

## **5 Summary of California Law (10th), Torts**

### **I. INTRODUCTION**

#### **A. Nature of Torts and Tort Actions.**

- 1. [§1] Definitions and Distinctions.**
- 2. [§2] Act as Tort and Breach of Contract.**
- 3. [§3] Restatement of Torts.**
- 4. [§4] Texts, Practice Works, and Commentary.**
- 5. [§5] Classification of Torts.**
- 6. Legal Duty Toward Person Harmed.**
  - (a) [§6] General Principle.**
  - (b) Illustrations of No Duty.**
    - (1) [§7] In General.**
    - (2) [§8] Schools.**
    - (3) [§9] Social Service Agencies.**
    - (4) [§10] Public Utilities.**
  - (c) Violation of Statute or Constitutional Provision.**
    - (1) In General.**
      - (aa) [§11] Violation as Giving Rise to Tort Liability.**
      - (bb) [§12] Restatement Rule.**
      - (cc) [§13] Legislative Intent Approach.**
    - (2) Illustrations.**
      - (aa) [§14] State Statute.**
      - (bb) [§15] Federal Statute.**
      - (cc) [§16] Federal Constitution.**
      - (dd) [§17] State Constitution.**
- 7. [§18] Causation.**
- 8. New Torts and Tort Reform.**
  - (a) [§19] In General.**
  - (b) [§20] Intentional Torts: Prima Facie Tort Doctrine.**
- 9. [§21] Tort Recovery Precluded by Public Policy: Perjury or False Defense.**
- 10. [§22] Motive in Tort Law.**
- 11. [§23] Survival of Tort Liability.**

#### **B. Persons or Entities Liable for Tort.**

- 1. [§24] In General.**
- 2. [§25] Minors.**
- 3. [§26] Mentally Disabled Persons.**
- 4. Liability Between Family Members.**
  - (a) [§27] Spouses.**
  - (b) [§28] Parent and Child.**
  - (c) [§29] Siblings.**
- 5. [§30] Agents and Employees.**
- 6. [§31] Representatives.**
- 7. [§32] Corporations.**
- 8. Corporate Directors and Officers.**
  - (a) [§33] In General.**

- (b) [§34] **Limitation of Liability in Articles.**
- (c) [§35] **Volunteer Directors or Officers of Nonprofit Corporations.**

**9. Unincorporated Associations.**

- (a) [§36] **Judicial Recognition of Liability.**
- (b) [§37] **Statutory Liability.**
- (c) **Condominiums and Other Common Interest Developments.**
  - (1) [§38] **In General.**
  - (2) [§39] **Liability for Third-Party Criminal Conduct.**
  - (3) [§40] **Liability of Individual Owners.**
  - (4) [§41] **Volunteer Directors or Officers of Nonprofit Developments.**

**10. Charities.**

- (a) [§42] **Liability to Persons Other Than Beneficiaries.**
- (b) [§43] **Liability to Beneficiaries.**

**C. Liability of Multiple Tortfeasors.**

**1. Types of Joint Torts.**

- (a) **Acts in Concert: Joint Tortfeasors.**
  - (1) [§44] **Who Are Joint Tortfeasors.**
  - (2) **Civil Conspiracy.**
    - (aa) [§45] **Significance of Charge.**
    - (bb) [§46] **Wrongful Act.**
    - (cc) [§47] **Knowledge and Intent.**
    - (dd) [§48] **Joining Existing Conspiracy.**
- (b) [§49] **Independent Acts: Concurrent and Successive Tortfeasors.**

**2. Apportionment of Damages.**

- (a) [§50] **Common Law Background: Joint and Several Liability.**
- (b) [§51] **Restatement.**
- (c) **Modification of Joint and Several Liability (Proposition 51).**
  - (1) [§52] **Nature, Purpose, and Validity.**
  - (2) [§53] **Several Liability for Noneconomic Damages.**
  - (3) **Manner of Allocating Damages.**
    - (aa) [§54] **Basic Rule.**
    - (bb) [§55] **Between Negligent and Intentional Tortfeasors.**
    - (cc) [§56] **Between Original and Successive Tortfeasors.**
    - (dd) [§57] **Between Tortfeasors Subject and Not Subject to Liability.**
    - (ee) [§58] **Between Settling and Nonsettling Tortfeasors.**
    - (ff) [§59] **Credit for Workers' Compensation Benefits.**
    - (gg) [§60] **Applicability of Comparative Equitable Indemnity.**
  - (4) **Claims Subject to Proposition 51.**
    - (aa) [§61] **In General.**
    - (bb) [§62] **Claims Involving Both Negligent and Intentional Torts.**
    - (cc) [§63] **Claims Involving Vicarious Liability.**
    - (dd) [§64] **Claims Involving Strict Liability.**

**(5) [§65] Proposition 51 Nonretroactive.**

**3. Action and Judgment.**

- (a) [§66] Suit and Judgment Against One or More.**
- (b) [§67] Burden of Proof on Defendants.**
- (c) [§68] Instructions.**
- (d) [§69] Satisfaction of Judgment.**

**4. Settlement With Fewer Than All Tortfeasors.**

**(a) In General.**

**(1) [§70] Common Law Release Rule.**

**(2) Statutory Abrogation of Rule.**

**(aa) [§71] In General.**

**(bb) [§72] Scope.**

**(cc) [§73] Effect of General Release.**

**(dd) [§74] Application to Alter Ego Liability.**

**(3) [§75] Restatement.**

**(b) [§76] Time of Settlement.**

**(c) Requirement of Good Faith.**

**(1) Nature and Scope of Requirement.**

**(aa) [§77] In General.**

**(bb) [§78] Early Cases.**

**(cc) [§79] Tech-Bilt Test.**

**(dd) [§80] Nonmonetary Consideration for Settlement.**

**(ee) [§81] Settlement With Cross-Defendant.**

**(ff) [§82] Condition That Settling Tortfeasor Participate in Trial.**

**(2) Determination of Good Faith.**

**(aa) [§83] Statutory Requirement.**

**(bb) [§84] Notice or Application.**

**(cc) [§85] Conduct of Hearing.**

**(dd) [§86] Review.**

**(ee) [§87] Scope of Statute.**

**(d) Effect of Good Faith Settlement.**

**(1) [§88] General Rule: Bar to Further Claims Against Settling Tortfeasor.**

**(2) Distinctions and Exceptions.**

**(aa) [§89] Claims Against Others.**

**(bb) [§90] Claims Asserted in Independent Action.**

**(cc) [§91] Claims for Contractual or Statutory Indemnity.**

**(dd) [§92] Claims of Nonparties.**

**(ee) [§93] Claims of Insurers.**

**(ff) [§94] Claims Not Involving Contribution or Indemnity.**

**(3) Offset to Judgment Against Nonsettling Tortfeasor.**

**aa) [§95] In General.**

**bb) [§96] Valuation of Settlement.**

**(cc) [§97] Structured Settlement With Periodic Payments.**

- (dd) [§98] Settlement Offsetting Entire Judgment.
- (ee) [§99] Noneconomic Damages Under Proposition 51.
- (d-1) [§99A] (New) Settlement Not Made in Good Faith.
- (e) Sliding Scale Agreements.
  - (1) [§100] Nature and Types.
  - (2) [§101] Notice and Disclosure.
  - (3) [§102] Good Faith Requirement.

**5. Contribution.**

- (a) [§103] Development of Law.
- (b) [§104] Restatement.
- (c) [§105] Contribution Statute.
- (d) [§106] No Contribution Where Entitlement to Indemnity.
- (e) [§107] No Contribution to Wilful Wrongdoer.
- (f) [§108] Necessity of Joint Judgment.
- (g) Amount of Contribution.
  - (1) [§109] Pro Rata Share.
  - (2) [§110] Equitable Principles.
- (h) [§111] Judgment on Notice.

**6. Indemnity.**

- (a) In General.
  - (1) [§112] Definition and Nature.
  - (2) [§113] Restatement.
  - (3) [§114] Instructions.
- (b) Equitable Indemnity.
  - (1) [§115] In General.
  - (2) [§116] Recognition of Comparative Indemnity.
  - (3) [§117] Total Indemnity.
  - (4) [§118] Implied Contractual Indemnity.
- (c) Express Indemnity.
  - (1) [§119] In General.
  - (2) [§120] Interpretation of Clauses.
  - (3) [§121] Void Clauses.
  - (4) [§122] Distinction Between Active and Passive Negligence.
  - (5) [§123] Implied Indemnity Despite Express Clause.
  - (6) [§124] Effect of Indemnitee's Settlement of Underlying Claim.
  - (7) [§125] Illustrations.

**D. Defenses to Tort Action.**

**1. Consent.**

- (a) [§126] In General.
- (b) Withholding of Life-Sustaining Treatment.
  - (1) [§127] In General.
  - (2) [§128] Assisted Suicide.
  - (3) [§129] Particular Types of Patients.
  - (4) [§130] Commentary.

**2. Privilege.**

- (a) [§131] In General.

- (b) Emergency Medical Aid.**
  - (1) [§132] In General.**
  - (2) Immunity of Physicians.**
    - (aa) [§133] In General.**
    - (bb) [§134] Distinction: Physician Assigned to Emergency Duties.**
    - (cc) [§135] Distinction: Services Rendered to Scheduled Patient.**
  - (3) Immunity of Others.**
    - (aa) [§136] In General.**
    - (bb) [§137] Persons or Teams Attempting Resuscitation.**
  - (4) [§138] Refusal To Render Emergency Services.**
- (b-1) [§138A] (New) Providers of 911 Service.**
- (c) [§139] Immunization Programs.**
- (d) Report of Child Abuse or Neglect.**
  - (1) [§140] In General.**
  - (2) [§141] Nature and Scope of Immunity.**
  - (3) Subsequent Acts.**
    - (aa) [§142] Subsequent Statements.**
    - (bb) [§143] Subsequent Concealment of Victim.**
  - (4) [§144] Federal Civil Rights Liability.**
  - (5) [§145] Related Immunities.**
  - (6) [§146] Liability for Failure To Report.**
- (e) Report of Abuse of Elder or Dependent Adults.**
  - (1) [§147] In General.**
  - (2) [§148] Required or Authorized Reporting.**
    - (2a) [§148A] (New) Reporting by Financial Institutions.**
  - (3) [§149] Confidentiality and Disclosure.**
  - (4) [§150] Immunity for Reporting.**
- (f) [§151] Report of Student's Use of Alcohol or Drugs.**
- (g) [§152] Reports Respecting Health Care Plans and Facilities.**
- (h) [§153] Disclosure of AIDS Test.**
- (i) [§154] Insurer's Report of Suspected Arson.**
- (j) [§155] Proceedings of Professional Society or Committee.**
- (k) [§156] Referrals of Patients or Clients.**
- (l) [§157] Protection of Property Against Dog.**
- (m) [§158] Structural Inspection After Declared Emergency.**
- (n) [§159] Donated Fire Protection Equipment.**
- (o) [§160] Independent Quality Review for Residential Construction.**
- (p) [§161] Reliance on Court Process or Order.**
- (q) [§162] Failure of Court To Give Notice of Protective Order.**
- (r) [§163] Disclosure by Anonymous Witness Program.**
- (s) [§164] Report Regarding Threat of Violence on School Grounds.**
- (s-1) [§164A] (New) Discussion of Insurance Fraud With Insurance Commissioner.**
- (t) Privilege of Public Officers.**

- (1) [§165] Legislators.
- (2) Judges and Quasi-Judicial Officers.
  - (aa) [§166] In General.
  - (bb) [§167] Quasi-Judicial Immunity.
  - (cc) [§168] Nonjudicial Acts.
  - (dd) [§169] Acts Without or in Excess of Jurisdiction.
  - (ee) [§170] Proceedings or Relief Not Barred.
  - (ff) [§171] Administrative Judges and Hearing Officers.
  - (gg) [§172] State Bar and Bar Associations.
  - (hh) [§173] Grand Jurors.
  - (ii) [§174] Persons Engaged in Alternative Dispute Resolution.
  - (jj) [§175] Private Persons Conspiring With Judge.
- (3) Executive Officers.
  - (aa) [§176] General Rule and Policy.
  - (bb) [§177] State Officers in Civil Rights Suits.
  - (cc) [§178] Federal Officers in Constitutional Tort Actions.
  - (dd) [§179] President and Aides.
- (4) Prosecuting Officers.
  - (aa) [§180] In General.
  - (bb) [§181] Immunity in Civil Rights Suits.
  - (cc) [§182] Administrative Agency Officers.
- (5) Law Enforcement Officers.
  - (aa) [§183] In General.
  - (bb) [§184] Police Officer Witness.
  - (u) [§185] Privilege of Member of Military.
  - (v) [§186] Statutory Privileged Communications.
  - (w) [§186A] (New) Prescription of Controlled Substance Pursuant to Drug Overdose Program.
- 3. [§187] Discharge of Liability.
- 4. [§188] What Are Not Defenses.
- E. Conflict of Laws.**
  - 1. [§189] Traditional Rule: Place of Wrong.
  - 2. Modern Approach.
    - (a) [§190] Restatement: State of Most Significant Relationship.
    - (b) [§191] Repudiation of Traditional Rule and Adoption of Governmental Interest Approach.
    - (c) [§192] Comparative Impairment Analysis.
  - 3. Particular Torts.
    - (a) [§193] Injuries to Person or Property.
    - (b) [§194] Wrongful Death.
    - (c) [§195] Fraud.
    - (d) [§196] Defamation and Invasion of Privacy.
    - (e) [§197] Malicious Prosecution and Abuse of Process.
    - (f) [§198] Products Liability.

