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Article 9

Misrepresentation: Extension of Liability Thereon

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MISREPRESENTATION: EXTENSION OF LIABILITY THEREON

I. Scope of Article

As the early cases at common law defined it, the liability for a misrepresentation was rather narrow. A plaintiff could succeed only by alleging and proving a certain limited set of facts which would entitle him to recover.[1]

Since that time courts generally, and particularly those in American jurisdictions, have whittled away at these strict requirements. It is the purpose of this article to set forth the traditional common law delineations of liability and to show how these have been expanded. This expansion will be traced along two lines. The first will deal with the kind of conduct that gives rise to liability. The second will concern the problem of duty; i.e., what persons can recover once given actionable conduct.

II. Conduct Giving Rise to Liability

A misrepresentation is simply the statement of a fact that is not true. In selling a car if A states to B that the car will run 20 miles to the gallon when in fact it will not, A has misrepresented to B. This gives rise to an *ex contractu* action. B could sue to rescind the contract, sue for damages in an action for warranty, or defend in an action by A for the contract price.

Independent of the contractual situation in which it might have arisen, a misrepresentation gives rise to a separate cause of action sounding in tort. As such an independent action it is usually labelled deceit.[2]

A's misrepresentation in the foregoing example could have resulted because of one of the following: (1) He intentionally misrepresented the fact as true when he knew it was not. (2) A believed the misrepresentation to be true but arrived at that belief in a careless or negligent manner. (3) A used due diligence but still misrepresented the fact. It would then appear that a misrepresentation can result from conduct of differing kinds. The question that immediately arises is what kind of conduct must be asserted to succeed in the tort action? Will a negligent or innocent misrepresentation render a party liable for the damages that might be caused to others who rely on the statement?

The English courts decided that only intentional or so called fraudulent misrepresentations would support the common law action of deceit. In *Deery v. Peek*[3] the court considered whether a mere

[1] Prosser, Law of Torts (Hornbook series) 523 (1955).
[2] *Ibid.* at 521.
[3] Deery v. Peek, 14 App. Cas. 337 (1889).

negligent misrepresentation would suffice and decided that it would not.

> "In an action of deceit it is not enough to establish misrepresentation alone . . . a false statement made through want of care falls far short of and is a very different thing from fraud."[4]

The requirement of intentional misrepresentation and actual knowledge of the falsity, is usually called *fraud* or *scienter*. This was the very gravamen of the action of deceit at common law.[5]

As a result of *Deery v. Peek*, the rule became fixed that only intentional, fraudulent conduct would give rise to liability in a deceit action. The possibility of bringing a straight negligence action and asserting negligent misrepresentation was asserted. Judge Jeremiah Smith stated that one should be able to succeed in an action for negligence by alleging a duty on the part of the defendant to use reasonable care in making representations.[6] Logically it appears to be true that if one is liable for damages caused by the negligent operation of an automobile he should also be liable for the damages caused by the negligent misrepresentation of a fact.[7]

Only one court has *openly* recognized negligence as a basis of liability in the area of misrepresentation. In *Cunningham v. Pease*[8] the defendant represented that certain blacking could be used on stoves when in fact it was only to be used on stove pipes. An explosion resulted causing physical injury to the plaintiff. The court stated:

> "In this state a person who acts on a false representation . . . may recover the damages he sustains in an action of deceit, when the maker of the statement knew it to be false, and in an action of negligence when he ought to have known it to be so."[9]

In *Weston v. Brown*[10] the rule of the *Cunningham* case was extended to cover a situation where the harm caused by the negligent misrepresentation was to one's economic interests.

> "Once granting, however, that damage has resulted from reasonable reliance on a negligent misstatement it is difficult to perceive why liability should be made to depend upon the nature of the injury sustained."[11]

New Hampshire has been the only jurisdiction that avowedly

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[4] *Ibid.*
[5] *Ibid.*; International Milling v. Priem, 179 Wis. 622, 192 N.W. 68 (1923); 23 AM. JUR., FRAUD AND DECIET, §126 (1939).
[6] Smith, *Liability for Negligent Language*, 14 HARV. L. REV. 184 (1901).
[7] Williston, *Liability for Honest Misrepresentation*, 24 HARV. L. REV. 433 (1910); Bohlen, *Misrepresentation as Deceit, Negligence or Warranty*, 42 HARV. L. REV. 733 (1929); Keeton, *Ambit of a Fraudlent Representor's Liability*, 17 TEX. L. REV. 1 (1938).
[8] Cunningham v. Pease, House Furnishing Co. 74 N.H. 435, 69 Atl. 120 (1908).
[9] *Ibid.*
[10] Weston v. Brown, 82 N.H. 157, 131 Atl. 141 (1925).
[11] *Ibid.*

allows a negligence action for false representation. Many jurisdictions continue to label the cause of action deceit but will impose liability in certain cases where the misrepresentation was merely negligent, not intentional. It is not within the scope of this article to present a state by state analysis of the law. Our discussion will be limited to examining in what instances Wisconsin allows deceit to succeed where only negligence is alleged.[12]

