally communicated to the person by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner.

(3) The definitions of "intentionally" and "knowingly" as contained in sections 702-206(1) and 702-206(2) shall apply.

(b) Notwithstanding sections 663-1 and 663-9, any owner or harborer of an animal shall not be liable for any civil damages resulting from actions of the animal occurring in or upon the premises of the owner or harborer where the person suffering either personal or property damage as a proximate result of the actions of the animal is found by the trier of fact intentionally or knowingly to have entered or remained in or upon such premises unlawfully.

(c) Notwithstanding sections 663-1 and 663-9, any owner or harborer of an animal shall not be liable for any civil damages resulting from actions of the animal where the trier of fact finds that:

(1) The animal caused such damage as a proximate result of being teased, tormented, or otherwise abused without the negligence, direction, or involvement of the owner or harborer; or

(2) The use of the animal to cause damage to person or property was justified under chapter 703. [L 1980, c 218, §3; gen ch 1985]

" **§663-9.5 Liability of firearm owners.** (a) If a firearm discharges and the discharge of the firearm proximately causes either personal injury or property damage to any person, the owner of the firearm shall be absolutely liable for the damage.

(b) It shall be an affirmative defense to the absolute liability that the firearm was not in the possession of the owner.

(c) It shall be an affirmative defense to the absolute liability that:

(1) The firearm was taken from the owner's possession without the owner's permission; and

(2) The owner either:

(A) Reported the theft to the police prior to the discharge; or

(B) Despite the exercise of reasonable care:

(i) Had not discovered the theft prior to the discharge; or

(ii) Was not reasonably able to report the theft to the police prior to the discharge.

(d) This section shall not apply when the discharge of the firearm was legally justified.

(e) The absolute liability under subsection (a) shall not apply to the State or counties for the use of a firearm owned by the State or county, as applicable, and used by a law enforcement officer employed by the State or county, outside of the course and scope of employment as a law enforcement officer; provided that this section shall not be construed to relieve the State and counties from any other tort liability that may be applicable to the State or counties.

(f) The absolute liability under subsection (a) shall not apply to National Rifle Association certified firearms instructors during the course of providing firearms training or safety courses or classes at a firing range to persons seeking to acquire a permit for the acquisition of a pistol or revolver in accordance with section 134-2(g)(4); provided that this section shall not be construed to relieve a National Rifle Association certified firearms instructor from any other tort liability that may be applicable. [L 1994, c 204, §1; am L 2008, c 129, §1; am L 2012, c 301, §1]

" **§663-10 Collateral sources; protection for liens and rights of subrogation.** (a) In any civil action in tort, the court, before any judgment or stipulation to dismiss the action is approved, shall determine the validity of any claim of a lien against the amount of the judgment or settlement by any person who files timely notice of the claim to the court or to the parties in the action. The judgment entered, or the order subsequent to settlement, shall include a statement of the amounts, if any, due and owing to any person determined by the court to be a holder of a valid lien and to be paid to the lienholder out of the amount of the corresponding special damages recovered by the judgment or settlement. In determining the payment due the lienholder, the court shall deduct from the payment a reasonable sum for the costs and fees incurred by the party who brought the civil action in tort. As used in this section, lien means a lien arising out of a claim for payments made or indemnified from collateral sources, including health insurance or benefits, for costs and expenses arising out of the injury which is the subject of the civil action in tort. If there is a settlement before suit is filed or there is no civil action pending, then any party may petition a court of competent jurisdiction for a determination of the validity and amount of any claim of a lien.

(b) Where an entity licensed under chapter 432 or 432D possesses a lien or potential lien under this section:

(1) The person whose settlement or judgment is subject to the lien or potential lien shall submit timely notice of a third-party claim, third-party recovery of damages, and related information to allow the lienholder or potential lienholder to determine the extent of reimbursement required. A refusal to submit timely notice shall constitute a waiver by that person of section 431:13-103(a)(10). An entity shall be entitled to reimbursement of any benefits erroneously paid due to untimely notice of a third-party claim;

(2) A reimbursement dispute shall be subject to binding arbitration in lieu of court proceedings if the party receiving recovery and the lienholder agree to submit the dispute to binding arbitration, and the process used shall be as agreed to by the parties in their binding arbitration agreement; and

(3) In any proceeding under this section to determine the validity and amount of reimbursement, the court or arbitrator shall allow a lienholder or person claiming a lien sufficient time and opportunity for discovery and investigation.

For purposes of this subsection:

"Third-party claim" means any tort claim for monetary recovery or damages that the individual has against any person, entity, or insurer, other than the entity licensed under chapter 432 or 432D.

"Timely notice of a third-party claim" means a reasonable time after any written claim or demand for damages, settlement recovery, or insurance proceeds is made by or on behalf of the person. [L Sp 1986, c 2, §16; am L 2000, c 29, §2; am L 2002, c 228, §2]

Case Notes

Appellant's motion to determine its lien on settlement was properly denied, because this section unambiguously applies to collateral source payors, which appellant was not. 76 H. 266, 874 P.2d 1091 (1994).

Cited: 73 H. 403, 833 P.2d 890 (1992).

" **§663-10.5 Government entity as a tortfeasor; abolition of joint and several liability.** Any other law to the contrary notwithstanding, including but not limited to sections 663-10.9, 663-11 to 663-13, 663-16, 663-17, and 663-31, in any case where a government entity is determined to be a tortfeasor along with one or more other tortfeasors, the government entity shall be liable for no more than that percentage share of the damages

attributable to the government entity; provided that joint and several liability shall be retained for tort claims relating to the maintenance and design of highways pursuant to section 663-10.9.

For purposes of this section, "government entity" means any unit of government in this State, including the State and any county or combination of counties, department, agency, institution, board, commission, district, council, bureau, office, governing authority, or other instrumentality of state or county government, or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county.

For purposes of this section, the liability of a government entity shall include its vicarious liability for the acts or omissions of its officers and employees. [L 1994, c 213, §1; am L 2001, c 300, §2; am L 2006, c 112, §1]

Case Notes

The plain language of this section's nonretroactivity clause focuses upon the specific "acts or omissions" that predicate a plaintiff's claim, and, therefore, the clause's applicability is not keyed to when the plaintiff's cause of action "accrues"; thus, trial court erred in apportioning liability between department of education (DOE) and teacher and DOE was liable to plaintiffs for the full extent of their damages. 100 H. 34, 58 P.3d 545 (2002).

