

# 7 Summary of California Law (10th), Constitutional Law

## I. THE FEDERAL SYSTEM

### A. Limited Powers of Federal Government.

1. [§1] Source of Federal Powers.
2. Reserved Powers of States.
  - (a) [§2] In General.
  - (b) Regulation of State Employees.
    - (1) [§3] Former Rule.
    - (2) [§4] Valid Regulation.
    - (3) [§5] Invalid Regulation.
  - (c) [§6] No Requirement That State Officials Administer Federal Law.
  - (d) [§7] Regulation of State Utilities.

### B. Relations Between States and Federal Government.

1. Federal Supremacy.
  - (a) Conflicting State Law Is Invalid.
    - (1) [§8] Constitutional Principle.
    - (2) [§9] Questions Involved.
    - (3) Substantive Civil Law.
      - (aa) [§10] Arbitration.
      - (bb) [§11] Aviation.
      - (cc) [§12] Banking.
      - (dd) [§13] Bankruptcy.
      - (ee) [§14] Employee Retirement Income Security Act.
      - (ff) [§15] Environmental Legislation.
      - (gg) [§16] Foreign Affairs.
      - (hh) [§17] Labor Relations.
      - (ii) [§18] Telecommunications.
      - (jj) [§19] Other Subjects.
  - (b) When State Law Will Be Upheld.
    - (1) [§20] General Principles.
    - (2) Where No Conflict Exists.
      - (aa) [§21] U.S. Supreme Court.
      - (bb) [§22] California Supreme Court.
      - (cc) [§23] California Courts of Appeal.
    - (3) [§24] Federal Authorization.
  - (c) [§25] State Court Must Apply Federal Law.
2. [§26] Interference With Governmental Functions.
3. Enclave: Federal Territory Within State.
  - (a) [§27] Federal Jurisdiction.
  - (b) [§28] Reserved State Jurisdiction.
  - (c) [§29] Retrocession.
4. [§30] Full Faith and Credit to Judgments.

### C. Relations Between States.

**1. Full Faith and Credit Clause.**

- (a) **§31 In General.**
- (b) **§32 Choice of Law Questions.**
- (c) **State Statutes.**
  - (1) **§33 Right of Action.**
  - (2) **§34 Substantive Defense.**
- (d) **State Judgments.**
  - (1) **§35 General Principle.**
  - (2) **§36 Public Policy Exception.**
  - (3) **§37 Necessity of Jurisdiction.**
  - (4) **§38 No Greater Effect Than in State of Rendition.**
  - (5) **§39 Judgment Barred by Limitations.**
  - (6) **§40 Penal and Tax Judgments.**

**2. Actions Against States.**

- (a) **§41 In General.**
- (b) **Action Authorized by Federal Statute.**
  - (1) **§42 Former Rule.**
  - (2) **§43 Fourteenth Amendment.**
  - (3) **§44 Family and Medical Leave Act.**
  - (4) **§44A (New) Americans With Disabilities.**
- (c) **Action Not Authorized by Federal Statute.**
  - (1) **§45 In General.**
  - (2) **§46 Indian Gaming.**
  - (3) **§47 Patent and Trademark.**
  - (4) **§48 Fair Labor Standards.**
  - (5) **§49 Age Discrimination.**
  - (6) **§50 Americans With Disabilities.**
- (d) **§51 Action in State Court.**
- (e) **Action Against State Officer or Agency.**
  - (1) **§52 In General.**
  - (2) **§53 Action To Recover Money.**
  - (3) **§54 Action To Compel Future Act or Expenditure.**
  - (4) **§55 Action For Injunctive or Declaratory Relief.**
  - (5) **§56 Action To Compel Compliance With State Law.**

**D. Diversity Jurisdiction: Rules of Decision Act.**

**1. In General.**

- (a) **§57 Nature of Diversity Jurisdiction.**
- (b) **§58 Erie Doctrine.**
- (c) **§59 Determination of State Law.**

**2. Procedure.**

- (a) **§60 In General.**
- (b) **§61 Capacity To Sue.**
- (c) **§62 Statute of Limitations.**

**3. §63 Conflict of Laws.**

**4. Federal Statute or Policy.**

(a) [§64] Case Involving Federal Statute.

(b) [§65] Case Involving Federal Policy.

E. [§66] Interstate Compacts and Reciprocal Agreements.

## II. NATURE AND SCOPE OF CONSTITUTIONAL LAW

### A. Constitution of California.

1. [§67] History.

2. [§68] Restrictive and Enabling Provisions.

3. [§69] Self-Executing Provisions.

### B. Amendment of Constitutions.

1. [§70] Federal Constitution.

2. California Constitution.

(a) [§71] In General.

(c) [§72] No Revision by Initiative.

### C. Power To Declare Laws Unconstitutional.

#### 1. In General.

(a) [§73] Origin and Nature of Power.

(b) [§74] Administrative Agency Cannot Exercise Power.

(c) [§75] Presumption of Validity.

#### 2. Standing: Interest of Party Attacking Constitutionality.

(a) In General.

(1) [§76] Nature of Standing Requirement.

(2) [§77] Standing Not Shown.

(3) [§78] Standing Shown.

(b) [§79] First Amendment Challenge.

(c) [§80] State or Local Taxpayer.

(d) [§81] Federal Taxpayer.

(e) Member of Injured Class.

(1) [§82] General Rule and Warth Test.

(2) [§83] California Test.

(3) [§84] Class Member Unable To Challenge Law.

(4) [§85] Complainant Injured by Law.

(5) [§86] Challenge by State, Subdivision, or Court.

#### 3. Political Questions.

(a) [§87] General Rule.

(b) [§88] Illustrations.

#### 4. Case or Controversy Requirement in Federal Courts.

(a) [§89] Constitutional Limitation.

(b) [§90] Jurisdiction Rejected.

(c) [§91] Jurisdiction Accepted.

#### 5. Abstention: Where Decision on Constitutionality Is Unnecessary.

(a) [§92] Abstention Doctrine.

(b) [§93] Pullman Abstention.

(c) [§94] Younger Abstention.

(d) [§95] Burford Abstention.

(e) Exceptions.

(1) [§96] In General.

- (2) [§97] Absence of Pending Proceeding in State Court.
  - 6. Methods of Raising Constitutionality.
    - (a) Injunction.
      - (1) [§98] In General.
      - (2) [§99] Limitations on Federal Injunction of State Law.
    - (b) [§100] Declaratory Relief and Quiet Title.
    - (c) Extraordinary Writs and Appeal.
      - (1) [§101] In General.
      - (2) Challenge to Proposed Legislation.
        - (aa) [§102] In General: No Relief.
        - (bb) [§103] Invalid Initiative.
  - 7. [§104] Waiver of Constitutional Right.
  - 8. [§105] Effect of Determination of Unconstitutionality.
  - 9. Partial Unconstitutionality and Severability.
    - (a) [§106] In General.
    - (b) [§107] Severability Clause.
    - (c) [§108] Construction To Avoid Unconstitutionality.
  - 10. State Constitutional Protection (Independent Grounds).
    - (a) [§109] Nature of Doctrine.
    - (b) [§110] Commentary.
    - (c) [§111] Specification of State Grounds.
- D. Interpretation of Constitutions and Statutes.
- 1. In General.
    - (a) [§112] Federal and State Courts.
    - (b) [§113] Strict or Liberal Construction of Constitution.
    - (c) [§114] Commentary.
  - 2. Rules for Interpretation of Statutes.
    - (a) [§115] In General.
    - (b) [§116] Initiative and Referendum Powers.
    - (c) [§117] Conflicting Statutes.
    - (d) [§118] Construction in Favor of Constitutionality.
    - (e) [§119] Facial Challenge.
    - (f) [§120] Disregarding Words To Avoid Absurdity.
    - (g) [§121] Plain Meaning and Other Particular Rules.
    - (h) [§122] Application of Rules.
  - 3. Aids to Interpretation.
    - (a) [§123] In General.
    - (b) Legislative History.
      - (1) [§124] In General.
      - (2) [§125] Sources of Legislative History.
    - (c) [§126] Statement of Legislative Findings or Intent.
    - (d) [§127] Contemporaneous Administrative Construction.
    - (e) [§128] Distinction: No Extrinsic Evidence Where Statute Is Clear.
- E. Title and Subject of Statute.

1. [§129] Descriptive Title.
2. [§130] Reenactment Requirement.
3. Single Subject Rule.
  - (a) [§131] In General.
  - (b) [§132] Rule Violated.
  - (c) [§133] Rule Not Violated.

**F. Uncertainty: Void for Vagueness.**

1. [§134] Criminal Statutes.
2. [§135] Civil Statutes.
3. [§136] Rules.

**III. SEPARATION OF POWERS**

**A. In General.**

1. [§137] Nature of Doctrine.
2. [§138] Exceptions and Distinctions.
3. [§139] Standing and Case-or-Controversy Requirement.

**B. Judicial Power.**

1. Judicial Power Is in Courts.
  - (a) The Judiciary.
    - (1) [§140] In General.
    - (2) [§141] Compelling Payment of Judgment Against Executive.
  - (b) [§142] Executive or Administrative Officers.
  - (c) The Legislature.
    - (1) [§143] In General.
    - (2) [§144] Statutes Abrogating or Interpreting Prior Law.
2. Delegation of Judicial Power.
  - (a) [§145] In General.
  - (b) [§146] Valid Administrative Adjudication.

**C. Legislative Power.**

1. Legislative Power Is in Legislature.
  - (a) [§147] In General.
  - (b) [§148] Court Cannot Compel Legislative Action.
  - (c) [§149] Court Cannot Inquire Into Legislative Motivation.
  - (d) Speech or Debate Clause.
    - (1) [§150] Nature of Immunity.
    - (2) [§151] No Immunity for Nonlegislative Activities.
  - (e) [§152] Qualifications of Members of Legislature.
2. Initiative and Referendum.
  - (a) In General.
    - (1) [§153] Constitutional Authorization.
    - (2) [§154] Statutory Procedure.
    - (3) [§155] Initiative.
    - (4) [§156] Referendum.
    - (5) [§157] Alternative and Complementary Measures.
    - (6) [§158] Amendment and Repeal.