**4. Particular Issues.**

- (a) **[\$199] Duty, Breach, and Causation.**
- (b) **[\$200] Damages.**
- (c) **[\$201] Defenses.**
- (d) **[\$202] Other Issues.**

**II. GOVERNMENTAL LIABILITY**

**A. In General.**

- 1. [\$203] Common Law Doctrine of Sovereign Immunity.**
- 2. [\$204] Federal Sovereign Immunity.**
- 3. Liability Under Federal Tort Claims Act.**
  - (a) **[\$205] In General.**
  - (b) **[\$206] Liability for Tortious Acts of Federal Employees.**
  - (c) **[\$207] Liability Is That of Private Person.**
  - (d) **[\$208] Exceptions.**
  - (e) **[\$209] Procedure in Suit Under Act.**
- 4. Development of California Law.**
  - (a) **Immunity Prior to Tort Claims Act.**
    - (1) **[\$210] General Immunity of Public Entities for Governmental But Not Proprietary Acts.**
    - (2) **[\$211] Statutory Basis for Liability.**
    - (3) **[\$212] Dangerous Condition of Public Property.**
    - (4) **[\$213] School District's Liability for Negligence.**
    - (5) **[\$214] Limited Immunity of Public Employees.**
  - (b) **[\$215] Judicial Repudiation of Governmental Immunity.**
  - (c) **Tort Claims Act.**
    - (1) **[\$216] Adoption.**
    - (2) **[\$217] Statutory Framework.**
    - (3) **[\$218] Exclusions and Limitations.**
    - (4) **[\$219] "Employee."**
    - (5) **[\$220] Other Definitions.**
    - (6) **[\$221] Construction.**

**B. Public Entities.**

**1. In General.**

- (a) **Nature of Liability.**
  - (1) **[\$222] In General.**
  - (2) **[\$223] No Common Law Liability.**
  - (3) **[\$224] Liability Under Statutes and Constitution.**
  - (4) **[\$225] Liability Issue Tried First.**
- (b) **Scope of Immunities and Defenses.**
  - (1) **[\$226] Statutory Immunities.**
  - (2) **[\$227] Defenses of Private Person Are Available.**
  - (3) **[\$228] Immunity Where Employee Is Immune.**
  - (4) **[\$229] Tort Claims Act Immunities Extend to Liabilities Imposed by Other Statutes.**
  - (5) **[\$230] No Punitive Damages.**
- (c) **[\$231] Insurance Coverage.**

- (d) [§232] Liability Under Joint Powers Agreements.
  - (e) [§233] Compromise and Settlement of Claims.
  - (f) [§234] Conference on Satisfaction of Judgment.
  - (g) [§235] Periodic Payment of Judgment.
  - (h) [§236] Defense or Indemnification of Witness.
- 2. Liability for Torts of Employees.
  - (a) [§237] Statutory Rule of Liability.
  - (b) [§238] Employment by Public Entity.
  - (c) Scope of Employment.
    - (1) [§239] In General.
    - (2) [§240] Sexual Misconduct by Employee.
  - (d) Exception for Employee's Misrepresentation.
    - (1) [§241] Immunity Rule.
    - (2) [§242] Requirement of Commercial Relationship or Transaction.
  - (e) [§243] Intentional Torts of Elected Officials.
- 3. [§244] Liability for Torts of Independent Contractors.
- 4. Failure To Discharge Mandatory Duty.
  - (a) [§245] Statutory Rule of Liability.
  - (b) [§246] Illustrations Finding Liability.
  - (c) [§247] Illustrations Finding No Liability.
  - (d) [§248] Availability of Immunities.
- 5. Dangerous Condition of Public Property.
  - (a) [§249] Governing Statute.
  - (b) Public Property.
    - (1) [§250] Property Covered.
    - (2) [§251] Property Not Owned or Controlled.
    - (3) Unimproved Property.
      - (aa) [§252] Property in Natural Condition: General Rule of Nonliability.
      - (bb) [§253] Illustrations.
      - (cc) [§254] Effect of Assuming Duty To Protect Public.
      - (dd) [§255] Roads, Trails, and Paths.
      - (ee) [§256] Tidelands, Submerged Lands, and School Lands.
      - (ff) [§257] Injury or Damage on Adjacent Land.
  - (c) Dangerous Condition as Cause.
    - (1) In General.
      - (aa) [§258] Elements of Liability.
      - (bb) [§259] What Constitutes Dangerous Condition.
      - (cc) [§260] Illustrations of Dangerous and Non-Dangerous Conditions.
      - (dd) [§261] Minor or Trivial Defect.
      - (ee) [§262] Recovery for Emotional Distress.
      - (ff) [§263] Causation.
    - (2) Traffic Signals.



- (aa) [§264] Lack of Signal.
      - (bb) [§265] Defective Signal.
    - (3) [§266] Dangerous Activity Permitted.
    - (4) Negligent or Criminal Conduct of Third Party.
      - (aa) [§267] In General.
      - (bb) [§268] Criminal Assault.
    - (5) [§269] Condition on Adjacent Property.
  - (d) Culpable Conduct.
    - (1) [§270] Act or Omission of Employee.
    - (2) [§271] Notice of Condition.
  - (e) Particular Immunities and Defenses.
    - (1) [§272] Reasonable Act or Omission.
    - (2) Improper Use of Reservoir or Canal.
      - (aa) [§273] Statutory Rule.
      - (bb) [§274] Exceptions.
    - (3) Hazardous Recreational Activity.
      - (aa) [§275] In General.
      - (bb) [§276] Participants and Spectators.
      - (cc) [§277] Nature of Activity.
      - (dd) [§278] Exceptions.
    - (3a) [§278A] (New) Injury Caused by Dog in Dog Park.
    - (4) [§279] Accident Caused by Weather Conditions.
    - (5) Advance Approval of Plan or Design.
      - (aa) [§280] Nature of Defense.
      - (bb) [§281] Causation of Injury by Design.
      - (cc) [§282] Advance Discretionary Approval.
      - (dd) [§283] Reasonableness of Design.
      - (ee) [§284] Effect of Changed Conditions.
      - (ff) [§285] Protective Measures Against Earth Movement.
- 6. [§286] Legislation or Law Enforcement.
- 7. [§287] Action or Inaction on License.
- 8. [§288] Inspection of Private Property.
- 9. [§289] Tax Collection or Administration.
- 10. Police and Correctional Activities.
  - (a) Scope of Liability.
    - (1) [§290] In General.
    - (2) [§291] Liability Based on Special Relationship.
  - (b) Injury Caused or Sustained by Prisoner.
    - (1) [§292] Immunity Rule.
    - (2) [§293] Who Are Prisoners.
    - (3) [§294] Exceptions.
    - (4) [§295] Failure To Furnish Medical Care to Prisoner.
  - (c) [§296] Injury Caused by Escaped Prisoner.
  - (d) [§297] Injury Caused by Arrested Person.
  - (e) Injury From Release of Prisoner.
    - (1) [§298] Immunity Rule.

- (2) [§299] Duty To Warn Where Special Relationship Exists.
    - (3) [§300] Statutory Duty of Notification.
    - (4) [§301] Release of Suicidal Arrestee.
  - (f) Injury From Failure To Provide Protection.
    - (1) [§302] Immunity Rule.
    - (2) [§303] Discriminatory Allocation of Protective Services During Riot.
    - (3) [§304] Duty To Protect Where Special Relationship Exists.
  - (g) [§305] Injury From Failure To Arrest or Retain in Custody.
  - (h) [§306] Interference With Prisoner's Right to Judicial Review.
  - (i) Traffic Injuries.
    - (1) [§307] Failure To Prevent Driving.
    - (2) [§308] Failure To Remove Parked Car.
    - (3) [§309] Inadequate Assistance to Stranded Motorist.
- 11. Fire Protection.**
- (a) [§310] In General.
  - (b) Injury Caused in Fighting Fire.
    - (1) [§311] General Immunity Rule.
    - (2) [§312] Exceptions and Distinctions.
    - (3) [§313] Immunity Despite Wilful Misconduct.
  - (c) [§314] Fire on Public Property.
- 12. [§315] Protection From Hazardous Substances.**
- 13. Medical, Hospital, and Public Health Activities.**
- (a) [§316] Liabilities.
  - (b) [§317] Immunities.
  - (c) [§318] Failure To Conduct Physical or Mental Examination.
  - (d) [§319] Confinement or Release of Mental Patient or Addict.
  - (e) [§320] Escape of Mental Patient or Addict.
- 14. School Operations.**
- (a) [§321] In General.
  - (b) [§322] Activities on School Grounds.
  - (c) [§323] Activities Outside School Grounds.
  - (d) [§324] Extracurricular Activities.
  - (e) [§325] Activities Unrelated to School Function or Program.
  - (f) [§326] Use of Facilities by Other Organizations.
  - (g) [§327] Injury to Truant.
  - (h) [§328] Injury to Nonstudent.
  - (i) [§329] Sexual Misconduct.
  - (j) [§330] Exposure to Asbestos.
- 15. Operation of Motor Vehicles.**
- (a) [§331] In General.
  - (b) [§332] Negligent or Wrongful Conduct.
  - (c) [§333] Operation of Vehicle.
  - (d) Authorized Emergency Vehicle.
    - (1) [§334] Exemption and Immunity.
    - (2) [§335] Entity Liable Even Though Driver Is Not.

**(e) Police Pursuit.**

**(1) [§336] Nature and Scope of Immunity.**

**(2) [§337] Adoption of Pursuit Policy.**

**16. [§338] Use of Pesticides.**

**17. [§339] Nuisances.**

**18. [§340] Condemnor's Entry To Survey Land.**

**19. Emergency Activities.**

**(a) [§341] In General.**

**(b) [§342] Earthquake and Volcanic Warnings.**

**(c) [§343] 911 Calls.**

**20. [§344] National Guard Operations.**

**C. Public Employees.**

**1. In General.**

**(a) [§345] Statutory Framework.**

**(b) [§346] Nature of Liability.**

**(c) [§347] Punitive Damages May Be Recoverable.**

**(d) [§348] Nature of Immunities and Defenses.**

**(e) [§349] Particular Employees.**

**(f) [§350] Insurance Coverage.**

**2. Discretionary Acts.**

**(a) [§351] Immunity Rule.**

**(b) [§352] What Constitutes Discretionary Act.**

**(c) [§353] Causes of Action Subject to Immunity.**

**(d) Illustrations.**

**(1) [§354] Immunity Applicable.**

**(2) [§355] Immunity Not Applicable.**

**(3) [§356] Police Officers.**

**(4) [§357] Parole Officers.**

**(5) [§358] Public Defenders.**

**3. Dangerous Condition of Public Property.**

**(a) [§359] Liability.**

**(b) [§360] Immunities.**

**4. Police and Correctional Activities.**

**(a) [§361] Liabilities.**

**(b) [§362] Immunities.**

**5. [§363] Fire Protection.**

**6. Medical, Hospital, and Public Health Activities.**

**(a) [§364] Liabilities.**

**(b) [§365] Immunities.**

**7. [§366] Operation of Motor Vehicles.**

**8. [§367] Improper Expenditure of Public Funds.**

**9. [§368] Institution or Prosecution of Judicial or Administrative Proceeding.**

**10. [§369] False Arrest or Imprisonment.**

**11. Procedure.**

**(a) [§370] In General.**

**(b) Defense by Public Entity.**

- (1) [§371] Employee's Right to Defense.
- (2) [§372] When Defense May Be Refused.
- (3) [§373] When Defense Is Optional.
- (4) [§374] Methods of Providing Defense.
- (c) Indemnification of Employee.
  - (1) [§375] In General.
  - (2) [§376] Employee Must Act Within Scope of Employment.
  - (3) [§377] Where Entity Fails To Defend or Defends Under Reservation of Rights.
  - (4) [§378] Payment of Punitive Damages.
  - (5) [§379] Contribution From Employee's Insurer.
  - (6) [§380] Elected Officials.

### **III. INTENTIONAL INVASIONS OF INTERESTS IN PERSONALITY**

#### **A. Assault and Battery.**

##### **1. Nature and Distinctions.**

- (a) [§381] In General.
- (b) [§382] Statutory Actions.

##### **2. Elements.**

- (a) [§383] Offensive Contact.
- (b) [§384] Intent.
- (c) [§385] Present Ability.

##### **3. Plaintiff's Consent to Act.**

- (a) [§386] Nature of Defense.
- (b) [§387] Participation in Illegal Activity.
- (c) Consent to Operation or Treatment.
  - (1) [§388] In General.
  - (2) Minor or Incompetent Patient.
    - (aa) [§389] In General.
    - (bb) [§390] Treatment of Mental Disorders.
    - (cc) [§391] Abortion Without Parental Consent.
    - (dd) [§392] Procedure When Long-Term Health Facility Resident Loses Competency.
  - (3) [§393] Implied Consent.
  - (4) [§394] Exceeding Scope of Consent.
  - (5) Nondisclosure and Uninformed Consent.
    - (aa) [§395] In General.
    - (bb) [§396] As Battery.
    - (cc) [§397] As Negligence.
    - (dd) [§398] Causation of Injury.
    - (ee) [§399] Emergency Exception to Duty To Inform.
  - (6) Required Disclosure.
    - (aa) [§400] In General.
    - (bb) [§401] Duty To Disclose Risks of Not Consenting.
    - (cc) [§402] Duty To Disclose Information Unrelated to Patient' Health.

