5 Summary of California Law (10th), Torts

I. INTRODUCTION
   A. Nature of Torts and Tort Actions.
      1. §1 Definitions and Distinctions.
      2. §2 Act as Tort and Breach of Contract.
      3. §3 Restatement of Torts.
      4. §4 Texts, Practice Works, and Commentary.
      5. §5 Classification of Torts.
         (a) §6 General Principle.
         (b) Illustrations of No Duty.
            (1) §7 In General.
            (2) §8 Schools.
            (3) §9 Social Service Agencies.
            (4) §10 Public Utilities.
         (c) Violation of Statute or Constitutional Provision.
            (1) In General.
               (aa) §11 Violation as Giving Rise to Tort Liability.
               (bb) §12 Restatement Rule.
               (cc) §13 Legislative Intent Approach.
            (2) Illustrations.
               (aa) §14 State Statute.
               (bb) §15 Federal Statute.
               (cc) §16 Federal Constitution.
               (dd) §17 State Constitution.
      7. §18 Causation.
         (a) §19 In General.
         (b) §20 Intentional Torts: Prima Facie Tort Doctrine.
      10. §22 Motive in Tort Law.
      11. §23 Survival of Tort Liability.
   B. Persons or Entities Liable for Tort.
      1. §24 In General.
      2. §25 Minors.
      3. §26 Mentally Disabled Persons.
      4. Liability Between Family Members.
         (a) §27 Spouses.
         (b) §28 Parent and Child.
         (c) §29 Siblings.
      5. §30 Agents and Employees.
      6. §31 Representatives.
      7. §32 Corporations.
      8. Corporate Directors and Officers.
         (a) §33 In General.
(b) §34 Limitation of Liability in Articles.
(c) §35 Volunteer Directors or Officers of Nonprofit Corporations.

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

10. Charities.
   (a) §42 Liability to Persons Other Than Beneficiaries.
   (b) §43 Liability to Beneficiaries.

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

2. Apportionment of Damages.
   (a) §50 Common Law Background: Joint and Several Liability.
   (b) §51 Restatement.
   (c) Modification of Joint and Several Liability (Proposition 51).
      (1) §52 Nature, Purpose, and Validity.
      (2) §53 Several Liability for Noneconomic Damages.
      (3) Manner of Allocating Damages.
         (aa) §54 Basic Rule.
         (bb) §55 Between Negligent and Intentional Tortfeasors.
         (cc) §56 Between Original and Successive Tortfeasors.
         (dd) §57 Between Tortfeasors Subject and Not Subject to Liability.
         (ee) §58 Between Settling and Nonsettling Tortfeasors.
         (ff) §59 Credit for Workers' Compensation Benefits.
         (gg) §60 Applicability of Comparative Equitable Indemnity.
      (4) Claims Subject to Proposition 51.
         (aa) §61 In General.
         (bb) §62 Claims Involving Both Negligent and Intentional Torts.
         (cc) §63 Claims Involving Vicarious Liability.
         (dd) §64 Claims Involving Strict Liability.
(5) [§65] Proposition 51 Nonretroactive.

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

4. Settlement With Fewer Than All Tortfeasors.
   (a) In General.
      (2) Statutory Abrogation of Rule.
         (aa) [§71] In General.
         (bb) [§72] Scope.
         (dd) [§74] Application to Alter Ego Liability.
      (3) [§75] Restatement.
   (b) [§76] Time of Settlement.
   (c) Requirement of Good Faith.
      (1) Nature and Scope of Requirement.
         (aa) [§77] In General.
         (bb) [§78] Early Cases.
         (cc) [§79] Tech-Bilt Test.
         (dd) [§80] Nonmonetary Consideration for Settlement.
         (ee) [§81] Settlement With Cross-Defendant.
         (ff) [§82] Condition That Settling Tortfeasor Participate in Trial.
      (2) Determination of Good Faith.
         (aa) [§83] Statutory Requirement.
         (bb) [§84] Notice or Application.
         (cc) [§85] Conduct of Hearing.
         (dd) [§86] Review.
         (ee) [§87] Scope of Statute.
   (d) Effect of Good Faith Settlement.
      (1) [§88] General Rule: Bar to Further Claims Against Settling Tortfeasor.
      (2) Distinctions and Exceptions.
         (aa) [§89] Claims Against Others.
         (bb) [§90] Claims Asserted in Independent Action.
         (cc) [§91] Claims for Contractual or Statutory Indemnity.
         (dd) [§92] Claims of Nonparties.
         (ee) [§93] Claims of Insurers.
         (ff) [§94] Claims Not Involving Contribution or Indemnity.
      (3) Offset to Judgment Against Nonsettling Tortfeasor.
         aa) [§95] In General.
         bb) [§96] Valuation of Settlement.
         cc) [§97] Structured Settlement With Periodic Payments.
(dd) §98 Settlement Offsetting Entire Judgment.
(ee) §99 Noneconomic Damages Under Proposition 51.
(d-1) §99A (New) Settlement Not Made in Good Faith.
(e) Sliding Scale Agreements.
   (1) §100 Nature and Types.
   (2) §101 Notice and Disclosure.
   (3) §102 Good Faith Requirement.

