

February 12, 1991 LB 88

SENATOR KRISTENSEN: If I wanted to sue you, it is my opinion that contributory negligence is still a possible defense and the elements of 88 would apply. So we would still use comparative fault back and forth to do that. So I don't think in that example that we have changed anything, Senator Schmit, because I think contributory negligence is still a defense and 88 would come into play.

SENATOR SCHMIT: So you are saying that notwithstanding the fact that you were just a passenger with me that you still have a right to sue?

SENATOR KRISTENSEN: I still have a right to sue you, sure.

SENATOR SCHMIT: Yes, what about...and what do you mean by contributory negligence?

SENATOR KRISTENSEN: Contributory negligence would be where the plaintiff,...

SENATOR SCHMIT: Yes.

SENATOR KRISTENSEN: ...or the person who is suing contributed to their own injuries or damages in some fact situation.

SENATOR SCHMIT: Okay, well, I will just take your word for it. I still don't understand what you are doing, but I will take your word for it.

SENATOR KRISTENSEN: Senator Schmit, if I could, can I still have a little more of your time to maybe help you out.

SENATOR SCHMIT: You surely can, take all you want.

SENATOR KRISTENSEN: Okay, in that situation, contributory negligence on my behalf as a passenger in the car may not come up very often. I mean how did I contribute to your negligence of driving? Might have I had a magazine that I was showing you and distracting you, might have I been swatting a wasp, there is a thousand of those situations. The key is that you may be able to use and say to me that I contributed to your damages and, thus, you have that defense to me. The problem with these examples are that when we use generalities, it is real tough because we don't have one fact situation that covers every specific thing. Could I be contributory negligence as a