This section, which abolishes joint and several liability for government entities, did not supersede or impliedly repeal (1) §663-10.9(4), which expressly allows for recovery of non-economic damages in motor vehicle accidents involving the maintenance and design of highways, or (2) §663-10.9(1), that provides for the recovery of economic damages against joint tortfeasors in actions involving injury or death to persons. 110 H. 97, 129 P.3d 1125 (2006).

Plaintiffs' negligence claim included the right to recover under an unmodified doctrine of joint and several liability, as at the time their claim accrued, this section (2005) imposed joint and several liability for economic and noneconomic damages upon any jointly liable person; thus, because the legislature did not intend for Act 112, L 2006 to apply retroactively to divest the plaintiffs' accrued or substantive rights, the trial court correctly concluded that Act 112 did not apply to the case. 117 H. 262, 178 P.3d 538 (2008).

Where patient's estate was entitled to recover under the doctrine of joint and several liability in place at the time of patient's injury, trial court did not err in holding defendant

hospital jointly and severally liable. 127 H. 325 (App.), 278 P.3d 382 (2012).

" **[§663-10.6] Exemption for providing shelter and subsistence to the needy.** (a) Any charitable or nonprofit organization that in good faith provides shelter or proper means of subsistence to needy persons as part of its bona fide and customary charitable activities, rendered without remuneration or expectation of remuneration, shall be exempt from civil liability for injuries and damages resulting from the organization's acts or omissions in providing such shelter or subsistence, except for gross negligence or wanton acts or omissions of the organization.

(b) Any person who donates goods, food, materials, or services to a charitable or nonprofit organization described in subsection (a) shall be exempt from civil liability for injuries and damages resulting from the donation, except for gross negligence or wanton acts or omissions.

(c) As used in this section, "needy person" means any person who lacks adequate or proper means of subsistence. [L 1994, c 250, §2]

" **[§663-10.7] Exemption for providing emergency access to land, shelter, and subsistence during a disaster.** (a) Any owner of private property who in good faith provides emergency access to land, shelter, or subsistence, including food and water, to a person during a disaster without remuneration or expectation of remuneration, shall be exempt from civil liability for any injury or damage suffered by the person that resulted from the owner providing such emergency access to land, shelter, or subsistence, unless the injury or damage was caused by the gross negligence or intentional or wanton acts or omissions of the owner.

(b) For the purposes of this section:

"Disaster" means a nonroutine event that exceeds the capacity of persons in the affected area to respond to it in such a way as to save lives, preserve property, or to maintain the social, ecological, economic, or political stability of the affected area.

"Emergency" means a situation in which the life or health of a person is in jeopardy due to a disaster requiring immediate assistance.

"Owner" means the possessor of a fee interest, or a tenant, lessee, occupant, person, group, club, partnership, family, organization, entity, or corporation that has control, possession, or use of the land, and its members, agents,

partners, representatives, shareholders, and employees. [L 2012, c 291, §1]

" **§663-10.9 Abolition of joint and several liability; exceptions.** Joint and several liability for joint tortfeasors as defined in section 663-11 is abolished except in the following circumstances:

(1) For the recovery of economic damages against joint tortfeasors in actions involving injury or death to persons;

(2) For the recovery of economic and noneconomic damages against joint tortfeasors in actions involving:
   (A) Intentional torts;
   (B) Torts relating to environmental pollution;
   (C) Toxic and asbestos-related torts;
   (D) Torts relating to aircraft accidents;
   (E) Strict and products liability torts; or
   (F) Torts relating to motor vehicle accidents except as provided in paragraph (4);

(3) For the recovery of noneconomic damages in actions, other than those enumerated in paragraph (2), involving injury or death to persons against those tortfeasors whose individual degree of negligence is found to be twenty-five per cent or more under section 663-31. Where a tortfeasor's degree of negligence is less than twenty-five per cent, then the amount recoverable against that tortfeasor for noneconomic damages shall be in direct proportion to the degree of negligence assigned; and

(4) For recovery of noneconomic damages in motor vehicle accidents involving tort actions relating to the maintenance and design of highways including actions involving guardrails, utility poles, street and directional signs, and any other highway-related device upon a showing that the affected joint tortfeasor was given reasonable prior notice of a prior occurrence under similar circumstances to the occurrence upon which the tort claim is based. In actions in which the affected joint tortfeasor has not been shown to have had such reasonable prior notice, the recovery of noneconomic damages shall be as provided in paragraph (3).

(5) Provided, however, that joint and several liability for economic and noneconomic damages for claims against design professionals, as defined in chapter 672, and certified public accountants, as defined in chapter 466, is abolished in actions not involving

physical injury or death to persons. [L Sp 1986, c 2, §17; am L 1989, c 300, §2; am L 1991, c 62, §1; am L 1993, c 238, §1; am L 1995, c 130, §1; am L 1999, c 237, §4]

Note

Chapter 672 referred to in text is repealed.

Cross References

Contractor repair act, see chapter 672E.

Law Journals and Reviews

Ozaki and Comparative Negligence: Imposing Joint Liability Where a Duty to Protect or Prevent Harm from Third Party Intentional Tortfeasors Exits Is Fairer to Plaintiffs and Defendants. 26 UH L. Rev. 575 (2004).

Case Notes

Where third party defendant analogized this section's limit on joint and several liability to comparative negligence, discussed in Amboy, the court was unpersuaded by the argument that defendants' rights to contribution would be prejudiced if defendant, a nondiverse dispensable party, was dismissed. 892 F. Supp. 2d 1234 (2012).

State properly held jointly and severally liable under paragraph (4) as a "prior occurrence" need not be identical or exactly similar to put State on "reasonable prior notice"; it was enough that the State knew of the particular defective guardrail, had an opportunity to correct it, and failed to do so. 91 H. 60, 979 P.2d 1086 (1999).

Section 663-10.5, which abolishes joint and several liability for government entities, did not supersede or impliedly repeal (1) paragraph (4), which expressly allows for recovery of non-economic damages in motor vehicle accidents involving the maintenance and design of highways, or (2) paragraph (1), that provides for the recovery of economic damages against joint tortfeasors in actions involving injury or death to persons. 110 H. 97, 129 P.3d 1125 (2006).

