

5 Summary of California Law (10th), Torts

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 - (b) [§450] Protected Interest in Peace of Mind.
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 - (b) [§452] Severe Emotional Distress.
 - (c) [§453] Intentional or Reckless Conduct.
 - (d) [§454] Causation.
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 - (a) [§455] Privilege.
 - (b) [§456] Constitutionally Protected Speech or Conduct.
 - 4. Particular Conduct.
 - (a) [§457] Acts of Landlords.
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 - (e) [§461] Other Situations.
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- IV. INTENTIONAL INJURIES TO REPUTATION AND SIMILAR INTERESTS**
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 - (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.
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 - (1) [§477] Nature of Requirement.
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 - (1) [§480] Nature of Requirement.
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 - (aa) [§483] Action Unfavorable to Accused.
 - (bb) [§484] Action Favorable to Accused.
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 - (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.
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- (d) [§497] Institution or Continuation of Prior Proceeding.
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 - (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.
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(3) [§508] Some, But Not All, Claims or Amounts Supported by Probable Cause.

(4) [§509] Advice of Attorney.

(5) [§510] Action Against Attorney.

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(1) [§511] In General.

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(2) [§524] Distinctions.

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(b) [§530] Libel and Slander Distinguished.

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- (cc) [§569] Relevancy Limitation.
- (dd) [§570] No Interest of Justice Exception.
- (ee) [§571] Steps Before and After Trial.
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- (gg) [§573] Arbitration Proceedings.
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- (ii) [§575] Petition for Probate.
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- (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.
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 - (1) [§591] In General.
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 - (aa) [§592] In General.
 - (bb) [§593] What Constitutes Malice.
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 - (aa) [§594] In General.
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 - (1) [§601] In General.
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 - (aa) [§602] *New York Times* Rule: Requirement of Actual Malice.
 - (bb) [§603] Public Official Plaintiffs.

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 - (aa) [§613] Gertz Rule.
 - (bb) [§614] Burden of Proof on Falsity.
 - (cc) [§615] Matters of Purely Private Concern.
 - (dd) [§616] No Neutral Reportage Privilege.
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 - (1) [§617] Common Law Privilege.
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 - (aa) [§620] In General.
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 - (dd) [§623] Criticism of Judge.
 - (ee) [§624] Criticism of Performance of Profession or Occupation.
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 - (1) [§626] Original Publisher.
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 - (cc) [§632] Specification of Statements.
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 - (aa) [§636] Slander.
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(cc) [§638] Nonparticipants.

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(c) [§644] Instrument Void on Its Face.

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4. [§646] Damage: Pecuniary Loss.

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(b) [§648] Absolute Privilege.

(c) [§649] Qualified Privilege.

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(b) [§652] Defamation Distinguished.

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(f) [§656] Necessity of Showing Malice.

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(1) [§658] In General.

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(1) [§660] In General.

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(1) [§664] In General.

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(3) [§668] Identity Theft.

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(b) [§674] Illustrations.

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(1) [§676] In General.

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(b) Statutory Action.

(1) [§681] In General.

(2) [§682] Conditions of Recovery.

(3) [§683] Exemptions.

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(1) [§684] Background.

(2) [§685] Statutory Right.

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(a) [§687] In General.

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(1) [§688] General Rule.

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(1) [§690] In General.

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(c) [§695] Actual or Constructive Possession by Plaintiff.

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(b) [§697] Other Privileged Entries.

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(a) [§699] Nature of Tort.

(b) [§700] Remedies.

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- (a) [§708] Actual Interference Required.
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- (c) Particular Acts.
 - (1) [§710] Taking.
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- 1. [§726] Action by Parents.
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(aa) [§794] In General.

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6 Summary of California Law (10th), Torts

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(1) [§853] Firefighter Cases.

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 - 4. [§903] Lack of Necessary Skill or Care.
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 - (a) [§905] Warning Before Acts.
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 - (a) [§908] Safety Belts.
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 - (b) [§919] Electricity.
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 - (aa) [§942] Statutory Provisions.**
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 - (aa) [§953] In General.**
 - (bb) [§954] Extension of Applicable Statute of limitations.**
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- (1) [§977] In General.
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- (1) [§979] In General.
- (2) [§980] Cause of Action Recognized.
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- (4) [§982] Recovery Limited to Special Damages
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- (b) Duty to Unintended Recipients of Information.
 - (1) [§991] Former Foreseeability Approach.
 - (2) [§992] Liability Limited to Client.
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- (a) [§995] In General.
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- (a) Duty Owed by Child.
 - (1) [§998] General Principle.
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(b) [§1005] Injury Without Impact.