**(dd) [§403] No Duty To Inform Respecting Unrecommended Procedure.**

**(ee) [§404] No Duty To Inform Respecting Illegal Procedure.**

**(ff) [§405] Duty of Specialist.**

**(7) Particular Procedures and Information.**

**(aa) [§406] Breast Cancer.**

**(bb) [§407] Hysterectomy.**

**(cc) [§408] Sperm or Ova Removal.**

**(dd) [§409] Cosmetic Implants.**

**(ee) [§410] Statistical Life Expectancy.**

**(d) Consent to Medical Experimentation.**

**(1) [§411] Nature of Statute.**

**(2) [§412] Scope of Statute.**

**(3) [§413] Experimental Subject' Bill of Rights.**

**(4) [§414] Consent Required.**

**(5) [§415] Civil and Criminal Sanctions.**

**(e) [§416] Consent Fraudulently Obtained.**

**4. Privilege of Defendant.**

**(a) Self-Defense and Defense of Third Person.**

**(1) [§417] Nature and Scope of Privilege.**

**(2) [§418] Conditions.**

**(b) Defense or Recapture of Property.**

**(1) [§419] Use of Reasonable Force.**

**(2) [§420] Use of Deadly Force.**

**(3) [§421] No Privilege for Forcible Entry.**

**(4) [§422] Recaption of Personal Property.**

**(c) [§423] Defense Against Animal.**

**(d) [§424] Arrest by Police Officer.**

**(f) [§425] Control of Pupils.**

**B. False Imprisonment.**

**1. Nature of Tort.**

**(a) [§426] Definition and Distinctions.**

**(b) [§427] Necessity of Restraint.**

**(c) [§428] Methods of Restraint.**

**(d) [§429] Persons Restrained.**

**(e) [§430] Necessity for Awareness or Harm.**

**2. Privilege.**

**(a) Reasonable Detention Without Arrest.**

**(1) [§431] Judicially Created Privileges.**

**(2) [§432] Statutory Privileges.**

**(3) [§433] Distinction: Detention of Patient.**

**(b) Arrest.**

**(1) [§434] In General.**

**(2) Felony Arrest Without Warrant.**

**(aa) [§435] When Arrest Is Authorized.**

- (bb) [§436] Reasonable Cause.
      - (cc) [§437] Arrest Based on Entrapment.
    - (3) Misdemeanor Arrest Without Warrant.
      - (aa) [§438] Arrest by Peace Officer or Authorized Public Employee.
      - (bb) [§439] Arrest by Private Person.
      - (ee) [§440] Delayed Arrest.
    - (4) Arrest With Warrant.
      - (aa) [§441] In General.
      - (bb) [§442] Warrant Defective on Face.
      - (cc) [§443] Arrest of Wrong Person.
    - (5) [§444] Mechanics of Arrest.
  - (c) Conduct After Arrest.
    - (1) [§445] Delayed Taking Before Magistrate.
    - (2) [§446] Trespass Ab Initio Doctrine Repudiated.
    - (3) [§447] Release of Arrested Person.
  - (d) [§448] Furnishing Information Leading to Arrest.
- C. Intentional Infliction of Emotional Distress.**
- 1. Independent Tort.
    - (a) [§449] Classification and Development.
    - (b) [§450] Protected Interest in Peace of Mind.
  - 2. Elements.
    - (a) [§451] Outrageous Conduct.
    - (b) [§452] Severe Emotional Distress.
    - (c) [§453] Intentional or Reckless Conduct.
    - (d) [§454] Causation.
  - 3. Defenses.
    - (a) [§455] Privilege.
    - (b) [§456] Constitutionally Protected Speech or Conduct.
  - 4. Particular Conduct.
    - (a) [§457] Acts of Landlords.
    - (b) [§458] Collectors' Tactics.
    - (c) [§459] Insurers' Tactics.
    - (d) [§460] Interference With Dead Body.
    - (e) [§461] Other Situations.
- D. Interference With Access.**
- 1. [§462] Commercial Blockade.
  - 2. [§463] Interference With Access to Clinic or Church.
  - 3. [§463A] (New) Interference With Access to School Grounds or Health Facility.
- E. Marketing of Illegal Drugs.**
- 1. [§464] In General.
  - 2. [§465] Who May Recover.
  - 3. [§466] Who Is Liable.
- F. [§467] Domestic Violence.**
- G. [§468] Gender-Related Violence.**

**H. [§468A] (New) Human Trafficking.**

**I. [§468B] (New) Implantation of Identification Device.**

**IV. INTENTIONAL INJURIES TO REPUTATION AND SIMILAR INTERESTS**

**AMalicious Prosecution.**

**1. In General.**

- (a) [§469] Nature of Tort.
- (b) [§470] Other Torts Distinguished.
- (c) [§471] Action as Disfavored.
- (d) [§472] Defense of Plaintiff's Guilt or Liability.
- (e) [§473] No Defense of Absolute Privilege.
- (f) [§474] Preemption by Federal Remedies.

**2Malicious Prosecution of Criminal Proceeding.**

- (a) [§475] In General.
- (b) [§476] Institution of Proceeding.
- (c) Favorable Termination.
  - (1) [§477] Nature of Requirement.
  - (2) [§478] Termination Consistent With Guilt.
  - (3) [§479] Final Termination Unnecessary.
- (d) Lack of Probable Cause.
  - (1) [§480] Nature of Requirement.
  - (2) [§481] Proof and Determination of Issue.
  - (3) [§482] Advice of Counsel.
  - (4) Action by Magistrate, Grand Jury, or Court.
    - (aa) [§483] Action Unfavorable to Accused.
    - (bb) [§484] Action Favorable to Accused.
- (e) [§485] Malice.

**3. Malicious Institution of Civil Proceeding.**

- (a) In General.
  - (1) [§486] Nature of Tort.
  - (2) [§487] Public Entity Cannot Sue.
- (b) Proceedings That May Give Rise to Liability.
  - (1) [§488] Action or Special Proceeding.
  - (2) [§489] Ancillary Proceeding.
  - (3) [§490] Order To Show Cause.
  - (4) [§491] Cross-Complaint.
  - (5) [§492] Declaratory Judgment.
- (c) Proceedings That Do Not Give Rise to Liability.
  - (1) [§493] Subsidiary or Defensive Procedures Within Action.
  - (2) [§494] Small Claims Proceeding.
  - (3) [§495] Contractual Arbitration.
  - (4) [§496] Family Law Proceedings.
  - (5) [§496A] (New) Petition To Enjoin Harassment.
  - (6) [§496B] (New) Petition To Enjoin Workplace Violence or Threats.
- (d) [§497] Institution or Continuation of Prior Proceeding.
- (e) Favorable Termination.

- (1) [§498] In General.
- (2) [§499] Requirement That Proceeding Have Terminated.
- (3) [§500] Partially Favorable Result.
- (4) [§501] Dismissal Reflecting on Merits.
- (5) [§502] Dismissal Not Reflecting on Merits.
- (6) [§503] Failure To Make Discovery.
- (7) [§504] Judicial Arbitration Award.
- (8) [§505] Determination After Remand.
- (f) Lack of Probable Cause.
  - (1) [§506] In General.
  - (2) [§507] Judgment or Ruling in Prior Proceeding.
  - (3) [§508] Some, But Not All, Claims or Amounts Supported by Probable Cause.
  - (4) [§509] Advice of Attorney.
  - (5) [§510] Action Against Attorney.
- (g) Malice.
  - (1) [§511] In General.
  - (2) [§512] Family Law Proceedings.
- 4. Malicious Institution of Administrative Proceeding.
  - (a) [§513] General Rule.
  - (b) Distinctions.
    - (1) [§514] Proceeding Not Instituted Against Another.
    - (2) [§515] Investigation Without Hearing.
    - (3) [§516] Proceeding Initiated After Independent Investigation.
- B. Abuse of Process.
  - 1. [§517] Nature of Tort.
  - 2. Scope of "Process."
    - (a) [§518] Any Judicial Procedure.
    - (b) [§519] Distinction: Court Action Not Involved.
    - (c) [§520] Distinction: Malicious Appeal.
  - 3. Elements.
    - (a) [§521] Ulterior Purpose.
    - (b) [§522] Wilful Act in Use of Process.
  - 4. Particular Abuses.
    - (a) Attachment.
      - (1) [§523] Improper or Excessive Attachment.
      - (2) [§524] Distinctions.
    - (b) [§525] Action Disregarding Venue Statutes.
    - (c) [§526] Improper Use of Discovery.
    - (d) [§527] Filing or Recording To Harass or Influence Public Employee.
  - 5. [§528] Defense of Absolute Privilege.
- C. Defamation.
  - 1. In General.
    - (a) [§529] Nature of Tort.
    - (b) [§530] Libel and Slander Distinguished.
    - (c) Who May Be Defamed.



- (1) [§531] Class of Persons.
  - (2) [§532] Corporation, Partnership, or Association.
  - (3) [§533] Distinction: Deceased Person.
  - (d) [§534] Commentary and Practice Works.
- 2. Publication of Statement.
  - (a) [§535] In General.
  - (b) [§536] Unintended Publication.
  - (c) [§537] Republication.
  - (d) [§538] Single Publication Rule.
- 3. Defamatory Character of Statement.
  - (a) Libel.
    - (1) In General.
      - (aa) [§539] Statutory Definition.
      - (bb) [§540] Common Law Rule: All Libel Is Actionable Without Proof of Special Damage.
      - (cc) [§541] California Doctrine of Libel Per Se.
    - (2) Illustrations of Libel Per Se.
      - (aa) [§542] Charges of Criminal Conduct.
      - (bb) [§543] Charges of Other Misconduct or Character Defect.
      - (cc) [§544] Epithets and Derogatory Suggestions.
      - (dd) [§545] Ascribing Damaging Statements to Plaintiff.
    - (3) Statements Not Susceptible of Defamatory Meaning.
      - (aa) [§546] In General.
      - (bb) [§547] Humor or Parody.
      - (cc) [§548] Political Cartoons.
      - (dd) [§549] Employee Evaluation.
    - (4) [§550] Statements Susceptible of Multiple Meanings.
    - (5) [§550A] (New) No Defamation by Omission.
  - (b) Slander.
    - (1) [§551] Statutory Definition.
    - (2) [§552] Slander Per Se.
    - (3) [§553] Injury to Business or Professional Reputation.
    - (4) [§554] Statement Made in Jest.
  - (c) [§555] Pleading and Proof of Defamatory Meaning.
- 4. Defenses.
  - (a) Truth.
    - (1) [§556] Nature of Defense.
    - (2) [§557] Truth of Substance of Charge Is Sufficient.
    - (3) [§558] Effect of Emphasizing Truthful Statement.
    - (4) [§559] Accurate Repetition Is No Defense.
    - (5) [§560] Burden of Proof.
  - (b) Absolute Privilege.
    - (1) In General.
      - (aa) [§561] Nature of Defense.
      - (bb) [§562] Statutory Framework.

- (cc) [§563] Scope of Privilege.
- (2) Discharge of Official Duty.
  - (aa) [§564] In General.
  - (bb) [§565] High Ranking Officials.
  - (cc) [§566] Lower Ranking Officials.
- (3) Judicial Proceedings.
  - (aa) [§567] In General.
  - (aa-1) [§567A] (New) Breach of Contract Actions.
  - (bb) [§568] Persons Protected.
  - (cc) [§569] Relevancy Limitation.
  - (dd) [§570] No Interest of Justice Exception.
  - (ee) [§571] Steps Before and After Trial.
  - (ff) [§572] Quasi-Judicial Proceedings.
  - (gg) [§573] Arbitration Proceedings.
  - (hh) [§574] Grand Jury Proceedings.
  - (ii) [§575] Petition for Probate.
  - (jj) [§576] Proceedings in Foreign Country.
  - (kk) [§577] Attorney Communications.
  - (ll) [§578] Statements to Media.
- (4) [§579] Legislative Proceedings.
- (5) Other Official Proceedings.
  - (aa) [§580] In General.
  - (bb) [§581] Scope of Privilege.
  - (cc) [§582] Report to Police.
  - (dd) [§583] Relevancy Limitation.
- (6) [§584] Proceedings Reviewable by Mandamus.
- (7) Report of Official Proceeding or Complaint.
  - (aa) [§585] In General.
  - (bb) [§586] Proceedings Within Privilege.
  - (cc) [§587] Requirement That Statement Be Fair and True.
  - (dd) [§588] Limitations on Communications to Public Journals.
- (8) [§589] Report of Public Meeting.
- (9) [§590] Consent.
- (c) Qualified Privilege.
  - (1) [§591] In General.
  - (2) Freedom From Malice.
    - (aa) [§592] In General.
    - (bb) [§593] What Constitutes Malice.
  - (3) Requirement of Interest.
    - (aa) [§594] In General.
    - (bb) [§595] Communication Between Partners, Corporate Directors or Officers, or Association Members.
  - (4) [§596] Request for Information.
  - (5) [§597] Credit Report.

- (6) [§598] Answer to Defamatory Charge.
  - (7) [§599] No "Public-Interest" Privilege for Media.
  - (8) [§600] Pleading and Proof.
- (d) Constitutional Limits on Recovery.
  - (1) [§601] In General.
  - (2) Statements Concerning Public Officials or Public Figures.
    - (aa) [§602] *New York Times* Rule: Requirement of Actual Malice.
    - (bb) [§603] Public Official Plaintiffs.
    - (cc) [§604] Public Figure Plaintiffs.
    - (cc-1) [§604A] (New) Extension of Rule to Labor Disputes.
    - (dd) [§605] Who Are Not Public Figures.
    - (ee) [§606] Nonmedia Defendants.
    - (ff) [§607] Governmental Defendants.
    - (gg) [§608] Ambiguous Statements.
    - (hh) [§609] Inaccurate Quotations.
    - (ii) [§610] Discovery Concerning Defendant's State of Mind.
    - (jj) [§611] Standard of Proof.
    - (kk) [§612] Independent Appellate Review.
  - (2) Statements Concerning Private Individuals.
    - (aa) [§613] Gertz Rule.
    - (bb) [§614] Burden of Proof on Falsity.
    - (cc) [§615] Matters of Purely Private Concern.
    - (dd) [§616] No Neutral Reportage Privilege.
- (e) Fair Comment.
  - (1) [§617] Common Law Privilege.
  - (2) Constitutional Protections.
    - (aa) [§618] In General.
    - (bb) [§619] No Separate Constitutional Privilege for Opinions.
  - (3) Particular Statements.
    - (aa) [§620] In General.
    - (bb) [§621] Statements in Labor Disputes.
    - (cc) [§622] Statements in Political Campaign.
    - (dd) [§623] Criticism of Judge.
    - (ee) [§624] Criticism of Performance of Profession or Occupation.
    - (ff) [§625] Review of Program.
- (f) Innocence or Good Faith.
  - (1) [§626] Original Publisher.
  - (2) [§627] Ordinary Disseminator or Circulator.
  - (3) [§628] Radio or Television Broadcaster.
- (g) Retraction by Newspaper or Broadcaster.
  - (1) [§629] Background and Scope of Statute.
  - (2) Notice and Demand.

- (aa) [§630] Necessity.
- (bb) [§631] Persons Served.
- (cc) [§632] Specification of Statements.
- (3) [§633] Retraction.
- (4) Scope of Statutory Protection.
  - (aa) [§634] Publisher and Author.
  - (bb) [§635] Other Participants.
- (5) Where Statute Does Not Apply.
  - (aa) [§636] Slander.
  - (bb) [§637] Publication in Magazines.
  - (cc) [§638] Nonparticipants.
  - (dd) [§639] Republication.

#### **D. Slander of Title and Trade Libel.**

##### **1. In General.**

- (a) [§640] Nature of Causes of Action.
- (b) [§641] Restatement.

##### **2. What Constitutes Slander of Title.**

- (a) [§642] Elements.
- (b) [§643] Illustrations.
- (c) [§644] Instrument Void on Its Face.

##### **3. [§645] What Constitutes Trade Libel.**

##### **4. [§646] Damage: Pecuniary Loss.**

##### **5. Defenses.**

- (a) [§647] Truth.
- (b) [§648] Absolute Privilege.
- (c) [§649] Qualified Privilege.
- (d) [§650] Constitutional Limits on Recovery.