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

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

D. Defenses to Tort Action.

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

2. Privilege.
   (a) §131 In General.
(b) Emergency Medical Aid.
(1) §132 In General.
(2) Immunity of Physicians.
   (aa) §133 In General.
   (bb) §134 Distinction: Physician Assigned to Emergency Duties.
   (cc) §135 Distinction: Services Rendered to Scheduled Patient.
(3) Immunity of Others.
   (aa) §136 In General.
   (bb) §137 Persons or Teams Attempting Resuscitation.
(4) §138 Refusal To Render Emergency Services.
(b-1) §138A (New) Providers of 911 Service.
(c) §139 Immunization Programs.
(d) Report of Child Abuse or Neglect.
   (1) §140 In General.
   (2) §141 Nature and Scope of Immunity.
   (3) Subsequent Acts.
      (aa) §142 Subsequent Statements.
      (bb) §143 Subsequent Concealment of Victim.
   (4) §144 Federal Civil Rights Liability.
   (5) §145 Related Immunities.
   (6) §146 Liability for Failure To Report.
(e) Report of Abuse of Elder or Dependent Adults.
   (1) §147 In General.
   (2) §148 Required or Authorized Reporting.
   (2a) §148A (New) Reporting by Financial Institutions.
   (3) §149 Confidentiality and Disclosure.
   (4) §150 Immunity for Reporting.
(f) §151 Report of Student's Use of Alcohol or Drugs.
(g) §152 Reports Respecting Health Care Plans and Facilities.
(h) §153 Disclosure of AIDS Test.
(i) §154 Insurer's Report of Suspected Arson.
(j) §155 Proceedings of Professional Society or Committee.
(k) §156 Referrals of Patients or Clients.
(l) §157 Protection of Property Against Dog.
(m) §158 Structural Inspection After Declared Emergency.
(n) §159 Donated Fire Protection Equipment.
(o) §160 Independent Quality Review for Residential Construction.
(p) §161 Reliance on Court Process or Order.
(q) §162 Failure of Court To Give Notice of Protective Order.
(r) §163 Disclosure by Anonymous Witness Program.
(s) §164 Report Regarding Threat of Violence on School Grounds.
(s-1) §164A (New) Discussion of Insurance Fraud With Insurance Commissioner.
(t) Privilege of Public Officers.
(1) [§165] Legislators.

(2) Judges and Quasi-Judicial Officers.
   (aa) [§166] In General.
   (dd) [§169] Acts Without or in Excess of Jurisdiction.
   (ee) [§170] Proceedings or Relief Not Barred.
   (ff) [§171] Administrative Judges and Hearing Officers.
   (gg) [§172] State Bar and Bar Associations.
   (ii) [§174] Persons Engaged in Alternative Dispute
             Resolution.
   (jj) [§175] Private Persons Conspiring With Judge.

(3) Executive Officers.
   (bb) [§177] State Officers in Civil Rights Suits.
   (cc) [§178] Federal Officers in Constitutional Tort
             Actions.
   (dd) [§179] President and Aides.

(4) Prosecuting Officers.
   (aa) [§180] In General.
   (bb) [§181] Immunity in Civil Rights Suits.
   (cc) [§182] Administrative Agency Officers.

(5) Law Enforcement Officers.
   (aa) [§183] In General.
   (bb) [§184] Police Officer Witness.
   (uu) [§185] Privilege of Member of Military.
   (vv) [§186] Statutory Privileged Communications.
   (ww) [§186A] (New) Prescription of Controlled Substance Pursuant to
             Drug Overdose Program.


E. Conflict of Laws.
   1. [§189] Traditional Rule: Place of Wrong.
      (a) [§190] Restatement: State of Most Significant Relationship.
      (b) [§191] Repudiation of Traditional Rule and Adoption of
             Governmental Interest Approach.
      (c) [§192] Comparative Impairment Analysis.
   3. Particular Torts.
      (a) [§193] Injuries to Person or Property.
      (b) [§194] Wrongful Death.
      (c) [§195] Fraud.
      (d) [§196] Defamation and Invasion of Privacy.
      (e) [§197] Malicious Prosecution and Abuse of Process.
      (f) [§198] Products Liability.
4. Particular Issues.
   (a) §199 Duty, Breach, and Causation.
   (b) §200 Damages.
   (c) §201 Defenses.
   (d) §202 Other Issues.

