

SUPREME COURT OF LOUISIANA

No. 01-C-2297

J. Jude QUEBEDEAUX and Wendy Quebedeaux

versus

**The DOW CHEMICAL COMPANY and John Dandridge, Reliance
Insurance Co. and Dorinco Reinsurance Co.**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF IBERVILLE**

KIMBALL, J., additionally concurring

While I agree with the majority’s treatment of the employment at will doctrine, I write separately to also point out that, in my view, Dow should not be held liable under principles of vicarious liability. Louisiana Civil Code article 2320 states that “employers are liable for the damage occasioned by their servants . . . in the exercise of the functions in which they are employed” (emphasis added). Mr. Quebedeaux seeks recovery for lost wages and benefits due to his termination by his employer, Dow Chemical, which had a policy against fighting in the workplace. The record shows that both Mr. Quebedeaux and Mr. Dandridge had roles in the fight, and the jury accordingly attributed 35% of the fault to Mr. Quebedeaux and 65% of the fault to Mr. Dandridge. Dow terminated Mr. Quebedeaux because of his own role in the fight, not because he was an innocent victim of a battery inflicted by Mr. Dandridge. Therefore, Mr. Quebedeaux’s termination was occasioned by Mr. Quebedeaux, not by Mr. Dandridge. For this reason, I conclude that Dow Chemical is not liable to Mr. Quebedeaux for lost wages and benefits under the principles of vicarious liability expressed in article 2320.