To: New Jersey Law Revision Commission
From: Samuel M. Silver, Dep. Dir., Whitney Schlimbach, Counsel
Re: Rescue Doctrine and Property as discussed in *Samolyk v. Berthe*, 251 N.J. 73 (2022)
Date: November 07, 2022

UPDATE MEMORANDUM[1]

Project Summary

Although "[t]he rescue doctrine 'has long been a part of [New Jersey's] social fabric'"[2] it has not been codified.[3] The doctrine permits a civilian rescuer to recover damages for injuries they sustain because a culpable party placed themselves in a perilous position which invited rescue.[4] In New Jersey, "[t]he Appellate Division has consistently applied the doctrine to cases where the rescuer is injured when trying to rescue another person."[5]

The doctrine, however, has limits.[6] It is based on the tort concepts of duty and foreseeability.[7] Pursuant to the doctrine, an actor who created a danger for themselves is liable to the rescuer if, at the time of such conduct, the actor "*should reasonably anticipate* that others might attempt to rescue [the actor] from [the] self-created peril…" and the rescuer "sustain[ed] harm in doing so."[8]

In *Samolyk v. Berthe*, the New Jersey Supreme Court was asked to consider the rescue doctrine in the context of "those who voluntarily choose to expose themselves to significant danger

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[1] At the September 15, 2022, Commission Meeting, the Commission Staff was asked to conduct additional research to determine the number of states that follow the RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM § 32, cmt. b (AM. L. INST. 2010) and those that have adopted a variation on the Restatement's position. N.J. LAW REVISION COMM'N, 'Rescue Doctrine,' *Minutes of NJLRC Meeting 15 Sept. 2022*, at *9-10, Newark, New Jersey, available at www.njlrc.org. [hereinafter Sept. 15, 2022, Minutes]. *See* discussion *infra* 50 State Survey.

[2] *Samolyk v. Berthe*, 251 N.J. 73 (2022) (quoting *Saltsman v. Corazo*, 371 N.J. Super. 237, 248 (App. Div. 1998) (noting that in New Jersey the doctrine has been historically used to address situations in which the rescuer sued the party whose negligence placed the victim in a position of imminent peril thereby necessitating the rescue)). *See Ruiz v. Mero*, 189 N.J. 525, 527 (marking the first time that the rescue doctrine was considered by the New Jersey Supreme Court which unanimously upheld the right of a police officer to rely on the doctrine to sue the owner of a bar for injuries sustained while suppressing a disturbance at the owner's bar).

[3] E-mail from Comm'r Bernard W. Bell to Laura C. Tharney, Exec. Dir., N.J. Law Revision Comm'n (June 24, 2022) (on file with the NJLRC).

[4] *Id. See Provenzo v. Sam*, 23 N.Y.2d 256, 296 (1968); *Saltsman*, 371 N.J. Super. at 249. (App. Div. 1995) (applying the doctrine to "situations where the rescuer… sues the rescued victim who is either completely, or partially, at fault for creating the peril that invited the rescue.").

[5] *Saltsman*, 371 N.J. Super. at 247; *Blackburn v. Broad St. Baptist Church*, 305 N.J. Super. 541, 544-46 (App. Div. 1997); *Tornatore v. Selective Ins. Co. of Am.*, 302 N.J. Super. 244, 252 (App. Div. 1997).

[6] *Samolyk*, 251 N.J. at 80 (citing *Estate of Desir v. Vertus*, 214 N.J. 303, 321 (2013) (holding that a criminal defendant did not negligently create the danger caused to the individual who was shot while the defendant was fleeing from a business because the rescue doctrine is grounded upon essential tort concepts of duty and foreseeability.)).

[7] *Estate of Desir*, 214 N.J. at 321.

[8] *Samolyk*, 251 N.J. at 80 (quoting *Estate of Desir v. Vertus*, 214 N.J. at 321). *See also* RESTATEMENT (SECOND) OF TORTS § 445 cmt. D (AM. L. INST. 1965).

in an effort to safeguard the property of another."[9] In this case, the property in question was an animal. Although the Court declined to expand the rescue doctrine to include injuries sustained to protect property, it did recognize that an exception should be made "in settings in which the plaintiff has acted to shield human life."[10]

In June of 2022, the *Samolyk* decision was brought to the attention of Commission Staff for potential consideration.[11] In response, Staff examined case law to determine how animals are treated in other contexts.