- (b) **Exceptions to Initiative and Referendum Powers.**
  - (1) [§159] **Urgency, Elections, and Tax Matters.**
  - (2) [§160] **Matters of Statewide Concern.**
  - (3) [§161] **Administrative Action.**
  - (4) [§162] **Legislature's Constitutional Power Over Internal Affairs.**
  - (5) [§163] **Measure Identifying Person or Corporation.**

**3. Legislative Investigations.**

- (a) [§164] **Congressional Investigating Committees.**
- (b) [§165] **State and Municipal Investigating Committees.**

**4. Delegation of Legislative Power.**

- (a) [§166] **In General.**
- (b) [§167] **Express Standards.**
- (c) [§168] **Implied Standards.**
- (d) [§169] **Adequate Safeguards Doctrine.**

**5. [§170] Legislative Veto.**

**D. Executive Power.**

- 1. [§171] **In General.**
- 2. [§172] **Appointment Power.**
- 3. [§173] **Veto.**
- 4. [§174] **Invalid Delegation of Executive Power.**
- 5. [§175] **Judicially Appointed Special Prosecutor.**
- 6. [§176] **No Stay of Private Action.**

**IV. FUNDAMENTAL RIGHTS GENERALLY.**

**A. In General.**

- 1. **Restrictions on Federal and State Power.**
  - (a) [§177] **Federal Constitution.**
  - (b) [§178] **California Constitution.**
  - (c) [§179] **Classification of Rights.**
- 2. [§180] **Right To Petition Government.**
- 3. [§181] **Right To Bear Arms.**

**B. Citizenship.**

- 1. [§182] **Citizenship by Birth.**
- 2. **Citizenship by Naturalization.**
  - (a) **Immigration.**
    - (1) [§183] **In General.**
    - (2) [§184] **Scope of Power.**
    - (3) [§185] **Marriage Fraud Act.**
    - (4) [§186] **Detention of Juvenile Aliens.**
    - (5) [§187] **Political Asylum for Refugees.**
    - (6) [§188] **Employment of Unauthorized Aliens.**
  - (b) **Naturalization.**
    - (1) [§189] **In General.**
    - (2) **Eligibility.**
      - (aa) [§190] **In General.**
      - (bb) [§191] **Moral Character.**

(cc) [§192] Military Service.

**3. Denaturalization.**

(a) [§193] In General.

(b) [§194] Proof of Grounds.

**4. Expatriation.**

(a) [§195] In General.

(b) Acts Not Resulting in Expatriation.

(1) [§196] Residence in Foreign Country.

(2) [§197] Voting in Foreign Election.

(3) [§198] Desertion or Draft Evasion.

**C. [§199] Unreasonable Search and Seizure.**

**D. Slavery and Involuntary Servitude.**

1. [§200] General Rule: No Imprisonment for Debt.

2. Exceptions.

(a) [§201] Economic Oppression.

(b) [§202] Criminal Nonpayment of Fee or Tax.

(c) [§203] Other Exceptions.

**E. Protection to Persons Accused of Crime.**

1. [§204] In General.

2. Bill of Attainder.

(a) [§205] Nature of Prohibition.

(b) [§206] Crime of Communist Holding Union Office.

(c) [§207] Valid Legislation.

**F. Jury Trial.**

1. In Federal Courts.

(a) Nature of Guarantee.

(1) [§208] In General.

(2) [§209] Composition of Jury.

(3) [§210] Size of Jury.

(b) [§211] Exceptions.

(c) [§212] Waiver of Jury.

2. In State Courts.

(a) [§213] Right to Jury Trial.

(b) Nature of Guarantee.

(1) [§214] California Constitution.

(2) [§215] Federal Constitution.

(3) [§216] Jury of Less Than Six Is Invalid.

(c) [§217] Exceptions.

**G. Fundamental Rights Under Due Process Clause.**

1. [§218] In General.

2. [§219] Incorporation Theory.

3. [§220] Rights of Criminal Defendants.

4. Fundamental Civil Rights.

(a) [§221] In General.

(b) Rights of Mentally Ill Persons.

(1) [§222] Freedom From Unnecessary Confinement.

- (2) [§223] Constitutional Right to Treatment.
- (3) [§224] Statutory Rights.
- (c) [§225] Maternity Leave Regulations.
- (d) [§226] Distinction: Corporal Punishment of Pupil.
- (e) [§226A] (New) Marriage Between Persons of Same Sex.

## **V. SUFFRAGE.**

### **A. Nature of Right To Vote.**

- 1. [§227] Federal Constitution.
  - 2. Federal Voting Rights Act.
    - (a) [§228] In General.
    - (b) [§229] Prohibited Practices.
    - (c) Remedial Provisions.
      - (1) [§230] States and Political Subdivisions.
      - (2) [§231] Tests and Devices Suspended.
      - (3) [§232] Preclearance for Changes in Voting Regulations.
  - 3. California Law.
    - (a) [§233] In General.
    - (b) [§234] Secrecy, Absentee Ballots, and Voting by Mail.
    - (c) [§235] Write-in Voting.
    - (d) [§236] New Citizen Voting.
  - 4. [§237] 18-Year Old Voters.
- A-1. [§237A] (New) Valid Restriction: Identification.

### **B. Invalid Restrictions.**

- 1. [§238] Segregated Districts.
- 2. [§239] Required Designation of Race.
- 3. English Literacy Tests.
  - (a) [§240] Discrimination Against Blacks.
  - (b) Discrimination Against Non-English Speakers.
    - (1) [§241] Federal Law.
    - (2) [§242] California Law.
- 4. [§243] Poll Tax.
- 5. Residence.
  - (a) [§244] Discriminatory Provisions.
  - (b) [§245] Period of Residence.
- 6. Disenfranchisement for Criminal Conviction.
  - (a) [§246] Former California Law.
  - (b) [§247] California Constitutional Revision.

### **C. Political Parties and Candidates.**

- 1. Regulation of Primary Elections.
  - (a) [§248] In General
  - (b) [§249] Federal Cases.
  - (c) [§250] Independent Candidates
  - (d) [§251] Enrollment Deadline.
- 2. [§252] Rights of Blacks.
- 3. Political Activities of Public Employees.

- (a) [§253] Federal Employees.
    - (b) California Employees.
      - (1) [§254] In General.
      - (2) [§255] Case Law.
  - 4. Federal Regulation of Campaigns.
    - (a) [§256] Election Campaign Act.
    - (b) [§257] Contributions From Corporations or Labor Organizations.
    - (c) [§258] Restrictions on Political Committees.
  - 5. Candidates.
    - (a) Residence Requirement.
      - (1) [§259] Invalid Period.
      - (2) [§260] Valid Period.
    - (b) [§261] Filing Fee.
    - (c) [§262] Filing Deadline.
    - (d) [§263] Disqualification of Recalled Officer.
    - (e) [§264] Payment of Costs of Election Pamphlet.
    - (f) [§265] Content of Candidate's Statement.
    - (g) [§266] Candidate's Preelection Promise.
    - (h) [§267] Party's Endorsement of Candidate.
  - 6. Term Limits.
    - (a) [§268] United States Congress.
    - (b) [§269] State Government.
  - 7. [§270] Ballot Regulations.
  - 8. [§270A] (New) Election Contests.
- D. California Political Reform Act.**
- 1. In General.
    - (a) [§271] Nature and Purpose of Act.
    - (b) [§272] Statutory Framework.
    - (c) [§273] Enforcement.
  - 2. [§274] Fair Political Practices Commission.
  - 3. Campaign Disclosure.
    - (a) [§275] In General.
    - (b) [§276] Campaign Statements.
    - (c) [§277] Anonymous Mass Mailings.
    - (d) [§278] Prohibited Practices.
  - 4. Lobbyists.
    - (a) [§279] In General.
    - (b) [§280] Prohibited Acts.
  - 5. Conflicts of Interest.
    - (a) Prohibited Acts.
      - (1) [§281] In General.
      - (2) [§282] Exceptions.
    - (b) [§283] Disclosures.
    - (c) [§284] Conflict of Interest Codes.
    - (d) [§285] Restrictions on Former Officials.

**6. [§286] Restrictions on Honoraria, Gifts, and Travel Expenses.**

**7. Limitations on Campaign Spending and Contributions.**

(a) [§287] Statutory Development.

(b) [§288] Filing and Account Requirements.

(c) [§289] Contribution Limits.

(d) [§290] Voluntary Expenditure Limits.

(e) [§291] Use of Funds.

**E. [§292] Code of Fair Campaign Practices.**

**F. [§293] Regulation of Political Advertising.**

**G. Reapportionment.**

**1. Justiciable Issue.**

(a) [§294] In General.

(b) Gerrymandering.

(1) [§295] In General.

(2) [§296] To Benefit Racial Minority Groups.

**2. [§297] Discriminatory Weighted Voting.**

**3. [§298] Congressional Districts.**

**4. State Legislative Districts.**

(a) [§299] Reynolds v. Sims.

(b) [§300] Subsequent U.S. Supreme Court Decisions.

(c) [§301] California Decisions.

**5. [§302] County Supervisorial Districts.**

**6. [§303] City Council Districts.**

**H. Restricted Eligibility in Local Elections.**

**1. [§304] School District Elections.**

**2. Special District Elections.**

(a) [§305] Valid Provisions.

(b) [§306] Invalid Provisions.

**I. General Bond Elections.**

**1. [§307] Vote Restricted to Property Taxpayers.**

**2. [§308] Requirement of More Than Majority.**

**J. [§309] Incorporation of City or Annexation.**

**K. [§310] Referendum on County Charter.**

## **VI. FREEDOM OF SPEECH, PRESS, AND ASSEMBLY**

**A. Nature of Guarantees.**

**1. Constitutional Provisions.**

(a) [§311] Federal Constitution.

(b) [§312] California Constitution.

(c) [§313] Commentary.

**2. Rights on Private Property.**

(a) [§314] Company-Owned Town.

(b) Shopping Center.

(1) [§315] Under Federal Constitution.

(2) [§316] Under California Constitution.

(c) [§317] Stand-Alone Business.

(d) [§318] Medical Facility.