Plaintiffs' negligence claim included the right to recover under an unmodified doctrine of joint and several liability, as at the time their claim accrued, §663-10.5 (2005) imposed joint and several liability for economic and noneconomic damages upon any jointly liable person; thus, because the legislature did not

intend for Act 112, L 2006 to apply retroactively to divest the plaintiffs' accrued or substantive rights, the trial court correctly concluded that Act 112 did not apply to the case. 117 H. 262, 178 P.3d 538 (2008).

Section does not abolish joint and several liability for actions involving intentional torts; condominium association and murderer were thus jointly and severally liable to plaintiffs for noneconomic as well as economic damages, subject to reduction proportional to victim's assigned negligence. 87 H. 273 (App.), 954 P.2d 652 (1998).

Construing the language of §§431:10C-301 and 431:10C-103 governing uninsured motorist (UM) and underinsured motorist (UIM) insurance according to their plain and commonly understood meaning and in pari materia with §663-11 and this section, UM and UIM policies must provide coverage for all damages which an insured is legally entitled to recover from the owner or operator of an uninsured or underinsured motor vehicle, which necessarily encompasses damages for which the owner or operator of an uninsured or underinsured motor vehicle is jointly and severally liable pursuant to §663-11 and this section. 120 H. 329 (App.), 205 P.3d 594 (2009).

Because this section does not limit "injury" to those of a physical nature, it extends to negligent infliction of emotional distress claims; thus, circuit court erred in failing to hold state hospital jointly and severally liable for damages attributable to patient's sister's negligent infliction of emotional distress claim. 127 H. 325 (App.), 278 P.3d 382 (2012).

Read together with §662-5, paragraph (3) requires the imposition of joint and several liability only as adjudicated by the court, not the jury; having determined that the state hospital's individual degree of negligence was more than twenty-five per cent, the circuit court properly awarded joint and several damages against the hospital to the full extent that the court determined patient's injuries to arise out of the subject incident, and therefore complied with paragraph (3). 127 H. 325 (App.), 278 P.3d 382 (2012).

" **§663-10.95 Motorsports facilities; waiver of liability.** (a) Any waiver and release, waiver of liability, or indemnity agreement in favor of an owner, lessor, lessee, operator, or promoter of a motorsports facility, which releases or waives any claim by a participant or anyone claiming on behalf of the participant which is signed by the participant in any motorsports or sports event involving motorsports in the State, shall be valid and enforceable against any negligence claim for personal injury of the participant or anyone claiming on behalf

of and for the participant against the motorsports facility, or the owner, operator, or promoter of a motorsports facility. The waiver and release shall be valid notwithstanding any claim that the participant did not read, understand, or comprehend the waiver and release, waiver of liability, or indemnity agreement if the waiver or release is signed by both the participant and a witness. A waiver and release, waiver of liability, or indemnity agreement executed pursuant to this section shall not be enforceable against the rights of any minor, unless executed in writing by a parent or legal guardian.

(b) The execution of a waiver and release, waiver of liability, or indemnity agreement shall create a presumption that the person signing the document read and understood the document.

(c) A waiver and release, waiver of liability, or indemnity agreement executed under this section shall be construed as an express assumption of risk on the part of the party executing such a waiver and release, waiver of liability, or indemnity agreement.

(d) This section shall not apply to acts or omissions constituting gross negligence, wilful and wanton conduct, or intentional acts on the part of another participant or employees or agents of the motorsports facility.

(e) The provisions of this section shall not apply to any motorsports facility unless the facility has a general liability policy of no less than $1,000,000 for spectators and no less than $500,000 for participants, per claim, indemnifying participants and spectators for the negligence of the facility, its employees or agents.

(f) Without regard to whether a waiver and release, waiver of liability, or indemnity agreement has been executed pursuant to subsection (a) and without regard to subsection (e), no public entity or public employee shall be liable to a participant, for injury or damage sustained during the person's use of a motorsports facility, except when the injury or damage is caused by a condition resulting from the public entity's failure to design, maintain, or repair the motorsports facility. This limitation of liability for public entities and employees applies only to the provision of motorsports facilities and shall not extend to other activities, including but not limited to police and security, ambulance and medical, fire, food concessions, and other non-motorsports activities or functions.

(g) For the purposes of this section:

"Motorsports facility" means land, building, structure, or area designed or modified for motorsports activities, including the track and surrounding area wherein a motorsports or other event involving motor vehicles is held and which is clearly

demarcated as a restricted area to spectators. "Motorsports facility" shall not include the areas intended for use by spectators or nonparticipants.

"Owner" means a person or entity that owns or holds fee simple title to, or a leasehold interest in, a motorsports facility or any portion of a motorsports facility, and shall include without limitation, a fee owner or lessor of the underlying land, a lessee, or sublessee, or a sublessor or master lessor, of a motorsports facility or a portion thereof.

"Participant" means a person who is participating in a motorsports event at a motorsports facility, including practices or trials, as a rider, passenger or driver, official, or owner of a vehicle or equipment used in a motorsports event, or anyone assisting any of the foregoing, or a person entering an area of the motorsports facility restricted to participants. [L 1997, c 245, §1; am L 2006, c 111, §1]

" **[§663-10.98] Design professional liability; highways.** (a) Any other law to the contrary notwithstanding, including but not limited to sections 663-10.9, 663-11 to 663-13, 663-16, 663-17, and 663-31, in any case involving tort claims relating to the design, construction, and maintenance of highways, where a design professional is determined to be a joint tortfeasor along with one or more other joint tortfeasors, and the degree of negligence of the design professional is ten per cent or less, including the vicarious liability of the design professional for the negligent acts or omissions of the officers and employees of the design professional, the liability of the design professional for more than the design professional's pro rata share of negligence shall not exceed the available policy limits of the design professional's professional liability coverage; provided that one of the following applies:

(1) The contract amount for design professional services relating to the tort claim is $500,000 or less and the design professional is covered for the claim by a professional liability insurance policy with limits of no less than $1,000,000 per occurrence and $1,000,000 in the aggregate; or

(2) The contract amount for design professional services relating to the tort claim is $1,000,000 or less and the design professional is covered for the claim by a professional liability insurance policy with limits of no less than $1,000,000 per occurrence and $2,000,000 in the aggregate.

(b) This section shall not apply to any design professional with a gross annual revenue of $10,000,000 or more during any of the three calendar years immediately preceding the

effective date of the contract for design professional services relating to the tort claim. Information produced pursuant to this section relating to gross revenue shall be confidential and used only for purposes of this section unless otherwise ordered by the court.