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(a) [§1007] Former Law: No Recovery.

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(c) [§1009] Dillon Guidelines Are Binding.

(d) [§1010] Nearness of Plaintiff.

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

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(3) [§1013] Event Need Not Be Sudden.

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

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

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(2) [§1019] Foster Parent.

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(g) [§1021A] (New) Defective Product as Source of Emotional Distress.

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(a) [§1022] Development of Rule.

(b) Cases Upholding Recovery.

(1) [§1023] In General.

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(b) [§1032] Injury to Property.

(c) [§1033] Report Causing Arrest.

(d) [§1034] Wrongful Termination of Employment.

(e) [§1035] Assisting in Removal of Child.

(f) [§1036] Fear of Contracting Disease.

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(b) Illustrations: Situations Where No Duty Arises.

(1) [§1039] Probation Department.

(2) [§1040] Intoxicated Patron of Business Establishment.

(3) [§1041] Knowledge of Another's Violent Tendencies.

(4) [§1042] Faith Healer.

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(aa) [§1043] Clergy.

(bb) [§1044] Police Officer.

(cc) [§1045] Mental Health Practitioner.

(6) Clergy.

(aa) [§1046] In General.

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(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.

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(2) [§1061] Conditions for Liability.

(3) [§1062] Illustration: Street Vendor's Duty to Child.

(4) [§1063] Distinction: Casual Advice.

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(1) [§1066] Common Law Rule of Nonliability.

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- (bb) [§1068] Liability to Intoxicated Person.
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 - (aa) [§1070] Statutory Rules.
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 - (cc) [§1072] Furnishing Liquor to Intoxicated Minor.
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 - (1) [§1085] Traditional Status Classification.
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 - 2. Trespassers.**
 - (a) [§1094] Who Are Trespassers.
 - (b) [§1095] Former Limited Duties.
 - (c) [§1096] Current Bases of Liability.
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 - (2) [§1098] Authority Must Be Express.
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 - (b) [§1101] Former Limited Duties.
 - (c) [§1102] Current Bases of Liability.
 - (d) No Liability to Recreational Licensees.

- (1) [§1103] In General.
 - (2) [§1104] Constitutionality of Statute.
 - (3) Recreational Purpose.
 - (aa) [§1105] In General.
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 - (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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- 4. Invitees or Business Visitors.**
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 - (1) Theory of Mutual Business Interest.
 - (aa) [§1113] In General.
 - (bb) [§1114] Nonbusiness Activity as Business.
 - (cc) [§1115] Circumstances and Custom.
 - (2) [§1116] Theory of Public Invitation.
 - (3) [§1117] Illustrations.
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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.
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 - (bb) [§1135] Parking Garages.
 - (cc) [§1136] Other Structures.
 - (4) [§1137] Warning of Danger.

- (5) [§1138] Proximate Cause.
 - (6) Liability of Owner of Business Premises.
 - (aa) [§1139] Parking Garage Owner.
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 - (cc) [§1141] No Duty To Comply With Criminal's Demand.
 - (7) Liability of Landlord.
 - (aa) [§1142] Liability Upheld.
 - (bb) [§1143] Liability Denied.
 - (8) [§1144] Liability of Lessee to Guest.
 - (9) [§1145] Injury to or Loss of Property.
 - (e) Dangerous Activity Off Premises.
 - (1) [§1146] In General.
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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.
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- 5. Trespassing Children.**
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 - (1) [§1154] Rule and Classification.
 - (2) [§1155] Extension of Liability Under Restatement.
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- D. Construction Defects.**
- 1. [§1162] In General.
 - 2. [§1163] Scope of Legislation.
 - 3. [§1164] Actionable Defects.
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 - 5. [§1166] Action and Relief.
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- E. Manufacturers and Other Suppliers of Goods.**
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 - (b) [§1169] Restatement and California Law.