#### **E. Invasion of Privacy.**

##### **1. In General.**

- (a) [§651] Nature of Right to Privacy.
- (b) [§652] Defamation Distinguished.
- (c) [§653] No Relational Right.
- (d) [§654] Private Disclosure.
- (e) [§655] Oral Disclosure.
- (f) [§656] Necessity of Showing Malice.
- (g) [§657] Commentary.

##### **2. Intrusion into Private Affairs.**

- (a) Common Law Action.
  - (1) [§658] In General.
  - (2) [§659] Illustrations.
- (b) Statutory Actions.
  - (1) [§660] In General.
  - (2) [§661] Wiretapping and Electronic Eavesdropping.
  - (3) [§662] Stalking.
  - (4) [§663] Capturing Impression of Personal or Familial Activity.

##### **3. Public Disclosure of Private Facts.**

- (a) Common Law Action.**
  - (1) [§664] In General.**
  - (2) [§665] Absence of Newsworthiness.**
- (b) Statutory Actions.**
  - (1) [§666] In General.**
  - (2) [§667] Information Practices Act.**
  - (3) [§668] Identity Theft.**
  - (4) [§669] Failure To Protect Security of Personal Information.**
  - (5) [§670] Failure To Destroy Consumer Records.**
  - (6) [§671] Breach of Security for Computerized Personal Information.**
  - (7) [§672] Disclosure by Videotape Provider.**

**4. Placing Plaintiff in False Light.**

- (a) [§673] Nature of Wrong.**
- (b) [§674] Illustrations.**
- (c) [§675] Special Damages Requirement.**

**5. Appropriation of Name or Likeness.**

- (a) Common Law Cause of Action.**
  - (1) [§676] In General.**
  - (2) [§677] Use of Picture.**
  - (3) [§678] Use of Name.**
  - (4) [§679] Newsworthy Matters.**
  - (5) [§680] Transformative Matters.**
- (b) Statutory Action.**
  - (1) [§681] In General.**
  - (2) [§682] Conditions of Recovery.**
  - (3) [§683] Exemptions.**
- (c) Survivable Right of Publicity.**
  - (1) [§684] Background.**
  - (2) [§685] Statutory Right.**

**6. [§686] Privileges.**

**7. Defense of Public Interest.**

- (a) [§687] In General.**
- (b) Voluntary Exposure to Publicity.**
  - (1) [§688] General Rule.**
  - (2) [§689] Illustrations.**
- (c) Involuntary Exposure to Publicity.**
  - (1) [§690] In General.**
  - (2) [§691] News Report of Current Criminal Activities.**
  - (3) [§692] News Report of Past Criminal Activities.**

**V. INTENTIONAL INVASION OF INTERESTS IN PROPERTY**

**A. Trespass to Land.**

**1. Nature of Tort.**

- (a) [§693] In General.**
- (b) [§694] Invasion on, Above, or Below Surface.**
- (c) [§695] Actual or Constructive Possession by Plaintiff.**

**2. Defense of Privilege.**

- (a) [§696] Entry by Consent.
- (b) [§697] Other Privileged Entries.
- (c) [§698] Flight at Reasonable Height.

**B. Conversion of Personal Property.**

**1. In General.**

- (a) [§699] Nature of Tort.
- (b) [§700] Remedies.

**2. Property Subject to Conversion.**

- (a) [§701] Tangible Property.
- (b) [§702] Intangible Property.
- (c) [§703] Money.
- (d) [§704] Human Biological Material.

**3. Plaintiff's Title or Interest in Property.**

- (a) [§705] Person Without Title or Possession.
- (b) [§706] Possessor Who Is Not Owner.
- (c) [§707] Owner Not in Possession.

**4. Interference With Plaintiff's Dominion Over Property.**

- (a) [§708] Actual Interference Required.
- (b) [§709] Actual Taking Unnecessary.
- (c) Particular Acts.
  - (1) [§710] Taking.
  - (2) [§711] Destruction, Alteration, or Transfer.
  - (3) [§712] Other Acts.

**5. Defendant's State of Mind.**

- (a) [§713] Wrongful Intent Unnecessary.
- (b) [§714] Innocent Agent.
- (c) [§715] Innocent Bailee or Trustee.
- (d) [§716] Innocent Buyer.
- (e) [§717] Innocent Auctioneer.
- (f) [§718] Negligent Loss or Destruction.

**6. [§719] Defense of Privilege.**

**C. [§720] Trespass to Personal Property.**

**D. [§721] Infringement of Trademark, Trade Name, or Trade Secret.**

**E. [§722] Literary Infringement or Plagiarism.**

**VI. INTERFERENCE WITH DOMESTIC RELATIONS**

**A. Abolished Actions.**

- 1. [§723] Types of Actions.
- 2. [§724] Distinction: Professional Negligence.

**B. [§725] Personal Injury to Spouse.**

**C. Personal Injury to Minor Child.**

- 1. [§726] Action by Parents.
- 2. [§727] Action by Child.
- 3. [§728] Injury to Unborn Child.

**D. [§729] Abduction of Child.**

**VII. INTERFERENCE WITH BUSINESS RELATIONS**

**A. Inducing Breach of Contract.**

**1. In General.**

(a) [§730] Development of Tort.

(b) [§731] California Law.

**2. Existing and Valid Contract.**

(a) [§732] Void Contract.

(b) [§733] Voidable Contract.

(c) [§734] Contract Terminable at Will.

(d) [§735] Contract Subject to Condition Precedent.

**3. [§736] Knowledge and Intent.**

**4. [§737] Breach or Disruption of Contractual Relationship.**

**5. [§738] Causation and Damage.**

**6. [§739] No Action Against Other Contracting Party.**

**7. [§740] Remedies.**

**B. Interference With Prospective Economic Advantage.**

**1. Intentional Interference.**

(a) [§741] Nature of Tort.

(b) [§742] Elements.

(c) [§743] Intent.

(d) [§744] Wrongful Conduct.

(e) [§745] Probability of Benefit.

(f) [§746] No Action Against Other Party to Relationship.

(g) Particular Types of Interference.

(1) [§747] In General.

(2) [§748] Interference With Unenforceable Contract.

(3) [§749] Interference With Noncommercial Opportunity.

(4) [§750] Destruction of Evidence.

(5) [§750A] (New) Intentional Interference With Expected Inheritance.

**2. Negligent Interference.**

(a) [§751] In General.

(b) [§752] Scope of Rule.

(c) [§753] Elements of Action.

(d) [§754] Destruction of Evidence.

**C. [§755] Interference With Employment Relation.**

**D. Defense of Privilege.**

**1. [§756] In General.**

**2. [§757] Litigation Privilege.**

**3. Competition.**

(a) [§758] Restatement.

(b) [§759] California Law.

**4. [§760] Financial Interest in Business.**

**5. [§761] Refusal To Do Business With Another.**

**6. [§762] Confidential Relationship.**

**7. [§763] Inducing Suit on Colorable Claim.**

**8. [§764] Petitioning Government for Redress of Grievance.**

**9. [§765] First Amendment Guarantees.**

**10. [§766] Other Privileges.**

## **VIII. FRAUD AND DECEIT**

### **A. In General.**

**1. [§767] Governing Statutes.**

**2. [§768] Restatement.**

**3. [§769] Standard of Proof.**

**4. [§770] Constitutional Limitations.**

**5. [§771] Commentary.**

### **B. Fraudulent Misrepresentation.**

**1. [§772] In General.**

**2. Misrepresentation.**

**(a) [§773] General Requirement That Misrepresentation Must Be of Fact.**

**(b) Statement of Opinion.**

**(1) [§774] General Rule That Opinions Are Not Actionable.**

**(2) [§775] Assumption of Superior Knowledge: Expert Opinion.**

**(3) [§776] Opinion Stated as Fact or Implying Justifying Facts.**

**(4) [§777] Opinion by Fiduciary or Other Trusted Person.**

**(5) [§778] Opinion on Quality or Safety of Goods.**

**(c) Misrepresentation of Law.**

**(1) [§779] In General.**

**(2) [§780] Actionable Misrepresentations.**

**(d) False Promise.**

**(1) [§781] Theory of Misrepresentation of Intention.**

**(2) [§782] Proof of Intention Not To Perform.**

**(3) [§783] Oral Promise Unenforceable in Contract Action.**

**(4) Representations Involving Promise of Marriage.**

**(aa) [§784] Promise Inducing Transfer: Restitution.**

**(bb) [§785] Promise Inducing Marriage: Damages.**

**(cc) [§786] Promise To Support.**

**(5) [§787] Illustrations.**

**(e) [§788] Representations Concerning Credit.**

**(f) Representations Concerning Sexual Relations.**

**(1) [§789] Representation That Contraceptive Measures Were Taken.**

**(2) [§790] Representation of Sterility.**

**(3) [§791] Representation of Freedom From Disease.**

**(4) [§792] Representation of Paternity.**

**(g) Nondisclosure or Concealment.**

**(1) [§793] In General.**

**(2) Fiduciary Relationship.**

**(aa) [§794] In General.**

**(bb) [§795] Dual Fiduciary Relationship.**

**(3) Defendant With Exclusive Knowledge.**

**(aa) [§796] In General.**



- (bb) [§797] Real Estate Transactions.
    - (4) [§798] Active Concealment.
    - (5) [§799] Partial Suppression of Facts.
    - (h) [§799A] (New) Representations Concerning Employment.
  - 3. Knowledge of Falsity (Scienter).
    - (a) [§800] Actual Knowledge.
    - (b) [§801] Reckless Misrepresentation.
  - 4. Intent To Defraud.
    - (a) [§802] In General.
    - (b) Intent To Deceive Particular Persons.
      - (1) [§803] General Rule.
      - (2) [§804] Representation to One for Another.
      - (3) [§805] Representation to Public or Class.
      - (4) [§806] Unknown Third Persons.
    - (c) [§807] Intent To Induce Particular Action.
  - 5. Causation: Reliance and Right To Rely.
    - (a) Actual Reliance.
      - (1) [§808] In General.
      - (2) [§809] Investigation or Examination.
      - (3) [§810] Time of Reliance.
      - (4) [§811] Securities Cases.
    - (b) Right To Rely (Justifiable Reliance).
      - (1) [§812] In General.
      - (2) [§813] No General Duty To Investigate.
      - (3) [§814] Constructive Notice Is Not a Bar.
      - (4) [§815] Exceptionally Gullible or Careless Person.
  - 6. Resulting Damage.
    - (a) [§816] Pecuniary or Property Loss.
    - (b) [§817] Other Elements.
- C. Negligent Misrepresentation.
  - 1. [§818] Nature of Tort.
  - 2. [§819] Tort as Form of Deceit.
  - 3. [§820] Scope of Tort.
  - 4. Representation Resulting in Physical Harm.
    - (a) [§821] In General.
    - (b) [§822] Liability to Third Parties.
    - (c) [§822A] (New) Duty of Manufacturer of Name-Brand Drug to User of Generic Equivalent.
  - 5. Endorsement of Commercial Product.
    - (a) [§823] Recovery Allowed.
    - (b) [§824] Recovery Denied.
  - 6. [§825] Limitations on Recovery.
- D. [§826] Innocent Misrepresentation.
- E. Alternative Remedies.
  - 1. [§827] Rescission and Restitution.
  - 2. [§828] Affirmance and Damages.

- 3. [§829] Election of Remedies.**
- 4. [§830] Waiver of Tort Remedy.**

## **6 Summary of California Law (10th), Torts**

### **IX. NEGLIGENCE: IN GENERAL**

#### **A. Meaning of Negligence.**

- 1. [§831] Definitions.**
- 2. [§832] Jury Instructions.**

#### **B. [§833] California Statute.**

#### **C. [§834] Restatement.**

#### **D. Elements of Actionable Negligence.**

##### **1. Traditional Analysis.**

###### **(a) Duty--Breach--Causation.**

###### **(1) [§835] In General.**

###### **(2) [§836] Duty as Matter of Law and Assumed Duty.**

###### **(b) [§837] Palsgraf Theory: Negligence Toward Class.**

##### **2. [§838] Restatement 2d.**

###### **2A. [§838A] (New) Restatement 3d.**

##### **3. [§839] Relaxation of Duty Approach.**

#### **E. Illustrations of Duty Approach.**

##### **1. Ignition Key Left in Vehicle.**

###### **(a) [§840] General Rule: No Liability.**

###### **(b) [§841] Criticism of General Rule.**

###### **(c) Special Circumstances Exception.**

###### **(1) [§842] Trucks and Other Heavy Vehicles.**

###### **(2) [§843] Ordinary Vehicles.**

###### **(3) [§844] Exception Not Applicable.**

##### **2. Injuries to Safety Personnel.**

###### **(a) [§845] Adoption of Firefighter's Rule.**

###### **(b) Injured Party.**

###### **(1) [§846] Volunteer Firefighter.**

###### **(2) Police Officer.**

###### **(aa) [§847] Off-Duty Officer.**

###### **(bb) [§848] Officer Responding to Existing Crisis.**

###### **(cc) [§849] Officer Responding to New Crisis.**

###### **(3) [§850] Private Safety Employee.**

###### **(4) [§851] Tow Truck Operator.**

###### **(c) [§852] Extension of Firefighter's Rule to All Public Safety Personnel.**

###### **(d) Judicial Exception for Fraud.**

###### **(1) [§853] Firefighter Cases.**

###### **(2) [§854] Police Officer Cases.**

###### **(e) Judicial Exception for Independent Cause.**

###### **(1) [§855] ] Firefighter Cases.**

###### **(2) [§856] Police Officer Cases.**

###### **(f) Statutory Exception for Wilful or Negligent Acts.**

###### **(1) [§857] In General.**

###### **(2) [§858] Exception Applicable.**

###### **(3) [§859] Exception Not Applicable.**

3. [§859A] (New) Parking on Shoulder of Interstate Highway.
4. [§859B] (New) Injuries to Worker's Family Members.

**F. Questions of Law and Fact.**

**1. Legal Duty.**

- (a) [§860] Question of Law.
- (b) Illustrations.

- (1) [§861] School District and Children on School Property.
- (2) [§862] Negligent Motorist and Tow Truck Driver.
- (3) [§863] Negligent Motorist and Child Not Yet Conceived.
- (4) [§864] Lender and Borrower.
- (5) [§865] Other Illustrations.

**2. [§866] Due Care and Causation Are Questions of Fact.**

**X. NEGLIGENCE: GENERAL DUTY TO EXERCISE DUE CARE**

**A. Standard of Due Care: In General.**

1. [§867] The Ordinarily Prudent Person.
2. [§868] Foreseeability of Unreasonable Risk.
3. [§869] Degrees of Care and Negligence.
4. [§870] Wilful Misconduct.