(c) For purposes of this section:

"Available policy limits" means the remaining occurrence or aggregate policy limits available after reduction for prior claim payments made under the applicable professional liability insurance policy.

"Contract amount" means the maximum charges permitted under the contract; provided that if two or more design professional firms share in a contract, the contract amount shall be the share of maximum charges permitted for the design professional against which the claim is asserted.

"Design professional" means a professional engineer, architect, surveyor, or landscape architect licensed under chapter 464. [L 2009, c 179, §2]

" **[§663-10.99] Trespass; limited liability of agricultural land owner.** (a) An owner of agricultural land shall not be liable for any injury, death, loss, or damage suffered by a trespasser on the owner's agricultural land, unless the injury, death, loss, or damage was:

(1) Intentionally inflicted upon the trespasser by the owner of the land; or

(2) Caused by the gross negligence of the owner of the land.

(b) For purposes of this section, unless the context otherwise requires:

"Agricultural land" means any land in excess of four acres used primarily for a farming operation, as defined in section 165-2; provided that the term shall include land used for farm buildings and dwellings and roads and irrigation infrastructure associated with the agricultural land.

"Fallow" means land associated with agricultural production that is left unseeded or unplanted for one or more growing seasons.

"Owner" means the possessor of a fee interest, a tenant, lessee, occupant, or person, group, club, partnership, family, organization, entity, or corporation that is in control, possession, or use of the land, and their members, agents, partners, representatives, shareholders, and employees.

"Trespasser" means a person who enters or remains unlawfully on the agricultural land without the permission of the owner, and the lands:

(1) Are fenced, enclosed, secured in a manner designed to exclude the general public, or marked by a structure or barrier, including a cattle grid, cattle grate, or other obstacle used to secure livestock;
(2) Have a sign or signs displayed on the land that are sufficient to give reasonable notice and that read as follows: "No Trespassing" or a substantially similar message; provided that the sign or signs shall consist of letters not less than two inches in height and shall be placed at reasonable intervals along the boundary line of the land and at roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary line; or
(3) At the time of entry, are fallow or have a visible presence or evidence of livestock-raising, such as cattle, horses, water troughs, shelters, or paddocks, or a crop:
(A) Under cultivation;
(B) In the process of being harvested; or
(C) That has been harvested. [L 2011, c 208, §3]

"PART II. UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT

Case Notes

Joint and several liability imposed on asbestos manufacturers in products liability action. 960 F.2d 806 (1992).

Discussed, where defendant did not have a right of contribution for intentional torts alleged in the complaint against it. 293 F. Supp. 2d 1144 (2003).

§663-11 Joint tortfeasors defined. For the purpose of this part the term "joint tortfeasors" means two or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them. [L 1941, c 24, §1; RL 1945, §10487; RL 1955, §246-10; HRS §663-11]

Rules of Court

Parties, see HRCP rules 19, 20; DCRCP rule 20.

Law Journals and Reviews

Ozaki and Comparative Negligence: Imposing Joint Liability Where a Duty to Protect or Prevent Harm from Third Party

Intentional Tortfeasors Exits Is Fairer to Plaintiffs and Defendants. 26 UH L. Rev. 575 (2004).

Case Notes

As to rights of the children against driver of other car. 244 F.2d 604 (1957).

Settlement of action by defendants established both defendants as joint tortfeasors. 884 F.2d 492 (1989).

There must be common liability to injured person. 73 F. Supp. 707 (1947).

Father may not be joined as joint tortfeasor where children are plaintiffs. 135 F. Supp. 376 (1955).

Master and servant not joint tortfeasors, where master liable only under doctrine of respondeat superior. 7 H. 196 (1887).

Culpability among joint tortfeasors. 45 H. 128, 363 P.2d 969 (1961).

Minor son of plaintiff may be liable as joint tortfeasor to plaintiff. 51 H. 74, 450 P.2d 998 (1969).

Parents are liable for torts to their minor children, and they may be joined as joint tortfeasors in action by children against third party. 51 H. 484, 462 P.2d 1007 (1969).

An employee and employee's vicariously liable employer are joint tortfeasors as defined by this section. 78 H. 1, 889 P.2d 685 (1995).

Where condominium association's and murderer's tortious conduct resulted in same injury to victim, condominium association and murderer were joint tortfeasors. 87 H. 273 (App.), 954 P.2d 652 (1998).

Construing the language of §§431:10C-301 and 431:10C-103 governing uninsured motorist (UM) and underinsured motorist (UIM) insurance according to their plain and commonly understood meaning and in pari materia with §663-10.9 and this section, UM and UIM policies must provide coverage for all damages which an insured is legally entitled to recover from the owner or operator of an uninsured or underinsured motor vehicle, which necessarily encompasses damages for which the owner or operator of an uninsured or underinsured motor vehicle is jointly and severally liable pursuant to §663-10.9 and this section. 120 H. 329 (App.), 205 P.3d 594 (2009).

" **§663-12 Right of contribution; accrual; pro rata share.** [(a)] The right of contribution exists among joint tortfeasors.

[(b)] A joint tortfeasor is not entitled to a money judgment for contribution until the joint tortfeasor has by payment discharged the common liability or has paid more than the joint tortfeasor's pro rata share thereof.

[(c)] A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.

[(d)] When there is such a disproportion of fault among joint tortfeasors as to render inequitable an equal distribution among them of the common liability by contribution, the relative degrees of fault of the joint tortfeasors shall be considered in determining their pro rata shares, subject to section 663-17. [L 1941, c 24, §2; RL 1945, §10488; RL 1955, §246-11; HRS §663-12; am L 1972, c 144, §2(g); gen ch 1985]

Law Journals and Reviews

Keeping the (Good) Faith: Hawai‘i's Good Faith Settlement After HRS Section 15.5 and Troyer v. Adams. 26 UH L. Rev. 275 (2003).

Case Notes

Right of contribution, ripens when. 283 F. Supp. 854 (1968).

Settlement did not bar defendant's contribution rights against State where settlement extinguished State's liability to plaintiffs; apportionment of fault where negligent employee, acting for both joint tortfeasors, performed services primarily benefiting one tortfeasor. 643 F. Supp. 593 (1986).

Party was not allowed to recover as a joint tortfeasor. 682 F. Supp. 1499 (1988).