Background

On the evening of July 13, 2017, Ann Samolyk ("Plaintiff") heard someone calling for help to rescue a dog that had fallen into a canal.[12] In response to the plea for help she dove into the canal to rescue the dog from drowning.[13] The dog was owned by her neighbors, Illona and Robert DeStefanis.[14] The dog was ultimately rescued by the neighbor's son and a friend of that family.[15] Ann was found unconscious on a floating dock.[16] As a result of her rescue attempt, she "sustained neurological and cognitive injuries."[17]

The Plaintiff, by and through her guardian ad litem, filed suit against Defendants.[18] The civil action alleged that the Defendants were "liable under the rescue doctrine by negligently allowing their dog to fall or jump into the canal that borders their property."[19] The parties filed dispositive motions addressing whether the Plaintiff raised a cognizable claim under the rescue doctrine.[20]

The Plaintiff maintained that the Defendants "invited the rescue because the dog was in peril, … [and Ann] would not [have] jump[ed] in the lagoon and [nearly] drown[ed] but for the dog being in there and people screaming about having to rescue the dog."[21] The Defendants argued that "no court in this State had extended the rescue doctrine to apply to the protection of

[9] *Samolyk*, 251 N.J. at 80.
[10] *Id.* at 82.
[11] *See* sources cited *supra* note 2.
[12] *Samolyk*, 251 N.J. at 76.
[13] *Id.*
[14] *Id.* at 75-76. The complaint, as originally filed "also named Dorothy Berthe III as a defendant, without any description of the alleged role she played in the litigation. Plaintiff subsequently entered a stipulation of dismissal without prejudice as to Berthe." *Samolyk v. Berthe*, No. A-3431-19, 2021 WL 2222600 n.1 (N.J. Super. Ct. App. Div. June 2, 2021), *aff'd*, 251 N.J. 73 (2022).
[15] *Id.* at 76.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.* at 77.

property."[22] The trial court stated that it was not "empowered to start defining what level of property is worth risking human life."[23] The Plaintiff appealed the trial court's decision.[24]

The Appellate Division acknowledged that the *Restatement (Second) of Torts* has extended the rescue doctrine to the protection of property.[25] In addition, the Court noted that some sister states follow the Restatement approach.[26] The Appellate Division, however, stated that, "no reported case from any New Jersey court has applied the rescue doctrine to support a cause of action brought by the rescuer of real or personal property against a defendant who, through [their] negligence, placed the property in peril." [27] Citing its role as an intermediate appellate court, the Court declined to expand the scope of the rescue doctrine.[28]

The New Jersey Supreme Court "granted plaintiffs' petition for certification to determine whether the rescue doctrine extends to property."[29]

Analysis

In New Jersey, the rescue doctrine has consistently applied to cases in which the rescuer is injured when trying to rescue a person who is either completely, or partially, at fault for creating the peril that invited the rescue.[30] The *Samolyk* Court considered, as a matter of first impression, the expansion of the rescue doctrine to include "those who voluntarily choose to expose themselves to significant danger in an effort to safeguard the property of another."[31]

Like the Appellate Division, the Supreme Court acknowledged that the *Restatement (Second) of Torts* (*Restatement*) extends the rescue doctrine to real and personal property.[32] The Court noted that the *Restatement* provides that

> [i]t is not contributory negligence for a plaintiff to expose himself to danger in an effort to save himself or a third person, or the land or chattels of the plaintiff or a

[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.* RESTATEMENT (SECOND) OF TORTS § 445 cmt. D (AM. L. INST. 1965). *But see* 65A C.J.S. Negligence § 267 (providing that "[a] person is not relieved of duty to exercise ordinary care for the person's own safety by the fact that his or her own or another's property is in imminent danger of loss or injury arising from the negligence of a third person."). *Contra Wiggins v. Bottger*, 518 N.Y.S.2d 936, 938 (Sup. Ct. 1987) (finding that a plaintiff is not entitled to recovery where he puts himself in a dangerous position for the purpose of rescuing a person's property).
[26] *Id.* at 77.
[27] *Id.* RESTATEMENT (SECOND) OF TORTS § 445 cmt. D (AM. L. INST. 1965).
[28] *Id.*
[29] *Samolyk v. Berthe*, 248 N.J. 518 (2021).
[30] *Samolyk*, 251 N.J. at 79. For a thoughtful history of the evolution of the rescue doctrine *see id.* at 78-80.
[31] *Id.* at 80.
[32] *Id.* at 80.

third person, from harm, unless the effort itself is an unreasonable one, or the plaintiff acts unreasonably in the course of it.[33]

The Court noted that the *Restatement* acknowledges that "a plaintiff may run a greater risk to his own personal safety in a reasonable effort to save [a] life than he could run … to save the animate or inanimate chattels of his neighbor or even himself."[34]

