

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

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    - (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.**
- 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**
  - A. Malicious 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.

## **2 Malicious 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.**
  - (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.
  - 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.
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## 6 Summary of California Law (10th), Torts

### IX. NEGLIGENCE: IN GENERAL

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- 2. [§832] Jury Instructions.
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**X. NEGLIGENCE: GENERAL DUTY TO EXERCISE DUE CARE**

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- (4) Other Driving Rules.
  - (aa) [§883] Driving in Wrong Location or Manner.
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- (a) [§892] Class of Persons.
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- (g) Carrier's Duty To Prevent Assault.**
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**(1) [§991] Former Foreseeability Approach.**

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(1) [§998] General Principle.

(2) [§999] Illustrations.

(3) [§1000] Child Vehicle Driver.

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(b) [§1005] Injury Without Impact.

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(a) [§1007] Former Law: No Recovery.

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(d) [§1010] Nearness of Plaintiff.

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(1) [§1011] Condition Met: Recovery Allowed.

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(4) [§1014] Plaintiff May Be Voluntarily Present.

(5) [§1015] Seriousness of Event Must Be Apparent.

(6) [§1016] Event Must Be Visible.

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(f) Close Relationship.

(1) [§1018] Family Relationship.

(2) [§1019] Foster Parent.

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(3) [§1028] Legal Malpractice.

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- (a) [§1031] Financial Injury.
- (b) [§1032] Injury to Property.
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- (d) [§1034] Wrongful Termination of Employment.
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- (f) [§1036] Fear of Contracting Disease.
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**XI. NEGLIGENCE: AFFIRMATIVE DUTIES ARISING FROM SPECIAL RELATIONSHIPS**

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    - (1) [§1039] Probation Department.
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    - (3) [§1041] Knowledge of Another's Violent Tendencies.
    - (4) [§1042] Faith Healer.
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      - (aa) [§1043] Clergy.
      - (bb) [§1044] Police Officer.
      - (cc) [§1045] Mental Health Practitioner.
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    - (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.
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    - (3) [§1062] Illustration: Street Vendor's Duty to Child.
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- (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.
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    - (cc) [§1072] Furnishing Liquor to Intoxicated Minor.
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- (b) Owner or Possessor.
  - (1) [§1083] In General.
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- (b) [§1095] Former Limited Duties.
- (c) [§1096] Current Bases of Liability.
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(e) [§1099] Person Committing Serious Felony.

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(b) [§1101] Former Limited Duties.

(c) [§1102] Current Bases of Liability.

(d) No Liability to Recreational Licensees.

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(2) [§1104] Constitutionality of Statute.

(3) Recreational Purpose.

(aa) [§1105] In General.

(bb) [§1106] Playing on Machinery.

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(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.

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(1) Theory of Mutual Business Interest.

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(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.

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(cc) [§1124] Injury From Insect Bite.

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(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.
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      - (aa) [§1134] In General.
      - (bb) [§1135] Parking Garages.
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    - (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.
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    - (8) [§1144] Liability of Lessee to Guest.
    - (9) [§1145] Injury to or Loss of Property.
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    - (2) [§1147] Vicious Dog In Neighborhood.
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    - (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 Prelitigation 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.
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  - (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.

**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.

**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.
    - (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) [§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 (1824 (1430))] 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.