Cited, where a defendant filed a motion for summary judgment against plaintiff's claims and filed cross-claims against co-defendants, who filed an opposition to the motion, but did not file a cross-claim against the defendant, and plaintiff filed a statement of no position regarding the motion; the court found the right of the co-defendants to oppose the motion was sustainable under the Uniform Contribution Among Tortfeasors Act and HRCP rule 15(b). 415 F. Supp. 2d 1163 (2006).

In reviewing apportionment of damages, supreme court should confine its question to whether apportionment was so erroneous as to shock the moral sense. 45 H. 128, 363 P.2d 969 (1961).

A party who settles before suit and is found not negligent in action for contribution is not a joint tortfeasor and is therefore not entitled to contribution but may recover under subrogation. 53 H. 398, 495 P.2d 585 (1972).

Based on §663-17(c) and this section, because joint tortfeasor landlord did not file a cross-claim against joint tortfeasor tenant, landlord did not have a right of contribution from

tenant, and trial court properly acted within its discretion in dismissing tenant from the case. 93 H. 417, 5 P.3d 407 (2000).

Where bar owners failed to litigate the issue of proportionate fault with bar customer by pleading the customer into the case by filing a third-party complaint against the customer pursuant to this section, under §663-17(c), the bar owners were barred from having "the relative degrees of fault of the joint tortfeasors considered in determining their pro rata shares"; thus, because the customer could not have been included on the special verdict form as a matter of law, the appeals court erred in concluding to the contrary. 118 H. 385, 191 P.3d 1062 (2008).

Form of final judgment with respect to joint tortfeasor's claim for contribution. 6 H. App. 664, 737 P.2d 871 (1987).

Condominium association jointly and severally liable with murderer under this section as section provides for apportionment of the common liability of joint tortfeasors as among themselves but does not affect the joint and several liability of each defendant toward plaintiff. 87 H. 273 (App.), 954 P.2d 652 (1998).

When conduct of all joint tortfeasors is not sufficiently culpable to justify award of punitive damages against each tortfeasor, such damages may not be the subject of contribution among joint tortfeasors. 87 H. 273 (App.), 954 P.2d 652 (1998).

" **§663-13 Judgment against one tortfeasor.** The recovery of a judgment by the injured person against one joint tortfeasor does not discharge the other joint tortfeasors. [L 1941, c 24, §3; RL 1945, §10489; RL 1955, §246-12; HRS §663-13]

" **§§663-14 and 663-15 REPEALED.** L 2001, c 300, §§3, 4.

" **§663-15.5 Release; joint tortfeasors; co-obligors; good faith settlement.** (a) A release, dismissal with or without prejudice, or a covenant not to sue or not to enforce a judgment that is given in good faith under subsection (b) to one or more joint tortfeasors, or to one or more co-obligors who are mutually subject to contribution rights, shall:

(1) Not discharge any other joint tortfeasor or co-obligor not released from liability unless its terms so provide;

(2) Reduce the claims against the other joint tortfeasor or co-obligor not released in the amount stipulated by the release, dismissal, or covenant, or in the amount of the consideration paid for it, whichever is greater; and

(3) Discharge the party to whom it is given from all liability for any contribution to any other joint tortfeasor or co-obligor.

This subsection shall not apply to co-obligors who have expressly agreed in writing to an apportionment of liability for losses or claims among themselves.

(b) For purposes of subsection (a), any party shall petition the court for a hearing on the issue of good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, serving notice to all other known joint tortfeasors or co-obligors. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

The petition shall indicate the settling parties and, except for a settlement that includes a confidentiality agreement regarding the case or the terms of the settlement, the basis, terms, and settlement amount.

The notice, petition, and proposed order shall be served as provided by rules of court or by certified mail, return receipt requested. Proof of service shall be filed with the court. Within twenty-five days of the mailing of the notice, petition, and proposed order, a nonsettling alleged joint tortfeasor or co-obligor may file an objection to contest the good faith of the settlement. If none of the nonsettling alleged joint tortfeasors or co-obligors files an objection within the twenty-five days, the court may approve the settlement without a hearing. An objection by a nonsettling alleged joint tortfeasor or co-obligor shall be served upon all parties. A nonsettling alleged joint tortfeasor or co-obligor asserting a lack of good faith shall have the burden of proof on that issue.

Where a confidentiality agreement has been entered into regarding the claim or settlement terms, the court shall hear the matter in a manner consistent with preventing public disclosure of the agreement while providing other joint tortfeasors and co-obligors sufficient information to object to a proposed settlement.

(c) The court may determine the issue of good faith for purposes of subsection (a) on the basis of affidavits or declarations served with the petition under subsection (a), and any affidavits or declarations filed in response. In the alternative, the court, in its discretion, may receive other evidence at a hearing.

(d) A determination by the court that a settlement was made in good faith shall:

(1) Bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor, except those based on a written indemnity agreement; and

(2) Result in a dismissal of all cross-claims filed against the settling joint tortfeasor or co-obligor, except those based on a written indemnity agreement.

(e) A party aggrieved by a court determination on the issue of good faith may appeal the determination. The appeal shall be filed within twenty days after service of written notice of the determination, or within any additional time not exceeding twenty days as the court may allow.

(f) The running of any statute of limitations or other time limitations shall be tolled during the period of consideration by the court on the issue of good faith.

(g) The procedures, rights, and obligations of this section shall apply to a release, dismissal, or covenant given before, as well as after, a lawsuit has been filed and does not require the existence of a lawsuit.

(h) This section shall not apply to a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment given to a co-obligor on an alleged contract debt where the contract was made prior to January 1, 2002. [L 2001, c 300, §1; am L 2003, c 146, §1]

Law Journals and Reviews

Keeping the (Good) Faith: Hawai‘i's Good Faith Settlement After HRS Section 15.5 and Troyer v. Adams. 26 UH L. Rev. 275 (2003).

Case Notes

Magistrate judge properly determined that defendant did not meet its burden of disproving good faith regarding settlement between plaintiff and other defendants. 293 F. Supp. 2d 1144 (2003).

Discussed, where the court held that the proportionate share rule of federal admiralty law governed the settlement between plaintiff and the settling defendant. 526 F. Supp. 2d 1135 (2007).

This section adequately protects a non-settling joint tortfeasor's right to procedural due process; subsections (b) and (c) afford a non-settling joint tortfeasor notice and an opportunity to be heard regarding the determination whether a settlement has been given in good faith and, consequently, bars

cross-claims for contribution against the settling joint tortfeasor. 102 H. 399, 77 P.3d 83 (2003).