While the majority of states follow the *Restatement* treatment of the rescue doctrine as it pertains to property,[35] other states have declined to do so. The *Samolyk Cour*t noted that in *Welch v. Hesston, Corp.*, the Missouri Eastern District Court of Appeals declined to extend the rescue doctrine to protect personal property.[36] The *Welch* Court reasoned that the "high regard in which the law holds human life and limb" provided the underlying reason to distinguish the treatment of those who rescue persons and those who rescue property.[37]

Ultimately, the *Samolyk* Court, "declin[ed] to expand the rescue doctrine to include injuries sustained to protect property except in settings in which the plaintiff … acted to shield human life."[38] The Court stated that "sound public policy cannot sanction expanding the rescue doctrine to imbue property with the same status and dignity uniquely conferred upon human life."[39] The Court determined that the Plaintiff's actions were based solely on her perception of danger to an animal and affirmed the dismissal of her complaint.[40]

• *Property in Other Contexts*

Animals that are domesticated pets are consistently described by New Jersey courts as property, albeit a special form of property, in varying contexts. The New Jersey Supreme Court addressed the status of animals, and pets particularly, in *McDougall v. Lamm*.[41] In that case, the Court explained that, although "[a]nimals have traditionally been treated by the law as property," appellate courts in New Jersey have "recognized that pets are a special variety of personal property."[42] The Court explained that this special status is an acknowledgment "that pets have a

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[33] *Id. quoting* RESTATEMENT (SECOND) OF TORTS § 472. *See also* RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM § 32, cmt. b (AM. L. INST. 2010) (noting that a rescuer of imperiled property, whether owned by another or the rescuer, may seek recovery for physical and emotional harm).
[34] *Id.* quoting RESTATEMENT (SECOND) OF TORTS § 472 cmt. a.
[35] *Id. citing Estate of Newton v. McNew,* 698 P.2d 835, 837 (Colo. App. 1984) (holding that the doctrine to "one who tries to rescue the property of another"); *Neff v. Woodmen of the World Life Ins. Soc'y,* 529 P.2d 294, 296 (N.M. Ct. App. 1974) (noting that "[t]he majority of courts ... have extended [the doctrine] to include situations where property is in danger of being severely damaged or destroyed"); *Henjum v. Bok,* 110 N.W.2d 461, 463 (1961) (holding that the doctrine is applicable "where an attempt is being made to save human life or property").
[36] *Samolyk v. Berthe*, 251 N.J. at 81.
[37] *Id. citing Welch v. Hesston Corp.*, 540 S.W.2d 127, 129-130 (Mo. Ct. App. 1976).
[38] *Id.* at 82.
[39] *Id.*
[40] *Id.*
[41] *McDougall v. Lamm*, 211 N.J. 203 (2012) (plaintiff made a claim for emotional distress after her dog was killed by another dog on a walk).
[42] *Id.* at 223, citing *Hyland v. Borras*, 316 N.J. Super. 22, 25 (App. Div. 1998) and *Houseman v. Dare*, 405 N.J. Super. 538, 543 (App. Div. 2009) (finding specific performance was an appropriate remedy in case where couple orally

value in excess of that which would ordinarily attach to property, because . . . they are not fungible."[43]

In *McDougall*, the Court determined that a claim for non-economic loss does not extend to the death of a pet for several reasons, including that "recognizing the cause of action would conflict with the Legislature's statutory scheme for regulating dog owners and for addressing dangerous dogs."[44] Given that the rescue doctrine requires that a negligent act give rise to the situation requiring a rescuer,[45] the risk of conflict identified in *McDougall* is also relevant here. For instance, Title 4 of the New Jersey statutes addresses a variety of issues related to domesticated animals and pets. The statutes in Chapter 19 govern licensing and liability for injuries caused by domesticated animals,[46] and Chapter 22 provides criminal and civil penalties for animal cruelty.[47]

In the context of animal cruelty, two statutes provide for increased penalties for harming or interfering with law enforcement[48] and service animals.[49] These statutes were enacted following highly publicized attacks on police and service dogs.[50] The Statement accompanying the 1983 bill, subsequently enacted as N.J.S. 2C:29-3.1, explained that the statute was intended "to offer protection to police officers who use police animals in the performance of law enforcement

agreed that plaintiff would keep their dog because pets have "special subjective value," similar to "heirlooms, family treasures and works of art that induce a strong sentimental attachment").