- (c) [§1170] Injury to Property.
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- 3. [§1175] Duty To Inspect.
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- 1. [§1179] Recovery Allowed.
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- 1. Nature of Doctrine.
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 - (b) [§1182] Restatement 2d.
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- 3. Cause in Fact and Proximate Cause.
 - (a) [§1185] Cause in Fact.
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 - (c) [§1187] Instructions.
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 - (1) [§1188] Negligence of Medical Personnel or Facility.
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- 1. [§1192] Liability for Unforeseeable Consequences.
- 2. [§1193] Concurring Causes.
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- 1. Test of Foreseeability.
 - (a) [§1197] In General .
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- 2. [§1199] Natural Forces and Animals.
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- 4. Negligent Act or Omission of Third Person.
 - (a) [§1201] Object Left in Path of Vehicle.
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 - (c) [§1203] Illegal Parking.

- (d) [§1204] Accident Leaving Plaintiff Helpless.
- (e) Intervening Negligent Driver.
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- (g) Manufacturer's Negligence and Intervening Negligence.
 - (1) [§1208] Intervening Party's Knowledge.
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 - (3) [§1210] Intervening Negligent Act of Stranger.
- (h) [§1211] Subcontractor's Negligence and Contractor's Intervening Negligence.
- (i) [§1212] Intervening Negligence of Hospital Staff.
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- (a) [§1214] Unforeseeable Act.
- (b) [§1215] Likelihood of Act.
- (c) [§1216] Act Not Highly Extraordinary.
- (d) [§1217] Act of Responsible Child.
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XIII. NEGLIGENCE: LIABILITY FOR NEGLIGENCE OF OTHERS

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- 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.
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- 3. [§1226] Respondeat Superior Liability Distinguished.

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- 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.
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- 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.
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 - (1) [§1245] Peculiar Risk Doctrine Is Not Applicable.
 - (2) [§1246] Direct and Vicarious Liability.

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- (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.

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F. Statutory Liability for Operation of Automobile.

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- (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.

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- (a) In General.
 - (1) [§1260] Statutory Development.
 - (2) [§1261] Limited Liability.
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- (b) Liability of Owner.
 - (1) [§1265] In General.
 - (2) [§1266] Notification to Department.
 - (3) [§1267] Minor Who Disaffirms.
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- (c) [§1269] Liability of Bailee or Personal Representative.
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(1) [§1271] Express and Implied Permission.

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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.

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(a) [§1276] In General.

(b) [§1277] Security Following Accident.

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I. [§1279] Distinction: Financing Agency Is Not Liable.

XIV. NEGLIGENCE: DEFENSES

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(b) [§1282] Relation Contributory Negligence.

(c) [§1283] Relation to Comparative Negligence.

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(1) [§1284] Risk of Defendant's Negligence.

(2) [§1285] Plaintiff's Knowledge of Danger.

(b) Illustrations of Risk Assumed.

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(c) When Risk Is Not Assumed.

(1) [§1288] No Actual Knowledge of Danger.

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(a) [§1292] In General.

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(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.
2. Dogs.

- (a) [§1407] Statutory Liability.
 - (b) Dog-Bite Statute.
 - (1) [§1408] In General.
 - (2) [§1409] Private Place.
 - (3) [§1410] Veterinarian's Assumption of Risk.
 - (4) [§1411] Immunity for Military and Police Dogs.
 - (c) [§1412] Liability Independent of Statute.
- 3. [§1413] Causation and Contributory Fault.
- B. Ultrahazardous Activity: Liability Without Fault.**
 - 1. [§1414] Theory of Ultrahazardous Activity.
 - 2. Development of California Law.
 - (a) [§1415] Earlier Cases.
 - (b) [§1416] Adoption of Restatement Rule.
 - 3. [§1417] Causation and Contributory Fault.
 - 4. Activities Classed as Ultrahazardous.
 - (a) [§1418] Using Explosives.
 - (b) [§1419] Fumigating.
 - (c) [§1420] Crop Dusting.
 - (d) [§1421] Testing Rocket Motor.
 - (e) [§1422] Using Blowtorch Near Oil.
 - (f) [§1423] Using Electrical Transformers Containing PCBs.
 - 5. Activities Not Classed as Ultrahazardous.
 - (a) [§1424] Impounding Water.
 - (b) [§1425] Aviation.
 - (c) [§1426] Excavation and Earth Moving.
 - (d) [§1427] Other Activities.
- C. Strict Products Liability.**
 - 1. In General.
 - (a) [§1428] Background: Negligence and Warranty.
 - (b) [§1429] Liability Irrespective of Fault.
 - (c) [§1430] Restatement.
 - (d) [§1431] Negligence Liability Compared.
 - (e) [§1432] Indemnity.
 - (f) [§1433] Recovery for Emotional Distress.
 - (g) [§1434] No Avoidance of Liability by Written Agreement.
 - 2. What Constitutes Defective Product.
 - (a) In General.
 - (1) [§1435] Restatement 3d.
 - (2) [§1436] Product Need Not Be Unreasonably Dangerous.
 - (3) [§1437] Jury Instructions.
 - (b) Particular Products.
 - (1) [§1438] Asbestos.
 - (2) [§1439] Machinery and Equipment.
 - (3) [§1440] Food and Beverages.
 - (4) [§1441] Drugs, Medical Devices, and Personal Care Products.
 - (5) [§1442] Household Furnishings and Appliances.