II. GOVERNMENTAL LIABILITY
   A. In General.
      1. §203 Common Law Doctrine of Sovereign Immunity.
      2. §204 Federal Sovereign Immunity.
         (a) §205 In General.
         (b) §206 Liability for Tortious Acts of Federal Employees.
         (c) §207 Liability Is That of Private Person.
         (d) §208 Exceptions.
         (e) §209 Procedure in Suit Under Act.
         (a) Immunity Prior to Tort Claims Act.
            (1) §210 General Immunity of Public Entities for Governmental
                But Not Proprietary Acts.
            (2) §211 Statutory Basis for Liability.
            (3) §212 Dangerous Condition of Public Property.
            (4) §213 School District's Liability for Negligence.
            (5) §214 Limited Immunity of Public Employees.
         (b) §215 Judicial Repudiation of Governmental Immunity.
         (c) Tort Claims Act.
            (1) §216 Adoption.
            (2) §217 Statutory Framework.
            (3) §218 Exclusions and Limitations.
            (4) §219 "Employee."
            (5) §220 Other Definitions.
            (6) §221 Construction.
   B. Public Entities.
      1. In General.
         (a) Nature of Liability.
            (1) §222 In General.
            (2) §223 No Common Law Liability.
            (3) §224 Liability Under Statutes and Constitution.
            (4) §225 Liability Issue Tried First.
         (b) Scope of Immunities and Defenses.
            (1) §226 Statutory Immunities.
            (2) §227 Defenses of Private Person Are Available.
            (3) §228 Immunity Where Employee Is Immune.
            (4) §229 Tort Claims Act Immunities Extend to Liabilities
                Imposed by Other Statutes.
            (5) §230 No Punitive Damages.
         (c) §231 Insurance Coverage.
2. Liability for Torts of Employees.
   (a) [§237] Statutory Rule of Liability.
   (b) [§238] Employment by Public Entity.
   (c) Scope of Employment.
      (1) [§239] In General.
      (2) [§240] Sexual Misconduct by Employee.
   (d) Exception for Employee's Misrepresentation.
      (1) [§241] Immunity Rule.
      (2) [§242] Requirement of Commercial Relationship or Transaction.
   (e) [§243] Intentional Torts of Elected Officials.
3. [§244] Liability for Torts of Independent Contractors.
4. Failure To Discharge Mandatory Duty.
   (a) [§245] Statutory Rule of Liability.
   (b) [§246] Illustrations Finding Liability.
   (c) [§247] Illustrations Finding No Liability.
   (d) [§248] Availability of Immunities.
5. Dangerous Condition of Public Property.
   (a) [§249] Governing Statute.
   (b) Public Property.
      (1) [§250] Property Covered.
      (2) [§251] Property Not Owned or Controlled.
      (3) Unimproved Property.
         (aa) [§252] Property in Natural Condition: General Rule of Nonliability.
         (bb) [§253] Illustrations.
         (cc) [§254] Effect of Assuming Duty To Protect Public.
         (ff) [§257] Injury or Damage on Adjacent Land.
      (c) Dangerous Condition as Cause.
         (1) In General.
            (aa) [§258] Elements of Liability.
            (cc) [§260] Illustrations of Dangerous and Non-Dangerous Conditions.
            (dd) [§261] Minor or Trivial Defect.
            (ee) [§262] Recovery for Emotional Distress.
            (ff) [§263] Causation.
         (2) Traffic Signals.
(aa) [§264] Lack of Signal.
(bb) [§265] Defective Signal.
(3) [§266] Dangerous Activity Permitted.
(4) Negligent or Criminal Conduct of Third Party.
   (aa) [§267] In General.
   (bb) [§268] Criminal Assault.
(5) [§269] Condition on Adjacent Property.
(d) Culpable Conduct.
   (1) [§270] Act or Omission of Employee.
   (2) [§271] Notice of Condition.
(e) Particular Immunities and Defenses.
   (1) [§272] Reasonable Act or Omission.
   (2) Improper Use of Reservoir or Canal.
      (aa) [§273] Statutory Rule.
      (bb) [§274] Exceptions.
   (3) Hazardous Recreational Activity.
      (aa) [§275] In General.
      (bb) [§276] Participants and Spectators.
      (cc) [§277] Nature of Activity.
      (dd) [§278] Exceptions.
   (3a) [§278A] (New) Injury Caused by Dog in Dog Park.
(4) [§279] Accident Caused by Weather Conditions.
(5) Advance Approval of Plan or Design.
   (bb) [§281] Causation of Injury by Design.
   (cc) [§282] Advance Discretionary Approval.
   (dd) [§283] Reasonableness of Design.
   (ee) [§284] Effect of Changed Conditions.
   (ff) [§285] Protective Measures Against Earth Movement.

6. [§286] Legislation or Law Enforcement.
7. [§287] Action or Inaction on License.
8. [§288] Inspection of Private Property.
9. [§289] Tax Collection or Administration.
   (a) Scope of Liability.
      (1) [§290] In General.
      (2) [§291] Liability Based on Special Relationship.
   (b) Injury Caused or Sustained by Prisoner.
      (1) [§292] Immunity Rule.
      (2) [§293] Who Are Prisoners.
      (3) [§294] Exceptions.
      (4) [§295] Failure To Furnish Medical Care to Prisoner.
   (c) [§296] Injury Caused by Escaped Prisoner.
   (d) [§297] Injury Caused by Arrested Person.
   (e) Injury From Release of Prisoner.
      (1) [§298] Immunity Rule.
(2) [§299] Duty To Warn Where Special Relationship Exists.
(3) [§300] Statutory Duty of Notification.
(4) [§301] Release of Suicidal Arrestee.

(f) Injury From Failure To Provide Protection.
   (1) [§302] Immunity Rule.
   (2) [§303] Discriminatory Allocation of Protective Services During Riot.
   (3) [§304] Duty To Protect Where Special Relationship Exists.

(g) [§305] Injury From Failure To Arrest or Retain in Custody.

(h) [§306] Interference With Prisoner's Right to Judicial Review.

(i) Traffic Injuries.
   (1) [§307] Failure To Prevent Driving.
   (2) [§308] Failure To Remove Parked Car.
   (3) [§309] Inadequate Assistance to Stranded Motorist.

   (a) [§310] In General.
   (b) Injury Caused in Fighting Fire.
      (2) [§312] Exceptions and Distinctions.
      (3) [§313] Immunity Despite Wilful Misconduct.
   (c) [§314] Fire on Public Property.


13. Medical, Hospital, and Public Health Activities.
   (a) [§316] Liabilities.
   (b) [§317] Immunities.
   (c) [§318] Failure To Conduct Physical or Mental Examination.
   (d) [§319] Confinement or Release of Mental Patient or Addict.
   (e) [§320] Escape of Mental Patient or Addict.

   (a) [§321] In General.
   (b) [§322] Activities on School Grounds.
   (c) [§323] Activities Outside School Grounds.
   (d) [§324] Extracurricular Activities.
   (e) [§325] Activities Unrelated to School Function or Program.
   (f) [§326] Use of Facilities by Other Organizations.
   (g) [§327] Injury to Truant.
   (h) [§328] Injury to Nonstudent.
   (i) [§329] Sexual Misconduct.
   (j) [§330] Exposure to Asbestos.

15. Operation of Motor Vehicles.
   (a) [§331] In General.
   (b) [§332] Negligent or Wrongful Conduct.
   (c) [§333] Operation of Vehicle.
   (d) Authorized Emergency Vehicle.
      (1) [§334] Exemption and Immunity.
      (2) [§335] Entity Liable Even Though Driver Is Not.
(e) Police Pursuit.
   