- (e) [§319] Church.
  - (f) [§320] Private Residential Housing Project.
- 3. Right of Private Corporation.
  - (a) [§321] Impermissible Restriction.
  - (b) [§322] Permissible Restriction.
- 4. [§323] Entertainment and Symbolic Speech.
- 5. Commercial Speech.
  - (a) In General.
    - (1) [§324] Historical Development.
    - (2) [§325] Virginia State Board Case.
    - (3) [§326] No Least-Restrictive-Means Test.
    - (4) [§327] Texts and Law Reviews.
  - (b) Restrictions on Advertising and Publicity.
    - (1) [§328] In General.
    - (2) [§329] Advertising by Lawyers.
    - (3) [§330] Publicizing Services of Legal Clinic.
    - (4) [§331] Advertising by Gambling Casino.
    - (5) [§332] Advertising of Alcohol and Tobacco.
    - (6) [§333] Required Funding for Generic Advertising.
    - (7) [§334] Deceptive or Misleading Advertising.
  - (c) Other Restrictions.
    - (1) [§335] In General.
    - (2) [§336] Moratorium on Solicitation of Accident Victims.
    - (3) [§337] Solicitation by Accountant.
    - (4) [§338] Unlawful Conduct.
- 6. Government Speech.
  - (a) [§339] In General.
  - (b) [§340] Funding Restrictions.
  - (c) [§341] Viewpoint Discrimination.
- 7. Political Speech.
  - (a) [§342] In General.
  - (b) [§343] Advertising on Public Transit Vehicles.
  - (c) [§344] Restrictions on Initiatives.
  - (d) [§345] Restrictions on Electioneering.
  - (e) [§346] Distinction: Nonpublic Forum.
- 8. Charitable Appeals for Funds.
  - (a) [§347] In General.
  - (b) [§348] Solicitation Inside Airport Terminal.
  - (c) [§349] Distinction: Begging or Soliciting Alms.
- 9. Right To Circulate or Distribute.
  - (a) [§350] In General.
  - (b) [§351] Newsracks.
  - (c) [§352] Door-to-Door.
- 10. Right To Post.
  - (a) [§353] In General.

**(b) [§354] Residential Signs.**

**11. Other Areas.**

**(a) [§355] Ban on Receipt of Honoraria.**

**(b) [§356] Fortunetelling.**

**(c) [§357] Police Surveillance of College.**

**(d) [§358] Promotional Advertising by Public Utility.**

**B. Scope of Protection.**

**1. Freedom From Previous Restraint.**

**(a) [§359] General Principle.**

**(b) [§360] Requirement of License or Permit.**

**(c) [§361] Invalid Restraint by Injunction.**

**(d) [§362] Discriminatory Special Tax.**

**(e) Restrictions on Newspapers and Magazines.**

**(1) [§363] In General.**

**(2) [§364] Requirement of Free Space.**

**(3) [§365] Other Restrictions.**

**(4) [§366] Distinction: Action for Breach of Promise of Confidentiality.**

**(f) Restrictions on Books.**

**(1) [§367] In General.**

**(2) [§368] Censorship by Listing.**

**(3) [§369] Income From Work Describing Crime.**

**(g) [§370] Restrictions on Mail.**

**(h) [§371] Restrictions on Motion Pictures and Plays.**

**(i) Restrictions on Radio and Television.**

**(1) [§372] In General.**

**(2) [§373] Cable Television and Satellite Broadcasting.**

**(3) [§374] Sexually Oriented Programming.**

**(4) [§375] Must-Carry Requirements.**

**(5) [§376] Refusal To Accept Political Advertisements.**

**(6) [§377] Prohibition of Editorializing.**

**2. Freedom of Association.**

**(a) [§378] In General.**

**(b) Confidentiality of Membership.**

**(1) [§379] In General.**

**(2) [§380] Private Social Club.**

**(3) [§381] Membership Applications.**

**(4) [§382] Limited Right of Discovery.**

**(c) [§383] Furnishing Attorneys for Group Members.**

**(d) [§384] Patronage Appointment of Public Employees.**

**(e) [§385] Agency Shop for Public Employees.**

**(f) [§386] Politically Motivated Economic Boycott.**

**(g) [§387] Restrictions on Prisoners' Rights.**

**(h) [§388] Rights of Political Parties.**

**(i) [§389] Exclusion of Women From Membership.**

**(j) [§390] Exclusion of Group From Parade.**

- (k) [§391] Exclusion of Homosexual Scoutmaster.
- (l) [§391A] (New) Exclusion From Subsidized Program.
- (m) [§391B] (New) Exclusion of Group From Street Fair.

### **3. Right of Peaceable Assembly.**

- (a) [§392] In General.
- (b) Public Forum.
  - (1) [§393] U.S. Supreme Court Decisions.
  - (2) [§394] California Decisions.
- (c) [§395] Semipublic Forum.
- (d) Picketing Generally.
  - (1) [§396] In General.
  - (2) [§397] By Labor Organizations.
  - (3) [§398] Residential Picketing.
- (e) Picketing of Abortion Clinics.
  - (1) [§399] Earlier Cases.
  - (2) [§400] Shasta-Diablo Case.
  - (3) [§401] Madsen Case.
  - (4) [§402] Subsequent Cases.

### **4. Right To Travel.**

- (a) [§403] Interstate Travel.
- (b) [§404] International Travel.

## **C. Limitations on the Rights.**

### **1. General Principles and Tests.**

- (a) [§405] Rights Are Not Absolute.
- (b) [§406] Preferred Position of Freedoms.
- (c) [§407] Clear and Present Danger Test.
- (d) Uncertainty and Overbreadth.
  - (1) [§408] In General.
  - (2) [§409] Invalid Regulations.
  - (3) [§410] Valid Regulations.
- (e) [§411] Uneven Application.

### **2. Interference With Judicial Process.**

- (a) [§412] Publications as Contempt.
- (b) Court's Control Over Publicity.
  - (1) [§413] Right of Media To Report Proceedings.
  - (2) [§414] Juvenile Delinquency Proceedings.
  - (3) [§415] Control To Insure Fair Trial.
  - (4) [§416] Unauthorized Photographs of Courtroom Proceedings.
  - (5) [§417] Public Broadcast of Trial.
  - (6) [§418] Discovery Protective Order.
- (c) Public Access to Court Proceedings.
  - (1) [§419] Criminal Pretrial Hearing.
  - (2) [§420] Criminal Trial.
  - (3) [§421] Jury Voir Dire.
  - (4) [§422] Juvenile Dependency Proceedings.

- (5) [§423] Civil Trial.
- 3. [§424] Fraud.
- 4. Libel.
  - (a) [§425] In General.
  - (b) New York Times Rule.
    - (1) [§426] Public Officials.
    - (2) [§427] Public Figures.
    - (3) [§428] Private Individuals.
- 5. Invasion of Privacy.
  - (a) [§429] New York Times Rule Applies.
  - (b) [§430] Publication of Name of Rape Victim.
  - (c) [§431] Information Initially Obtained Illegally.
  - (d) [§432] Infliction of Emotional Distress.
  - (e) [§433] Distinction: Right of Publicity.
- 6. Obscenity.
  - (a) [§434] In General.
  - (b) [§435] Requirement of Knowledge.
  - (c) Determination of Obscenity.
    - (1) [§436] Roth Test.
    - (2) [§437] Miller Test.
    - (3) [§438] Subsequent Decisions.
  - (d) Protection of Minors.
    - (1) [§439] In General.
    - (2) [§440] Internet Transmissions.
    - (3) [§441] Child Pornography.
  - (e) Theaters, Movies, and Plays.
    - (1) [§442] In General.
    - (2) [§443] Zoning of Adult Theaters.
    - (3) [§444] Consenting Adults.
  - (f) Private Possession or Distribution.
    - (1) [§445] Private Possession Protected.
    - (2) [§446] Private Distribution Not Protected.
  - (g) [§447] Commercial Telephone Communications.
  - (h) [§448] Nudity: Public Indecency Statutes.
  - (i) California Law.
    - (1) [§449] Statutory Development.
    - (2) [§450] Validity of Statute.
    - (3) [§451] Books.
    - (4) [§452] Films.
    - (5) [§453] Live Entertainment.
    - (6) [§454] Validity of Local Ordinances.
  - (j) [§455] Civil Proceedings Against Obscene Matter.
- 7. [§456] Street Meetings and Parades.
- 8. Violence and Incitement to Violence.
  - (a) [§457] In General.
  - (b) [§458] Statements Not “Fighting Words.”

- (c) **Cross Burning.**
      - (1) [§459] **General Prohibition.**
      - (2) [§460] **Specific Prohibition on Property of Another.**
    - (d) [§461] **Acts Motivated by Bigoted Racial Beliefs.**
    - (e) [§462] **Picketing Court or Legislature.**
    - (f) [§463] **Sit-in or Stand-in.**
  - 9. [§464] **Antinoise Regulations.**
  - 10. **Registration and Identification.**
    - (a) [§465] **In General.**
    - (b) [§466] **Handbill Distributor.**
    - (c) [§467] **Anonymous Recorded Phone Messages.**
    - (d) [§468] **Author of Attack on Candidate.**
    - (e) [§469] **Author of Campaign Materials.**
  - 11. **Loyalty Regulations.**
    - (a) **Antisubversive Criminal Legislation.**
      - (1) [§470] **Earlier Statutes.**
      - (2) [§471] **Smith Act.**
      - (3) [§472] **Federal Preemption.**
      - (4) [§473] **Burning Draft Card.**
      - (5) [§474] **Desecrating Flag.**
    - (b) **Regulation of Aliens.**
      - (1) [§475] **Exclusion and Registration.**
      - (2) [§476] **Deportation.**
    - (c) [§477] **Registration of Subversive Organizations.**
    - (d) [§478] **Investigation of Subversive Activities.**
    - (e) **Loyalty Tests for Employees.**
      - (1) [§479] **In General.**
      - (2) [§480] **Disclosure of Communist Membership.**
      - (3) [§481] **Cooperation With Investigating Agencies.**
    - (f) **Loyalty Oaths of Employees.**
      - (1) [§482] **Earlier Cases.**
      - (2) [§483] **Later Cases.**
    - (g) [§484] **Loyalty Tests for Others.**
- D. Regulation of Educational Institutions.**
- 1. **Professors and Schoolteachers.**
    - (a) [§485] **Protected Rights.**
    - (b) [§486] **Valid Regulations.**
  - 2. **College and University Students.**
    - (a) [§487] **In General.**
    - (b) [§488] **Freedom of Speech and Association.**
    - (c) [§489] **Mandatory Fees To Fund Student Activities.**
    - (d) [§490] **Registration and Identification.**
    - (e) [§490A] **(New) Military Recruiters on Campus.**
  - 3. **Elementary and Secondary School Students.**
    - (a) **First Amendment Rights.**
      - (1) [§491] **In General.**