- (6) [§1443] Motor Vehicle Equipment.
- (7) [§1444] Sports and Recreational Equipment.
- (8) [§1445] Miscellaneous Products.
- (9) Electrical Facilities and Power.
 - (aa) [§1446] Electrical Facilities: No Strict Liability.
 - (bb) [§1447] Delivery of Electricity: Strict Liability.
- (10) [§1448] Restatement Rules Applicable to Particular Products.
- (c) Defects in Design.
 - (1) [§1449] In General.
 - (2) [§1450] Restatement 3d.
 - (3) [§1451] All Components Considered.
 - (4) [§1452] Possibility of Alternative Design.
 - (5) [§1453] Product Need Not Be Unreasonably Dangerous.
 - (6) [§1454] Dangerous Location.
 - (7) [§1455] Consumer Expectations and Risk-Benefit Tests: In General.
 - (8) Consumer Expectations and Risk-Benefit Tests: Qualifications.
 - (aa) [§1456] Design Merits Are Irrelevant in Consumer Expectations Analysis.
 - (bb) [§1457] Warning Is Relevant in Risk-Benefit Analysis.
 - (cc) [§1458] Propriety of Instruction on Consumer Expectations Where Product Is Not Readily Available.
 - (dd) [§1459] Establishing Prima Facie Case.
 - (9) Consumer Expectations and Risk-Benefit Tests: Application.
 - (aa) [§1460] Breast Implants.
 - (bb) [§1461] Motorcycles.
 - (cc) [§1462] Arthroscopic Scissors.
 - (dd) [§1463] Firearms and Ammunition.
 - (ee) [§1464] Other Decisions.
- (d) Obvious Defects.
 - (1) [§1465] Strict Liability for Obvious Defects.
 - (2) [§1466] Contradictory Instructions.
- 3. Failure To Warn.
 - (a) In General.
 - (1) [§1467] Duty To Warn.
 - (2) [§1468] Risk-Benefit Analysis.
 - (3) [§1469] Product of Another Manufacturer.
 - (b) Drugs.
 - (1) [§1470] In General.
 - (2) [§1471] Prescription Drugs.
 - (3) [§1472] Warning in Languages Other Than English.
 - (4) [§1473] Restatement 3d.
 - (c) Lack of Knowledge of Danger.