   (2) [§337] Adoption of Pursuit Policy.

17. [§339] Nuisances.

   (a) [§341] In General.
   (b) [§342] Earthquake and Volcanic Warnings.
   (c) [§343] 911 Calls.


C. Public Employees.
   1. In General.
      (a) [§345] Statutory Framework.
      (b) [§346] Nature of Liability.
      (c) [§347] Punitive Damages May Be Recoverable.
      (d) [§348] Nature of Immunities and Defenses.
      (e) [§349] Particular Employees.
      (f) [§350] Insurance Coverage.

   (a) [§351] Immunity Rule.
   (b) [§352] What Constitutes Discretionary Act.
   (c) [§353] Causes of Action Subject to Immunity.
   (d) Illustrations.
      (1) [§354] Immunity Applicable.
      (2) [§355] Immunity Not Applicable.
      (3) [§356] Police Officers.
      (4) [§357] Parole Officers.
      (5) [§358] Public Defenders.

3. Dangerous Condition of Public Property.
   (a) [§359] Liability.
   (b) [§360] Immunities.

   (a) [§361] Liabilities.
   (b) [§362] Immunities.


6. Medical, Hospital, and Public Health Activities.
   (a) [§364] Liabilities.
   (b) [§365] Immunities.


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

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

10. [§369] False Arrest or Imprisonment.

    (a) [§370] In General.
    (b) Defense by Public Entity.
(1) [§371] Employee's Right to Defense.
(c) Indemnification of Employee.
(1) [§375] In General.
(2) [§376] Employee Must Act Within Scope of Employment.
(3) [§377] Where Entity Fails To Defend or Defends Under Reservation of Rights.
(4) [§378] Payment of Punitive Damages.
(5) [§379] Contribution From Employee's Insurer.
(6) [§380] Elected Officials.

III. INTENTIONAL INVASIONS OF INTERESTS IN PERSONALITY

A. Assault and Battery.
      (a) [§381] In General.
      (b) [§382] Statutory Actions.
   2. Elements.
      (a) [§383] Offensive Contact.
      (b) [§384] Intent.
      (c) [§385] Present Ability.
   3. Plaintiff's Consent to Act.
      (a) [§386] Nature of Defense.
      (b) [§387] Participation in Illegal Activity.
      (c) Consent to Operation or Treatment.
         (1) [§388] In General.
         (2) Minor or Incompetent Patient.
            (aa) [§389] In General.
            (bb) [§390] Treatment of Mental Disorders.
            (cc) [§391] Abortion Without Parental Consent.
            (dd) [§392] Procedure When Long-Term Health Facility Resident Loses Competency.
         (3) [§393] Implied Consent.
         (4) [§394] Exceeding Scope of Consent.
      (5) Nondisclosure and Uninformed Consent.
         (aa) [§395] In General.
         (bb) [§396] As Battery.
         (cc) [§397] As Negligence.
         (dd) [§398] Causation of Injury.
         (ee) [§399] Emergency Exception to Duty To Inform.
      (6) Required Disclosure.
         (aa) [§400] In General.
         (bb) [§401] Duty To Disclose Risks of Not Consenting.
         (cc) [§402] Duty To Disclose Information Unrelated to Patient's Health.
No Duty To Inform Respecting Unrecommended Procedure.
No Duty To Inform Respecting Illegal Procedure.
Duty of Specialist.

(7) Particular Procedures and Information.
Breast Cancer.
Hysterectomy.
Sperm or Ova Removal.
Cosmetic Implants.
Statistical Life Expectancy.

(d) Consent to Medical Experimentation.
(1) Nature of Statute.
(2) Scope of Statute.
(3) Experimental Subject' Bill of Rights.
(4) Consent Required.
(5) Civil and Criminal Sanctions.

(e) Consent Fraudulently Obtained.

(a) Self-Defense and Defense of Third Person.
(1) Nature and Scope of Privilege.
(2) Conditions.
(b) Defense or Recapture of Property.
(1) Use of Reasonable Force.
(2) Use of Deadly Force.
(3) No Privilege for Forcible Entry.
(4) Recaption of Personal Property.

(c) Defense Against Animal.
(d) Arrest by Police Officer.
(f) Control of Pupils.

B. False Imprisonment.
1. Nature of Tort.
(a) Definition and Distinctions.
(b) Necessity of Restraint.
(c) Methods of Restraint.
(d) Persons Restrained.
(e) Necessity for Awareness or Harm.

2. Privilege.
(a) Reasonable Detention Without Arrest.
(1) Judicially Created Privileges.
(2) Statutory Privileges.
(3) Distinction: Detention of Patient.
(b) Arrest.
(1) In General.
(2) Felony Arrest Without Warrant.
(aa) 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.

   (c) Conduct After Arrest.
      (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.
      (b) [§458] Collectors' Tactics.
      (c) [§459] Insurers' Tactics.
      (d) [§460] Interference With Dead Body.
      (e) [§461] Other Situations.

D. Interference With Access.
   1. [§462] Commercial Blockade.
   2. [§463] Interference With Access to Clinic or Church.
   3. [§463A] (New) Interference With Access to School Grounds or Health Facility.

E. Marketing of Illegal Drugs.
   1. [§464] In General.

F. [§467] Domestic Violence.

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.

   (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.

   (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.

(g) Malice.
(1) [§511] In General.
(2) [§512] Family Law Proceedings.

   (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.

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.
      (2) [§557] Truth of Substance of Charge Is Sufficient.
      (3) [§558] Effect of Emphasizing Truthful Statement.
   (b) Absolute Privilege.
      (1) In General.
         (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.
   (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.

   (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.


(9) [§590] Consent.