Ordinarily,[13] in the action for deceit, intentional misrepresentation must be alleged. If, as in New Hampshire, liability is to be imposed for merely negligent misrepresentation, the proper form of action is negligence. Negligent conduct will not support a deceit action. Therefore, when Wisconsin or any other court speaks of allowing recovery in deceit when the misrepresentation was due to negligence, they fail to differentiate the two causes of action. Actually, this is not important since the causes of action have been abolished. The important thing is that liability is being imposed for negligent misrepresentation. For the sake of technical accuracy the action should be labelled negligence rather than deceit.

At an early period the Wisconsin court allowed recovery in an action for deceit where the misrepresentation was not fraudulent. These cases were limited to misrepresentations by a seller of lands to the buyer in regard to the quantity or quality thereof.[14] The rule is stated in AMERICAN JURISPRUDENCE as follows: "In some states a vendor or transactor of land has been held to strict accountability for false representation regardless of intent."[15]

If our court ever intended to limit the rule to cases involving sales of lands they quickly expanded it to other contractual situations and imposed liability where the misrepresentation was not intentional.[16] In a case where the defendant induced plaintiff to purchase notes of a third party by representing that the notes were secured by a first mortgage when in fact they were not, the court said:

> "The action was based on fraud. If Mr. Hackett made the representations . . . and they were false, relied upon by the plaintiff, and caused damage, it is immaterial whether they were made in bad faith or not."[17]

We see from this case that, though the court still talks about

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[12] See 23 AM. JUR., FRAUD AND DECEIT, §20 (1939) for cases in other jurisdictions holding negligence can be a basis for a cause of action in certain instances.
[13] *Supra*, notes 1 and 3.
[14] Bird v. Kleiner, 41 Wis. 134, (1876); Davis v. Nuzum, 72 Wis. 439, 40 N.W. 497 (1888); Gunther v. Ulrich, 82 Wis. 222, 52 N.W. 88 (1892).
[15] 23 AM. JUR., FRAUD AND DECEIT, §120 (1939).
[16] Cameron v. Mount, 86 Wis. 477, 56 N.W. 1094 (1893) sale of a horse; Palmer v. Goldberg, 128 Wis. 103, 107 N.W. 478 (1906) promissory note; First National Bank v. Hackett, 159 Wis. 113, 149 N.W. 703 (1914).
[17] First National Bank v. Hackett, 159 Wis. 113, 149 N.W. 703 (1914).

fraud, they obviously do not use it in the sense of meaning that the misrepresentation must have been intentional. In a later action for deceit, the court apparently used fraud in the same sense as the English courts but disposed of intent as an element of the action.

> "It is of course not necessary in order to establish the defendant's liability to show that the representation was made with the intent to deceive and defraud plaintiffs."[18]

Wisconsin appears, in consequence, to have departed from the common law rule. This is true, whether we say fraud is an element of deceit but then define fraud to mean something less than an intentional misrepresentation,[19] or whether we simply dispense with fraud as a requirement of deceit.[20] The basis of liability for a misrepresentation need no longer be intentional conduct in Wisconsin. Despite this obvious departure, Wisconsin has not, like New Hampshire,[21] declared that liability will be imposed even where the conduct is not fraudulent. Instead, in the case of *Montreal River Lumber Company v. Nuhills,*[22] an effort was made to reconcile the court's position with that of the English rule. There liability was imposed for a negligent misrepresentation made in inducing a sale of lumber where defendant made the representation and stated it to be true as of his own knowledge. The court cited *Deery v. Peek*[23] and used it as authority to support their decision, saying:

> "The falsehood consists in stating that the party knew the facts when he did not. . . ."[24]

In other words, the court is trying to say that the misrepresentation consisted in the defendant stating that the facts were true as of his own knowledge when he knew they were not "as of his own knowledge." The representation which the plaintiff relied on to his damage concerned the quality of the lumber. If this had been of the quality stated it would be immaterial that the defendant had in fact learned of it through another, rather than by his own examination and conclusion as to its value.