- (1) [§1474] Unforeseeable Danger.
 - (2) [§1475] Duty Despite Lack of Knowledge.
 - (d) [§1476] Adequacy of Warning.
 - (e) [§1477] Knowledge or Knowability.
 - (f) [§1478] Postsale Failure To Warn.
- 4. [§1479] Failure To Recall Product.
- 5. Scope of Liability.
 - (a) Persons Liable.
 - (1) [§1480] Manufacturer: In General.
 - (2) Manufacturer: Successor Corporations.
 - (aa) [§1481] Liability Where Assets Are Acquired.
 - (bb) [§1482] Distinction: Acquisition of Capital Stock.
 - (cc) [§1483] Distinction: Negligence Action.
 - (dd) [§1484] Distinction: Acquisition Through Bankruptcy.
 - (ee) [§1485] Liability for Failure To Warn.
 - (3) Manufacturer: Unidentified Maker of Fungible Goods.
 - (aa) [§1486] DES Case.
 - (bb) [§1487] Drug Marketed for Different Purpose.
 - (cc) [§1488] Defective Vaccine.
 - (dd) [§1489] Insufficient Share of Market.
 - (4) Manufacturer: Asbestos Cases.
 - (aa) [§1490] Where Market Share Theory Is Inapplicable.
 - (bb) [§1491] Where Market Share Theory Is Applicable.
 - (cc) [§1492] Erroneous Burden-Shifting Instruction.
 - (5) [§1493] Manufacturer: Multiple Toxin Cases.
 - (6) [§1494] Manufacturer: Apparent Manufacturer.
 - (7) Retail Dealer.
 - (aa) [§1495] In General.
 - (bb) [§1496] Seller of Secondhand Goods.
 - (cc) [§1497] Pharmacist.
 - (8) Wholesaler or Distributor.
 - (aa) [§1498] In General.
 - (bb) [§1499] Successor Corporation.
 - (9) [§1500] Licensor or Franchisor.
 - (10) Mass Produced Homes.
 - (aa) [§1501] Seller.
 - (bb) [§1502] Manufacturer or Supplier of Component Part.
 - (11) [§1503] Vendor of Tract Lots.
 - (12) [§1504] Developer of Planned Development Project.
 - (13) [§1505] Subcontractor.
 - (14) [§1506] Lessor of Personal Property.
 - (15) [§1507] Lessor of Residential Premises.
 - (15a) [§1507A] (New) Finance Lessor.
 - (16) [§1508] Scope of Liability Under Third Restatement.

- (b) Persons Entitled To Recover.**
 - (1) [§1509] Foreseeable User or Consumer.**
 - (2) [§1510] Commercial Customer.**
 - (3) [§1511] Bystander.**
 - (4) [§1512] Licensee.**
- (c) Kinds of Injury or Damage.**
 - (1) [§1513] Physical Injury or Wrongful Death.**
 - (2) Economic Loss.**
 - (aa) [§1514] No Recovery Rule.**
 - (bb) [§1515] As Applied to Strict Liability Action.**
 - (cc) [§1516] As Applied to Negligence Action.**
 - (dd) [§1517] Restatement Rule.**
 - (ee) [§1517A] (New) Distinction: Intentional Tort.**
- (d) [§1518] Enhancement of Harm.**
- (e) Where Liability Is Not Imposed.**
 - (1) [§1519] Sales Not in Course of Business.**
 - (2) Performance of Services.**
 - (aa) [§1520] In General.**
 - (bb) [§1521] Medical Operation.**
 - (cc) [§1522] Other Medical Procedure.**
 - (dd) [§1523] Latent Defect in Hospital Premises.**
 - (3) [§1524] Commercial Transaction.**
 - (4) [§1525] Commercial Establishment.**

6. Defenses.

- (a) Defect Is Not Proximate Cause of Injury.**
 - (1) [§1526] In General.**
 - (2) [§1527] Vehicle Cases.**
 - (3) Article To Be Processed.**
 - (aa) [§1528] In General.**
 - (bb) [§1529] Raw Material and Sophisticated Buyer Defenses.**
 - (4) Abnormal Use.**
 - (aa) [§1530] Unforeseeable Use.**
 - (bb) [§1531] Foreseeable Use.**
- (b) Unavoidably Unsafe Products.**
 - (1) In General.**
 - (aa) [§1532] Drugs and Vaccines.**
 - (bb) [§1533] Other Products.**
 - (2) Statutory Immunity for Inherently Unsafe Product.**
 - (aa) [§1534] In General.**
 - (bb) [§1535] Revocation of Immunity for Tobacco Manufacturers.**
 - (cc) [§1536] Retroactivity.**
- (c) [§1537] Adequate Warning.**
- (d) [§1538] Government Contractor Defense.**
- (e) Compliance With Federal Standards.**

- (1) [§1539] Automobile Safety Equipment.
- (2) [§1540] Medical Devices.
- (3) [§1540A] (New) Distinction: Drugs.
- (f) Doctrine of Comparative Fault.
 - (1) [§1541] Former Law: Assumption of Risk.
 - (2) [§1542] Adoption of Doctrine.
 - (3) [§1543] Restatement Rule.
- (g) [§1544] Contractual Exculpation.

XVII. DAMAGES: IN GENERAL

A. Nominal Damages.

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

B. Compensatory Damages.

1. In General.

- (a) [§1548] Theory and Distinctions.
- (b) [§1549] General and Special Damages.
- (c) [§1550] No Double Recovery.
- (d) [§1551] Certainty.
- (e) [§1552] Prospective Damages.