[43] *Id.* at 225; *see also Harabes v. Barkery, Inc.*, 348 N.J. Super. 366, 373 (Law. Div. 2001) (finding "no authority in [New Jersey] for allowing plaintiffs to recover non-economic damages resulting from defendants' alleged negligence [in causing dog's death and that,] various public policy concerns mitigate against permitting such claims" but acknowledging that "labeling a dog 'property' fails to describe the value human beings place upon the companionship that they enjoy with a dog [and] inadequately and inaccurately describes the relationship between a human and a dog") (internal quotations omitted); *see also Hyland v. Borras*, 316 N.J. Super. 22, 25 (App. Div. 1998) (holding that plaintiff was entitled to the "repair" cost rather than the "replacement" cost of her dog because "a household pet is not like other fungible or disposable property, intended solely to be used and replaced after it has outlived its usefulness"); *see Timmins v. Boyle*, 2021 WL 2255014, at *6 (App. Div. June 3, 2021) ("[i]n addition to the animal's value, pet owners may recover the cost of medical treatment and damages based on the pet's intrinsic value."), *cert. denied*, 249 N.J. 464 (2022).

[44] *Id.* at 228.

[45] *Samolyk v. Berthe*, 251 N.J. 73, 78 (2022), quoting *Wagner v. Int'l Ry. Co.*, 232 N.Y. 176, 180 (1921) ("The wrong that imperils life is a wrong to the imperiled victim; it is a wrong also to his rescuer.").

[46] N.J. STAT. ANN. §§ 4:19-1 to -43 (West 2022).

[47] N.J. STAT. ANN. §§ 4:22-15 to -61 (West 2022).

[48] N.J. STAT. ANN. § 2C:29-3.1 (West 2022).

[49] N.J. STAT. ANN. § 2C:29-3.2 (West 2022).

[50] §25:02. Offenses Against Animals—Harming an Animal Used in Law Enforcement—(N.J.S.A. 2C:29-3.1), 33A N.J. Prac., Criminal Law § 25:02 (5th ed.) ("N.J.S.A. 2C:29-3.1 was initially enacted into law in 1983 following the highly publicized story of a police dog from the Trenton Police Department that was stabbed by a criminal suspect during a chase. The outrage this incident aroused in the local print media apparently convinced the Legislature at the time that this type of activity needed to be deterred and severely punished."); §25:07. Offenses Against Animals—Service Animals or Guide Dogs—(N.J.S.A. 2C:29-3.2), 33A N.J. Prac., Criminal Law § 25:07 (5th ed.) ("N.J.S.A. 2C:29-3.2 was assigned the popular name of 'Dusty's Law' in honor of a puppy that was in training to be a guide dog and was savagely attacked and injured by another canine. The puppy survived the 2010 attack but was too traumatized to complete his training. The widespread publicity surrounding the event prompted the Legislature to enact this law three years later.").

duties."[51] The Sponsor's Statement implies that the heightened protection afforded to law enforcement animals is related to their role as a law enforcement tool.[52]

Similarly, the service animal statute, N.J.S. 2C:29-3.2, provides for restitution for the "value of the guide dog; replacement and training or retraining expenses . . . ; veterinary and other . . . expenses for the guide dog [and] handler; and lost wages or income."[53] This provision also seems to imply that a service animal is property, while acknowledging its increased value stemming from the handler's investment in its training and the animal's purpose as an assistive device.

• *Other Considerations*

The refusal of the *Samolyk* Court to extend the rescue doctrine to the protection of property raises three issues. Despite being part of New Jersey's social fabric, the doctrine has never been codified.[54] Consistent with the modern trend in torts toward loosening or eliminating doctrines that bar recovery, the majority of states have adopted the *Second and Third Restatement's* expansion of the rescue doctrine to include situations that involve the rescue of property.[55] The *Samolyk* decision adopted the minority position. Finally, although the Court declined to expand the rescue doctrine to include injuries sustained protecting property, it created an exception for instances in which the plaintiff acted to protect a human life.[56] This exception, however, is not well-defined.[57]

In light of the recency of the decision in *Samolyk*, the New Jersey judiciary may further define the exception and the treatment of the "no liability" rule.[58] Given the "varied and *sui generis*" nature of the claims in this area of law, it is not clear whether codification of the rule or the exception is appropriate at this time[59]

50-State Survey

At the September 15, 2022, meeting of the Commission, Staff was asked to conduct additional research to discern the number of states that follow the *Restatement* and the number that

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[51] Sponsor's Statement, A.B. 1605, 200th Leg., 1982 Sess. (Jun. 14, 1982), later enacted as L. 1983, c.261, eff. Jul. 7, 1983.