- (2) [§492] Demonstrations and Symbolic Acts.
- (3) [§493] Clothes and Personal Appearance.
- (4) [§494] Removal of Library Books.
- (5) [§495] Obscene Speech.
- (6) [§496] Newspaper Produced by Journalism Class.
- (b) California Constitution and Statutes.
  - (1) [§497] Fees for Extracurricular Activity.
  - (2) [§498] Censorship of Unofficial Newspaper.
  - (3) [§499] Censorship of Official Newspaper.
  - (4) [§500] School Placement.
- 4. Statutory Declaration of Rights.
  - (a) [§501] Legislative Findings and Intent.
  - (b) [§502] Protected Speech Is Not Subject to Discipline.
- E. Regulation of Government Employees.
  - 1. [§503] In General.
  - 2. [§504] Balancing of Interests.
- VII. Freedom of Religion.
  - A. In General.
    - 1. [§505] Nature of Constitutional Provisions.
    - 2. [§506] Texts and Commentary.
  - B. Establishment Clause.
    - 1. Under Federal Constitution.
      - (a) [§507] In General.
      - (b) [§508] Prayer.
      - (c) [§509] Religious Speech.
      - (d) [§510] Tax Exemption.
      - (e) [§511] Exemption from Landmark Preservation Laws.
      - (f) [§512] Other Applications.
    - 2. [§513] Under California Constitution.
  - C. Free Exercise Clause.
    - 1. Invalid Direct Restraints.
      - (a) [§514] In General.
      - (b) [§515] Prohibition of Ritual Slaughter of Animals.
      - (c) [§516] Religious Freedom Restoration Act.
    - 2. Indirect Restraints.
      - (a) [§517] In General.
      - (b) [§518] Social Security and Social Security Numbers.
      - (c) [§519] Children.
      - (d) [§520] Prisoners.
      - (e) [§521] Religious Solicitation.
      - (f) [§522] Meetings in Public Place.
      - (g) [§523] Use of Drugs.
      - (h) [§524] Defamation Action Against Church.
      - (i) [§525] Intentional Infliction of Emotional Distress.
      - (j) [§526] Religious Discrimination Against Advertisers.
      - (k) [§527] Fair Employment and Housing Act.

(1) [§528] Prescription Contraceptive Coverage.

**D. Religious Activity in Public Schools.**

1. [§529] Religious Instruction.

2. Prayers and Bible Reading.

(a) [§530] In General.

(b) [§531] Student Bible Study Club.

(c) [§532] School Period of Silence.

(d) Invocation at School Graduation.

(1) [§533] California Decisions.

(2) [§534] United States Supreme Court Decision.

3. [§535] Instruction on Evolution.

4. [§536] Flag Salute.

5. [§537] Creation of Public School District for Religious Community.

**E. Aid to Private Schools or Private School Students.**

1. [§538] In General.

2. [§539] Furnishing Transportation.

3. Lending Textbooks and Equipment.

(a) [§540] United States Supreme Court Decisions.

(b) [§541] California Decisions.

4. Financial Assistance.

(a) [§542] Development of Law.

(b) [§543] Money for Salaries and Books.

(c) [§544] Grants for Special Purposes.

(d) [§545] Shared Time of Public School Teacher.

(e) Tuition Reimbursement.

(1) [§546] In General.

(2) [§547] State Income Tax Deduction.

(f) [§548] Construction Aid to Colleges

5. [§549] Aid to Disabled Students in Private Schools.

**F. Other Activities.**

1. Work on Religious Holiday.

(a) [§550] In General.

(b) [§551] Broader Protection Under California Constitution.

2. [§552] Labor Regulations.

3. [§553] Sunday Closing Laws.

4. Government-Sponsored Christmas Displays.

(a) [§554] U.S. Supreme Court Decisions.

(b) [§555] California Cases.

4A. [§555A] (New) Other Government-Sponsored Religious Displays.

5. [§556] State Religious Holiday.

6. [§557] Patriotic Message on License Plates.

**VIII. PRIVACY**

**A. Rights Under Federal Constitution.**

1. [§558] Theory of Peripheral Rights Doctrine.

2. [§559] Texts and Law Reviews.

3. [§560] Contraceptives.

**4. Abortion.**

**(a) Woman's Right To Have Abortion.**

- (1) [§561] In General: Roe v. Wade.**
- (2) [§562] Texts and Law Reviews.**
- (3) [§563] Development of Law.**
- (4) [§564] Webster Case.**
- (5) [§565] Casey Case.**
- (6) [§566] Partial Birth Abortion.**

**(b) [§567] Notification of Parents.**

**(c) [§568] Public Funding of Abortion.**

**5. [§569] Right To Marry.**

**6. [§570] Sterilization of Incompetent Conservatee.**

**7. [§571] Withdrawal of Life Support.**

**8. [§572] Assisted Suicide.**

**9. [§573] Sodomy Laws.**

**10 . [§574] Drug Prescription Records.**

**B. Rights Under California Law.**

**1. California Constitutional Provision.**

**(a) In General.**

- (1) [§575] Nature and Scope.**
- (2) [§576] Elements and Analysis.**
- (3) [§577] Rights of Partnership or Corporation.**

**(b) Abortion.**

- (1) [§578] Public Funding.**
- (2) [§579] Rights of Minors.**

**(c) Medical Records and Information.**

- (1) [§580] In General.**
- (2) [§581] Discovery of Medical Patient's Records.**
- (3) [§582] Disclosure of HIV-Positive Status.**

**(d) Employment.**

- (1) [§583] In General.**
- (2) [§584] Disclosure of University Tenure Proceedings.**
- (3) [§585] Disclosure of Employee Personnel Records.**

**(e) Criminal Investigations and Prosecution.**

- (1) [§586] In General.**
- (2) Arrest Records.**
  - (aa) [§587] Protected Acts.**
  - (bb) [§588] Unprotected Acts.**
- (3) [§589] Sex Crimes.**

**(4) [§590] Possession of Marijuana.**

**(5) [§591] Compulsory Polygraph Examination.**

**(f) Drug Testing.**

- (1) [§592] In General: Employee or Applicant.**
- (2) [§593] Distinction: Safety Interest Insufficient To Justify Intrusion.**
- (3) [§594] Athletes.**

**(g) Other Illustrations.**

- (1) [§595] Disclosure of University Grades.**
- (2) [§596] Discovery of Sexual Experiences.**
- (3) [§597] Zoning Regulations and Restrictive Covenants.**
- (4) [§598] Psychosurgery and Shock Treatment.**
- (5) [§599] Identities of Prospective Jurors.**
- (6) [§600] Drug Efficacy Requirement.**
- (7) [§601] Fingerprint and Photograph Requirements.**
- (8) [§602] Miscellaneous Examples.**

- 2. [§603] Right to Financial Privacy Act.**
- 3. [§604] Information Practices Act.**
- 4. [§605] Medical Records and Information.**
- 5. [§606] Motor Vehicle Records.**
- 6. [§607] Other Privacy Statutes.**

**IX. PRIVILEGES AND IMMUNITIES**

**A. United States Citizenship.**

- 1. [§608] The Abridgement Clause.**
- 2. [§609] Access to Courts.**

**B. State Citizenship.**

- 1. The Entitlement Clause.**
  - (a) [§610] Nature and Purpose.**
  - (b) [§611] Scope.**
- 2. [§612] Wild Animals and Fish.**
- 3. [§613] Employment Discrimination.**
- 4. [§614] Residency Requirement for Attorney.**

**X. DUE PROCESS OF LAW**

**A. Nature and Scope of Guarantee.**

- 1. [§615] Procedural and Substantive Due Process.**
- 2. [§616] Protection Only Against Government Action.**
- 3. [§617] No Action for Money Damages.**
- 4. [§618] Persons Protected.**
- 5. State Action.**
  - (a) [§619] In General.**
  - (b) [§620] Government Assisted Housing Projects.**
  - (c) [§621] Nonjudicial Foreclosure.**
  - (d) [§622] Athletic Associations.**

**B. Retrospective Legislation.**

- 1. Changes Affecting Substantive Rights.**
  - (a) [§623] In General.**
  - (b) [§624] Clarification of Existing Law.**
  - (c) Vested Right as Basis of Attack.**
    - (1) [§625] Rule and Test.**
    - (2) Permit Cases.**
      - (aa) [§626] In General.**

(bb) [§627] Distinction: Permit Subject to Condition.

(3) [§628] Community Property Cases.

(d) [§629] Changes in Conditions of License.

2. Changes in Procedure.

(a) [§630] Valid Retrospective Laws.

(b) [§631] Efficient Remedy Must Be Left.

3. [§632] Deprivation of Defense.

4. Construction Against Retroactivity.

(a) [§633] General Rule.

(b) [§634] Initiative Measure.

(c) [§635] Repeal of Statute Without Saving Clause.

C. [§636] Extraterritorial Legislation.

D. Nature of Procedural Due Process.

1. [§637] Long Established and New Procedures.

2. [§638] Notice Is Fundamental.

3. [§639] Non-Essential Matters.

E. Procedural Due Process in Judicial Proceedings.

1. Essential Elements.

(a) [§640] Jurisdiction, Notice, and Hearing.

(b) Fair Hearing.

(1) [§641] In General.

(2) [§642] Impartial Judge.

(3) [§643] Communications Between Judges.

2. [§644] Actions In Personam.

3. [§645] Proceedings In Rem.

4. Creditors' Remedies.

(a) [§646] In General: Sniadach Rule.

(b) [§647] Illustrations.

5. Indigent's Access to Courts.

(a) [§648] Indigent Plaintiffs.

(b) [§649] Indigent Defendants.

6. [§650] Hearing on Child Custody.

7. Commitment of Mentally Ill Person.

(a) [§651] In General.

(b) [§652] Defendant Not Guilty by Reason of Insanity.

(c) Minor.

(1) [§653] California Decisions.

(2) [§654] U.S. Supreme Court Decisions.

8. [§655] Treatment of Incompetent Nursing Home Patient.

9. [§656] Restraining Criminal Nuisance.

F. Procedural Due Process in Administrative Proceedings.

1. Right to Notice and Hearing.

(a) [§657] In General.

(b) [§658] Adequate Notice and Hearing.

(c) [§659] Illustrations of Inadequate Procedure.