2. Causation.

- (a) [§1553] Nature of Requirement.
- (b) [§1554] Burden of Proof Where Causation Is Uncertain.

3. Compensatory Damages in Particular Circumstances.

- (a) [§1555] Anticipated Punitive Damages in Malpractice Action.
- (b) [§1556] Postresignation Damages in Employment Action.

4. Tax Treatment of Tort Recovery.

- (a) [§1557] In General.
- (b) [§1558] Punitive Damages.

C. Punitive or Exemplary Damages.

1. In General.

- (a) [§1559] Nature and Purpose of Award.
- (b) [§1560] Restatement 2d.
- (c) [§1561] Model Punitive Damages Act.
- (d) [§1562] Instructions.
- (e) [§1563] Awards in Multiple Litigation.
- (f) [§1564] No Insurance Against Award.
- (g) [§1565] Is Award Disfavored?

2. Constitutionality of Awards.

- (a) [§1566] In General.
- (b) [§1567] No Due Process Violation.
- (c) [§1568] Due Process Violation.
- (d) [§1568A] (New) Disgorgement of Profits.
- (e) [§1568B] (New) Harm to Nonparties.

3. Statutory Penalties Distinguished.

- (a) [§1569] Nature and Validity of Penalties.

- (b) [§1570] Treble Damages.
- (c) [§1571] Recovery of Both Penalty and Punitive Damages.

4. Malice.

- (a) [§1572] Requirement of Actual Malice.
- (b) [§1573] Inference From Circumstances.
- (c) Conscious Disregard of Rights or Safety.
 - (1) [§1574] Nature of Problem and Earlier Cases.
 - (2) [§1575] Rule That Conscious Disregard of Safety Is Sufficient.
 - (3) [§1576] Rule Is Retroactive.
- (d) [§1577] Ignorance of Injured Party's Identity.

5. Proper and Improper Plaintiffs.

- (a) [§1578] In General.
- (b) [§1579] Recovery by Public Entities.

6. Proper and Improper Defendants.

- (a) [§1580] In General.
- (b) Employer.
 - (1) [§1581] General Rule of Nonliability.
 - (2) [§1582] Act Authorized or Ratified.
 - (3) [§1583] Liability in Other Situations.
 - (4) [§1584] Award Only Against Employer.
 - (5) [§1585] Codification of Rules.

7. Types of Cases.

- (a) Tort Actions.
 - (1) [§1586] Personal Torts.
 - (2) [§1587] Fraud.
 - (3) [§1588] Trespass or Injury to Real Property.
 - (4) [§1589] Wrongful Taking of Personal Property.
 - (5) Breach of Covenant of Good Faith.
 - (aa) [§1590] Former Law: Bad Faith Rule.
 - (bb) [§1591] Bad Faith Rule Limited to Insurance Cases.
 - (cc) [§1592] Breach by Surety.
 - (6) Products Liability Action.
 - (aa) [§1593] In General.
 - (bb) [§1594] Market Share Cases.
 - (7) [§1595] Civil Rights Action.
 - (8) [§1596] Job Discrimination Action.
 - (9) [§1597] Other Torts.
- (b) [§1598] Equity Actions.
- (c) [§1599] Alternative Contract or Tort Actions.
- (d) Action Against Health Care Provider.
 - (1) [§1600] In General.
 - (2) [§1601] Arising Out of Professional Negligence.
 - (3) [§1602] Substantial Probability That Plaintiff Will Prevail.
 - (4) [§1603] Time Limits.
 - (5) [§1604] Action Based on Intentional Tort or Crime.
- (e) [§1605] Action Against Religious Corporation.

(f) [§1606] Felon's Action Against Victim.

8. Necessity of Actual Damages.

(a) [§1607] Nature of Requirement.

(b) [§1608] No Need for Prayer.

(c) [§1609] Separate Award Is Not Essential.

(d) [§1610] Award of Nominal Damages.

9. Determination of Award and Amount.

a[§1611] Discretion of Jury.

(b) [§1612] Relation to Actual Damages.

(c) Wealth of Defendant.

(1) Evidence Admissible.

(aa) [§1613] In General.

(bb) [§1614] Net Worth.

(2) Bifurcation of Trial.

(aa) [§1615] In General.