[52] *See e.g. Dye v. Wargo*, 253 F.3d 296, 299 (7th Cir. 2001) (removing as a defendant the police dog the plaintiff sued pursuant to 42 U.S.C. § 1983 on the basis that "the words 'person' and 'whoever' [in the Dictionary Act in 1 U.S.C. § 1] include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals, but dogs are not on this list"); *see* N.J. Stat. Ann. § 1:1-2 (West 2022) ("person includes corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals . . . and . . . this State, the United States, any other State of the United States as defined infra and any foreign country or government lawfully owning or possessing property within this State," but not dogs).

[53] Sponsor's Statement, A.B. 4105 (identical to S.B. 1907), 215th Leg., 2013 Sess. (May 6, 2013), later enacted as L. 2013, c.205, eff. Jan. 17, 2014.

[54] E-mail from Comm'r Bernard W. Bell to Laura C. Tharney, Exec. Dir., N.J. Law Revision Comm'n (June 24, 2022) (on file with the NJLRC).

[55] *Id.*

[56] *Samolyk*, 251 N.J. at 82.

[57] *See* source cited *supra* note 53.

[58] *Id.*

[59] *Id.*

have expanded the rescue doctrine to include acts that initially appear to protect property but are actually measures designed to protect human life.[60] The Rescue Doctrine provides:

> [I]f an actor's tortious conduct imperils another or the property of another, the scope of the actor's ***liability*** includes any ***harm*** to a person resulting from that person's efforts to aid or to protect the imperiled person or property, so long as the ***harm*** arises from a risk that inheres in the effort to provide aid.[61]

Staff examined the statutory and common law in each of the fifty-states and the District of Columbia to determine the legal landscape of the rescue doctrine.[62]

To this time, there are twenty-seven states that allow an injured rescuer – of a *person or property* - to recover damages from the person who created the need for rescue.[63]

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[60] Sept. 15, 2022, Minutes at 9-10.

[61] *Restatement of the Law, Torts 3d Liability for Physical and Emotional Harm - § 32 Rescuers.* (Emphasis added).

[62] *See* Figure 1.

[63] **Ala.** *Braden v. St. Louis-San Francisco R. Co.*, 223 Ala. 659, 137 So. 663 (1931) (finding that if a rescuer is injured during the course of rescuing property the "injuries received in such effort are the proximate cause" and recovery may follow). **Ariz.** *Espinoza v. Schulenburg*, 129 P.3d 937 (Ariz. 2006) (regarding the rescue doctrine holding that "absent law to the contrary, Arizona follows the Restatement...."). **Colo**. *Est. of Newton By & Through Newton on Behalf of Newton v. McNew*, 698 P.2d 835 (Colo. App. 1984) (following the majority of states that apply the rule that a duty is owed to one who tries to rescue the property of another). **Conn.** *Schmartz v. Harger*, 171 A.2d 89 (Super. Ct. 1961) (finding that where the plaintiff received personal injuries while attempting to protect or save another person's property from a fire, that one who negligently causes such fire is liable for the injuries suffered). **Del.** *Burgess v. Rowland*, No. 90C-OC-5, 1991 WL 113336 (Del. Super. Ct. June 13, 1991) (determining. The Rescue Doctrine illustrates the development of the common law to reflect the courts' recognition of society's interest in encouraging the conservation of life and property. The Rescue Doctrine is a long-standing and well-established legal doctrine. **Fla.** *Reeves v. North Broward Hosp. Dist.*, 821 So. 2d 319 (Fla. Dist. Ct. App. 4th Dist. 2002) (stating that for rescue doctrine to come into play, defendant must have been negligent, the person or property to be rescued must have been in imminent peril, and rescuer must have acted reasonably). **Ga.** *Lorie v. Standard Oil Co.*, 368 S.E.2d 765 (Ga. Ct. App. 1988) (finding "the rescue doctrine applies when the defendants' negligent acts or omissions have created a condition or situation which involves imminent and urgent peril to life and property."). **Ill.** *Henry v. Cleveland, C., C. & St. L.R. Co.*, 67 F. 426 (C.C.S.D. Ill. 1895) (determining that "[i]t is not contributory negligence per se for a stranger to go on premises where a fire is raging, which endangers life or safety, if he does so in good faith, for the purpose of saving life or property."). **Ind.** *Franciose v. Jones*, 907 N.E.2d 139 (Ind. Ct. App.), *aff'd on reh'g*, 910 N.E.2d 862 (Ind. Ct. App. 2009) (noting that "[a] rescuer is one who undertakes physical activity in a reasonable attempt to rescue persons or property from imminent peril."). **Iowa.** *Clinkscales v. Nelson Securities*, Inc., 697 N.W.2d 836 (Iowa 2005) (observing that under the rescue doctrine, those who negligently imperil life or property may not only be liable to their victims, but also to the rescuers). **Ky**. Peterson v. Bailey, 571 S.W.2d 630 (Ky. Ct. App. 1978) (examining the "rescue doctrine" and applicability to property and making the following observation – "[t]he scope of the risk created may still extend to the possibility that such defensive efforts may be negligent, and so may endanger others. It is only when they are so utterly foolhardy and extra ordinary that they cannot be regarded as any normal part of the original risk, that they will be considered a superseding cause."). **Md.** *Warsham v. James Muscatello, Inc.*, 985 A.2d 156 (Md. Ct.. Spec. App. 2009) (noting there is a narrowly chiseled exception to the defense of assumption of the risk - "the rescue doctrine" - which focuses on the element of voluntariness, applies to emergency situations involving imminent peril, in which an individual acts to save the life or property of another). **Mass.** MASS. GEN. LAWS ANN. ch. 231, § 85 (West 2022) (providing that "[c]ontributory negligence shall not bar recovery in any action by any person or legal representative to recover damages for negligence resulting in death or in injury to person or property…."); *See Migliori v. Airborne Freight Corp.,* 690 N.E.2d 413, 417 (Mass. 1998) (finding that "Massachusetts recognizes the rescue doctrine in that rescuers are not, as a matter of law, precluded from recovery because they voluntarily placed themselves in danger."). **Mich**. *Roberts v. Vaughn*, 587 N.W.2d 249 (Mich. 1998) (holding "under the "rescue