- (d) [§660] Right-Privilege Distinction Repudiated.
  - (e) [§661] Right To Practice Profession Involved.
  - (f) [§662] Suspension of Driver's License.
- 2. Type of Hearing Required.**
- (a) [§663] In General.
  - (b) [§664] Evidence, Witnesses, and Cross-Examination.
  - (c) [§665] Counsel.
  - (d) Impartial Body or Officer.
    - (1) [§666] General Rule.
    - (2) [§667] Conflict of Interest.
    - (3) [§668] Bias.
    - (4) [§669] Financial Interest.
    - (5) [§670] Necessity Exception.
    - (6) [§671] Partially Interested Board.
  - (e) [§672] Hearing and Determination.
  - (f) [§673] Who May Render Decision.
- 3. Non-Adjudicatory Proceedings.**
- (a) Quasi-Legislative Action.
    - (1) [§674] Constitutional Requirement.
    - (2) [§675] Statutory Requirement.
    - (3) [§676] Approval of Subdivision Map.
  - (b) [§677] Investigative Process.
- 4. Summary Action Without Prior Hearing.**
- (a) In General.
    - (1) [§678] Nature and Scope of Exception.
    - (2) [§679] Right to Subsequent Hearing.
    - (3) [§680] Distinction: Summary Action Unnecessary.
  - (b) Obscene Matter.
    - (1) [§681] Valid Seizure or Injunction.
    - (2) [§682] Invalid Procedure.
  - (c) Termination of Utility Service.
    - (1) [§683] Telephone Service.
    - (2) [§684] Municipal Utility Service.
  - (d) Denial of Welfare Aid.
    - (1) [§685] Termination of Aid.
    - (2) [§686] Denial of Application for Aid.
  - (e) [§687] Termination of Disability Benefits.
  - (f) Disciplinary Action Against Students.
    - (1) [§688] In General.
    - (2) [§689] Due Process in Short Suspensions.
    - (3) [§690] Revised Statutory Procedure.
  - (g) [§691] Dismissal of Professors and Schoolteachers.
  - (h) Punitive Action Against Civil Service Employee.
    - (1) [§692] In General.
    - (2) [§693] Termination Under AWOL Statute.

## **8 Summary of California Law (10th), Constitutional Law**

### **XI. EQUAL PROTECTION OF THE LAWS**

#### **A. Nature and Scope of Constitutional Provisions.**

##### **1. Federal Constitution.**

- (a) [§694] In General.**
- (b) [§695] Meaning of Equal Protection.**
- (c) [§696] Scope of Guarantee.**
- (d) State Action.**
  - (1) [§697] General Principle.**
  - (2) [§698] State Participation or Involvement.**
  - (3) [§699] Acts of State Officers.**
  - (4) [§700] Judicial Action in Private Litigation.**
- (e) Classification of Subjects of Legislation.**
  - (1) [§701] General Principle.**
  - (2) [§702] Statute Need Not Cover Field.**
  - (3) Presumption Favoring Legislative Classification.**
    - (aa) [§703] Traditional Rule.**
    - (bb) [§704] Two-Tier Test of Classification.**

##### **2. California Constitution.**

- (a) [§705] Nature and Effect of Provisions.**
- (b) [§706] Local or Special Laws.**
- (c) [§707] Uniform Operation of General Laws.**
- (d) [§708] Discrimination by Public Utility.**

#### **B. Illustrations of Valid and Invalid Classifications.**

##### **1. Corporations.**

- (a) [§709] Individuals and Corporations.**
- (b) [§710] Classes of Corporations.**

##### **2. Different Types of Business or Activity.**

- (a) [§711] Closing Regulations.**
- (b) [§712] Price Regulations.**
- (c) [§713] Other Regulations.**

##### **3. Same Types of Business or Activity.**

- (a) [§714] Invalid Classifications.**
- (b) [§715] Valid Classifications.**

##### **4. The State and Subdivisions.**

- (a) [§716] Counties or Cities.**
- (b) [§717] Single County or City and County.**
- (c) [§718] Experimental Program in Specified Counties.**
- (d) [§719] District Created by Special Act.**
- (e) [§720] The State and Other Entities.**

##### **5. Aliens.**

- (a) [§721] In General.**
- (b) [§722] Alien Land Laws.**
- (c) [§723] Public Works Employment.**
- (d) [§724] Federal Civil Service.**

- (e) [§725] Profession, Business, or Employment.**
- (f) [§726] Alien Gun Laws.**
- (g) [§727] Welfare Benefits.**
- (h) [§728] Financial Assistance for Higher Education.**
- (i) [§729] Education for Illegal Alien Children.**
- (j) Valid Classifications.**
  - (1) [§730] In General.**
  - (2) [§731] Illegal Aliens.**
  - (3) [§732] Law Enforcement Officers.**
  - (4) [§733] Public Schoolteachers.**

**6. Nonresidents.**

- (a) [§734] In General.**
- (b) [§735] Welfare Benefits.**
- (c) [§736] Hospitalization and Medical Care.**
- (d) [§737] Greater Benefits to Established Residents.**
- (e) [§738] Long Residency for Appointed Officers.**
- (f) Valid Classifications.**
  - (1) [§739] In General.**
  - (2) [§740] Residence Requirement for Municipal Employees.**
  - (3) [§741] Preferential Parking for Local Residents.**
  - (4) [§742] Nonresident Student Fees.**

**7. Race or National Origin.**

- (a) [§743] In General.**
- (b) Jury Selection.**
  - (1) [§744] In General.**
  - (2) [§745] Exclusionary Use of Peremptory Challenge.**
- (c) [§746] Racial Restrictive Covenants.**
- (d) [§747] Anti-Miscegenation Law.**
- (e) [§748] Interracial Cohabitation Law.**
- (f) Segregation.**
  - (1) [§749] Former Separate but Equal Doctrine.**
  - (2) Public Schools Generally.**
    - (aa) [§750] Segregation Unconstitutional.**
    - (bb) [§751] Initial Implementation of Brown Decision.**
    - (cc) [§752] Unconstitutional Methods of Segregation.**
    - (dd) [§753] Duty To Desegregate and Guidelines.**
    - (ee) [§754] Elimination of De Facto Segregation.**
    - (ff) [§755] No Requirement of Annual Readjustment.**
    - (gg) [§756] Dissolution of Desegregation Decree.**
  - (3) Anti-Busing Laws.**
    - (aa) [§757] In General.**
    - (bb) [§758] Constitutional Amendment.**

- (4) [§759] Public Facilities.
- (5) [§760] Restaurants.
- (6) [§761] Public Housing.

**8. Women.**

**(a) In General.**

- (1) [§762] Constitutional Provisions and Early Cases.
- (2) [§763] Modern View.
- (3) [§764] Texts and Commentary.

**(b) Employment.**

- (1) [§765] Invalid Discrimination.
- (2) [§766] Valid Discrimination.

**(c) [§767] Exclusion From Juries.**

**(d) [§768] Social Security Benefits.**

**(e) [§769] Crimes.**

**(f) [§770] Educational Opportunities.**

**(g) [§771] Other Discriminatory Treatment.**

**9. Men.**

**(a) [§772] In General.**

**(b) [§773] Workers' Compensation.**

**(c) [§774] Alimony.**

**(d) Father of Illegitimate Child.**

**(1) [§775] In General.**

**(2) [§776] Right To Withhold Consent to Adoption.**

**(3) [§777] Standing Where Presumed Father Exists.**

**10. Minors.**

**(a) In General.**

**(1) [§778] Valid Classification.**

**(2) [§779] Invalid Classification.**

**(b) Illegitimate Children.**

**(1) [§780] Action for Wrongful Death of Parent.**

**(2) [§781] Workers' Compensation and Other Benefits.**

**(3) [§782] Support by Father.**

**(4) [§783] Public Aid.**

**(5) [§784] Right To Inherit.**

**11. [§785] Married and Unmarried Persons.**

**12. Insane or Incompetent Persons.**

**(a) [§786] Insanity Commitments.**

**(b) [§787] Mentally Defective Parents.**

**(c) [§788] Insane Person's Relatives.**

**(d) [§789] Developmentally Disabled Persons.**

**13. [§790] Indigent Criminal Defendant.**

**14. [§791] Persons Convicted of Crimes.**

**15. Civil Litigants or Litigation.**

**(a) [§792] Vexatious Litigant in Pro. Per.**

**(b) [§793] Penalty on Unsuccessful Appellant.**

**(c) [§794] Attorneys' Fees to Particular Litigants.**

- (d) [§795] Tort Action by Guest.
    - (e) [§796] Defamation Action Against Newspaper or Broadcaster.
  - 16. [§797] Veterans.
  - 17. [§798] Sexual Orientation.
  - 18. Other Classes of Persons.
    - (a) [§799] Valid Classifications.
    - (b) [§800] Invalid Classifications.
  - 19. [§801] Public Employment.
  - 20. [§802] Mandatory Retirement.
  - 21. Financial Ability.
    - (a) [§803] Invalid Classifications.
    - (b) [§804] Valid Classifications.
    - (c) School Financing System.
      - (1) [§805] In General.
      - (2) [§806] California Law.
      - (3) [§807] State's Duty To Insure Funds.
  - 22. [§808] Motor Vehicles.
  - 23. Welfare Regulations.
    - (a) [§809] Valid Regulations.
    - (b) [§810] Invalid Regulations.
  - 24. [§811] Preference in Favor of Prior Activity ("Grandfather Clause").
- C. Unconstitutional Conditions.**
- 1. [§812] Theory and Development of Doctrine.
  - 2. [§813] Application Outside Field of Foreign Corporations.
- D. Federal Civil Rights Legislation.**
- 1. Original Civil Rights Acts.
    - (a) Constitutional and Statutory Framework.
      - (1) [§814] In General.
      - (2) [§815] Criminal Liability.
      - (3) [§816] Civil Liability.
      - (4) [§817] Damages for Conspiracy.
    - (b) [§818] Federal and State Court Jurisdiction.
    - (c) [§819] Persons Liable.
    - (d) Elements of Cause of Action.
      - (1) Deprivation of Rights.
        - (aa) [§820] Constitutional Rights.
        - (bb) [§821] Federal Statutory Rights.
        - (cc) [§822] High-Speed Police Pursuit.
        - (dd) [§823] Voluntary Commitment.
        - (ee) [§824] Distinction: Ordinary Tort.
      - (2) Rights of Prisoners.
        - (aa) [§825] Fourth Amendment.
        - (bb) [§826] Eighth Amendment.
        - (cc) [§827] Fourteenth Amendment.



