

LEGAL AUTHORITY CONTROLLING THE CASE/ APPLICABLE LAW

**Note the law cited in this section was adopted from other jurisdictions and modified for purposes of the 2004 CNMI High School Mock Trial competition. The law cited is NOT the law of the CNMI.*

CNMI MT CODE OF LAW

Section 323. Special Relations Giving Rise to Duty to Aid or Protect

A business is under a duty to its customers to take reasonable action

- a) To protect them against unreasonable risk of physical harm, and
- b) To give them first aid after it knows or has reason to know that they are ill or injured, and to care for them until they can be cared for by others.

Section 336. Activities Dangerous to Invitees

A business owner is subject to liability to his or her customers for physical harm caused to them by a failure to carry on activities with reasonable care for their safety if, but only if, he/she should expect that they will not discover or realize the danger, or will fail to protect themselves against it.

Section 339. Dangerous Conditions Known to or Discoverable by Owner.

- A) A business owner is subject to liability for physical harm caused to his/her customers by a dangerous condition on the property of the business if and only if s/he knows by the exercise of reasonable care, should have discovered the condition, and should realize that it involves an unreasonable risk of harm to such customers, and
- B.) Should expect that customers will not discover or realize the danger, or will fail to protect themselves against it, and
- C.) Fails to exercise reasonable care to protect them against the danger.

Section 362. Known or Obvious Dangers.

A business is not liable to his/ her customers for physical harm caused to them by any activities or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.

Section 23-246. Comparative Negligence Statute

1. When the occurrence of an incident is proximately caused by negligence on the part of a defendant and not by negligence on the part of a Plaintiff, then Plaintiff is entitled to recover the full amount of damages sustained as a result of the occurrence.
2. When the occurrence is proximately caused by negligence of both Plaintiff and Defendant, the percentages of their negligence must be compared.
3. When the percentage of negligence attributable to a Plaintiff is equal to or greater than the percentage of negligence attributable to a Defendant, or if a Defendant is not negligent the plaintiff shall not be entitled to recover any damages for his/her injuries.
4. When the percentage of negligence attributable to a Plaintiff is less than the percentage of negligence attributable to the Defendant, a Plaintiff will be entitled to recover that portion of damages not caused by the Plaintiff's own negligence.

Section 23-248. Proximate Cause Defined

1. To be a proximate cause, the conduct must have been a substantial factor in bringing about the harm complained of, and the harm-giving rise to the action could have been reasonably foreseen or anticipated by a person of ordinarily intelligence and prudence.
2. To be a proximate cause of an injury, there is no requirement that the cause be the only cause, the last act, or the one nearest the injury, so long as it is a substantial factor in producing the injury or damage.
3. The foresee ability requirement does not require the person guilty of negligence to foresee the exact manner in which the injury takes place or the exact person who would be injured. It is enough that person guilty of negligence could foresee, or should have foreseen through the exercise of reasonable care, the general manner in which the injury or result would occur.

CASE LAW

Lok v. Hicks, 68 MT 209 (1912)

The court in Lok set forth the following elements, which must be shown to establish a prima facie case of negligence:

1. A duty on the part of the defendant to conform to a specific standard of conduct for protection of a plaintiff against an unreasonable risk of injury. A duty of care is owed only to foreseeable Plaintiffs.
2. A breach of that duty by Defendant,
3. The breach is the actual and proximate cause of the Plaintiff's injury and
4. Damages

Kubrick v. Island of Tinian, 226 CNMI MT 418 (1997)

The CNMI Supreme Court upheld the traditional definition of duty as "An obligation that the defendant has to the plaintiff." There, the court expressed that there are different variables to determine if a duty exists, including (1) the foreseeability of the harm, (2) degree of certainty for the injury (3) existence of a relationship between the parties involved, (4) closeness of the connection between the conduct and the injury (5) moral blame attached to the conduct, (6) policy of preventing future harm, and (7) burdens and consequences of imposing duty and resulting liability for breach.

Haynes v. A Professional Building, 443 MT 443 (1975)

In this seminal case, the Mock Trial Court defined foreseeability as a situation where the actor must realize or should realize that there is a risk of harm. Foreseeability depends on whether a reasonable person could anticipate that a given event might occur under certain conditions. The court cautioned, however that just because an event might be foreseeable does not impose a duty of the defendant to ask some kind of action. There must be some sort of risk to injury to another or his property before an actor is required to act.

Kim v. HAL Enterprises, Inc 3 MT 710 (1996)

The general rule is that there is no duty to aid or protect another unless there is a special relationship between them, such as between an invitor and an invitee. An invitee is one who is on the defendant's land for reasons related to the activity and of some tangible benefit to defendant.

In Re Estate of Barcinas, 4 NMI MT 149 (1994)

The CNMI Supreme Court clarified that in a civil action, the Plaintiff has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove each element of the Plaintiff's claim. The term "preponderance of the evidence" means the factual information (evidence) presented in the trial is of greater weight or is more controlling than the evidence which is being offered in opposition by the evidence. If the evidence on a particular issue appears to be equally balanced, the party having the burden of proving that issue must fail.

In Re Moonwater Industries, 4 NMI MT 100 (1994)

Under the state comparative negligence statute, the Defendant has the burden of showing contributory fault or obligation of Plaintiff by a preponderance of the evidence.

Ito v. Macro Inc., 4 NMI MT (1993)

Under the law of contributory negligence, every person has an obligation to exercise reasonable care for their own safety.

Ito v. Macro Energy Inc., 4 NMI 46 (1993)

The doctrine of Assumption of the risk is applicable in this State, only to cases in which there has been a clear assumption of the risk. The doctrine of Assumption of the Risk serves only the purpose of limiting the scope of a defendant's liability for injuries caused to the plaintiff and has no utility in barring recovery where defendant has been found to have negligently breached a duty owed to plaintiff.

STIPULATIONS TO JURY/ NONJURY TRIAL

Both parties demand the right to a jury trial.

ATTEMPTS FOR SETTLEMENT

The parties met on numerous occasions and discussed the possibility of settlement. Both agree they have been unable to reach settlement and trial of this matter is necessary.