There are eighteen states that limit the rescue doctrine to the protection of human life.[64]

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doctrine," one who negligently creates a risk of harm may be liable to a volunteer whose intervention is reasonably foreseeable and who is exposed to personal peril in order to avert the danger to others or personal property."). **Minn**. *Henjum v. Bok*, 110 N.W.2d 461 (Minn. 1961) (noting that the rescue doctrine does not affect the ordinary standard of care, rather indicates that, where an attempt is being made to save human life or property, a reasonably prudent person will take greater risks than might ordinarily be justified). **Mont.** *Bossard v. Johnson*, 876 P.2d 627 (Mont. 1994) (emphasizing that the necessity of an actual danger of injury to person or property and a definite emergency before the rescue doctrine could be applied). **Neb.** *Buchanan v. Prickett & Son, Inc.*, 279 N.W.2d 855 (Neb. 1979) (noting it is not contributory negligence for a volunteer to expose himself to danger in a reasonable effort to save a third person or the property of a third person from harm). **N.H.** *Maxfield v. Maxfield*, 151 A.2d 226 (N.H. 1959) (extending the rescue doctrine to a plaintiff who was injured in an attempt to rescue her car, which was parked next to the defendant's burning barn). **N.M.** *Neff v. Woodmen of World Life Ins. Soc.*, 529 P.2d 294 (N.M. Ct. App. 1974) (stating that "[t]he principles which underlie the rescue doctrine are in harmony with the spirit of Tort Law in New Mexico."). **N.C.** *Hutton v. Logan*, 566 S.E.2d 782 (N.C. Ct. App. 2002) (finding "rescue doctrine" requires a tortfeasor to anticipate the possibility some bystander will yield to the meritorious impulse to save life or even property from destruction and attempt a rescue). **N.D.** N.D. CENT. CODE ANN. § 32-03.2-02 (West 2022) (providing "[c]ontributory fault does not bar recovery in an action by any person to recover damages for death or injury to person or property…."). *See Dehn v. Otter Tail Power Co.*, 251 N.W.2d 404 (N.D. 1977) (holding that one who is injured in an attempt to rescue another person's property which is endangered by defendant's negligence may recover for the injury). **Or.** *Stewart v. Jefferson Plywood Co.*, 469 P.2d 783 (Or. 1970) (opining that one who is injured in an attempt to rescue another person's property which is endangered by defendant's negligence may recover for the injury). **Pa.** *Bole v. Erie Ins. Exchange*, 50 A.3d 1256 (Pa. 2012) (stating the rescue doctrine "provides that it is not contributory negligence for one to expose oneself to danger in a reasonable effort to save another person or the land or chattels of the rescuer or a third person from harm."). **Tenn**. *Caldwell v. Ford Motor Co.*, 619 S.W.2d 534, 539 (Tenn. Ct. App. 1981) ("An analysis of Tennessee case law establishes that the rescue doctrine applies to attempts to save personal property if the attempt is not rash or reckless."). **Wash.** *Black Industries, Inc. v. Emco Helicopters, Inc.*, 577 P.2d 610 (Wash. Ct. App 1978) (finding that the principle is the same whether the plaintiff is attempting to rescue persons or property). **Wis.** WIS. STAT. ANN. § 895.045 (West 2022) (providing that "[c]ontributory negligence does not bar recovery in an 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…."). **Wyo.** *Dubus v. Dresser Indus.*, 649 P.2d 198 (Wyo. 1982) (holding that the rescue doctrine provides that one who is injured in reasonably undertaking a necessary rescue may recover from the person whose negligence created the situation giving rise to the rescue).