(bb) [§1616] Same Trier of Fact.

(cc) [§1617] Time of Application.

(3) [§1618] Discovery of Financial Condition.

(4) [§1619] Introduction of Evidence Is Essential.

(5) [§1620] Awards Upheld.

(6) Awards Held Excessive.

aa) [§1621] In General.

(bb) [§1622] Defendant Not Wealthy.

(d) [§1623] Prejudicial Matter in Trial.

(e) [§1623A] (New) Uncompensated or Potential Harm as Affecting Amount.

D. Mitigation of Damages.

1. Avoidable Consequences.

(a) [§1624] In General.

(b) [§1625] Recovery of Cost of Efforts.

(c) Exceptions to Requirement.

(1) [§1626] Unreasonable Efforts.

(2) [§1627] Reliance on Defendant's Promise.

(3) [§1628] Lender's Failure To Insure Collateral.

2. [§1629] Benefits Conferred by Defendant.

3. [§1630] Other Mitigating Factors.

4. Collateral Source Rule.

(a) [§1631] Nature of Rule.

(b) [§1632] Supporting Theories and Policies.

(c) Scope and Application of Rule.

(1) [§1633] In General.

(2) [§1634] Gratuitous Payment.

(3) [§1635] Illustrations.

(d) Action Against Public Entity.

(1) [§1636] In General.

(2) Statutory Offset Procedure.

- (aa) [§1637] Nature of Statute.
- (bb) [§1638] Motion, Discovery, and Settlement Conference.
- (cc) [§1639] Hearing and Determination.

(e) Distinctions.

- (1) [§1640] Payment by Tortfeasor's Insurer.
- (2) [§1641] Uninsured Motorist Proceeds.
- (3) [§1642] Use of Rule To Reduce Damages.

E. Interest.

1. Actions Other Than for Personal Injury.

- (a) [§1643] In General.
- (b) [§1644] Obligation Not Arising From Contract.

2. Prejudgment Interest in Personal Injury Actions.

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

F. Attorneys' Fees and Other Litigation Expense.

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

G. Proposition 213: Limitation on Recovery of Damages.

- 1. [§1657] In General.
- 2. Uninsured Motorists.
 - (a) [§1658] In General.
 - (b) [§1659] Products Liability.
 - (c) [§1660] Punitive Damages.
 - (d) [§1661] Wrongful Death.
 - (e) [§1662] Action Against Public Entity.
 - (f) [§1663] Causal Connection.
 - (g) [§1664] Insured Vehicle.

XVIII. DAMAGES: KINDS OF INJURY

A. Injuries to Person.

- 1. [§1665] In General.
- 2. [§1666] Loss of Past Earnings or Value of Time.
- 3. Impairment of Future Earning Capacity.
 - (a) [§1667] In General.
 - (b) [§1668] Plaintiff's Lost Years.
 - (c) [§1669] Illegal Alien Subject to Deportation.

4. [§1670] Medical Care and Related Expense.
 5. Physical Pain and Mental Suffering.
 - (a) [§1671] In General.
 - (b) [§1672] Nature of Mental Suffering.
 - (c) [§1673] Loss of Enjoyment.
 - (d) [§1674] Injury to Baby.
 - (e) [§1675] Permissible Argument.
 6. [§1676] Aggravation of Plaintiff's Prior Condition.
 7. [§1677] Susceptibility to Subsequent Disease or Injury.
 8. Loss of Consortium.
 - (a) [§1678] Former Rule Denying Recovery.
 - (b) Recovery by Spouse.
 - (1) [§1679] In General.
 - (2) [§1680] Effect of Insurance Policy "One Person" Limit.
 - (3) [§1681] No Recovery for Premarital Injury.
 - (4) [§1682] Scope of Recovery.
 - (c) [§1683] No Recovery by Child.
 - (d) [§1684] No Recovery by Parent.
 - (e) [§1685] No Recovery by Nonmarital Cohabitant.
 9. Abuse of Elderly or Dependent Adult.
 - (a) [§1686] Statutory Remedies.
 - (b) [§1687] Exception for Professional Negligence by Health Care Provider.
 - (c) [§1688] Forms and Instructions.
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 - (a) [§1695] Minor Child.
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- C. Other Torts to Person, Reputation, and Similar Interests.**
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- 7. Causing Emotional Distress.**
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