

# **EXHIBIT 7C**



REST 2d TORTS § 599  
Restatement (Second) of Torts § 599 (1977)

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

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Division 5. Defamation  
Chapter 25. Defenses To Actions For Defamation  
Topic 3. Conditional Privileges  
Title A. Occasions Making A Publication Conditionally Privileged  
Subtitle III. Abuse Of Privilege

§ 599. General Principle

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**One who publishes defamatory matter concerning another upon an occasion giving rise to a conditional privilege is subject to liability to the other if he abuses the privilege.**

**Comment:**

*a.* The privileges described in [§§ 594-598A](#) are conditional ones, that is, the protection that they give is conditioned upon the manner in which the privilege is exercised. The unreasonable exercise of the privilege is an abuse of it that defeats the protection otherwise afforded. The privilege may be abused because of the publisher's knowledge or reckless disregard as to the falsity of the defamatory matter (see [§§ 600-602](#)); because the defamatory matter is published for some purpose other than that for which the particular privilege is given (see [§ 603](#)); because the publication is made to some person not reasonably believed to be necessary for the accomplishment of the purpose of the particular privilege (see [§ 604](#)); or because the publication includes defamatory matter not reasonably believed to be necessary to accomplish the purpose for which the occasion is privileged. (See [§§ 605, 605A](#)).

*b.* The effect of abuse of a conditional privilege is to make the publisher of the defamation subject to liability for the abuse. If the harm done by the abuse is severable, and can be distinguished from the harm done by a part of the publisher's conduct that would properly be privileged, he is subject to liability only for the excess of harm resulting from his abuse. This is true, for example, under [§ 604](#), when the harm resulting from excessive publication, as in the case of communication to an improper person in addition to a proper one, can easily be separated from that which has resulted from the privileged publication. It is also true under [§ 605](#), when unprivileged matter is communicated in addition to that which is conditionally privileged. When, however, the harm resulting from the abuse cannot be separated from that which has resulted from the proper exercise of the privilege, the effect of the abuse is to forfeit the conditional privilege and make the publisher subject to liability for the entire harm. This is true, for example, under [§ 600](#), as to knowledge or reckless disregard as to falsity, and under [§ 603](#), as to a publication made for an improper purpose.

*c.* The general principle set forth in this Section and its specific applications in [§§ 600-605A](#) are applicable to the conditional privileges set out in [§§ 594-598A](#). The special types of privileges set forth in [§ 611](#) (reports of official proceedings and public meetings) and [§ 612](#) (providing means of publication) are also not absolute and subject to loss by abuse. But the circumstances under which they are lost by abuse differ from those described in [§§ 600-605A](#). Those circumstances are described in [§ 611](#), Comments *a* and *b*; and [§ 612](#), Comment *b*.

*d.* Relation of privilege to constitutional requirement of fault as to falsity. A conditional privilege is one of the methods utilized by the common law for balancing the interest of the defamed person in the protection of his reputation against the interests of the publisher, of third persons and of the public in having the publication take place. The latter interests are not strong enough under the circumstances to create an absolute privilege but they are of sufficient significance to relax the usual standard for liability. Thus the traditional balance at common law had been attained in the past by holding that a person having a conditional privilege was not subject to the normal strict liability for a defamatory communication but was liable only if he did not believe the statement to be true or lacked reasonable grounds for so believing. This adjustment of the conflicting interests has now been subjected to necessary modification by the recent holding of the United States Supreme Court in [Gertz v. Robert Welch, Inc., \(1972\) 418 U.S. 323](#), that strict liability in defamation is unconstitutional and that a publisher can be held liable only if he was at fault amounting at least to negligence regarding the falsity of the statement. (See [§ 580B](#)).

One consequence of this holding is that mere negligence as to falsity, being required for all actions of defamation, is no longer treated as sufficient to constitute abuse of a conditional privilege. Instead, knowledge or reckless disregard as to falsity is necessary for this purpose. (See [§ 600](#)). For explanation of this in more detail, see the Special Note to Topic 3, immediately preceding [§ 593](#); and see [§ 580B](#), Comment *l*.

Another significant consequence of all this is that the courts will now find it necessary to reassess the circumstances under which it is appropriate to grant a conditional privilege. If a proper adjustment of the conflicting interests of the parties indicates that a publisher should be held liable for failure to use due care to determine the truth of the communication before publishing it, a conditional privilege is not needed and should not now be held to apply. The conditional privilege should be confined to a situation where the court feels that it is appropriate to hold the publisher liable only in case he knew of the falsity or acted in reckless disregard of it. This should be borne in mind in contemplating each of the sections on conditional privilege.

#### Case Citations

##### [Cross References Through December 1977](#)

- June 1987 [Case Citations 1978 — June 1987](#)
- June 2001 [Case Citations July 1987 — June 2001](#)
- June 2009 [Case Citations July 2001 — June 2009](#)

##### [Cross References Through December 1977:](#)

#### Cross References to

#### 1. Digest System Key Numbers

##### [Libel and Slander](#) [501/2](#)

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

No earlier citations

**C.A.1**, 1987. Cit. in disc. A motor oil manufacturer sued the supplier of an ingredient in the motor oil for product