64 Several states explicitly provide that the doctrine is applicable only in instances in which the rescuer is protecting human life. For purposes of this memorandum, those jurisdictions in which common law or statutes do not explicitly extend the rescue doctrine to the protection of property have been included in this category. **Alaska.** *Beaumaster v. Crandall*, 576 P.2d 988 (Alaska 1978) (addressing the sudden emergency doctrine and determining that "[a]person who, without negligence on his part, is suddenly and unexpectedly confronted with peril arising from either the actual presence of, or the appearance of, imminent danger to himself or to others, is not expected nor required to use the same judgment and prudence that is required of him in the exercise of ordinary care in calmer and more deliberate moments…."). **Ark.** *Johnson Timber Corp. v. Sturdivant*, 752 S.W.2d 241, *on reh'g sub nom. Johnson v. Sturdivant*, 758 S.W.2d 415 (Ark. 1988) (noting that the model jury instruction is based on the rescue doctrine and provides that when a person "acting under stress in response to humanitarian impulses" is "attempting to rescue another who reasonably appears to be in danger of substantial injury or loss of life."). **D.C**. *Destefano v. Children's Nat. Med. Ctr.*, 121 A.3d 59 (D.C. 2015) (joining the majority of jurisdictions that have adopted the rescue doctrine). **Haw.** *O'Grady v. State*, 398 P.3d 625 (Haw. 2017) (discussing the "rescue doctrine" and the limitations to the rule that makes actors liable for enhanced harm due to efforts of third parties to render medical or other aid). **Kan.** *Bridges v. Bentley by Bentley*, 769 P.2d 635 (Kan. 1989) (noting jury Instruction No. 23 states "A person who is injured while attempting to rescue another from peril in an emergency situation is not negligent merely on the ground that the rescue entails danger to himself. The law has a high regard for human life and efforts to save it. Danger invites rescue."). **La.** *Gary v. Lopez*, 460 So. 2d 748 (La. Ct. App. 1984) (stating **explicitly** that Louisiana applies rescue doctrine only where attempt has been made to protect human life). **Miss.** *Legan & McClure Lumber Co. v. Fairchild*, 124 So. 336 (1929) (finding when an employee has been injured in reasonable effort to rescue himself or another from peril created by the negligence of the employer makes the latter liable for damages for injury received). **Mo.** *No. Welch v. Hesston*

There are three states that do not follow the rescue doctrine.[65] In addition, there are three states that expand the rescue doctrine to include injuries sustained to protect property but only in situations in which the plaintiff acted to shield human life.[66]

Pending Bills

To this time, no bills have been introduced in New Jersey's 2022-2023 legislative session to codify the rescue doctrine as it pertains to real or personal property.[67]