Whether a settlement was given in "good faith" for purposes of this section is a matter left to the discretion of the trial court in light of all the relevant circumstances extant at the time of settlement. 102 H. 399, 77 P.3d 83 (2003).

Legislature intended only parties, not merely non-settling alleged joint tortfeasors, to have the right to appeal a court determination on the issue of good faith; where, for purposes of appeal, appellant was required to intervene as a party, pursuant to HRCP rule 24 and failed to do so, and was thus not made a party to the case, appellant lacked standing to appeal. 112 H. 176, 145 P.3d 719 (2006).

A settlement, wherein a party seeks to accomplish indirectly that which it is expressly barred by applicable law from accomplishing directly, is not in good faith. 113 H. 406, 153 P.3d 1091 (2007).

Where bankruptcy court remanded the entirety of the adversary proceeding to the circuit court, and petitioner timely appealed to the appellate court the bankruptcy court's good faith determination which had not been modified or set aside by the circuit court and thus remained in effect, since §602-57 gives the appellate court jurisdiction over appeals from the circuit court that are "allowed by law", and subsection (e) authorized an appeal from the good faith determination, the appellate court had jurisdiction over the appeal. 125 H. 186, 256 P.3d 694 (2011).

A good faith settlement made pursuant to this section does not preclude a defendant from introducing evidence that it was not the cause of the accident even though this evidence would logically point the finger at someone or something else, including a defendant who settled in good faith. 126 H. 420 (App.), 271 P.3d 1179 (2012).

Where doctor's professional corporation employer's potential liability concerned the same injury for which the hospital was liable – that resulting from the doctor's negligence – they were joint tortfeasors for purposes of this section; the circuit court thus erred in concluding that the hospital was not entitled to offset its damages by the amount of a settlement between the employer and the deceased patient's estate pursuant to subsection (a). 127 H. 325 (App.), 278 P.3d 382 (2012).

" **§663-16 Indemnity.** This part does not impair any right of indemnity under existing law. [L 1941, c 24, §6; RL 1945, §10492; RL 1955, §236-15; HRS §663-16]

" **§663-17 Third-party practice; enforcement of right to contribution; unnamed defendants and third-party defendants.** (a) A pleader may, as provided by the rules of court, bring in as a third-party defendant a person not a party to the action who is or may be liable to the pleader or to the person claiming against the pleader, for all or part of the claim asserted against the pleader in the action, whether or not liability for the claim is admitted by the pleader. A third-party defendant is bound by the adjudication of the third-party plaintiff's liability to the plaintiff as well as of the third-party defendant's own liability to the plaintiff or to the third-party plaintiff.

(b) A pleader may either:

(1) State as a cross-claim against a co-party any claim that the co-party is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant; or

(2) Move for judgment for contribution against any other joint judgment debtor, where in a single action a judgment has been entered against joint tortfeasors, one of whom has discharged the judgment by payment or has paid more than the joint tortfeasor's pro rata share thereof.

If relief can be obtained as provided in this subsection, no independent action shall be maintained to enforce the claim for contribution.

(c) As among joint tortfeasors who in a single action are adjudged to be such, section 663-12(d) applies only if the issue of proportionate fault is litigated between them by pleading in that action.

(d) A pleader may name as parties to a lawsuit under fictitious names defendants or third-party defendants whose names or whose responsibility for the acts complained of the pleader has been unable to ascertain with reasonable certainty. The pleading shall set forth a description of any unidentified defendant or third-party defendant and all actions already undertaken in a diligent and good faith effort to ascertain the true identity or responsibility of any unidentified defendant or third-party defendant. The pleader may later make known to the court the identity of a defendant or third-party defendant named as a party to the lawsuit under a fictitious name. For the purposes of statutes of limitation, later identified defendants or third-party defendants shall be considered to have been named as parties to the lawsuit on the date the pleading was filed first naming them under fictitious names. Parties shall exercise reasonable diligence in ascertaining the identity or responsibility of unnamed defendants or third-party defendants.

The court may make any order that justice requires to protect any party from undue burden and expense or substantial prejudice in any further proceedings involving the later identified defendants or third-party defendants. [L 1941, c 24, §7; RL 1945, §10493; RL 1955, §246-16; HRS §663-17; am L 1972, c 144, §2(h); gen ch 1985; am L 1999, c 237, § 2; am L 2016, c 55, §47]

Revision Note

In subsection (c), "the last paragraph of section 663-12" changed to "section 663-12(d)" pursuant to §23G-15.

Rules of Court

Third party practice, see HRCP rule 14; DCRCP rule 14. Counterclaims, cross-claims, see HRCP rule 13; DCRCP rule 13.

Law Journals and Reviews

The Requirement for Notice of Claim Against the City and County of Honolulu: Does it Apply to a Claim for Contribution under the Uniform Contribution Among Tortfeasors Act? 3 HBJ, no. 1, at 4 (1965).

Case Notes

Presentation of claim against county within six-month period provided by §46-72 not a condition precedent to maintaining third party action against county for contribution. 283 F. Supp. 854 (1968).

Right of contribution, when it becomes enforceable. 283 F. Supp. 854 (1968).

Cited, where a defendant filed a motion for summary judgment against plaintiff's claims and filed cross-claims against co-defendants, who filed an opposition to the motion, but did not file a cross-claim against the defendant, and plaintiff filed a statement of no position regarding the motion; the court found the right of the co-defendants to oppose the motion was sustainable under the Uniform Contribution Among Tortfeasors Act and HRCP rule 15(b). 415 F. Supp. 2d 1163 (2006).

Minor son of plaintiff may be subject to contribution to defendant as joint tortfeasor. 51 H. 74, 450 P.2d 998 (1969).

Parents are liable for torts to their minor children, and they may be joined as joint tortfeasors in action by children against third party. 51 H. 484, 462 P.2d 1007 (1969).

Plaintiff's wife may be impleaded by defendant, notwithstanding the interspousal tort immunity law. 68 H. 505, 720 P.2d 181 (1986).

Based on §663-12 and subsection (c), because joint tortfeasor landlord did not file a cross-claim against joint tortfeasor tenant, landlord did not have a right of contribution from tenant, and trial court properly acted within its discretion in dismissing tenant from the case. 93 H. 417, 5 P.3d 407 (2000).