**B. Standard of Due Care: Negligence Per Se.**

In General.

- (a) [§871] Nature of Doctrine.
- (b) [§872] Federal Law Violations.
- (c) [§873] Codification of Doctrine.
- (d) [§874] Illustrations.

**2. Statute, Ordinance, or Administrative Regulation.**

**(a) In General.**

- (1) [§875] Statute or Ordinance.
- (2) [§876] Administrative Regulation.
- (3) [§877] Agency Manual Is Not Regulation.

**(b) Motor Vehicles.**

- (1) [§878] Speed Limits.
- (2) Right-of-Way: Driver and Other Motorists.
  - (aa) [§879] Intersections.
  - (bb) [§880] Other Situations.
- (3) Right-of-Way: Driver and Pedestrian.
  - (aa) [§881] In General.
  - (bb) [§882] Crosswalks.
- (4) Other Driving Rules.
  - (aa) [§883] Driving in Wrong Location or Manner.
  - (bb) [§884] Obstruction of View.
  - (cc) [§885] Equipment and Signals.
  - (dd) [§886] Other Situations.

**(5) [§887] Parking.**

- (c) [§888] Bicycles.
- (d) [§889] Boats.

**3. Excuses Rebutting Presumption of Negligence.**

- (a) [§890] In General.
    - (b) [§891] Illustrations.
  - 4. Legal Duty and Type of Harm.
    - (a) [§892] Class of Persons.
    - (b) [§893] Type of Harm.
    - (c) [§894] Vehicle Cases.
  - 5. [§895] Proximate Cause.
  - 6. [§896] Doctrine Is Inapplicable to Immature Children.
- C. Due Care in Specific Situations.**
- 1. Custom and Regulations.
    - (a) [§897] Customary Conduct.
    - (b) [§898] Departure From Custom.
    - (c) [§899] Compliance With Safety Regulations.
  - 2. Emergency: Doctrine of Imminent Peril.
    - (a) [§900] In General.
    - (b) [§901] Illustrations.
  - 3. [§902] Unavoidable Accident.
  - 4. [§903] Lack of Necessary Skill or Care.
  - 5. [§904] Lack of Preparation or Inspection.
  - 6. Failure To Give Warning.
    - (a) [§905] Warning Before Acts.
    - (b) [§906] Warning of Conditions.
    - (c) [§907] Signals at Railroad Crossing.
  - 7. Failure To Take Precautions.
    - (a) [§908] Safety Belts.
    - (b) [§909] Other Precautions.
  - 8. [§910] Absence of Similar Occurrence.
  - 9. [§911] Operation of Machinery Near Horses.
  - 10. [§912] Risk of Venereal Disease.
  - 11. [§913] False Diagnosis of Recovered Memory.
  - 12. Radio, Television, or Motion Picture Production.
    - (a) [§914] Promotion.
    - (b) [§915] Film Depicting Violence.
    - (c) [§916] Song About Suicide.
    - (d) [§917] Unauthorized Viewing of Movie.
- D. Degree or Kind of Care in Special Situations.**
- 1. Dangerous Activities or Devices.
    - (a) [§918] In General.
    - (b) [§919] Electricity.
    - (c) [§920] Firearms and Ammunition.
    - (d) [§921] Explosives.
    - (e) [§922] Gas and Other Flammable Materials.
  - 2. Carriers.
    - (a) [§923] In General.
    - (b) [§924] What Constitutes Carrier.
    - (c) [§925] Private Carrier for Hire.

- (d) **[§926] Charterer of Excursion Boat.**
  - (e) **When Plaintiff Is Passenger.**
    - (1) **[§927] In General.**
    - (2) **[§928] Airline Passenger Changing Planes.**
  - (f) **[§929] Carrier's Duty Owed to Stranger.**
  - (g) **Carrier's Duty To Prevent Assault.**
    - (1) **[§930] Occurrence or Allegation of Prior Assault.**
    - (2) **[§931] No Occurrence or Allegation of Prior Assault.**
  - (h) **[§932] Carrier's Duty To Collect Evidence.**
- 3. Medical Practitioners.**
- (a) **In General.**
    - (1) **[§933] Degree of Skill or Care.**
    - (2) **[§934] Ordinary Versus Professional Negligence.**
    - (3) **[§935] Physician-Patient Relationship.**
    - (4) **[§936] Health Care Provider.**
    - (5) **[§937] HMO.**
  - (b) **Commentary and Practice Works.**
    - (1) **[§938] In General.**
    - (2) **[§939] Related Fields and Peripheral Matters.**
  - (c) **Medical Injury Compensation Reform Act (MICRA).**
    - (1) **[§940] Nature and Purpose of Act.**
    - (2) **[§941] Constitutionality of Act.**
    - (3) **Limitations on Attorney's Compensation.**
      - (aa) **[§942] Statutory Provisions.**
      - (bb) **[§943] Constitutionality.**
      - (cc) **[§944] Hybrid Action.**
      - (dd) **[§945] Computation of Fee.**
    - (4) **Compulsory Arbitration Agreements.**
      - (aa) **[§946] In General.**
      - (bb) **[§947] Subsequent Medical Services.**
      - (cc) **[§948] Persons Who Did Not Sign: In General.**
      - (dd) **[§949] Persons Who Did Not Sign: Cross-Complainants.**
      - (ee) **[§950] Retroactive Agreements.**
      - (ff) **[§951] Intentional Torts.**
      - (gg) **[§952] Punitive Damages.**
    - (5) **Notice of Intent To Sue.**
      - (aa) **[§953] In General.**
      - (bb) **[§954] Extension of Applicable Statute of limitations.**
      - (cc) **[§955] Government Tort Claim Is Not Notice of Intent To Sue.**
    - (6) **Evidence of Collateral Sources.**
      - (aa) **[§956] In General.**
      - (bb) **[§957] Constitutionality and Construction.**
    - (7) **Maximum Recovery for Noneconomic Loss.**
      - (aa) **[§958] In General.**

- (bb) [§959] Constitutionality.
- (cc) [§960] Comparative Negligence.
- (dd) [§961] Action by Spouse for Loss of Consortium.
- (ee) [§962] Action for Equitable Indemnity.
- (ff) [§963] Action Under Federal Patient-Dumping Statute.
- (gg) [§964] Periodic Payments.
- (hh) [§965] Intentional Torts.

**(8) Periodic Payments.**

- (aa) [§966] Authorization.
- (bb) [§967] Purpose.
- (cc) [§968] Procedure.
- (dd) [§969] No Interest on Periodic Payments.
- (ee) [§970] Attorneys' Fees When Periodic Payments Are Awarded.

**(d) Diagnosis or Treatment.**

- (1) [§971] In General.
- (2) [§972] Diagnosis of Battered Child Syndrome.
- (3) [§973] Sexual Relations With Patient.
- (4) [§974] Delayed Diagnosis.
- (5) [§975] Annotations and Practice Works.

**(e) [§976] Surgery.**

**(f) Wrongful Birth: Action by Parent.**

- (1) [§977] In General.
- (2) [§978] Proximate Cause.

**(g) Wrongful Life: Action by Child.**

- (1) [§979] In General.
- (2) [§980] Cause of Action Recognized.
- (3) [§981] No Cause of Action Against Parent.
- (4) [§982] Recovery Limited to Special Damages
- (5) Specific Failures.

(aa) [§983] Failure To Prevent Birth.

(bb) [§984] Failure To Diagnose Spina Bifida.

(cc) [§985] Failure To Secure Consent of Husband for Artificial Insemination.

**4. Hospitals.**

- (a) [§986] In General.
- (b) [§987] Improper Restraints.
- (c) [§988] Negligent Post-Operative Care.
- (d) [§989] Scope of Immunity Statute.

**5. Accountants.**

- (a) [§990] In General.
- (b) Duty to Unintended Recipients of Information.
  - (1) [§991] Former Foreseeability Approach.
  - (2) [§992] Liability Limited to Client.
  - (3) [§993] Audit Filed With Insurance Commissioner.





- (2) [§1027] Airplane Crash.
- (3) [§1028] Legal Malpractice.
- (4) [§1029] Childbirth.
- (5) [§1030] Incorrect Prescription.

**4. Physical Trauma Not Present.**

- (a) [§1031] Financial Injury.
- (b) [§1032] Injury to Property.
- (c) [§1033] Report Causing Arrest.
- (d) [§1034] Wrongful Termination of Employment.
- (e) [§1035] Assisting in Removal of Child.
- (f) [§1036] Fear of Contracting Disease.
- (g) [§1037] Negligent Construction.

**XI. NEGLIGENCE: AFFIRMATIVE DUTIES ARISING FROM SPECIAL RELATIONSHIPS**

**A. In General.**

**1. Necessity of Relationship.**

- (a) [§1038] General Principle.
- (b) Illustrations: Situations Where No Duty Arises.
  - (1) [§1039] Probation Department.
  - (2) [§1040] Intoxicated Patron of Business Establishment.
  - (3) [§1041] Knowledge of Another's Violent Tendencies.
  - (4) [§1042] Faith Healer.
  - (5) Suicide Prevention.
    - (aa) [§1043] Clergy.
    - (bb) [§1044] Police Officer.
    - (cc) [§1045] Mental Health Practitioner.
  - (6) Clergy.
    - (aa) [§1046] In General.
    - (bb) [§1047] Duty Provable, But Not Established.
  - (7) [§1048] Other Illustrations.
- (c) Illustrations: Relationships Giving Rise to Duty.
  - (1) [§1049] In General.
  - (2) Psychotherapist's Duty To Warn.
    - (aa) [§1050] In General.
    - (bb) [§1051] Statutory Limitation.
  - (3) [§1052] Medical Consultant.
  - (4) [§1053] Private Security Guard.
  - (5) [§1054] School District.
  - (6) Suicide Prevention.
    - (aa) [§1055] Care Facility for Elderly.
    - (bb) [§1056] Mental Health Practitioner.
  - (7) [§1057] Party Endangering Unidentified Victim.
  - (8) [§1058] Person Inviting Child Into Home.
  - (9) [§1059] Other Relationships.

**2. Exceptions: Affirmative Duty Without Relationship.**

- (a) Voluntary or Gratuitous Undertaking.

- (1) [§1060] Liability for Negligent Performance.
  - (2) [§1061] Conditions for Liability.
  - (3) [§1062] Illustration: Street Vendor's Duty to Child.
  - (4) [§1063] Distinction: Casual Advice.
  - (5) [§1064] Distinction: Medical Proctor.
  - (6) [§1065] No Liability for Failure To Perform.
  - (b) Furnishing Liquor to Intoxicated Person.
    - (1) [§1066] Common Law Rule of Nonliability.
    - (2) Former Judicial Rule of Liability.
      - (aa) [§1067] Liability to Third Person.
      - (bb) [§1068] Liability to Intoxicated Person.
      - (cc) [§1069] Liability to Social Guest.
    - (3) Legislative Abrogation of Liability.
      - (aa) [§1070] Statutory Rules.
      - (bb) [§1071] Constitutionality of Statutes.
      - (cc) [§1072] Furnishing Liquor to Intoxicated Minor.
      - (dd) [§1073] Furnishing Liquor to Sober Minor.
      - (ee) [§1074] Furnishing Liquor to Disabled Person.
      - (ff) [§1075] Entrusting Vehicle to Intoxicated Driver.
      - (gg) [§1076] Failure To Prevent Driving.
  - (c) [§1077] Statutory Duty.
  - (d) [§1078] Contractual Duty.
  - (e) [§1079] Active Force Under Defendant's Control.
  - (f) [§1080] Creation of Peril.
  - (g) [§1081] Interference With Attempt To Aid.
- B. Landowners and Possessors.**
- 1. In General.**
    - (a) [§1082] Nature of Liability.
    - (b) Owner or Possessor.
      - (1) [§1083] In General.
      - (2) [§1084] Holder of Bare Legal Title.
    - (c) Duty to Person Coming on Land.
      - (1) [§1085] Traditional Status Classification.
      - (2) [§1086] Repudiation of Traditional Classification.
      - (3) [§1087] Instructions.
    - (d) Duty to Person Outside Land.
      - (1) [§1088] In General.
      - (2) [§1089] Natural Conditions.
    - (e) Conditions or Activities Outside Land.
      - (1) [§1090] General Rule of Nonliability.
      - (2) [§1091] Defective Structure.
      - (3) [§1092] Hazardous Condition.
      - (4) [§1093] City's Liability and Right of Indemnity.
  - 2. Trespassers.**
    - (a) [§1094] Who Are Trespassers.
    - (b) [§1095] Former Limited Duties.

- (c) [§1096] Current Bases of Liability.
- (d) Trespasser on Railroad Car.
  - (1) [§1097] In General.
  - (2) [§1098] Authority Must Be Express.
- (e) [§1099] Person Committing Serious Felony.

### 3. Licensees.

- (a) [§1100] Who Are Licensees.
- (b) [§1101] Former Limited Duties.
- (c) [§1102] Current Bases of Liability.
- (d) No Liability to Recreational Licensees.
  - (1) [§1103] In General.
  - (2) [§1104] Constitutionality of Statute.
  - (3) Recreational Purpose.
    - (aa) [§1105] In General.
    - (bb) [§1106] Playing on Machinery.
  - (4) Land Unsuitable for Recreation.
    - (aa) [§1107] In General.
    - (bb) [§1108] Suitability Requirement Abrogated.
  - (5) [§1109] Owner of Estate or Interest in Real Property.
  - (6) [§1110] Exception for Public Property.
  - (7) [§1111] Liability for Wilful Misconduct.
- (e) [§1112] No Liability to Gleaners of Agricultural Products.

### 4. Invitees or Business Visitors.

- (a) Who Are Invitees.
  - (1) Theory of Mutual Business Interest.
    - (aa) [§1113] In General.
    - (bb) [§1114] Nonbusiness Activity as Business.
    - (cc) [§1115] Circumstances and Custom.
  - (2) [§1116] Theory of Public Invitation.
  - (3) [§1117] Illustrations.
- (b) [§1118] Bases of Liability.
- (c) Dangerous Physical Condition.
  - (1) [§1119] In General.
  - (2) [§1120] Knowledge of Condition.
  - (3) [§1121] Failure To Inspect: Recovery Allowed.
  - (4) No Breach of Duty: Recovery Denied.
    - (aa) [§1122] In General.
    - (bb) [§1123] Where Inspection Would Not Disclose Defect.
    - (cc) [§1124] Injury From Insect Bite.
  - (5) Obvious Dangers.
    - (aa) [§1125] Theory of Contributory Negligence.
    - (bb) [§1126] Theory of No Breach of Duty.
    - (cc) [§1127] Effect of Rowland Case.
  - (6) [§1128] Exceeding Scope of Invitation.
- (d) Dangerous Activity on Premises.
  - (1) [§1129] Nature of Duty.