Corp., 540 S.W.2d 127 (Mo. App. 1976) (stating **explicitly** that unlike a majority of other jurisdictions, Missouri has extended the benefits of the rescue doctrine only to rescuers of persons and not to rescuers of property). **Nev.** *Ashwood v. Clark Cnty.*, 930 P.2d 740 n1 (Nev. 1997) (noting that for the rescue doctrine to apply the defendants must first be liable for the injury to the victim being rescued). **N.Y.** See *Wignes v. Bottger*, 518 N.Y.S.2d 936 (Sup.Ct., Nassau County, 1987) (stating the rescue doctrine does not apply when the rescuer endangers himself merely to protect another's property - doctrine not applicable to rescue of a cat). **Ohio.** *Reese v. Minor*, 442 N.E.2d 782 (Ohio 1981) (confirming that the rescue doctrine is part of the common law of Ohio and that one injured in an attempt to rescue a person in danger may recover from the party negligently causing the danger to the same extent as the person being rescued). **Okla.** OKLA. STAT. ANN. TIT. 76, § 5(a) (West 2022) (providing that "[e]veryone is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person….). *See Day v. Waffle House, Inc.*, 743 P.2d 1111 (Okla. Civ. App. 1987) (noting that in actions based on the rescue doctrine under Oklahoma law, an injured party may recover damages for injury sustained in a rescue or attempt from the original tortfeasor if it can be shown that it was the original tortfeasor's negligence that placed the rescued person in peril, and that the rescuer suffered injuries in the rescue or attempt). **R.I.** *Hudson v. GEICO Ins. Agency, Inc.*, 161 A.3d 1150 (R.I. 2017) (noting that the law places a premium on human life, and one who voluntarily attempts to save a life of another should not be barred from complete recovery). **S.C.** *Brown v. Nat'l Oil Co.*, 105 S.E.2d 81 (S.C. 1958) (maintaining that for a rescuer to recover from the original tortfeasor, the rescuer must be foreseeable and must not be an intervening actor who breaks the chain of causation). **S.D.** *Thompson v. Summers*, 567 N.W.2d 387 (S.D. 1997) (finding that the basic theory of this doctrine is that the defendant's negligence in placing another in a position of imminent peril is not only a wrong to that person, but also to the rescuing plaintiff and that the rescuer may also recover from the imperiled party if that party's negligence caused the peril). **Vt.** *Wilford v. Salvucci*, 95 A.2d 37 (Vt. 1953) (noting that one who sees a person in imminent and serious peril caused by the negligence of another cannot be charged with contributory negligence). **Va.** *Kimble v. Carey*, 691 S.E.2d 790 (Va. 2010) (stating that if a rescuer reasonably believes that another person was in imminent or serious peril caused by the negligence of another, he will not be charged with contributory negligence in risking his own life or serious injury in attempting to rescue that person). **W. Va.** *Bond v. Baltimore & O.R. Co.*, 96 S.E. 932 (1918) (affirming that a person injured in effecting the rescue of another from danger occasioned by the negligence of a third party is not precluded from right of recovery).

[65] **Idaho.** Idaho is a comparative negligence state. **Me.** *Bourgeois v. Great N. Nekoosa Corp.*, 722 A.2d 369 (Me. 1999) (affirming that Maine has neve adopted the rescue doctrine). **Utah**. *Fordham v. Oldroyd*, 171 P.3d 411 (Utah 2007) (Wilkins, A.J. Concurring in part) (confirming that Utah has not adopted the rescue doctrine).

[66] **Calif.** *Tucker v. CBS Radio Stations, Inc.*, 124 Cal. Rptr. 3d 245 (2011) (noting where rescue is undertaken and the motive was not only to save property but to prevent potential harm to others - i.e. train hitting car and derailing causing multitude of injuries - the recue doctrine may apply). **N.J.** *Samolyk v. Berthe*, 251 N.J. 73 (2022) (declining to expand the rescue doctrine to include injuries sustained to protect property, except in settings in which the plaintiff has acted to shield human life). **Tex.** *Watanabe v. Summit Path Partners*, LLC, 650 S.W.3d 112 (Tex. App. 2021) (finding that "[p]ublic policy favors public-spirited citizens volunteering to rescue persons apparently in dangerous circumstances, as well as attempting to prevent the spread of dangerous conditions that may arise on the property of others" and that "when a dangerous condition arises on an absent owner's property that threatens the safety of another party or the public generally, the law will imply that the owner would acquiesce in passersby or other witnesses going upon his property in an attempt to rescue persons in danger or to reduce the risk to the property and the public generally.").

[67] *Compare* A.B. 199, 2022 Leg., 220th Sess. (N.J. 2022) (requiring exempting law enforcement officers and certain other emergency personnel from liability for breaking into motor vehicle to rescue animal under certain circumstances); A.B. 737, 2022 Leg., 220th Sess. (N.J. 2022) (providing immunity from civil liability for persons

Conclusion

Staff seeks direction from the Commission regarding whether it would like Staff to engage in additional research and outreach to assess whether: the rescue doctrine should be codified and expanded to include injuries sustained to protect property; the development of this doctrine should be left to the common law; or whether the Commission wishes to bring the issue to the attention of the Legislature for such action as it deems appropriate.

performing animal rescue); and A.B. 2821, 2022 Leg., 220th Sess. (N.J. 2022) (providing immunity from civil and criminal liability for rescue of animal from motor vehicle under inhumane conditions).

For Reference

Restatement of the Law, Torts 3d Liability for Physical and Emotional Harm - § 32 Rescuers

Notwithstanding § 29 or § 34, if an actor's tortious conduct imperils another or the property of another, the scope of the actor's liability includes any harm to a person resulting from that person's efforts to aid or to protect the imperiled person or property, so long as the harm arises from a risk that inheres in the effort to provide aid.