Where bar owners failed to litigate the issue of proportionate fault with bar customer by pleading the customer into the case by filing a third-party complaint against the customer pursuant to §663-12, under subsection (c), the bar owners were barred from having "the relative degrees of fault of the joint tortfeasors considered in determining their pro rata shares"; thus, because the customer could not have been included on the special verdict form as a matter of law, the appeals court erred in concluding to the contrary. 118 H. 385, 191 P.3d 1062 (2008).

"[PART III. ADVANCE PAYMENTS IN PERSONAL INJURY AND PROPERTY DAMAGE CASES]

§663-21 Advance payments not admission. In any action, including a medical tort, as defined in section 671-1, brought to recover damages for personal injuries, wrongful death or property damage no payment made by the defendant or the defendant's insurance company, whether made before or after the complaint is filed, to or for the plaintiff or any other person, hereinafter called an "advance payment", shall be construed as an admission of liability by any person. Except as provided in section 663-22, evidence of such payment shall not be admissible during the trial for any purpose by either plaintiff or defendant. [L 1969, c 233, §1; am L 1976, c 219, §19]

" **[§663-22 Reduction of award.]** If in such action it is determined that plaintiff is entitled to recover, defendant may introduce evidence of any advance payment made, and the court shall reduce the award to the plaintiff to the extent that said award includes an amount paid by any such advance payment. [L 1969, c 233, §2]

" **[§663-23 Refund of payments.]** If such action results in a final judgment for defendant, plaintiff, upon receipt of a written demand, shall refund to defendant or defendant's insurance company any advance payment made to or for the plaintiff by defendant or defendant's insurance company. [L 1969, c 233, §3; gen ch 1985]

" **[§663-24 Effect on insurance.]** No advance payment made by an insurance company on behalf of an insured shall increase the limits of liability of the insurance company under any existing policy of insurance, and the amount of any advance payment made in respect to any claim shall be credited against any obligation of the insurance company in respect to said claim. [L 1969, c 233, §4]

"[PART IV.] COMPARATIVE NEGLIGENCE

Law Journals and Reviews

Tort and Insurance "Reform" in a Common Law Court. 14 UH L. Rev. 55 (1992).

§663-31 Contributory negligence no bar; comparative negligence; findings of fact and special verdicts. (a) Contributory negligence shall not bar recovery in any action by any person or the person's legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not greater than the negligence of the person or in the case of more than one person, the aggregate negligence of such persons against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made.

(b) In any action to which subsection (a) of this section applies, the court, in a nonjury trial, shall make findings of fact or, in a jury trial, the jury shall return a special verdict which shall state:

(1) The amount of the damages which would have been recoverable if there had been no contributory negligence; and

(2) The degree of negligence of each party, expressed as a percentage.

(c) Upon the making of the findings of fact or the return of a special verdict, as is contemplated by subsection (b) above, the court shall reduce the amount of the award in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made; provided that if the said proportion is greater than the negligence of the person or in the case of more than one person, the aggregate negligence of such persons against whom recovery is sought, the court will enter a judgment for the defendant.

(d) The court shall instruct the jury regarding the law of comparative negligence where appropriate. [L 1969, c 227, §1; am

L 1972, c 144, §2(i); am L 1975, c 152, §1; am L 1976, c 161, §1; gen ch 1985]

Law Journals and Reviews

For a discussion of the doctrines of contributory and comparative negligence, see A Proposal for the Judicial Adoption of Comparative Negligence in Hawaii. 5 HBJ, no. 2, at 49 (1968).

Tort Law--Bertelmann v. Taas Associates: Limits on Dram Shop Liability; Barring Recovery of Bar Patrons, Their Estates and Survivors. 11 UH L. Rev. 277 (1989).

Ozaki and Comparative Negligence: Imposing Joint Liability Where a Duty to Protect or Prevent Harm from Third Party Intentional Tortfeasors Exits Is Fairer to Plaintiffs and Defendants. 26 UH L. Rev. 575 (2004).

Case Notes

In Federal Tort Claims Act action against United States of America for damages for personal injuries plaintiffs sustained when they were scalded by lava heated ocean water, judgment to be entered in favor of the government, where court found, inter alia, that because plaintiffs knowingly entered a closed area with an open and obvious hazard, not only was their behavior unreasonable, but they alone were responsible for their injuries. 73 F. Supp. 2d 1172 (1999).

Comparative negligence doctrine will not be applied to claims accruing before July 14, 1969. 51 H. 636, 466 P.2d 429 (1970).

Comparative negligence applies only to claims accruing after July 14, 1969, and the rule of contributory negligence continues on claims that accrued before that date. 52 H. 129, 471 P.2d 524 (1970).

Contributory negligence is available as defense against claims accruing before July 14, 1969. 55 H. 375, 520 P.2d 62 (1974).

Costs allowable to prevailing party not subject to reduction in proportion to negligence attributable. 56 H. 613, 546 P.2d 1013 (1976).

Section does not affect action between two joint tortfeasors under §§663-11 to 663-17. 65 H. 428, 653 P.2d 96 (1982).

Comparative negligence principles not applicable to strict liability case. 69 H. 176, 738 P.2d 79 (1987).

Contributory negligence is no longer a complete defense or total bar to a tort claim; legislature, in enacting comparative negligence statute did not intend to alter judicially created derivative action for loss of consortiums. 69 H. 192, 738 P.2d 85 (1987).

Pure comparative negligence principles apply to strict products liability claims. 69 H. 231, 738 P.2d 416 (1987).

Section required that judgment be entered for defendant where jury's special verdict apportioned greater fault to victim than to defendant. 87 H. 265, 954 P.2d 644 (1998).

Where arbitrator's award apportioned liabilities in passenger's action against passenger's driver and driver of other vehicle as seventy per cent to thirty per cent negligent respectively, and arbitrator's award had collateral estoppel effect, subsection (a) barred recovery by passenger's driver in separate action against other driver. 90 H. 143, 976 P.2d 904 (1999).

The known or obvious danger defense is inconsistent with the legislative intent behind Hawaii's comparative negligence statute, yields inconsistent results, and is incompatible with the policy values underlying Hawaii's tort law; thus, the known or obvious danger defense is no longer viable in Hawaii; the Restatement's retention of the doctrine as a factor in determining the landowner's duty is rejected, and the courts of this State may consider any known or obvious characteristics of the danger as factors in the larger comparative negligence analysis. 126 H. 133, 267 P.3d 1238 (2011).

Instructions to jury. 1 H. App 94, 614 P.2d 402 (1980).