To further clarify this point let us take an example. A states to B that he personally knows that a car will run 20 miles to a gallon of gas. In fact A does not know this personally but rather was informed by his employee C who has always been reliable.

There are really two representations here. The one concerns the source of A's knowledge and the other the gas mileage of the car. The

[18] Haentze v. Locker, 233 Wis. 583, 290 N.W. 163 (1940).
[19] *Supra,* note 17.
[20] *Supra,* note 18.
[21] *Supra,* note 8.
[22] Montreal River Lumber Company v. Mihills, 80 Wis. 540, 50 N.W. 507 (1891).
[23] *Supra,* note 3.
[24] *Ibid.*

first is *fraudulent* because A knows his information was not personally acquired. The second misrepresentation is only negligently made because A had every right to believe his usually reliable employee, C. That is, A honestly believed the car would average 20 miles to a gallon of gas. Even though the first representation was fraudulent, it is not the one which B relied on. The damage resulted because the car would not travel 20 miles on a gallon of gas. Therefore, predicating liability upon a false representation regarding *the source of knowledge* is poor logic.

Although the reasoning is faulty, the statement of the court in the *Montreal* case is indicative of the circumstances under which the Wisconsin court will allow recovery for a non-intentional misrepresentation. This appears to be true in cases where there is a statement of a positive fact, not merely an opinion, and declared to be true as of the speaker's own knowledge.

> "It was sufficient that he made a positive statement of facts and did not state it as being made on information."[25]

The following conclusions on the state of the law in Wisconsin can be drawn: The court will allow recovery in an action of deceit based on a non-intentional representation, when the statement is of a positive existing fact declared true as of the speaker's own knowledge and made in the course of a contractual negotiation.

Two recent cases in Wisconsin indicate that in the future the court may retreat somewhat from the doctrine they had established which enforced liability for non-fraudulent misrepresentation.

In *Benz v. Zobel,*[26] the court criticized the statement in the *Haentze*[27] case as being too broad and recommended that put forth in the *International Milling Company.*[28] The latter case unequivocally adopted the majority requirement of intentional misrepresentation.

In the *Benz* case there was a compromise settlement of a previous contract. It was alleged that the defendant falsely stated that if plaintiff did not settle he would lose all his rights under the contract. After criticizing the *Haentze* case, the court, however, based its decision not on a question of fraud, but on the point that plaintiff had no right to rely on these representations.

> "This is clearly a matter of *opinion* as to the legal effect of plaintiff's failure to sign. It is not a statement of fact."[29]

Although the Court's reference to the element of scienter was dicta, and although the fact situation was different from the previous cases, this decision indicates a more stringent attitude on the part of the

[25] *Supra,* note 17.
[26] Benz v. Zobel, 255 Wis. 542, 39 N.W.2d 713 (1949).
[27] *Supra,* note 18.
[28] International Milling Co. v. Priem, 179 Wis. 622, 192 N.W. 68 (1923).
[29] *Supra,* note 26 at 557.

Court. This opinion is confirmed by another recent case[30] involving the sale of dairy cows. Here the defendant represented them as healthy and free from brucellosis. The court cited *International Milling Co. v. Prilum*[31] as the majority law, however, the case was not particularly strong on the question of fraud because it could have turned upon the fact that plaintiff had no right to rely on the statement without having a medical test made.

These two most recent decisions[32] clearly indicate that our Court is retreating from its liberal extension of liability and returning to the common law requirement of fraud. However, in a case where the representation is of an existing fact, made as of the speaker's own knowledge and in the course of contractual negotiation, the Court cannot insist upon intentional misrepresentation. To do so, the Court would have to overrule prior Wisconsin decisions that did not require intent.

III. To Whom is a Duty Owed?

Whether a particular court holds that a misrepresentation must be fraudulent or only negligent to impose liability there is still the problem of to whom a duty is owed not to misrepresent. Is it limited to the party to whom the misrepresentation is directly made or does it also embrace third parties?

The English case of *Peek v. Gurney*[33] limited liability to the person or persons whom the defendant desired to influence. In that case plaintiff filed a bill in equity asking damages for a misrepresentation. A prospectus had been issued by the defendant which contained a fradulent misrepresentation. The court held that this prospectus was made to influence only persons who bought stock directly from the corporation. Therefore, there was no liability to the plaintiffs who had bought on the open market, even though in fact they may have been induced to do so by the prospectus. The English view tends to restrict the number of persons to whom a misrepresentor is liable. This restriction coupled with the requirement that the false representation be fraudulently made, results in a very narrow range of liability.