(c) Qualified Privilege.
   (1) [§591] In General.
   (2) Freedom From Malice.
      (aa) [§592] In General.
   (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.
   (bb) [§603] Public Official Plaintiffs.
   (cc) [§604] Public Figure Plaintiffs.
   (cc-1) [§604A] (New) Extension of Rule to Labor Disputes.
   (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.
   (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.
(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.
   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.
(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.
   (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.
7. Defense of Public Interest.
   (a) [§687] In General.
   (b) Voluntary Exposure to Publicity.
      (2) [§689] Illustrations.
   (c) Involuntary Exposure to Publicity.
      (1) [§690] In General.
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.


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.

B. [§725] Personal Injury to Spouse.

C. Personal Injury to Minor Child.
   3. [§728] Injury to Unborn Child.


VII. INTERFERENCE WITH BUSINESS RELATIONS
A. Inducing Breach of Contract.
   1. In General.
      (a) [§730] Development of Tort.
      (b) [§731] California Law.
   2. Existing and Valid Contract.
      (a) [§732] Void Contract.
      (b) [§733] Voidable Contract.
      (c) [§734] Contract Terminable at Will.
      (d) [§735] Contract Subject to Condition Precedent.
   3. [§736] Knowledge and Intent.
   4. [§737] Breach or Disruption of Contractual Relationship.
   5. [§738] Causation and Damage.
   6. [§739] No Action Against Other Contracting Party.
   7. [§740] Remedies.

B. Interference With Prospective Economic Advantage.
   1. Intentional Interference.
      (a) [§741] Nature of Tort.
      (b) [§742] Elements.
      (c) [§743] Intent.
      (d) [§744] Wrongful Conduct.
      (e) [§745] Probability of Benefit.
      (f) [§746] No Action Against Other Party to Relationship.
      (g) Particular Types of Interference.
         (1) [§747] In General.
         (2) [§748] Interference With Unenforceable Contract.
         (3) [§749] Interference With Noncommercial Opportunity.
         (4) [§750] Destruction of Evidence.
         (5) [§750A] (New) Intentional Interference With Expected Inheritance.
   2. Negligent Interference.
      (a) [§751] In General.
      (b) [§752] Scope of Rule.
      (c) [§753] Elements of Action.
      (d) [§754] Destruction of Evidence.


D. Defense of Privilege.
   1. [§756] In General.
   2. [§757] Litigation Privilege.
   3. Competition.
      (a) [§758] Restatement.
      (b) [§759] California Law.
   5. [§761] Refusal To Do Business With Another.
   6. [§762] Confidential Relationship.
   7. [§763] Inducing Suit on Colorable Claim.
10. [§766] Other Privileges.

VIII. FRAUD AND DECEIT

A. In General.
   2. [§768] Restatement.
   5. [§771] Commentary.

B. Fraudulent Misrepresentation.
   1. [§772] In General.
      (a) [§773] General Requirement That Misrepresentation Must Be of Fact.
      (b) Statement of 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.
         (2) [§782] Proof of Intention Not To Perform.
         (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.
Real Estate Transactions. 

Active Concealment. 
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. 
(2) [§804] Representation to One for Another. 
(3) [§805] Representation to Public or Class. 
(4) [§806] Unknown Third Persons. 
(c) [§807] Intent To Induce Particular Action. 

5. Causation: Reliance and Right To Rely. 
(a) Actual Reliance. 
(1) [§808] In General. 
(2) [§809] Investigation or Examination. 
(3) [§810] Time of Reliance. 
(4) [§811] Securities Cases. 
(b) Right To Rely (Justifiable Reliance). 
(1) [§812] In General. 
(2) [§813] No General Duty To Investigate. 
(3) [§814] Constructive Notice Is Not a Bar. 
(4) [§815] Exceptionally Gullible or Careless Person. 

6. Resulting Damage. 
(a) [§816] Pecuniary or Property Loss. 
(b) [§817] Other Elements. 

C. Negligent Misrepresentation. 
1. [§818] Nature of Tort. 
2. [§819] Tort as Form of Deceit. 
3. [§820] Scope of Tort. 
4. Representation Resulting in Physical Harm. 
   (a) [§821] In General. 
   (b) [§822] Liability to Third Parties. 
   (c) [§822A] (New) Duty of Manufacturer of Name-Brand Drug to User of Generic Equivalent. 
5. Endorsement of Commercial Product. 
   (a) [§823] Recovery Allowed. 
   (b) [§824] Recovery Denied. 
6. [§825] Limitations on Recovery. 

D. [§826] Innocent Misrepresentation. 

E. Alternative Remedies. 
1. [§827] Rescission and Restitution. 
2. [§828] Affirmance and Damages.
IX. NEGLIGENCE: IN GENERAL

A. Meaning of Negligence.
   1. [§831] Definitions.

B. [§833] California Statute.

C. [§834] Restatement.

D. Elements of Actionable Negligence.
   1. Traditional Analysis.
      (a) Duty—Breach—Causation.
         (1) [§835] In General.
         (2) [§836] Duty as Matter of Law and Assumed Duty.
      (b) [§837] Palsgraf Theory: Negligence Toward Class.
   2. [§838] Restatement 2d.
   2A. [§838A] (New) Restatement 3d.