**Fees.**

**(cc) [§860] Effect of After-Acquired Evidence of Wrongdoing.**

**(b) Sex Discrimination.**

**(1) [§861] In General.**

**(2) [§862] Burden of Proof.**

**(3) [§863] Gender-Based Fetal Protection Policy.**

**(4) Sexual Harassment.**

**(aa) [§864] In General.**

**(bb) [§865] Same-Gender Discrimination.**

**(cc) [§866] Vicarious Liability.**

**(5) [§867] Comparable Worth.**

**(6) [§868] Discrimination Against Men.**

**(c) Racial Discrimination.**

**(1) [§869] In General.**

**(2) [§870] Proof of Prima Facie Case.**

**(3) [§871] Discrimination Against Whites.**

**(4) [§872] Harassment by Employer.**

**(d) Age Discrimination.**

**(1) [§873] In General.**

**(2) [§874] Government Employers.**

**(2A) [§874A] (New) Burden of Proof.**

**(3) [§875] Sufficiency of Evidence.**

**(e) [§876] Religious Discrimination.**

**(f) [§877] Pregnancy Discrimination.**

**(g) [§878] Seniority Systems.**

**7. [§879] Discrimination by Private School.**

**8. Discrimination Against Disabled Persons.**

**(a) [§880] Rehabilitation Act.**

**(b) [§881] Individuals With Disabilities Education Act.**

**(c) Americans With Disabilities Act (ADA).**

**(1) [§882] In General.**

**(2) [§883] Texts and Commentary.**

**(3) [§884] Integration Mandate.**

**(4) [§885] Reasonable Accommodation Requirement.**

**(4A) [§885A] (New) Retaliation and Harassment.**

**(5) [§886] Effect of Arbitration Agreement.**

**(6) [§887] HIV as Disability.**

**(7) [§888] Visual Impairment as Disability.**

**(8) [§889] Inability To Perform Manual Tasks as Substantial Impairment.**

**E. California Civil Rights Legislation.**

**1. In General.**

**(a) [§890] Nature and Scope of Civil Rights Legislation.**

**(b) [§891] Insurance.**

**(c) [§892] Public Programs and Activities.**

- (d) [§893] Schools and Education.
  - (e) [§894] Housing Finance.
  - (f) [§895] Hate Crimes, Intimidation, and Threats of Violence.
  - (g) [§896] Sexual Harassment in Business and Professional Relationships.
  - (h) [§897] Other Discrimination Statutes.
- 2. Unruh Civil Rights Act.
  - (a) [§898] In General.
  - (b) [§899] Business Establishments.
  - (c) Nonprofit Community Service Organizations.
    - (1) [§900] In General.
    - (2) [§901] Boys' Club.
    - (3) [§902] Rotary Club.
    - (4) [§903] Cult Awareness Network.
    - (5) [§904] Boy Scouts.
  - (d) Activities Covered.
    - (1) [§905] In General.
    - (2) [§906] Business Discrimination.
    - (3) [§907] Racial Discrimination.
    - (4) [§908] Housing Discrimination.
    - (5) [§908A] (New) Marital Status Discrimination.
    - (6) [§908B] (New) Sexual Orientation Discrimination.
  - (e) Distinctions.
    - (1) [§909] Age-Based Preferences.
    - (2) [§910] Classification Based on Marital Status.
    - (3) [§911] Nonsmokers.
    - (4) [§912] Economic Criteria.
    - (5) [§913] Retaliatory Discrimination.
  - (f) [§914] Enforcement.
- 3. Fair Employment and Housing Act.
  - (a) [§915] Nature and Purpose of Act.
  - (b) Scope of Act.
    - (1) [§916] In General.
    - (2) [§917] Employees.
    - (3) [§918] Employers.
    - (4) [§919] Supervisors.
  - (c) [§920] Department and Commission.
  - (d) Employment.
    - (1) In General.
      - (aa) [§921] Discrimination.
      - (bb) [§922] Harassment.
    - (2) Racial Discrimination.
      - (aa) [§923] Discrimination Against Minorities.
      - (bb) [§924] Discrimination Against Whites.
    - (3) Sex Discrimination.
      - (aa) [§925] In General.

- (bb) [§926] **Discrimination Based on Pregnancy.**
  - (4) **Sexual Harassment.**
    - (aa) [§927] **In General.**
    - (bb) [§928] **Liability of Liability of Supervisor or Coworker.**
    - (cc) [§929] **Harassment of Applicant.**
    - (dd) [§930] **Same-Gender Harassment.**
  - (5) [§931] **Sexual Orientation Discrimination.**
  - (6) **Age Discrimination.**
    - (aa) [§932] **In General.**
    - (bb) [§933] **Sufficiency of Evidence.**
    - (cc) [§934] **Age as Protected Class.**
    - (dd) [§935] **Use of Economic Criteria.**
  - (7) **Discrimination Against Disabled Persons.**
    - (aa) [§936] **In General.**
    - (bb) [§937] **Accommodation Requirement.**
    - (cc) [§938] **Discrimination on Basis of Weight.**
    - (dd) [§939] **Chronic Alcoholics.**
  - (8) [§940] **Retaliatory Discrimination.**
  - (9) [§941] **Other Prohibited Discrimination.**
  - (10) **Family Care and Medical Leave.**
    - (aa) [§942] **In General.**
    - (bb) [§943] **Requirements for Taking Leave.**
    - (cc) [§944] **Unlawful Employment Practices.**
  - (e) **Housing.**
    - (1) [§945] **In General.**
    - (2) [§946] **Definitions.**
    - (3) [§947] **Unlawful Activities.**
  - (f) **Enforcement Procedure.**
    - (1) **Employment.**
      - (aa) [§948] **In General.**
      - (bb) [§949] **Accusation, Hearing, and Decision.**
      - (cc) [§950] **Damages and Penalties.**
      - (dd) [§951] **Judicial Enforcement.**
      - (ee) [§952] **Exhaustion of Administrative Remedies.**
    - (2) **Housing.**
      - (aa) [§953] **In General.**
      - (bb) [§954] **Accusation, Hearing, and Decision.**
      - (cc) [§955] **Civil Action.**
      - (dd) [§956] **Damages and Penalties.**
- 4. Rights of Disabled Persons.**
- (a) [§957] **In General.**
  - (b) [§958] **Physical Access.**
  - (c) [§959] **Enforcement.**
- 5. Rights of Public Safety Officers.**

- (a) [§960] In General.
- (b) [§961] Interrogation and Investigation.
- (c) [§962] Waiver of Rights.
- (d) [§963] Remedies.
- (e) [§964] Administrative Appeal.

**F. Affirmative Action Programs.**

**1. In General.**

- (a) [§965] Nature of Programs.
- (b) [§966] California Statutes.
- (c) [§967] Proposition 209: Affirmative Action Prohibited.

**2. Programs Directed at Discrimination in Education.**

- (a) [§968] Bakke Case: California Decision.
- (b) [§969] Bakke Case: U.S. Supreme Court Decision.
- (c) [§970] Gratz and Grutter Cases.
- (d) [§971] Other Decisions.

**3. Programs Directed at Discrimination in Employment.**

- (a) [§972] Programs Created Through Collective Bargaining.
- (b) Programs Mandated by Statute, Ordinance, or Rule.
  - (1) [§973] U.S. Supreme Court Cases.
  - (2) [§974] California Cases.
- (c) [§975] Programs Created by Court Order.

**XII. POLICE POWER**

**A. In General.**

**1. Nature of Police Power.**

- (a) [§976] Inherent Power To Regulate.
- (b) [§977] Paramount Power.
- (c) [§978] Elastic Power.
- (d) [§979] Legislative Judgment.

**2. [§980] Other Powers Distinguished.**

**3. Methods of Exercising Power.**

- (a) [§981] Prohibition and Regulation.
- (b) [§982] Taxation and Eminent Domain.

**4. [§983] Limitations on Power.**

**B. Exercise of Police Power by Local Subdivision.**

**1. In General.**

- (a) [§984] Constitutional Authorization.
- (b) [§985] Subjects of Regulation.

**2. Where State Legislates on Same Subject.**

- (a) [§986] Test of Valid Regulation.
- (b) [§987] Legislative Authorization of Local Regulations.
- (c) Local Regulations Held Valid.
  - (1) [§988] In General.
  - (2) [§989] Alcoholic Beverages.
  - (3) [§990] Criminal Activities.
  - (4) [§991] Activity on State-Owned Land.
- (d) [§992] Local Regulations Held Void.

### **3. Exclusive Power Over Municipal Affairs.**

- (a) [§993] Constitutional Provisions and Theory.**
- (b) [§994] Unlawful Surrender of Control.**
- (c) Determination of Issue.**
  - (1) [§995] In General.**
  - (2) [§996] Consideration of Purpose.**
- (d) What Are Municipal Affairs.**
  - (1) [§997] In General.**
  - (2) [§998] Financing of Local Political Campaigns.**
  - (3) [§999] Term Limits for Elected Officials.**
- (e) Matters of Statewide Concern.**
  - (1) [§1000] In General.**
  - (2) [§1001] District Formation and Dissolution.**
  - (3) [§1002] School System.**
  - (4) [§1003] Traffic.**

### **4. [§1004] Extraterritorial Municipal Regulations.**

## **C. Zoning.**

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

- (a) [§1005] Nature of Power.**
- (b) [§1006] Commentary and Practice Works.**
- (c) [§1007] Prohibiting Removal of Natural Products.**
- (d) [§1008] Taking of Property.**
- (e) [§1009] Invalid Regulations.**

### **2. Planning and Zoning Ordinances.**

- (a) In General.**
  - (1) [§1010] Local Power and State Law.**
  - (2) [§1011] Statutes of Limitation on Attack.**
- (b) General Plan.**
  - (1) [§1012] Nature and Scope.**
  - (2) [§1013] Housing Element.**
  - (3) [§1014] Consistency Requirement.**
  - (4) [§1015] Adoption and Implementation.**
  - (5) [§1016] Judicial Review.**
  - (6) [§1017] Amendment.**
- (c) [§1018] Specific Plans.**
- (d) Local Zoning Regulations.**
  - (1) [§1019] In General.**
  - (2) [§1020] Scope of Zoning Power.**
  - (3) [§1021] Consistency With General Plan.**
  - (4) [§1022] Zoning Procedure.**
  - (5) [§1023] Interim Ordinance.**
- (e) [§1024] Exemptions.**
- (f) Administration and Enforcement.**
  - (1) [§1025] Administration.**
  - (2) [§1026] Judicial Enforcement.**