We have seen how the requirement of fraudulent conduct has to some extent been done away with. But much more definitely has liability been extended by allowing others than the person whom defendant "desired" to influence to recover. It is now well settled that an intentional misrepresentor is liable to all those persons whom he should reasonably anticipate would rely on his representation.[34]

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[30] Larson v. Splett, 267 Wis. 473, 66 N.W.2d 180 (1954).
[31] *Supra,* note 28.
[32] *Supra,* note 26 and 30.
[33] Peek v. Gurney, 6 Eng. & Ir. App. 377 (1873).
[34] Ultramares Corp. v. Touche, 255 N.Y. 170, 174 N.E. 441 (1931); New York Title & Mortgagee Co. v. Hutton, 63 App. D.C. 266, 71 F.2d 989 (1934).

This means that where A makes a misrepresentation intending only to influence B but should reasonably expect under the circumstances that C and D also would rely on the representation, A will be liable also to C and D. Most often the circumstances which give rise to the "reasonable expectation" are that the misrepresentation is embodied in a written document customarily relied on by persons other than the party the defendant immediately wanted to influence. In the *Ultramares* case[35] the misrepresentation was in the form of a certified balance sheet and the court held that if made fraudulently the defendant was liable to all persons who might reasonably rely on that balance sheet such as investors or creditors. The plaintiff, who had extended credit on the faith of the balance sheet was held to be entitled to damages if the sheet was fradulently made.

Although one who fraudulently misrepresents is liable to all persons who would reasonably be expected to rely on his statement, this is not the rule where the misrepresentation is merely negligent. In the case of *Peterson v. Gales*[36] an abstractor was employed by the seller of property and due to a negligent oversight on his part, omitted a restrictive covenant from the abstract which resulted in damage to the purchasers. The court stated:

> "By the great if not universal authority the liability of an abstractor for damages resulting from his mistakes is based on contract and does not rest upon principles of negligence. He, therefore, is not liable to persons who may be misled to their damage by reason of his negligence unless some privity of contract exist between them."[37]

In this case we have a negligent misrepresentation but not one made under the limited set of circumstances in which we have discovered Wisconsin will impose liability; i.e., it was not made in the course of contractual negotiations and made true as of the speaker's own knowledge. The statement of the court here indicates there is a contract liability to persons in privity, but no tort duty to persons such as the plaintiff who reasonably relied on the abstract. The remainder of this article will be devoted to distinguishing the liability in tort and in contract respectively in the area of misrepresentation. In addition we will trace the recent trends towards a wider tort duty.

A cause of action in a court of law exists when a plaintiff asserts a right, a duty corresponding to that right on the part of the defendant, and a breach thereof.

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[35] *Ibid.;* other cases involving misrepresentations embodied in a document are National Bank of Savannah v. Kershaw Oil Mill, 202 F. 90 (1912); Stickel v. Atwood, 25 R.I. 456, 56 Atl. 687 (1903).

[36] Peterson v. Gales, 191 Wis. 137, 210 N.W. 407 (1926).

[37] *Ibid.*

"The existence of a legal right and of a legal duty corresponding to that right are the essential elements of a cause of action."[38]

The difference between liability in contract and liability in tort is in the origin of these rights and duties; i.e., how they arise. If a duty to act or not to act in a certain manner is imposed by operation of law we say the cause of action lies in tort. If, on the other hand, the duty is voluntarily assumed by the consent of the parties it is a contract action. This distinction can best be demonstrated by examining one of the three landmark cases that trace the extension of tort liability in the field of misrepresentation. Prior to the case of *MacPherson v. Buick*,[39] it had been held that no cause of action in tort could arise from the breach of a duty existing solely by virtue of contract unless there was between the defendant and the injured party what is termed privity of contract.[40] In the *MacPherson* case the defendant, a manufacturer of automobiles, was sued in an action to recover for personal injuries, not misrepresentation. The plaintiff, a retailer, was injured because of the negligent construction of the vehicle. Under the state of the law at the time,[41] the defendant's duty to manufacture arose only because of his *contract* with the wholesaler, hence it was only towards him that he would be liable for breach of contract and not in tort. The court held that where the instrument is such that a reasonable man would understand that if negligently constructed it was reasonably certain to cause injury to person or property, then there is a duty owed not only to the party in privity but to all who might be injured by such negligence. The result was to find that there were enforceable duties arising out of both the rules of contract and tort.