Comparative negligence and products liability doctrines merged; in products liability case injured plaintiff cannot recover if more negligent than defendant. 6 H. App. 652, 736 P.2d 440 (1987).

Because this section clearly permits apportionment of damages and no justification exists to maintain doctrine of last clear chance, use of doctrine by a plaintiff abolished. 83 H. 78 (App.), 924 P.2d 572 (1996).

Trial court should have instructed jury on law of comparative negligence and failure to do so made jury instructions that were given prejudicially insufficient. 83 H. 78 (App.), 924 P.2d 572 (1996).

In light of the plain language of HAR rule 23(a), trial court abused its discretion when it sanctioned defendant by apportioning defendant's and plaintiff's negligence based on arbitrator's award, and the apportionment sanction deprived defendant of a jury determination as to the degree of negligence of the parties, in violation of this section. 99 H. 432 (App.), 56 P.3d 734 (2002).

Cited: 60 H. 381, 590 P.2d 564 (1979).

Discussed: 781 F. Supp. 2d 1025 (2011).

"[PART V.] CIVIL ACTION; INTOXICATION OF PERSONS UNDER AGE TWENTY-ONE

[§663-41] Right of action. (a) Any person twenty-one years or older who:

(1) Sells, furnishes, or provides alcoholic beverages to a person under the age of twenty-one years; or

(2) Owns, occupies, or controls premises on which alcoholic beverages are consumed by any person under twenty-one years of age, and who knows of alcohol consumption by persons under twenty-one years of age on such premises, and who reasonably could have prohibited or prevented such alcohol consumption;

shall be liable for all injuries or damages caused by the intoxicated person under twenty-one years of age.

(b) This section shall not apply to sales licensed under chapter 281.

(c) An intoxicated person under the age of twenty-one years who causes an injury or damage shall have no right of action under this part. [L 2003, c 69, pt of §1]

Case Notes

There was actually no indication that this section was meant to encompass the instant factual situation where the injury was inflicted directly upon the minor by the host (defendant) through the provision of alcohol, and the claim was only between the minor and the host; thus, this section does not apply in a case where the intoxicated minor has not caused damage or injury to an innocent third party, and therefore did not bar the claims made by plaintiff (parents of decedent minor) against defendant. 130 H. 282, 308 P.3d 911 (2013).

" **[§663-42] Subrogation claims denied.** There shall be no recovery for any subrogation claim pursuant to any subrogation clause of an uninsured, underinsured, collision, or other first-party coverage as a result of payments made to persons who have claims that arise in whole or in part under this part. [L 2003, c 69, pt of §1]

"[PART VI.] LIMITATIONS ON PUBLIC ENTITY LIABILITY IN ACTIONS BASED UPON DUTY TO WARN OF NATURAL CONDITIONS

[§663-51] Definitions. As used in this part:

"Board" means the board of land and natural resources.

"Improved public lands" means lands designated as part of the state park system, parks, and parkways under chapter 184, or as part of a county's park system, and lands which are part of the Hawaii statewide trail and access system under chapter 198D,

excluding buildings and structures constructed upon such lands. For purposes of this part, "improved public lands" excludes ocean and submerged lands.

"Public entity" means "government entity" as defined in section 663-10.5. [L 2003, c 82, pt of §2, §8; am L 2007, c 152, §5; am L 2008, c 144, §1; am L 2009, c 81, §3; am L 2014, c 86, §2]

" **[§663-52] Conclusive presumptions relating to duty of public entities to warn of dangers on improved public lands.** (a) A sign or signs warning of dangerous natural conditions on improved public lands shall be conclusively presumed to be legally adequate warning of the dangerous natural conditions of which the sign or signs warn, if the State or a county posts a sign or signs warning of the dangerous natural conditions and the design and placement of the warning sign or signs are approved by the board. The board shall consult the risk assessment working group established by chapter 171, prior to approving the design and placement of a warning sign pursuant to this section.

(b) The State or a county may submit to the board a comprehensive plan for warning of dangerous natural conditions at a particular area of improved public lands. The board shall review the plan for adequacy of the warning as well as the design and placement of the warning signs, devices, or systems. The board shall consult with the risk assessment working group before approving the plan. The risk assessment working group shall seek public comment on the plan. In the event that the board after consulting with the risk assessment working group approves the plan for a particular area of improved public lands, and the State or a county posts the warnings provided for in the approved plan, then the warning signs, devices, or systems shall be conclusively presumed to be legally adequate warning of all dangerous natural conditions on the improved public lands.

(c) The State or a county shall have no duty to warn of dangerous natural conditions on unimproved public lands.

(d) If a warning sign, device, or system is posted or established in accordance with this section on unimproved lands, the posting or establishment of the warning sign, device, or system shall not create a duty on the part of the State or county to warn of other dangerous natural conditions on unimproved lands or to place or establish an additional warning sign, device, or system in other locations on the unimproved lands.

(e) The State and the counties shall implement and maintain a sign inspection program in which a park caretaker or

other authorized person conducts documented inspections of all signs in the park or trail area on a quarterly or more frequent basis.

Records shall be kept under the sign inspection program which document the date of each sign inspection and whether the particular sign inspected was in place, free of vandalism, and legible. The State and the counties shall annually provide the board with a copy of the documentation of all sign inspections under the sign inspection program.

The conclusive presumption provided by this section shall continue for any sign posted pursuant to this section for a period of one hundred twenty days after the last inspection that documented that the sign was in place and legible, after which the presumption shall lapse until the time at which the sign is subsequently inspected and documented to be in place and in legible condition.

In any circumstance in which the conclusive presumption lapses because of the lack of a documented inspection, the presumption shall be reestablished if the State or county, as the case may be, proves by a preponderance of the evidence that at the time of the incident at issue, the sign was in place and in legible condition.

(f) The board shall adopt rules pursuant to chapter 91 establishing standards to guide the department of land and natural resources and the risk assessment working group in the general design and placement of warning signs; provided that chapter 91 shall not apply to any other process or action undertaken pursuant to this part.

(g) The State and the counties shall implement an accident reporting and recordkeeping program whereby all known accidents in park and trail areas are documented on an accident report form, and all such accident reports are kept on a permanent basis. The risk assessment working group shall review and use accident reports kept as part of this program as part of its consultation to the board under this section. [L 2003, c 82, pt of §2, §8; am L 2007, c 152, §5; am L 2009, c 81, §3; am L 2014, c 86, §2]

Cross References

Risk assessment working group, see §171-8.6.