### **3. Zoning by Initiative or Referendum.**

- (a) [§1027] In General.
- (b) [§1028] Valid Initiative or Referendum Measures.
- (c) [§1029] Invalid Initiative or Referendum Measures.
- 4. Exclusionary Zoning.
  - (a) In General.
    - (1) [§1030] U.S. Supreme Court Decisions.
    - (2) [§1031] Tests for Validity.
    - (3) [§1032] Invalid Ordinances.
  - (b) [§1033] Business and Commercial Activity.
  - (c) [§1034] Transient Commercial Use of Residential Property.
  - (d) [§1035] Churches.
  - (e) [§1036] Schools.
  - (f) [§1037] Miscellaneous Classifications.
- 5. Type of Lot or Dwelling.
  - (a) [§1038] Lot Area and Open Space.
  - (b) [§1039] Other Regulations.
- 6. [§1040] Retroactive Zoning.
- 7. Nonconforming Uses.
  - (a) [§1041] In General.
  - (b) [§1042] No Rebuilding or Expansion.
  - (c) [§1043] Distinction: Mining Operations.
  - (d) [§1044] Amortization Provisions.
  - (e) [§1045] Uses Not Protected.
- 8. Individual Hardship.
  - (a) As Defense Against Enforcement.
    - (1) [§1046] Where General Plan Is Reasonable.
    - (2) Where Provision Is Arbitrary.
      - (aa) [§1047] In General.
      - (bb) [§1048] Illustrations.
    - (3) [§1049] Where Required Use Is Uneconomic.
  - (b) As Basis for Exception or Variance.
    - (1) Conditional Use Permit.
      - (aa) [§1050] Nature and Purpose.
      - (bb) [§1051] Conditions and Criteria.
      - (cc) [§1052] Challenge by Nonresident.
    - (2) Variance.
      - (aa) [§1053] Nature and Grounds.
      - (bb) [§1054] Discretion of Governing Body.
      - (cc) [§1055] Imposition of Conditions.
      - (dd) [§1056] Judicial Review of Findings.
  - (c) As Basis for Compensation.
    - (1) [§1057] Nature of Problem.
    - (2) [§1058] Agins Case.
    - (3) [§1059] Subsequent Decisions.
- D. Other Restrictions on Use of Property.
  - 1. [§1060] Regulation or Prohibition of Inimical Activity.

- 2. Regulation of Nondangerous Activity.**
  - (a) [§1061] General Principles.**
  - (b) [§1062] Invalid Regulations.**
- 3. Aesthetic Regulations.**
  - (a) [§1063] In General.**
  - (b) Billboards and Other Outdoor Advertising.**
    - (1) [§1064] In General.**
    - (2) [§1065] On-Site Advertising.**
    - (3) Off-Site Advertising.**
      - (aa) [§1066] Invalid Restrictions.**
      - (bb) [§1067] Valid Restrictions.**
    - (4) [§1068] Posting Signs on Public Property.**
- 4. [§1069] Conservation and Prevention of Waste.**
- E. [§1070] Restrictions on Freedom of Contract.**
- F. [§1071] Regulation of Personal Rights.**
- G. Regulation of Business.**
  - 1. [§1072] In General.**
  - 2. Health and Safety.**
    - (a) [§1073] Food, Drugs, and Water.**
    - (b) [§1074] Air Pollution.**
    - (c) [§1075] Closing and Working Hours.**
    - (d) [§1076] Fire Protection.**
  - 3. Fraud and Other Improper Practices.**
    - (a) [§1077] In General.**
    - (b) [§1078] Regulation of Franchises.**
  - 4. [§1079] Licensing for Regulatory Purposes.**
  - 5. [§1080] Limitations on Right To Do Business.**
  - 6. Regulation of Prices and Rates.**
    - (a) [§1081] Valid Regulations.**
    - (b) [§1082] Invalid Regulations.**
    - (c) [§1083] Insurance Rates.**
  - 7. Public Utilities in California.**
    - (a) [§1084] Public Utilities Commission.**
    - (b) Jurisdiction of Commission.**
      - (1) [§1085] In General.**
      - (2) [§1086] Judicial Powers of Commission.**
      - (3) [§1087] Power To Obtain Injunction.**
      - (4) [§1088] Powers of Other Governmental Agencies.**
    - (c) Jurisdiction of Courts.**
      - (1) [§1089] In General.**
      - (2) [§1090] Private Right of Action Allowed.**
      - (3) [§1091] Private Right of Action Rejected.**
    - (d) Public Utilities Regulated by Commission.**
      - (1) [§1092] In General.**
      - (2) [§1093] Public Transportation Authority.**
    - (e) Public Utilities Outside Jurisdiction of Commission.**

- (1) [§1094] In General.
- (2) [§1095] Exceptions Based on Source of Power.
- (3) [§1096] Specialized Transportation Vehicles.
- (f) [§1097] Private Utilities.
- (g) Nature and Extent of Regulation.
  - (1) [§1098] Permission To Enter Business.
  - (2) Regulation of Rates.
    - (aa) [§1099] In General.
    - (bb) [§1100] Test of Reasonableness.
    - (cc) [§1101] Distribution of Rate Refunds.
  - (3) Regulation of Service.
    - (aa) [§1102] In General.
    - (bb) [§1103] Adequate Service.
  - (4) [§1104] Other Regulatory Powers.
- (h) [§1105] Right To Abandon Operation.
- (i) Procedure Before Commission.
  - (1) [§1106] In General.
  - (2) [§1107] Hearing and Determination.
- (j) Review of Commission's Orders.
  - (1) [§1108] In General.
  - (2) [§1109] Exclusive Method.
  - (3) [§1110] Scope of Review.

**H. [§1111] Regulation of Labor Relations.**

**XIII. EMINENT DOMAIN**

**A. In General.**

- 1. [§1112] Nature of Power.
  - 2. [§1113] Property That May Be Taken.
  - 3. Who May Exercise Power.
    - (a) [§1114] In General.
    - (b) [§1115] Municipal Corporation.
    - (c) [§1116] Federal Government Acting for State.
    - (d) [§1117] Private Person.
  - 4. Public Use.
    - (a) [§1118] In General.
    - (b) [§1119] Airport Purposes.
    - (c) [§1120] Review of Legislative Determination.
    - (d) [§1121] Change of Use After Judgment.
    - (e) [§1121A] (New) New Resolution for Change of Use.
  - 5. Public Purpose in Private Use.
    - (a) [§1122] In General.
    - (b) [§1123] Correcting Market Failure.
  - 6. [§1124] Public Necessity.
- B. Taking Under Federal Constitution.**
- 1. What Constitutes Taking.
    - (a) [§1125] Acquisition of Title or Possession.
    - (b) Damage to Property or Interests.

- (1) [§1126] In General.
        - (2) [§1127] Insubstantial Permanent Physical Occupation.
        - (3) [§1128] Damage From Airplanes.
        - (4) [§1129] Water and Power Projects.
      - (c) [§1130] Temporary Taking of Going Business.
    - 2. [§1131] Noncompensable Injury.
  - C. Taking or Damage Under California Constitution.
    - 1. What Constitutes Damage.
      - (a) [§1132] In General.
      - (b) [§1133] Limitations on Right to Compensation.
      - (c) [§1134] Compensation Without Tort Liability.
      - (d) [§1135] Mitigation Damages.
      - (e) [§1136] Service Duplication.
      - (f) [§1137] Violation of Deed Restriction.
      - (g) [§1138] Compensation to Option Holder.
    - 2. Noncompensable Injury.
      - (a) [§1139] Emergency Exercise of Police Power.
      - (b) [§1140] No Property Right.
      - (c) [§1141] Access to Navigable Waters.
      - (d) [§1142] Damage Occurring During Arrest.
  - D. Inverse Condemnation.
    - 1. In General.
      - (a) [§1143] Nature of Action.
      - (b) [§1144] Entity Without Eminent Domain Power.
      - (c) [§1145] Recovery for Loss of Goodwill.
    - 2. Physical Taking or Damage.
      - (a) [§1146] Flood and Water Damage.
      - (b) [§1147] Land Subsidence.
      - (c) Impairment of Access to Street or Highway.
        - (1) [§1148] In General.
        - (2) [§1149] Direct Access Cut Off.
        - (3) [§1150] Circuity of Travel and Loss of Traffic.
        - (4) [§1151] Miscellaneous Inconveniences.
      - (d) [§1152] Nuisance Rendering Property Uninhabitable.
    - 3. Regulatory Taking.
      - (a) In General.
        - (1) [§1153] Valid Exercise of Police Power.
        - (2) Landlord and Tenant Regulations.
          - (aa) [§1154] In General.
          - (bb) [§1155] Rent Control.
        - (3) [§1156] Fee as Condition for Use or Building Permit.
        - (4) Taking Requiring Compensation.
          - (aa) [§1157] In General.
          - (bb) [§1158] Lucas Decision.
        - (5) [§1159] Texts and Law Reviews.

**(b) Temporary Taking.**

- (1) [§1160] In General.**
- (2) [§1161] Delay in Development Process.**
- (3) [§1162] Building Moratorium.**
- (4) [§1163] Taking During Pendency of Proceedings.**

**4. Procedure.**

- (a) [§1164] In General.**
- (b) [§1165] Standing and Ripeness.**
- (c) [§1166] Statute of Limitations.**
- (d) [§1167] Interest.**
- (e) [§1168] Costs and Attorneys' Fees.**
- (f) [§1169] Action Prior to Taking or Damage.**

**E. Statutory Eminent Domain Law.**

**1. In General.**

- (a) [§1170] Nature, Organization, and Scope.**
- (b) [§1171] Definitions.**
- (c) [§1172] Rules of Practice.**
- (d) [§1173] BAJI and CACI Instructions.**
- (e) [§1174] Jurisdiction of Public Utilities Commission.**

**2. The Right To Take.**

- (a) General Limitations on Exercise of Power.**
  - (1) Public Use Limitations.**
    - (aa) [§1175] In General.**
    - (bb) [§1176] Condemnation of Sport Franchise.**
  - (2) Statutory Authorization Required.**
    - (aa) [§1177] In General.**
    - (bb) [§1178] Private Person's Utility Easement.**
    - (cc) [§1179] Private Person's Repair Easement.**
  - (3) [§1180] Public Necessity Required.**
  - (4) [§1181] Extraterritorial Condemnation.**
- (b) Rights Included in Grant of Authority.**
  - (1) [§1182] Necessary Interests in Property.**
  - (2) [§1183] Property To Make Principal Use Effective.**
  - (3) [§1184] Acquisition of Remainder With Consent.**
  - (4) [§1185] Joint Exercise of Power.**
  - (5) [§1186] Acquisition by Gift, Purchase, Lease, or Other Means.**
- (c) [§1187] Future Use.**
- (d) Substitute Condemnation.**
  - (1) [§1188] In General.**
  - (2) [§1189] To Relocate Public Use.**
  - (3) [§1190] To Provide Utility Service or Access to Road.**
- (e) [§1191] Excess Condemnation.**
- (f) Property Appropriated to Public Use.**
  - (1) Condemnation for Compatible Joint Use.**