Contract duties arise through the consent of the parties and the interest they protect is that of having the contractual promises performed.[42] In the *MacPherson* case the wholesaler contracted to have the defendant manufacture a car for him. Once agreeing to do so, the defendant owed a duty to the wholesaler to construct the car in a non-negligent manner. Since this duty was a contract duty voluntarily assumed it was owed to no other than the wholesaler who was in privity of contract with the defendant. No duty was owed to plaintiff and he could not have recovered in contract because the essential elements (a right and duty) of a cause of action were missing.

Tort duties are not created by contract but are imposed by law.[43] The basic distinction then between tort and contract liability is that in tort the right and duty necessary for a cause of action arises by

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[38] 52 AM. JUR., TORTS, §10 (1939).
[39] MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916).
[40] 38 AM. JUR., NEGLIGENCE, §21 (1939).
[41] *Ibid.*
[42] *Supra*, note 1 at 578.
[43] *Ibid.*

operation of law, whereas in contract they exist by virtue of the voluntary consent of the parties, and exist only between the parties.[44]

We know how duties arise by consent, but what does "imposed by law" mean? Essentially, it simply means that a court of law sees fit to recognize a duty and will enforce liability for a breach thereof.

Courts are constantly recognizing new duties and disregarding others although the transition is gradual. The law today is a very different thing from what it was yesterday or will be tomorrow. "Hardly a rule of today but may be matched by its opposite of yesterday."[45]

What prompts the courts to extend or restrict liability in a given area depends on public policy, not logic.[46]

> "The life of the law has not been logic, it has been experience . . . the felt necessities of the times . . . intuitions of public policy (determine) the rules by which men shall be governed."[47]

Therefore, we can say that in order to successfully maintain a tort action a plaintiff must assert a duty on the part of the defendant towards the plaintiff which duty the court will recognize. Prior to the *MacPherson* case, the court refused to impose any duty on parties in the position of the defendant. However, due to some "intuition of public policy" felt by the court, it was there held that a duty would be recognized and liability imposed upon a manufacturer of instruments dangerous to person or property if negligently manufactured.

Thus, where a duty to perform some act (there to manufacture a car) arises through a contract, the court will now extend liability in tort for negligent performance to persons not in privity of contract. But, the rule was limited to negligent acts causing harm to person or porperty; i.e., physical harm.

The next important case, *Glanzer v. Shepard,*[48] took the step of extending liability to persons not in privity even though the harm caused was intangible that is to say economic, not physical. Here the plaintiff bought of one Bech certain beans and agreed to pay on the basis of weight as certified by public weighers. Bech contracted with the defendant to do the weighing. Relying on the weights represented by the defendant, plaintiff paid Bech. It was discovered that the defendant had erred and the plaintiff brought an action against the defendant weighers for *negligent weighing of the beans.* The defense was that the defendant contracted only with Bech and therefore owed

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[44] Morgan, THE STUDY OF LAW, p. 52 (1948).
[45] Cardozo, THE THEORY AND NATURE OF THE JUDICIAL PROCESS, p. 26 (1921).
[46] Andrews, J., in a dissent to Palsgraf v. Long Island Ry., 248 N.Y. 339, 162 N.E. 99 (1928).
[47] Holmes, THE COMMON LAW, p. 1 (1881).
[48] Glanzer v. Shepard, 233 N.Y. 236, 135 N.E. 275 (1922).

a duty only to him. No duty was owed to the plaintiff to exercise reasonable care since there was no privity of contract between them.

The court realized the close analogy here to the *MacPherson* case and citing it said:

> "In such circumstances assumption of the task of weighing was the assumption of a duty to weigh carefully for the benefit of all whose conduct was to be governed. We need not state the duty in terms of contract or of privity. Growing out of contract it (the duty) has an origin not exclusively contractual. Given the contract and the relation the duty is imposed *by law.*"[49]

Thus we see that the court is here recognizing a *tort* duty on the part of the weigher not to be negligent in performing his contracted task. This tort duty is owed to the third party, plaintiff, as well as to Bech who was in privity.

