



1939

## Code Revision

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## CODE REVISION

The Code Commission desires to give notice to the members of the Bar that Bar Briefs will be used in giving notices and reporting conditions connected with the Code Revision work, and asks members of the Bar to check Bar Briefs for matters in connection with the Code Revision.

The Commission has established a permanent office in the State Capitol and communications being addressed: Code Commission, State Capitol, Bismarck, N. Dak., will be received and attended to promptly.

The Commission is particularly anxious to have suggestions as to ambiguities, inconsistencies, conflicts and duplications in the present law. Practically every lawyer knows of some of these, but probably no one or two lawyers know them all.

As an example of some of the provisions which need correcting, let us call your attention to Section 2508 of the 1913 Compiled Laws wherein the following statement is contained:

“The board of county commissioners shall have the power and authority to refuse to appropriate county funds for the aid and maintenance of any poor person who has received aid from the overseer of the poor, if it shall appear to the board after examining the report of the said overseer that aid is necessary.”

And to Section 9028 of the 1913 Compiled Laws, which is as follows:

“In a justice’s court the parties may appear and act in person or by attorney and any person may act as attorney, except a practicing attorney, or other person occupying the same room in which the justice has his office, \*\*\*”.

And to Chapter 144 of the 1929 Session Laws, Section 6, which provides:

“No hotel, restaurant, dining room, or kitchen shall be used as a sleeping or dressing room by any employee or other person.”

Or to Section 3818 of the 1913 Compiled Laws which provides:

“The board of city commissioners shall have power:  
57. To license, regulate or prohibit the running at large of dogs and injuries and annoyances therefrom and to authorize their summary destruction when at large contrary to any such prohibition or regulation.”

There are also many other ambiguities, inconsistencies, conflicts and duplications, and in order that they may all be discovered and corrected the cooperation of the entire State Bar is necessary. Send in all of your suggestions; write separate letters or notations as to each section of the Statutes or Session Laws

commented upon so that your suggestions may be properly indexed and filed under the provision of the law which you mention in your letter. Our objective is to get a code as nearly perfect as the combined efforts of North Dakota lawyers can make it, and all your suggestions will be welcomed and will be considered.

The lawyers who are working with our law daily are the ones who can contribute most to its improvement. You must help us discover the places where improvement can be made. Give us your opinion on any phase of the prospective new Code in which you may be interested.

It is proposed to have published in each issue of the Bar Briefs hereafter something of interest to the lawyers on the Code Revision and reports will be made to the Bar from time to time as the work progresses. In the next issue of Bar Briefs, we hope to give you some of the plans for the new revised Code.

CODE COMMISSION,

By

C. L. Young,  
Clyde Duffy,  
A. M. Kuhfeld,  
Commissioners.

AMK:A

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**TORTS - CONTRIBUTORY NEGLIGENCE - INJURIES  
AVOIDABLE NOTWITHSTANDING CONTRIBUTORY  
NEGLIGENCE**

P, driving north, and D, driving south, collided on an icy curve. Immediately adjacent to the curve, on D's right-hand side, was an open place or road. The parties saw each other before entering the curve. The collision occurred before D reached the point where he could have driven onto the open place. He admitted that by speeding up he could have reached it before meeting P, thereby avoiding the accident. As the motorists neared each other, they applied their brakes. Skidding produced a collision, P's action for damages, in which he alleged D rounded the curve at excessive speed and without due care, was dismissed. P moved for a new trial. The motion was denied, and he appealed, predicated error on the ground, among others, that the trial court did not instruct on the last clear chance doctrine. Held, the doctrine was inapplicable. Judgment affirmed. *Ramage v. Trepanier*, 283 N. W. 471 (1938).

In defining the factual setup to which the doctrine applies, it is interesting to note that the court identified itself anew with the "humanitarian" viewpoint, adopting the position of the Restatement, Torts (1934) Section 479. "Last clear chance," it will be recalled, is a British-bred exception to the rule of non-liability where P has been contributorily negligent. It makes D liable where P negligently exposes himself to inextricable peril, and D discovers — or by the humanitarian rule should have discovered — the peril in performance of such duty as he owes P, but fails to