- (aa) [§1192] Nature of Power.
    - (bb) [§1193] Terms and Conditions of Joint Use.
  - (2) Condemnation for More Necessary Public Use.
    - (aa) [§1194] Nature of Power.
    - (bb) [§1195] Uses Presumed To Be More Necessary.
- 3. Precondemnation Activities.
  - (a) Preliminary Location, Survey, and Tests.
    - (1) [§1196] Right To Enter.
    - (2) [§1197] Entry Under Court Order.
    - (3) [§1198] Owner's Action for Damages.
  - (b) Resolution of Necessity.
    - (1) [§1199] Requirement.
    - (2) [§1200] Effect of Resolution.
    - (3) [§1201] Judicial Review.
    - (4) [§1202] Remedies If Proceeding Is Not Promptly Commenced.
    - (5) [§1203] Consent to Proceeding by Quasi-Public Entity.
- 4. Commencement of Proceeding.
  - (a) [§1204] Jurisdiction and Venue.
  - (b) [§1205] Parties.
  - (c) [§1206] Pleading.
  - (d) [§1207] Process.
  - (e) Pretrial Settlement Offers.
    - (1) [§1208] In General.
    - (2) [§1209] Award of Litigation Expenses.
  - (f) [§1210] Alternative Dispute Resolution.
  - (g) [§1211] Discovery and Exchange of Valuation Data.
- 5. Deposit and Possession Before Judgment.
  - (a) Deposit of Probable Compensation.
    - (1) [§1212] In General.
    - (2) [§1213] Procedure.
    - (3) [§1214] Deposit on Demand of Homeowner or Lessor.
    - (4) [§1215] Withdrawal of Deposit.
  - (b) Possession Prior to Judgment.
    - (1) [§1216] Application and Order.
    - (2) [§1217] Service of Order.
    - (3) [§1218] Stay and Vacation of Order.
- 5A. [§1218A] (New) Owner's Right to Leaseback.
- 6. Trial.
  - (a) [§1219] In General.
  - (b) [§1220] Contesting Right To Take.
  - (c) Determining Compensation.
    - (1) [§1221] In General.

(2) [§1222] Valuation of Divided Interests.

**7. Compensation.**

(a) [§1223] Right to Compensation.

(b) [§1224] Date of Valuation.

(c) Compensation for Improvements to Realty.

(1) [§1225] In General.

(2) [§1226] Improvements Removed or Destroyed.

(3) [§1227] Improvements Made After Summons Is Served.

(d) [§1228] Compensation for Crops.

(e) Measure of Compensation for Property Taken.

(1) Fair Market Value.

(aa) [§1229] In General.

(bb) [§1230] Determining Market Value.

(cc) [§1231] Admissible Matters.

(dd) [§1232] Inadmissible Matters.

(ee) [§1233] Value of Easement.

(2) Changes Due to Imminence of Project.

(aa) [§1234] Project Enhancement.

(bb) [§1235] Condemnation Blight.

(f) Injury to Remainder.

(1) [§1236] Right to Compensation.

(2) Severance Damages.

(aa) [§1237] In General.

(bb) [§1238] Unity of Title.

(cc) [§1239] Contiguity.

(dd) [§1240] Unity of Use.

(3) Measure of Damages.

(aa) [§1241] In General.

(bb) [§1242] Improper Elements.

(4) Benefit to Remainder.

(aa) [§1243] When Offset Is Proper.

(bb) [§1244] When Offset Is Improper.

(g) Compensation for Loss of Goodwill.

(1) [§1245] In General.

(2) [§1246] Valuation and Proof of Loss.

(h) [§1247] Personal Property of Destroyed Business.

(i) [§1248] Mitigation Work by Condemnor.

(j) [§1249] Protective Work by Owner.

**8. Divided Interests.**

(a) [§1250] Leases.

(b) [§1251] Encumbrances.

(c) [§1252] Partial Taking and Impairment of Security.

(d) [§1253] Future Interests.

**9. Postjudgment Procedure.**

(a) [§1254] Payment and Final Order.

- (b) Deposit and Withdrawal of Award.**
  - (1) [§1255] Deposit After Judgment.**
  - (2) [§1256] Withdrawal of Deposit.**
- (c) [§1257] Possession After Judgment.**
- (d) Interest.**
  - (1) [§1258] In General.**
  - (2) [§1259] Market Rate of Interest.**
- (e) Ad Valorem Property Taxes.**
  - (1) [§1260] Liability, Proration, and Payment.**
  - (2) [§1261] Exempt Property.**
  - (3) [§1262] Cancellation of Taxes.**
- (f) [§1263] Special Assessment Liens.**
- (g) [§1264] Abandonment and Dismissal.**
- (h) Expenses and Damages on Dismissal or Defeat of Right To Condemn.**
  - (1) [§1265] Litigation Expenses.**
  - (2) [§1266] Damages Caused by Dispossession.**
- (i) [§1267] Costs.**

#### **10. Arbitration.**

- (a) [§1268] In General.**
- (b) [§1269] Effect and Enforcement of Agreement.**
- (c) [§1270] Abandonment of Acquisition.**

#### **F. Removal and Relocation Costs.**

- 1. [§1271] In General.**
- 2. [§1272] Authorized Payments and Assistance.**
- 3. [§1273] Displaced Person.**
- 4. [§1274] Comparable Replacement Housing.**
- 5. [§1275] Review.**
- 6. [§1276] Cross-Complaint in Condemnation Action.**
- 7. [§1277] Inverse Condemnation Action.**

### **XIV. OBLIGATION OF CONTRACTS**

#### **A. Nature of Protection.**

- 1. [§1278] In General.**
- 2. [§1279] Distinctions.**

#### **B. What Constitutes Contract.**

- 1. [§1280] In General.**
- 2. [§1281] Corporate Charter.**
- 3. [§1282] Public Franchise or Grant.**
- 4. [§1283] Bond of Public District.**
- 5. Public Pension System.**
  - (a) [§1284] Contractual Theory.**
  - (b) [§1285] Valid Modifications.**
  - (c) [§1286] Invalid Modifications.**

#### **C. What Constitutes Impairment.**

- 1. [§1287] Valid Changes in Remedy or Procedure.**
- 2. [§1288] Invalid Changes in Obligation.**

**3. Valid Impairment Under Police Power.**

- (a) [§1289] Emergency Legislation.
- (b) [§1290] Non-Emergency Legislation.
- (c) [§1291] Insurance Contracts.
- (d) [§1292] Stipulated Judgment for Welfare Benefits.

**XV. FEDERAL POWERS**

**A. [§1293] Nature of Federal Powers.**

**B. The Commerce Power.**

**1. What Constitutes Interstate and Foreign Commerce.**

- (a) [§1294] In General.
- (b) [§1295] Transportation.
- (c) [§1296] Interstate Activity Without Transportation.
- (d) [§1297] Local Activity as Part of Interstate Movement.

**2. State Power and Interstate Commerce.**

**(a) Prohibitory Legislation.**

- (1) [§1298] General Principle.
- (2) [§1299] Export of Natural Resources.

**(b) Unreasonable Burdens.**

- (1) [§1300] In General; Dormant Commerce Clause.
- (2) [§1301] Legislation Protecting Local Industry.
- (3) [§1302] Restrictions on Waste Disposal.
- (4) [§1303] Condemnation of Sports Franchise.

**(c) State Regulatory Powers Generally.**

- (1) [§1304] Local Phases of Commerce.
- (2) [§1305] Local Activities of Interstate Salespersons.
- (3) [§1306] Localized Foreign Commerce.
- (3a) [§1306A] (New) Interstate Reach of California Law.

**(4) Congressional Silence.**

- (aa) [§1307] In General.
- (bb) [§1308] Coincidence of Federal and State Statutes.

**(5) Express Congressional Authority.**

- (aa) [§1309] Rule and Illustrations.
- (bb) [§1310] Distinctions.

**(6) [§1311] Direct Burdens Under Twenty-First Amendment.**

**(d) Police Power Regulations.**

- (1) [§1312] Health and Safety Measures.
- (2) [§1313] State as Market Participant.
- (3) [§1314] Economic Restrictions on Imports.
- (4) [§1315] Economic Restrictions on Exports.
- (5) [§1316] Use of Highways.

**3. Federal Power Over Commerce.**

**(a) Regulation of Interstate Commerce.**

- (1) [§1317] In General.

- (2) [§1318] Labor Relations.
- (b) Regulation of Intrastate Activity.
  - (1) [§1319] In General.
  - (2) Regulation of Local Production.
    - (aa) [§1320] In General.
    - (bb) [§1321] Labor Regulations.
    - (cc) [§1322] Farming.

**C. War Power.**

- 1. [§1323] In General.
- 2. [§1324] Economic Regulations.
- 3. [§1325] Restrictions on Speech and Press.
- 4. [§1326] Enemy Aliens.
- 5. [§1327] American Citizens of Japanese Descent.
- 6. [§1328] Martial Rule and Military Commissions.
- 7. Courts-Martial and Uniform Code.
  - (a) [§1329] American Military Court System.
  - (b) [§1330] Uniform Code of Military Justice.
  - (c) [§1331] Status of Forces Agreements.
  - (d) [§1332] No Jurisdiction Over Civilians.
  - (e) [§1333] Jurisdiction Over Non-Service-Connected Crimes.
  - (f) [§1334] Procedure in Courts-Martial.
  - (g) [§1335] Judicial Review.
- 8. [§1336] Selective Service.

**D. Power in Foreign Affairs.**

- 1. [§1337] In General.
- 2. Treaties.
  - (a) [§1338] In General.
  - (b) [§1339] Warsaw Convention.
  - (c) [§1340] Supremacy Over State Law.
  - (d) [§1341] Limitations on Power.
  - (e) [§1342] Texts and Law Reviews.
- 3. [§1343] International Compacts.

**E. Other Federal Powers.**

- 1. [§1344] Fiscal Power.
- 2. [§1345] Bankruptcy Power.
- 3. [§1346] Property Power.
- 4. [§1347] Postal Power.