E. Illustrations of Duty Approach.
   1. Ignition Key Left in Vehicle.
      (a) [§840] General Rule: No Liability.
      (b) [§841] Criticism of General Rule.
      (c) Special Circumstances Exception.
         (1) [§842] Trucks and Other Heavy Vehicles.
         (2) [§843] Ordinary Vehicles.
         (3) [§844] Exception Not Applicable.
   2. Injuries to Safety Personnel.
      (a) [§845] Adoption of Firefighter's Rule.
      (b) Injured Party.
         (1) [§846] Volunteer Firefighter.
         (2) Police Officer.
            (aa) [§847] Off-Duty Officer.
            (bb) [§848] Officer Responding to Existing Crisis.
            (cc) [§849] Officer Responding to New Crisis.
         (3) [§850] Private Safety Employee.
         (4) [§851] Tow Truck Operator.
      (c) [§852] Extension of Firefighter's Rule to All Public Safety Personnel.
      (d) Judicial Exception for Fraud.
         (1) [§853] Firefighter Cases.
         (2) [§854] Police Officer Cases.
      (e) Judicial Exception for Independent Cause.
         (1) [§855] Firefighter Cases.
         (2) [§856] Police Officer Cases.
      (f) Statutory Exception for Wilful or Negligent Acts.
         (1) [§857] In General.
         (2) [§858] Exception Applicable.
         (3) [§859] Exception Not Applicable.
3. §859A] (New) Parking on Shoulder of Interstate Highway.
4. §859B] (New) Injuries to Worker's Family Members.

F. Questions of Law and Fact.
1. Legal Duty.
   (a) §860] Question of Law.
   (b) Illustrations.
      (1) §861] School District and Children on School Property.
      (2) §862] Negligent Motorist and Tow Truck Driver.
      (3) §863] Negligent Motorist and Child Not Yet Conceived.
      (4) §864] Lender and Borrower.
      (5) §865] Other Illustrations.

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

X. NEGLIGENCE: GENERAL DUTY TO EXERCISE DUE CARE

A. Standard of Due Care: In General.
   1. §867] The Ordinarily Prudent Person.
   3. §869] Degrees of Care and Negligence.

B. Standard of Due Care: Negligence Per Se.
   1. In General.
      (a) §871] Nature of Doctrine.
      (b) §872] Federal Law Violations.
      (c) §873] Codification of Doctrine.
      (d) §874] Illustrations.

   2. Statute, Ordinance, or Administrative Regulation.
      (a) In General.
         (1) §875] Statute or Ordinance.
         (2) §876] Administrative Regulation.
      (b) Motor Vehicles.
         (1) §878] Speed Limits.
         (2) Right-of-Way: Driver and Other Motorists.
            (aa) §879] Intersections.
            (bb) §880] Other Situations.
         (3) Right-of-Way: Driver and Pedestrian.
            (aa) §881] In General.
            (bb) §882] Crosswalks.
         (4) Other Driving Rules.
            (aa) §883] Driving in Wrong Location or Manner.
            (bb) §884] Obstruction of View.
            (cc) §885] Equipment and Signals.
            (dd) §886] Other Situations.
         (5) §887] Parking.
      (c) §888] Bicycles.
      (d) §889] Boats.

3. Excuses Rebutting Presumption of Negligence.
4. Legal Duty and Type of Harm.
   (a) [§892] Class of Persons.
   (b) [§893] Type of Harm.
   (c) [§894] Vehicle Cases.

5. [§895] Proximate Cause.


C. Due Care in Specific Situations.
1. Custom and Regulations.
   (a) [§897] Customary Conduct.
   (b) [§898] Departure From Custom.
   (c) [§899] Compliance With Safety Regulations.

2. Emergency: Doctrine of Imminent Peril.
   (a) [§900] In General.
   (b) [§901] Illustrations.

3. [§902] Unavoidable Accident.

4. [§903] Lack of Necessary Skill or Care.

5. [§904] Lack of Preparation or Inspection.

6. Failure To Give Warning.
   (a) [§905] Warning Before Acts.
   (b) [§906] Warning of Conditions.
   (c) [§907] Signals at Railroad Crossing.

7. Failure To Take Precautions.
   (a) [§908] Safety Belts.
   (b) [§909] Other Precautions.


11. [§913] False Diagnosis of Recovered Memory.

12. Radio, Television, or Motion Picture Production.
   (a) [§914] Promotion.
   (b) [§915] Film Depicting Violence.
   (c) [§916] Song About Suicide.
   (d) [§917] Unauthorized Viewing of Movie.

D. Degree or Kind of Care in Special Situations.
1. Dangerous Activities or Devices.
   (a) [§918] In General.
   (b) [§919] Electricity.
   (c) [§920] Firearms and Ammunition.
   (d) [§921] Explosives.
   (e) [§922] Gas and Other Flammable Materials.