- (2) **Foreseeability: Activity of Third Person.**
  - (aa) [§1130] **In General: Prior Incidents.**
  - (bb) [§1131] **Assault Involving Firearms.**
  - (cc) [§1132] **Assault Not Involving Firearms.**
  - (dd) [§1133] **Spilled Liquid.**
- (3) **Foreseeability: Absence of Prior Incidents.**
  - (aa) [§1134] **In General.**
  - (bb) [§1135] **Parking Garages.**
  - (cc) [§1136] **Other Structures.**
- (4) [§1137] **Warning of Danger.**
- (5) [§1138] **Proximate Cause.**
- (6) **Liability of Owner of Business Premises.**
  - (aa) [§1139] **Parking Garage Owner.**
  - (bb) [§1140] **Store Owner.**
  - (cc) [§1141] **No Duty To Comply With Criminal's Demand.**
- (7) **Liability of Landlord.**
  - (aa) [§1142] **Liability Upheld.**
  - (bb) [§1143] **Liability Denied.**
- (8) [§1144] **Liability of Lessee to Guest.**
- (9) [§1145] **Injury to or Loss of Property.**
- (e) **Dangerous Activity Off Premises.**
  - (1) [§1146] **In General.**
  - (2) [§1147] **Vicious Dog In Neighborhood.**
  - (3) [§1148] **Failure To Correct or Warn of Flammable Structure.**
  - (4) [§1149] **Failure To Build Barrier.**
  - (5) **Criminal Acts of Third Parties: Location of Assault.**
    - (aa) [§1150] **Near School.**
    - (bb) [§1151] **Near Business.**
    - (cc) [§1152] **Near Apartment.**
    - (dd) [§1153] **Near Public Telephone.**

**5. Trespassing Children.**

- (a) **Former Doctrine of Attractive Nuisance.**
  - (1) [§1154] **Rule and Classification.**
  - (2) [§1155] **Extension of Liability Under Restatement.**
  - (3) [§1156] **Application In Particular Situations.**
- (b) [§1157] **New Foreseeable Risk Approach.**

**C. Real Property: Vendor, Lessor, and Contractor.**

**1. Vendor and Lessor.**

- (a) [§1158] **General Rule of Nonliability.**
- (b) [§1159] **Former Owner's Liability for Improvement.**

**2. Contractor.**

- (a) [§1160] **In General.**
- (b) [§1161] **Illustrations.**

**D. Construction Defects.**

**1. [§1162] In General.**

2. [§1163] Scope of Legislation.
3. [§1164] Actionable Defects.
4. [§1165] Right To Repair and Other Prolitigation Requirements.
5. [§1166] Action and Relief.
6. [§1167] Liability of Contractors, Suppliers, Product Manufacturers, and Design Professionals.

**E. Manufacturers and Other Suppliers of Goods.**

**1. In General.**

- (a) [§1168] Privity Requirement Repudiated
- (b) [§1169] Restatement and California Law.
- (c) [§1170] Injury to Property.

**2. Knowledge of Danger and Duty To Warn.**

- (a) [§1171] In General.
- (b) [§1172] Dangerous Chemicals.
- (c) [§1173] State of Emergency.
- (d) [§1174] Dangerous Design.
- (e) [§1174A] (New) Sophisticated User Defense.

**3. [§1175] Duty To Inspect.**

**4. [§1176] Food and Beverages.**

**5. [§1177] Drugs and Cosmetics.**

**6. [§1178] Secondhand Equipment.**

**F. Negligent Performance of Ordinary Contract.**

**1. [§1179] Recovery Allowed.**

**2. [§1180] Recovery Denied.**

**XII. NEGLIGENCE: PROXIMATE OR LEGAL CAUSE**

**A. In General.**

**1. Nature of Doctrine.**

- (a) [§1181] Development.
- (b) [§1182] Restatement 2d.
- (c) [§1183] Restatement 3d.

**2. [§1184] Question of Fact or Law.**

**3. Cause in Fact and Proximate Cause.**

- (a) [§1185] Cause in Fact.
- (b) [§1186] Proximate Cause.
- (c) [§1187] Instructions.
- (d) Illustrations.
  - (1) [§1188] Negligence of Medical Personnel or Facility.
  - (2) [§1189] Negligence Resulting in Violent Act.
  - (3) [§1190] Negligent Hiring of Tortfeasor.
  - (4) [§1191] Other Acts of Negligence.

**B. Direct Causation.**

**1. [§1192] Liability for Unforeseeable Consequences.**

**2. [§1193] Concurring Causes.**

**3. [§1194] Concurrent Negligence But Single Unidentified Cause.**

**4. [§1195] Unknown Cause.**

**C. [§1196] Normal Intervening Forces.**

#### **D. Independent Intervening Act.**

##### **1. Test of Foreseeability.**

(a) [§1197] In General .

(b) [§1198] Precise Act or Harm Need Not Be Foreseen.

##### **2. [§1199] Natural Forces and Animals.**

##### **3. [§1200] Irresponsible or Innocent Act of Third Person.**

##### **4. Negligent Act or Omission of Third Person.**

(a) [§1201] Object Left in Path of Vehicle.

(b) [§1202] Obstruction Diverting Pedestrian From Safe Place.

(c) [§1203] Illegal Parking.

(d) [§1204] Accident Leaving Plaintiff Helpless.

(e) Intervening Negligent Driver.

(1) [§1205] In General.

(2) [§1206] Realizable Likelihood of Act.

(f) [§1207] Unknown Intervening Act.

(g) Manufacturer's Negligence and Intervening Negligence.

(1) [§1208] Intervening Party's Knowledge.

(2) [§1209] Intervening Party's Failure To Inspect.

(3) [§1210] Intervening Negligent Act of Stranger.

(h) [§1211] Subcontractor's Negligence and Contractor's Intervening Negligence.

(i) [§1212] Intervening Negligence of Hospital Staff.

(j) [§1213] Intervening Negligence of Attorney.

##### **5. Intentional Act of Third Person.**

(a) [§1214] Unforeseeable Act.

(b) [§1215] Likelihood of Act.

(c) [§1216] Act Not Highly Extraordinary.

(d) [§1217] Act of Responsible Child.

(e) [§1218] Arrest and Prosecution by Authorities.

##### **6. [§1219] Suicide.**

### **XIII. NEGLIGENCE: LIABILITY FOR NEGLIGENCE OF OTHERS**

#### **A. [§1220] Circumstances Justifying Vicarious Liability.**

#### **B. Entrustment of Dangerous Instrumentality.**

##### **1. [§1221] In General.**

##### **2. Incompetent, Reckless, or Intoxicated Driver.**

(a) [§1222] In General.

(b) [§1223] No Duty To Inquire into Competency.

(c) [§1224] Seller of Vehicle Is Not Liable.

(d) [§1225] Gift of Vehicle.

##### **3. [§1226] Respondeat Superior Liability Distinguished.**

#### **C. Torts of Child.**

##### **1. [§1227] General Rule of Nonliability.**

##### **2. Exceptions.**

(a) [§1228] Knowledge of Past Misconduct.

(b) Statutory Liability for Wilful Misconduct.

(1) [§1229] Nature and Scope of Statute.

- (2) [§1230] Illustrations.
      - (3) [§1231] Injury to School Students, Personnel, or Property.
      - (4) [§1232] Theft From Merchant or Library.
    - (c) Permitting Access to Firearm.
      - (1) [§1233] Common Law.
      - (2) [§1234] California Statute.
  - D. [§1235] Members of Joint Enterprise.
  - E. Employers of Independent Contractors.
    - 1. [§1236] In General.
    - 2. Where Employer Is at Fault.
      - (a) [§1237] Employment of Incompetent Contractor.
      - (b) [§1238] Defective Plans.
      - (c) [§1239] Failure To Supervise Concessionaire.
      - (d) [§1240] No Liability to Independent Contractor's Employee for Negligent Hiring.
      - (e) [§1241] Limited Liability to Independent Contractor's Employee for Negligent Exercise of Retained Control.
    - 3. Inherently Dangerous Work.
      - (a) Theory of Liability: Peculiar Risk Doctrine.
        - (1) [§1242] Restatement 2d.
        - (2) [§1243] California Cases.
      - (b) [§1244] Distinction: Collateral Negligence.
      - (c) Distinction: Claim by Employee of Independent Contractor.
        - (1) [§1245] Peculiar Risk Doctrine Is Not Applicable.
        - (2) [§1246] Direct and Vicarious Liability.
      - (d) [§1246A] (New) Restatement 3d.
    - 4. Nondelegable Duty.
      - (a) [§1247] Theory of Liability.
      - (b) [§1248] Work Under Public License.
      - (c) [§1249] Creation of Nuisance.
      - (d) [§1250] Performance of Owner's or Possessor's Duty.
      - (e) [§1251] Automobile Driver's Duty.
      - (f) [§1252] Hazardous Waste Disposal.
      - (g) [§1252A] (New) Compliance With Safety Regulations.
    - 5. [§1253] Public Franchise to Employer.
    - 6. [§1254] General Contractor's Liability for Subcontractor's Negligence.
    - 7. [§1255] Hospital's Liability for Doctor's Negligence.
  - F. Statutory Liability for Operation of Automobile.
    - 1. Parent or Custodian of Minor.
      - (a) [§1256] Signer of Driver's License.
      - (b) [§1257] Minor Driving With Permission.
      - (c) [§1258] Nature and Scope of Liability.
      - (d) [§1259] Termination of Liability.
    - 2. Driving With Permission.
      - (a) In General.
        - (1) [§1260] Statutory Development.

- (2) [§1261] Limited Liability.
- (3) [§1262] Vehicle and Operation.
- (4) [§1263] Effect of Settlement.
- (5) [§1264] Effect of Unsatisfied Judgment.
- (b) Liability of Owner.
  - (1) [§1265] In General.
  - (2) [§1266] Notification to Department.
  - (3) [§1267] Minor Who Disaffirms.
  - (4) [§1268] Community and Joint Ownership.
- (c) [§1269] Liability of Bailee or Personal Representative.
- (d) [§1270] Liability of Operator.
- (e) Permission.
  - (1) [§1271] Express and Implied Permission.
  - (2) [§1272] Restricted Permission.
- G. [§1273] Statutory Liability for Operation of Vessel.
- H. Statutory Liability for Operation of Aircraft.
  - 1. Owner's Liability.
    - (a) [§1274] In General.
    - (b) [§1275] Who Is Owner of Aircraft.
  - 2. Uniform Aircraft Financial Responsibility Act.
    - (a) [§1276] In General.
    - (b) [§1277] Security Following Accident.
    - (c) [§1278] Insurance Coverage.
- I. [§1279] Distinction: Financing Agency Is Not Liable.
- XIV. NEGLIGENCE: DEFENSES
  - A. [§1280] Available Defenses.
  - B. Assumption of Risk.
    - 1. In General.
      - (a) [§1281] Definition.
      - (b) [§1282] Relation Contributory Negligence.
      - (c) [§1283] Relation to Comparative Negligence.
    - 2. Implied.
      - (a) In General.
        - (1) [§1284] Risk of Defendant's Negligence.
        - (2) [§1285] Plaintiff's Knowledge of Danger.
      - (b) Illustrations of Risk Assumed.
        - (1) [§1286] Spectator at Athletic Contest.
        - (2) [§1287] Dangerous Activity or Appliance.
      - (c) When Risk Is Not Assumed.
        - (1) [§1288] No Actual Knowledge of Danger.
        - (2) [§1289] No Knowledge of Particular Danger.
        - (3) [§1290] Unusually Dangerous Condition or Activity.
        - (4) [§1291] Violation of Safety Regulations.
    - 3. Express.
      - (a) [§1292] In General.
      - (b) [§1293] Restatement 3d.



(c) [§1294] Release in Wrongful Death Action.

**C. Contributory Negligence.**

**1. In General.**

(a) [§1295] Contributory Negligence and Comparative Negligence.

(b) [§1296] Pleading and Proof.

(c) Standard of Due Care.

(1) [§1297] In General.

(2) [§1298] Children and Disabled Persons.

(d) [§1299] Causal Connection With Injury.

(e) [§1300] Question of Law or Fact.

(f) [§1301] Action Based on Negligence Per Se.

(g) When Doctrine Is Not Applicable.

(1) [§1302] Intentional Tort and Wilful Misconduct.

(2) [§1303] Injury to Property.

**2. Illustrations of Contributory Negligence.**

(a) Voluntary Exposure to Danger.

(1) [§1304] Rule and Illustrations.

(2) [§1305] Distinctions.

(3) Exception: Rescue of Person or Property.

(aa) [§1306] The Rescue Rule.

(bb) [§1307] Peril Not Created by Defendant.

(cc) [§1308] Rescue of Property.

(b) [§1309] Forgetfulness of Known Danger.

(c) Negligent Failure To Discover Danger.

(1) [§1310] In General.

(2) Reliance on Defendant's Duty of Care.

(aa) [§1311] In General.

(bb) [§1312] Employees.

(cc) [§1313] Pedestrians.

(d) [§1314] Vehicle Guest's Failure To Protest.

**3. Contributory Negligence Per Se.**

(a) In General.

(1) [§1315] Violation of Statute.

(2) [§1316] Causation.

(3) [§1317] Excuse.

(b) [§1318] Violation of Traffic Rules.

(c) [§1319] Passenger in Wrong Place.

(d) [§1320] Drunken Pedestrian.

(e) [§1321] Jay Walking.

(f) [§1322] Stop, Look, and Listen Rule Abrogated.

(g) [§1323] Exposure to Electrical Shock.

**4. Imputed Contributory Negligence.**

(a) [§1324] Nature and Scope of Rule.

(b) [§1325] What Constitutes Joint Enterprise.

(c) [§1326] Rule Is Inapplicable to Domestic Relationships.

**D. Comparative Negligence: In General.**

1. [§1327] Nature and Purpose of Doctrine.
2. [§1328] Restatement 3d.
3. [§1329] Adoption of Doctrine in California.
4. [§1330] Limited Retroactivity.
5. [§1331] Joint and Several Liability Retained.
6. [§1332] Assigning Shares of Responsibility.
7. [§1333] Defendant's Negligence or Other Fault.
8. [§1334] Plaintiff's Contributory Fault Generally.
9. [§1335] Instructions.