As a result of this case the New York court had reached a point where tort liability for negligent performance of a task, the obligation of such performance arising out of contract, was extended to parties not in privity to the contract. It is imposed even though the harm resulting from this negligence was not of a physical nature. It goes one step further than *MacPherson v. Buick Motor Co.*

The action was one for negligent weighing of the beans, not for a negligent misrepresentation of their weight. However, the stage seemed set for the court to take the final step in a misrepresentation action and to declare both that negligence is a basis for misrepresentation and that liability will be extended to third parties for this misrepresentation. The trend set up by the *MacPherson* and *Glanzer* cases was toward extension of liability. But when a misrepresentation case came up the court failed to take the last step. Instead they definitely halted the trend and limited the possibilities in the *Glanzer* case.

In *Ultramares v. Touche,*[50] the defendants were certified public accountants employed by Stern & Co. to audit its books and make out a balance sheet. Stern had manipulated his books but the defendants failed to detect this and consequently their sheet showed Stern had a net worth of over a million dollars while in reality he was insolvent. Stern used this balance sheet to induce creditors to loan him money. Stern was insolvent and the plaintiff, a creditor who relied on the balance sheets, sued the defendant auditors on two counts; one for negligence and one for intentional misrepresentation.

The court carefully considered the allegations but after finding negligence declared that there was no duty to third parties not to be negligent.

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[49] *Ibid.*

[50] Ultramares Corp. v. Touche et al., 255 N.Y. 170, 174 N.E. 441 (1931).

> "The defendants owed to their employer a duty imposed by law (hence a liability in tort) to make their certificate without fraud, and a duty growing out of contract to make it with the care and caution proper to this calling. . . . To creditors and investors (third parties not in privity of contract) to whom the employer exhibited the certificate, the defendants owed a like duty to make it without fraud, since there was notice in the circumstances of its making that the employer did not intend to keep it to himself. . . . A different question develops when we ask whether they owed a duty to these to make it without negligence."[51]

The court distinguished the *Glanzer* case by saying that transference of the certificate was the "end and aim of the transaction" while here such transmission was only one possibility among many.

This distinction is not convincing. If it were the "end and aim of the transaction" the court would have decided the *Glanzer* case on the third party beneficiary contract theory[52] but rather it was decided by recognizing a tort duty. The court had to rely on such weak reasoning because, when confronted with the facts of the *Ultramares* case, they did not like the way the trend set up in previous decisions would *logically* take them. If liability were enforced against third parties for a negligent misrepresentation, it might put many accountants, abstractors and even lawyers in too difficult a position. The public good seemed to demand that such a great burden not be imposed. The court said:

> "If liability for negligence exists, a thoughtless slip or blunder, the failure to detect a theft or forgery beneath the cover of deceptive entries may expose accountants to a liability in an indeterminate amount for an indeterminate time to an indeterminate class. The hazards of a business conducted on these terms are so extreme as to kindle doubt whether a flaw may not exist in the implication of a duty that exposes to these consequences."[53]

From the decision in this case it seems that the *Glanzer* case must be restricted to its facts. Also it marks the end of any serious attempt in the American courts to extend liability for a negligent misrepresentation to third parties not in privity of contract.[54]

IV. Summary

In summary of the law of misrepresentation, we can say that, at common law, liability would be imposed only for an intentional misrepresentation.[55] In this area of the conduct giving rise to liability,

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[51] *Ibid.*
[52] Lawrence v. Fox, 20 N.Y. 268 (1859).
[53] *Supra,* note 50.
[54] *Supra,* note 1 at 544.
[55] *Supra,* notes 1 and 3.
[56] *Supra,* notes 14, 16 and 18.

Wisconsin[56] and other jurisdictions[57] have developed minor extensions of liability by allowing a tort action like deceit to succeed where no fraudulent misrepresentation is established but have limited these to very restricted sets of circumstances. When the issue of negligent conduct outside of these certain circumstances is before the courts they have refused to impose liability.[58]

Likewise at common law the party who could bring an action for fraudulent misrepresentation had to be the person that the defendant desired to influence.[59] Generally this rule has been relaxed and now if the representation is fraudulent anyone in the class whom defendant might reasonably have expected to rely on the misrepresentation can bring action for his damages.[60]

Finally we discussed, by examining three style cases, how the trend toward a wide extension of liability in tort developed[61] and then was halted by the *Ultramares* case.[62] This trend was interpreted in terms of the policy grounds which move a court to impose tort duty.

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[57] *Supra,* note 12.
[58] *Supra,* notes 36 and 50.
[59] *Supra,* note 33.
[60] *Supra,* notes 34 and 45.
[61] *Supra,* notes 39 and 48.
[62] *Supra,* note 50.