2. Carriers.
   (a) [§923] In General.
   (b) [§924] What Constitutes Carrier.
   (c) [§925] Private Carrier for Hire.
(d) §§26 Charterer of Excursion Boat.
(e) When Plaintiff Is Passenger.
   (1) §§27 In General.
   (2) §§28 Airline Passenger Changing Planes.
(f) §§29 Carrier's Duty Owed to Stranger.
(g) Carrier's Duty To Prevent Assault.
   (1) §§30 Occurrence or Allegation of Prior Assault.
   (2) §§31 No Occurrence or Allegation of Prior Assault.
(h) §§32 Carrier's Duty To Collect Evidence.
   (a) In General.
      (1) §§33 Degree of Skill or Care.
      (2) §§34 Ordinary Versus Professional Negligence.
      (3) §§35 Physician-Patient Relationship.
      (4) §§36 Health Care Provider.
      (5) §§37 HMO.
   (b) Commentary and Practice Works.
      (1) §§38 In General.
      (2) §§39 Related Fields and Peripheral Matters.
   (c) Medical Injury Compensation Reform Act (MICRA).
      (1) §§40 Nature and Purpose of Act.
      (2) §§41 Constitutionality of Act.
      (3) Limitations on Attorney's Compensation.
         (aa) §§42 Statutory Provisions.
         (bb) §§43 Constitutionality.
         (cc) §§44 Hybrid Action.
         (dd) §§45 Computation of Fee.
      (4) Compulsory Arbitration Agreements.
         (aa) §§46 In General.
         (bb) §§47 Subsequent Medical Services.
         (cc) §§48 Persons Who Did Not Sign: In General.
         (dd) §§49 Persons Who Did Not Sign: Cross-Complainants.
         (ee) §§50 Retroactive Agreements.
         (ff) §§51 Intentional Torts.
         (gg) §§52 Punitive Damages.
      (5) Notice of Intent To Sue.
         (aa) §§53 In General.
         (bb) §§54 Extension of Applicable Statute of limitations.
         (cc) §§55 Government Tort Claim Is Not Notice of Intent To Sue.
      (6) Evidence of Collateral Sources.
         (aa) §§56 In General.
         (bb) §§57 Constitutionality and Construction.
      (7) Maximum Recovery for Noneconomic Loss.
         (aa) §§58 In General.
(bb) §959 Constitutionality.
(cc) §960 Comparative Negligence.
(dd) §961 Action by Spouse for Loss of Consortium.
(ee) §962 Action for Equitable Indemnity.
(ff) §963 Action Under Federal Patient-Dumping Statute.
(gg) §964 Periodic Payments.
(hh) §965 Intentional Torts.
(8) Periodic Payments.
(aa) §966 Authorization.
(bb) §967 Purpose.
(cc) §968 Procedure.
(dd) §969 No Interest on Periodic Payments.
(ee) §970 Attorneys' Fees When Periodic Payments Are Awarded.

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

(e) §976 Surgery.

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

(g) Wrongful Life: Action by Child.
(1) §979 In General.
(2) §980 Cause of Action Recognized.
(3) §981 No Cause of Action Against Parent.
(4) §982 Recovery Limited to Special Damages
(5) Specific Failures.
(aa) §983 Failure To Prevent Birth.
(bb) §984 Failure To Diagnose Spina Bifida.
(cc) §985 Failure To Secure Consent of Husband for Artificial Insemination.

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

5. Accountants.
(a) §990 In General.
(b) Duty to Unintended Recipients of Information.
(1) §991 Former Foreseeability Approach.
(2) §992 Liability Limited to Client.
(3) §993 Audit Filed With Insurance Commissioner.
6. Other Professionals.
   (a) [§995] In General.
   (b) [§996] Architects.
   (d) [§997] Miscellaneous Professionals.

7. Children.
   (a) Duty Owed by Child.
      (2) [§999] Illustrations.
      (3) [§1000] Child Vehicle Driver.
   (b) Duty Owed to Child.
      (2) [§1002] Illustrations.

8. [§1003] Person With Mental or Physical Disability.
   E. Negligent Causing of Emotional Distress.
   1. In General.
      (a) [§1004] Nature of Tort.
      (b) [§1005] Injury Without Impact.
      (c) [§1006] Imputation of Negligence.
   2. Physical Trauma Present: Third Person Injured.
      (a) [§1007] Former Law: No Recovery.
      (b) [§1008] Current Law: Recovery Allowed.
      (c) [§1009] Dillon Guidelines Are Binding.
      (d) [§1010] Nearness of Plaintiff.
      (e) Contemporaneous Observance.
         (2) [§1012] Condition Not Met: Recovery Denied.
         (3) [§1013] Event Need Not Be Sudden.
         (4) [§1014] Plaintiff May Be Voluntarily Present.
         (5) [§1015] Seriousness of Event Must Be Apparent.
         (6) [§1016] Event Must Be Visible.
         (7) [§1017] Observation May Be While Event Is Occurring.
      (f) Close Relationship.
         (1) [§1018] Family Relationship.
         (2) [§1019] Foster Parent.
         (3) [§1020] Unmarried Cohabitant.
         (4) [§1021] Other Relationships.
      (g) [§1021A] (New) Defective Product as Source of Emotional Distress.
   3. Physical Trauma Present: No Impact or Injury.
      (a) [§1022] Development of Rule.
      (b) Cases Upholding Recovery.
         (1) [§1023] In General.
         (2) [§1024] Counseling.
         (3) [§1025] Legal Malpractice.
      (c) Cases Denying Recovery.
         (1) [§1026] In General.
XI. NEGLIGENCE: AFFIRMATIVE DUTIES ARISING FROM SPECIAL RELATIONSHIPS

A. In General.

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

   (a) Voluntary or Gratuitous Undertaking.
(1) [§1060] Liability for Negligent Performance.
(2) [§1061] Conditions for Liability.
(3) [§1062] Illustration: Street Vendor's Duty to Child.
(4) [§1063] Distinction: Casual Advice.
(6) [§1065] No Liability for Failure To Perform.

(b) Furnishing Liquor to Intoxicated Person.
(1) [§1066] Common Law Rule of Nonliability.
(2) Former Judicial Rule of Liability.
   (aa) [§1067] Liability to Third Person.
   (bb) [§1068] Liability to Intoxicated Person.
   (cc) [§1069] Liability to Social Guest.
(3) Legislative Abrogation of Liability.
   (aa) [§1070] Statutory Rules.
   (bb) [§1071] Constitutionality of Statutes.
   (cc) [§1072] Furnishing Liquor to Intoxicated Minor.
   (dd) [§1073] Furnishing Liquor to Sober Minor.
   (ee) [§1074] Furnishing Liquor to Disabled Person.
   (ff) [§1075] Entrusting Vehicle to Intoxicated Driver.
   (gg) [§1076] Failure To Prevent Driving.

(c) [§1077] Statutory Duty.
(d) [§1078] Contractual Duty.
(e) [§1079] Active Force Under Defendant's Control.
(f) [§1080] Creation of Peril.
(g) [§1081] Interference With Attempt To Aid.