**E. Comparative Negligence: Assumption of Risk as Contributory Negligence.**

1. [§1336] Former Law: Overlapping Defenses.
2. [§1337] Unreasonable Assumption of Risk: Defense Abolished.
3. [§1338] Reasonable Assumption of Risk: Conflict of Authority>.
4. Primary Versus Secondary Assumption of Risk.
  - (a) In General.
    - (1) [§1339] Adoption of Theory.
    - (2) [§1340] Extension to Noncompetitive Recreational Activity.
    - (3) [§1341] Restatement 3d.
    - (4) [§1342] Determining Whether Primary Assumption of Risk Doctrine Applies.
  - (b) Sports or Recreation.
    - (1) [§1343] Baseball.
    - (2) [§1344] Boating and Rafting.
    - (3) [§1345] Dancing.
    - (4) [§1346] Equestrian Activities.
    - (5) [§1347] Football.
    - (6) [§1348] Skating.
    - (7) [§1349] Skiing and Snowboarding.
    - (8) [§1350] Other Sports.
    - (9) [§1351] Athletic Instruction.
    - (10) [§1351A] (New) Amusement Parks.
  - (c) Job Performance.
    - (1) [§1352] Animal Care.
    - (2) [§1353] Medicine.
    - (3) [§1354] Public or Private Safety.
    - (4) [§1355] Other Jobs.
  - (d) [§1356] Miscellaneous Activities.

**F. Comparative Negligence: Comparative Partial Indemnity.**

1. In General.
  - (a) [§1357] Adoption of Doctrine.
  - (b) [§1358] No Apportionment Among Defendants.
  - (c) [§1359] Where One Defendant Is Judgment Proof.
2. Implied Indemnity Upheld.
  - (a) [§1360] Where Indemnitor Is Strictly Liable.
  - (b) [§1361] Where Indemnitor Is Not Joined in Original Action.
  - (c) [§1362] Where Indemnitee Settles.

- (d) [§1363] Where Indemnitee's Liability Is Not Based on Tort.
- (e) [§1364] Where Cause of Action Against Indemnitor Is Dismissed.
- (f) [§1365] Intentional Tortfeasors.
- (g) [§1366] Other Situations.

**3. Implied Indemnity Denied.**

- (a) [§1367] Homeowners Association.
- (b) [§1368] Practice of Law.
- (c) [§1369] Other Situations Where Indemnity Is Denied.
- (d) [§1370] Implied Contractual Indemnity.

**G. Comparative Negligence: Miscellaneous Problems.**

- 1. [§1371] Applicability of Doctrine in Particular Cases.
- 2. [§1372] Setoff.
- 3. [§1373] Release.
- 4. [§1374] Parties.
- 5. [§1375] Special Verdict.
- 6. [§1376] Judgment.

**XV. WRONGFUL DEATH**

**A. In General.**

- 1. [§1377] No Common Law Right of Action.
- 2. Statutory Cause of Action.
  - (a) [§1378] In General.
  - (b) [§1379] Statute of Limitations.
  - (c) [§1380] Lump Sum Verdict.
  - (d) [§1381] Scope of Action.
  - (e) [§1382] No Action for Death of Unborn Child.
- 3. Federal Acts.
  - (a) [§1383] In General.
  - (b) [§1384] Action Under Federal Civil Rights Act.

**B. Cause of Action and Parties.**

- 1. Single Joint Cause of Action.
  - (a) [§1385] In General.
  - (b) [§1386] Effect of Settlement by One Plaintiff.
  - (c) [§1387] Action by Omitted Heir.
- 2. Persons Entitled To Sue.
  - (a) [§1388] Heirs Under Former Law.
  - (b) [§1389] Listed Persons Under Current Law.
  - (c) [§1390] Putative Spouse.
  - (d) [§1391] Domestic Partner.
  - (e) [§1392] Dependent Parents.
  - (f) [§1393] Child of Presumed Parent.
  - (g) [§1394] Other Persons.
- 3. Persons Not Entitled To Sue.
  - (a) [§1395] Nonmarital Cohabitant.
  - (b) [§1396] Heir When Statutory Heirs Disclaim.
  - (c) [§1397] Other Persons.
- 4. [§1398] Right by Compromise and Estoppel.

**C. [§1399] Necessity of Pecuniary Loss.**

**D. Defenses.**

**1. [§1400] Negligence of Decedent.**

**2. [§1401] Negligence of Heir.**

**3. [§1402] Prior Action or Release.**

**XVI. ABSOLUTE AND STRICT LIABILITY**

**A. Liability for Dangerous Animals.**

**1. In General.**

**(a) [§1403] Necessity of Knowledge.**

**(b) [§1404] Liability Based on Negligence.**

**(c) [§1405] Liability to Trespasser.**

**(d) [§1406] Liability for Trespassing Animal.**

**(e) [§1406A] (New) Restatement 3d: When Strict Liability Is Not Applicable.**

**2. Dogs.**

**(a) [§1407] Statutory Liability.**

**(b) Dog-Bite Statute.**

**(1) [§1408] In General.**

**(2) [§1409] Private Place.**

**(3) [§1410] Veterinarian's Assumption of Risk.**

**(4) [§1411] Immunity for Military and Police Dogs.**

**(c) [§1412] Liability Independent of Statute.**

**3. [§1413] Causation and Contributory Fault.**

**B. Ultrahazardous Activity: Liability Without Fault.**

**1. [§1414] Theory of Ultrahazardous Activity.**

**2. Development of California Law.**

**(a) [§1415] Earlier Cases.**

**(b) [§1416] Adoption of Restatement Rule.**

**3. [§1417] Causation and Contributory Fault.**

**4. Activities Classed as Ultrahazardous.**

**(a) [§1418] Using Explosives.**

**(b) [§1419] Fumigating.**

**(c) [§1420] Crop Dusting.**

**(d) [§1421] Testing Rocket Motor.**

**(e) [§1422] Using Blowtorch Near Oil.**

**(f) [§1423] Using Electrical Transformers Containing PCBs.**

**5. Activities Not Classed as Ultrahazardous.**

**(a) [§1424] Impounding Water.**

**(b) [§1425] Aviation.**

**(c) [§1426] Excavation and Earth Moving.**

**(d) [§1427] Other Activities.**

**C. Strict Products Liability.**

**1. In General.**

**(a) [§1428] Background: Negligence and Warranty.**

**(b) [§1429] Liability Irrespective of Fault.**

**(c) [§1430] Restatement.**

- (d) [§1431] Negligence Liability Compared.**
- (e) [§1432] Indemnity.**
- (f) [§1433] Recovery for Emotional Distress.**
- (g) [§1434] No Avoidance of Liability by Written Agreement.**

**2. What Constitutes Defective Product.**

**(a) In General.**

- (1) [§1435] Restatement 3d.**
- (2) [§1436] Product Need Not Be Unreasonably Dangerous.**
- (3) [§1437] Jury Instructions.**

**(b) Particular Products.**

- (1) [§1438] Asbestos.**
- (2) [§1439] Machinery and Equipment.**
- (3) [§1440] Food and Beverages.**
- (4) [§1441] Drugs, Medical Devices, and Personal Care Products.**
- (5) [§1442] Household Furnishings and Appliances.**
- (6) [§1443] Motor Vehicle Equipment.**
- (7) [§1444] Sports and Recreational Equipment.**
- (8) [§1445] Miscellaneous Products.**
- (9) Electrical Facilities and Power.**

**(aa) [§1446] Electrical Facilities: No Strict Liability.**

**(bb) [§1447] Delivery of Electricity: Strict Liability.**

- (10) [§1448] Restatement Rules Applicable to Particular Products.**

**(c) Defects in Design.**

- (1) [§1449] In General.**
- (2) [§1450] Restatement 3d.**
- (3) [§1451] All Components Considered.**
- (4) [§1452] Possibility of Alternative Design.**
- (5) [§1453] Product Need Not Be Unreasonably Dangerous.**
- (6) [§1454] Dangerous Location.**
- (7) [§1455] Consumer Expectations and Risk-Benefit Tests: In General.**

**(8) Consumer Expectations and Risk-Benefit Tests: Qualifications.**

**(aa) [§1456] Design Merits Are Irrelevant in Consumer Expectations Analysis.**

**(bb) [§1457] Warning Is Relevant in Risk-Benefit Analysis.**

**(cc) [§1458] Propriety of Instruction on Consumer Expectations Where Product Is Not Readily Available.**

**(dd) [§1459] Establishing Prima Facie Case.**

**(9) Consumer Expectations and Risk-Benefit Tests: Application.**

**(aa) [§1460] Breast Implants.**

**(bb) [§1461] Motorcycles.**

**(cc) [§1462] Arthroscopic Scissors.**

**(dd) [§1463] Firearms and Ammunition.**

- (ee) [§1464] Other Decisions.
  - (d) Obvious Defects.
    - (1) [§1465] Strict Liability for Obvious Defects.
    - (2) [§1466] Contradictory Instructions.
- 3. Failure To Warn.
  - (a) In General.
    - (1) [§1467] Duty To Warn.
    - (2) [§1468] Risk-Benefit Analysis.
    - (3) [§1469] Product of Another Manufacturer.
  - (b) Drugs.
    - (1) [§1470] In General.
    - (2) [§1471] Prescription Drugs.
    - (3) [§1472] Warning in Languages Other Than English.
    - (4) [§1473] Restatement 3d.
  - (c) Lack of Knowledge of Danger.
    - (1) [§1474] Unforeseeable Danger.
    - (2) [§1475] Duty Despite Lack of Knowledge.
  - (d) [§1476] Adequacy of Warning.
  - (e) [§1477] Knowledge or Knowability.
  - (f) [§1478] Postsale Failure To Warn.
- 4. [§1479] Failure To Recall Product.
- 5. Scope of Liability.
  - (a) Persons Liable.
    - (1) [§1480] Manufacturer: In General.
    - (2) Manufacturer: Successor Corporations.
      - (aa) [§1481] Liability Where Assets Are Acquired.
      - (bb) [§1482] Distinction: Acquisition of Capital Stock.
      - (cc) [§1483] Distinction: Negligence Action.
      - (dd) [§1484] Distinction: Acquisition Through Bankruptcy.
      - (ee) [§1485] Liability for Failure To Warn.
    - (3) Manufacturer: Unidentified Maker of Fungible Goods.
      - (aa) [§1486] DES Case.
      - (bb) [§1487] Drug Marketed for Different Purpose.
      - (cc) [§1488] Defective Vaccine.
      - (dd) [§1489] Insufficient Share of Market.
    - (4) Manufacturer: Asbestos Cases.
      - (aa) [§1490] Where Market Share Theory Is Inapplicable.
      - (bb) [§1491] Where Market Share Theory Is Applicable.
      - (cc) [§1492] Erroneous Burden-Shifting Instruction.
    - (5) [§1493] Manufacturer: Multiple Toxin Cases.
    - (6) [§1494] Manufacturer: Apparent Manufacturer.
    - (7) Retail Dealer.
      - (aa) [§1495] In General.
      - (bb) [§1496] Seller of Secondhand Goods.
      - (cc) [§1497] Pharmacist.

- (8) Wholesaler or Distributor.**
  - (aa) [§1498] In General.**
  - (bb) [§1499] Successor Corporation.**
- (9) [§1500] Licensor or Franchisor.**
- (10) Mass Produced Homes.**
  - (aa) [§1501] Seller.**
  - (bb) [§1502] Manufacturer or Supplier of Component Part.**
- (11) [§1503] Vendor of Tract Lots.**
- (12) [§1504] Developer of Planned Development Project.**
- (13) [§1505] Subcontractor.**
- (14) [§1506] Lessor of Personal Property.**
- (15) [§1507] Lessor of Residential Premises.**
- (15a) [§1507A] (New) Finance Lessor.**
- (16) [§1508] Scope of Liability Under Third Restatement.**
- (b) Persons Entitled To Recover.**
  - (1) [§1509] Foreseeable User or Consumer.**
  - (2) [§1510] Commercial Customer.**
  - (3) [§1511] Bystander.**
  - (4) [§1512] Licensee.**
- (c) Kinds of Injury or Damage.**
  - (1) [§1513] Physical Injury or Wrongful Death.**
  - (2) Economic Loss.**
    - (aa) [§1514] No Recovery Rule.**
    - (bb) [§1515] As Applied to Strict Liability Action.**
    - (cc) [§1516] As Applied to Negligence Action.**
    - (dd) [§1517] Restatement Rule.**
    - (ee) [§1517A] (New) Distinction: Intentional Tort.**
- (d) [§1518] Enhancement of Harm.**
- (e) Where Liability Is Not Imposed.**
  - (1) [§1519] Sales Not in Course of Business.**
  - (2) Performance of Services.**
    - (aa) [§1520] In General.**
    - (bb) [§1521] Medical Operation.**
    - (cc) [§1522] Other Medical Procedure.**
    - (dd) [§1523] Latent Defect in Hospital Premises.**
  - (3) [§1524] Commercial Transaction.**
  - (4) [§1525] Commercial Establishment.**

## **6. Defenses.**

- (a) Defect Is Not Proximate Cause of Injury.**
  - (1) [§1526] In General.**
  - (2) [§1527] Vehicle Cases.**
  - (3) Article To Be Processed.**
    - (aa) [§1528] In General.**
    - (bb) [§1529] Raw Material and Sophisticated Buyer Defenses.**

- (4) **Abnormal Use.**
  - (aa) [§1530] Unforeseeable Use.
  - (bb) [§1531] Foreseeable Use.
- (b) **Unavoidably Unsafe Products.**
  - (1) **In General.**
    - (aa) [§1532] Drugs and Vaccines.
    - (bb) [§1533] Other Products.
  - (2) **Statutory Immunity for Inherently Unsafe Product.**
    - (aa) [§1534] In General.
    - (bb) [§1535] Revocation of Immunity for Tobacco Manufacturers.
    - (cc) [§1536] Retroactivity.
- (c) [§1537] Adequate Warning.
- (d) [§1538] Government Contractor Defense.
- (e) **Compliance With Federal Standards.**
  - (1) [§1539] Automobile Safety Equipment.
  - (2) [§1540] Medical Devices.
  - (3) [§1540A] (New) Distinction: Drugs.
- (f) **Doctrine of Comparative Fault.**
  - (1) [§1541] Former Law: Assumption of Risk.
  - (2) [§1542] Adoption of Doctrine.
  - (3) [§1543] Restatement Rule.
- (g) [§1544] Contractual Exculpation.

## **XVII. DAMAGES: IN GENERAL**

### **A. Nominal Damages.**

- 1. [§1545] Right to Nominal Damages.
- 2. [§1546] Where Award Is Proper.
- 3. [§1547] Amount Must Be Trivial.

### **B. Compensatory Damages.**

- 1. **In General.**
  - (a) [§1548] Theory and Distinctions.
  - (b) [§1549] General and Special Damages.
  - (c) [§1550] No Double Recovery.
  - (d) [§1551] Certainty.
  - (e) [§1552] Prospective Damages.
- 2. **Causation.**
  - (a) [§1553] Nature of Requirement.
  - (b) [§1554] Burden of Proof Where Causation Is Uncertain.
- 3. **Compensatory Damages in Particular Circumstances.**
  - (a) [§1555] Anticipated Punitive Damages in Malpractice Action.
  - (b) [§1556] Postresignation Damages in Employment Action.
- 4. **Tax Treatment of Tort Recovery.**
  - (a) [§1557] In General.
  - (b) [§1558] Punitive Damages.

### **C. Punitive or Exemplary Damages.**

- 1. **In General.**



- (a) [§1559] Nature and Purpose of Award.
  - (b) [§1560] Restatement 2d.
  - (c) [§1561] Model Punitive Damages Act.
  - (d) [§1562] Instructions.
  - (e) [§1563] Awards in Multiple Litigation.
  - (f) [§1564] No Insurance Against Award.
  - (g) [§1565] Is Award Disfavored?
- 2. Constitutionality of Awards.**
- (a) [§1566] In General.
  - (b) [§1567] No Due Process Violation.
  - (c) [§1568] Due Process Violation.
  - (d) [§1568A] (New) Disgorgement of Profits.
  - (e) [§1568B] (New) Harm to Nonparties.
- 3. Statutory Penalties Distinguished.**
- (a) [§1569] Nature and Validity of Penalties.
  - (b) [§1570] Treble Damages.
  - (c) [§1571] Recovery of Both Penalty and Punitive Damages.
- 4. Malice.**
- (a) [§1572] Requirement of Actual Malice.
  - (b) [§1573] Inference From Circumstances.
  - (c) Conscious Disregard of Rights or Safety.
    - (1) [§1574] Nature of Problem and Earlier Cases.
    - (2) [§1575] Rule That Conscious Disregard of Safety Is Sufficient.
    - (3) [§1576] Rule Is Retroactive.
  - (d) [§1577] Ignorance of Injured Party's Identity.
- 5. Proper and Improper Plaintiffs.**
- (a) [§1578] In General.
  - (b) [§1579] Recovery by Public Entities.
- 6. Proper and Improper Defendants.**
- (a) [§1580] In General.
  - (b) Employer.
    - (1) [§1581] General Rule of Nonliability.
    - (2) [§1582] Act Authorized or Ratified.
    - (3) [§1583] Liability in Other Situations.
    - (4) [§1584] Award Only Against Employer.
    - (5) [§1585] Codification of Rules.
- 7. Types of Cases.**
- (a) Tort Actions.
    - (1) [§1586] Personal Torts.
    - (2) [§1587] Fraud.
    - (3) [§1588] Trespass or Injury to Real Property.
    - (4) [§1589] Wrongful Taking of Personal Property.
    - (5) Breach of Covenant of Good Faith.
      - (aa) [§1590] Former Law: Bad Faith Rule.
      - (bb) [§1591] Bad Faith Rule Limited to Insurance Cases.
      - (cc) [§1592] Breach by Surety.

- (6) **Products Liability Action.**
  - (aa) **§1593 In General.**
  - (bb) **§1594 Market Share Cases.**
- (7) **§1595 Civil Rights Action.**
- (8) **§1596 Job Discrimination Action.**
- (9) **§1597 Other Torts.**
- (b) **§1598 Equity Actions.**
- (c) **§1599 Alternative Contract or Tort Actions.**
- (d) **Action Against Health Care Provider.**
  - (1) **§1600 In General.**
  - (2) **§1601 Arising Out of Professional Negligence.**
  - (3) **§1602 Substantial Probability That Plaintiff Will Prevail.**
  - (4) **§1603 Time Limits.**
  - (5) **§1604 Action Based on Intentional Tort or Crime.**
- (e) **§1605 Action Against Religious Corporation.**
- (f) **§1606 Felon's Action Against Victim.**
- 8. **Necessity of Actual Damages.**
  - (a) **§1607 Nature of Requirement.**
  - (b) **§1608 No Need for Prayer.**
  - (c) **§1609 Separate Award Is Not Essential.**
  - (d) **§1610 Award of Nominal Damages.**
- 9. **Determination of Award and Amount.**
  - (a) **§1611 Discretion of Jury.**
  - (b) **§1612 Relation to Actual Damages.**
  - (c) **Wealth of Defendant.**
    - (1) **Evidence Admissible.**
      - (aa) **§1613 In General.**
      - (bb) **§1614 Net Worth.**
    - (2) **Bifurcation of Trial.**
      - (aa) **§1615 In General.**
      - (bb) **§1616 Same Trier of Fact.**
      - (cc) **§1617 Time of Application.**
    - (3) **§1618 Discovery of Financial Condition.**
    - (4) **§1619 Introduction of Evidence Is Essential.**
    - (5) **§1620 Awards Upheld.**
    - (6) **Awards Held Excessive.**
      - aa) **§1621 In General.**
      - bb) **§1622 Defendant Not Wealthy.**
  - (d) **§1623 Prejudicial Matter in Trial.**
  - (e) **§1623A (New) Uncompensated or Potential Harm as Affecting Amount.**
- D. **Mitigation of Damages.**
  - 1. **Avoidable Consequences.**
    - (a) **§1624 In General.**
    - (b) **§1625 Recovery of Cost of Efforts.**
    - (c) **Exceptions to Requirement.**

- (1) [§1626] Unreasonable Efforts.
- (2) [§1627] Reliance on Defendant's Promise.
- (3) [§1628] Lender's Failure To Insure Collateral.
- 2. [§1629] Benefits Conferred by Defendant.
- 3. [§1630] Other Mitigating Factors.
- 4. Collateral Source Rule.
  - (a) [§1631] Nature of Rule.
  - (b) [§1632] Supporting Theories and Policies.
  - (c) Scope and Application of Rule.
    - (1) [§1633] In General.
    - (2) [§1634] Gratuitous Payment.
    - (3) [§1635] Illustrations.
  - (d) Action Against Public Entity.
    - (1) [§1636] In General.
    - (2) Statutory Offset Procedure.
      - (aa) [§1637] Nature of Statute.
      - (bb) [§1638] Motion, Discovery, and Settlement Conference.
      - (cc) [§1639] Hearing and Determination.
  - (e) Distinctions.
    - (1) [§1640] Payment by Tortfeasor's Insurer.
    - (2) [§1641] Uninsured Motorist Proceeds.
    - (3) [§1642] Use of Rule To Reduce Damages.

**E. Interest.**

- 1. Actions Other Than for Personal Injury.
  - (a) [§1643] In General.
  - (b) [§1644] Obligation Not Arising From Contract.
- 2. Prejudgment Interest in Personal Injury Actions.
  - (a) [§1645] General Rule Against Interest.
  - (b) Statutory Authorization.
    - (1) [§1646] Nature and Scope of Statute.
    - (2) [§1647] Interest on Award of Punitive Damages.
    - (3) [§1648] Verdict for Personal Injury and Other Damages.
    - (4) [§1649] Service Must Be on Party.
    - (5) [§1650] Prejudgment Interest Is Not Element of Damages.
    - (6) [§1651] Scope of Personal Injury.
    - (7) [§1652] Actions Excluded.
    - (8) [§1653] Insurer's Settlement Offer as Abrogating Obligation To Pay Prejudgment Interest.
    - (9) [§1654] Arbitration Proceedings.

**F. Attorneys' Fees and Other Litigation Expense.**

- 1. [§1655] General Rule: Fees Are Not Recoverable.
- 2. [§1656] Expense of Previous Litigation.

**G. Proposition 213: Limitation on Recovery of Damages.**

- 1. [§1657] In General.
- 2. Uninsured Motorists.

- (a) [§1658] In General.
- (b) [§1659] Products Liability.
- (c) [§1660] Punitive Damages.
- (d) [§1661] Wrongful Death.
- (e) [§1662] Action Against Public Entity.
- (f) [§1663] Causal Connection.
- (g) [§1664] Insured Vehicle.

## **XVIII. DAMAGES: KINDS OF INJURY**

### **A. Injuries to Person.**

- 1. [§1665] In General.
- 2. [§1666] Loss of Past Earnings or Value of Time.
- 3. Impairment of Future Earning Capacity.
  - (a) [§1667] In General.
  - (b) [§1668] Plaintiff's Lost Years.
  - (c) [§1669] Illegal Alien Subject to Deportation.
- 4. [§1670] Medical Care and Related Expense.
- 5. Physical Pain and Mental Suffering.
  - (a) [§1671] In General.
  - (b) [§1672] Nature of Mental Suffering.
  - (c) [§1673] Loss of Enjoyment.
  - (d) [§1674] Injury to Baby.
  - (e) [§1675] Permissible Argument.
- 6. [§1676] Aggravation of Plaintiff's Prior Condition.
- 7. [§1677] Susceptibility to Subsequent Disease or Injury.
- 8. Loss of Consortium.
  - (a) [§1678] Former Rule Denying Recovery.
  - (b) Recovery by Spouse.
    - (1) [§1679] In General.
    - (2) [§1680] Effect of Insurance Policy "One Person" Limit.
    - (3) [§1681] No Recovery for Premarital Injury.
    - (4) [§1682] Scope of Recovery.
  - (c) [§1683] No Recovery by Child.
  - (d) [§1684] No Recovery by Parent.
  - (e) [§1685] No Recovery by Nonmarital Cohabitant.
- 9. Abuse of Elderly or Dependent Adult.
  - (a) [§1686] Statutory Remedies.
  - (b) [§1687] Exception for Professional Negligence by Health Care Provider.
  - (c) [§1688] Forms and Instructions.
- 10. [§1689] Marketing of Illegal Drugs.

### **B. Wrongful Death.**

- 1. In General.
  - (a) [§1690] Recovery of Loss.
  - (b) [§1691] Value of Society and Companionship.
- 2. Death of Spouse and Parent.
  - (a) [§1692] Earnings of Husband and Father.

- (b) [§1693] Services of Wife and Mother.
    - (c) [§1694] Child's Loss of Advice and Training.
  - 3. Death of Child.
    - (a) [§1695] Minor Child.
    - (b) [§1696] Adult Child.
  - 4. [§1697] Death of Other Relative.
- C. Other Torts to Person, Reputation, and Similar Interests.
  - 1. [§1698] False Imprisonment.
  - 2. [§1699] Malicious Prosecution.
  - 3. [§1700] Abuse of Process.
  - 4. Defamation.
    - (a) [§1701] General Damages.
    - (b) [§1702] Special Damages.
  - 5. [§1703] Slander of Title and Trade Libel.
  - 6. [§1704] Invasion of Privacy.
  - 7. Causing Emotional Distress.
    - (a) [§1705] Instruction.
    - (b) Underlying Tort.
      - (1) [§1706] Negligence.
      - (2) [§1707] Conversion.
      - (3) [§1708] Insurance Bad Faith.
- D. [§1709] Interference With Contract or Economic Advantage.
- E. Fraud and Deceit.
  - 1. Development of Out-of-Pocket Loss Rule.
    - (a) [§1710] Nature of Rule.
    - (b) [§1711] Value of Property.
    - (c) [§1712] Consequential Damages.
    - (d) [§1713] Quasi-Contractual Recovery.
  - 2. Statutory Expansion.
    - (a) [§1714] Elements of Damage.
    - (b) [§1715] Fraud on Purchaser.
    - (c) [§1716] Illustrations.
  - 3. [§1717] Breach of Fiduciary Duty.
- F. Trespass and Injury to Personal Property.
  - 1. Injury.
    - (a) [§1718] Alternative Measures.
    - (b) [§1719] Where One Measure Is Larger.
  - 2. Destruction.
    - (a) [§1720] Market Value.
    - (b) [§1721] Loss of Use.
  - 3. Conversion.
    - (a) [§1722] Alternative Measures.
    - (b) [§1723] Conversion of Secured Note.
  - 4. Detention: Replevin.
    - (a) [§1724] In General.
    - (b) [§1725] Use Value in Excess of Value of Property.

**G. Trespass and Injury to Real Property.**

- 1. [§1726] Wrongful Occupancy.**
- 2. Injury to Land or Improvements by Completed Wrong.**
  - (a) [§1727] Diminution in Value.**
  - (b) [§1728] Cost of Repairs.**
  - (c) [§1729] Lost Profits.**
  - (d) [§1730] Emotional Distress.**
- 3. [§1731] Independent Unit or Fixture.**
- 4. Timber or Fruit Trees.**
  - (a) [§1732] Ordinary Injury or Taking: Actual Damages.**
  - (b) [§1733] Trespass Under Mistake: Double Damages.**
  - (c) [§1734] Wilful and Malicious Trespass: Treble Damages.**
- 5. [§1735] Injury to Growing Crops.**
- 6. [§1736] Taking Minerals or Other Products.**
- 7. [§1737] Continuing Injuries or Nuisance.**

**H. Excessive and Inadequate Damages.**

- 1. In General.**
  - (a) [§1738] Remedies in Trial Court.**
  - (b) [§1739] Remedies in Reviewing Court.**
  - (c) [§1740] Discretion of Jury and Trial Court.**
- 2. Excessive Damages.**
  - (a) Matters Considered on Issue.**
    - (1) [§1741] Evidence of Injury.**
    - (2) [§1742] Inflation.**
    - (3) [§1743] Comparison of Judgments.**
  - (b) Damages Held Excessive.**
    - (1) [§1744] Personal Injuries: In General.**
    - (2) [§1745] Injuries to or Death of Children.**
    - (3) [§1746] Intentional Torts.**
  - (c) Damages Held Not Excessive.**
    - (1) [§1747] Negligent Personal Injuries.**
    - (2) [§1748] Other Cases.**
  - (d) [§1749] Judgment by Default.**
- 3. Inadequate Damages.**
  - (a) [§1750] Damages Held Inadequate.**
  - (b) [§1751] Small Awards Upheld.**