B. Landowners and Possessors.
1. In General.
   (a) [§1082] Nature of Liability.
   (b) Owner or Possessor.
      (1) [§1083] In General.
      (2) [§1084] Holder of Bare Legal Title.
   (c) Duty to Person Coming on Land.
      (1) [§1085] Traditional Status Classification.
      (2) [§1086] Repudiation of Traditional Classification.
      (3) [§1087] Instructions.
   (d) Duty to Person Outside Land.
      (1) [§1088] In General.
      (2) [§1089] Natural Conditions.
   (e) Conditions or Activities Outside Land.
      (1) [§1090] General Rule of Nonliability.
      (2) [§1091] Defective Structure.
      (3) [§1092] Hazardous Condition.
      (4) [§1093] City's Liability and Right of Indemnity.

2. Trespassers.
   (a) [§1094] Who Are Trespassers.
   (b) [§1095] Former Limited Duties.
(c) §1096] Current Bases of Liability.
(d) Trespasser on Railroad Car.
   (1) §1097] In General.
   (2) §1098] Authority Must Be Express.
(e) §1099] Person Committing Serious Felony.

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

4. Invitees or Business Visitors.
   (a) Who Are Invitees.
      (1) Theory of Mutual Business Interest.
         (aa) §1113] In General.
         (bb) §1114] Nonbusiness Activity as Business.
         (cc) §1115] Circumstances and Custom.
      (2) §1116] Theory of Public Invitation.
      (3) §1117] Illustrations.
   (b) §1118] Bases of Liability.
   (c) Dangerous Physical Condition.
      (1) §1119] In General.
      (2) §1120] Knowledge of Condition.
      (3) §1121] Failure To Inspect: Recovery Allowed.
         (aa) §1122] In General.
         (cc) §1124] Injury From Insect Bite.
      (5) Obvious Dangers.
         (cc) §1127] Effect of Rowland Case.
      (6) §1128] Exceeding Scope of Invitation.
   (d) Dangerous Activity on Premises.
      (1) §1129] Nature of Duty.
(2) Foreseeability: Activity of Third Person.
   (aa) §1130 In General: Prior Incidents.
   (bb) §1131 Assault Involving Firearms.
   (cc) §1132 Assault Not Involving Firearms.
   (dd) §1133 Spilled Liquid.

(3) Foreseeability: Absence of Prior Incidents.
   (aa) §1134 In General.
   (bb) §1135 Parking Garages.
   (cc) §1136 Other Structures.

(4) §1137 Warning of Danger.
(5) §1138 Proximate Cause.
(6) Liability of Owner of Business Premises.
   (aa) §1139 Parking Garage Owner.
   (bb) §1140 Store Owner.
   (cc) §1141 No Duty To Comply With Criminal's Demand.

(7) Liability of Landlord.
   (aa) §1142 Liability Upheld.
   (bb) §1143 Liability Denied.

(8) §1144 Liability of Lessee to Guest.
(9) §1145 Injury to or Loss of Property.

(e) Dangerous Activity Off Premises.
   (1) §1146 In General.
   (2) §1147 Vicious Dog In Neighborhood.
   (3) §1148 Failure To Correct or Warn of Flammable Structure.
   (4) §1149 Failure To Build Barrier.
   (5) Criminal Acts of Third Parties: Location of Assault.
      (aa) §1150 Near School.
      (bb) §1151 Near Business.
      (cc) §1152 Near Apartment.
      (dd) §1153 Near Public Telephone.

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

C. Real Property: Vendor, Lessor, and Contractor.
1. Vendor and Lessor.
   (a) §1158 General Rule of Nonliability.
   (b) §1159 Former Owner's Liability for Improvement.

2. Contractor.
   (a) §1160 In General.
   (b) §1161 Illustrations.

D. Construction Defects.
1. §1162 In General. 
2. [§1163] Scope of Legislation.
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.

   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.

B. Direct Causation.
   1. [§1192] Liability for Unforeseeable Consequences.
   2. [§1193] Concurring Causes.
   4. [§1195] Unknown Cause.

C. [§1196] Normal Intervening Forces.
D. Independent Intervening Act.
   1. Test of Foreseeability.
      (a) §1197 In General.
      (b) §1198 Precise Act or Harm Need Not Be Foreseen.
   2. §1199 Natural Forces and Animals.
   3. §1200 Irresponsible or Innocent Act of Third Person.
   4. Negligent Act or Omission of Third Person.
      (a) §1201 Object Left in Path of Vehicle.
      (b) §1202 Obstruction Diverting Pedestrian From Safe Place.
      (c) §1203 Illegal Parking.
      (d) §1204 Accident Leaving Plaintiff Helpless.
      (e) Intervening Negligent Driver.
         (1) §1205 In General.
         (2) §1206 Realizable Likelihood of Act.
      (f) §1207 Unknown Intervening Act.
      (g) Manufacturer's Negligence and Intervening Negligence.
         (1) §1208 Intervening Party's Knowledge.
         (2) §1209 Intervening Party's Failure To Inspect.
         (3) §1210 Intervening Negligent Act of Stranger.
      (h) §1211 Subcontractor's Negligence and Contractor's Intervening
         Negligence.
      (i) §1212 Intervening Negligence of Hospital Staff.
      (j) §1213 Intervening Negligence of Attorney.
   5. Intentional Act of Third Person.
      (a) §1214 Unforeseeable Act.
      (b) §1215 Likelihood of Act.
      (c) §1216 Act Not Highly Extraordinary.
      (d) §1217 Act of Responsible Child.
      (e) §1218 Arrest and Prosecution by Authorities.
   6. §1219 Suicide.

XIII. NEGLIGENCE: LIABILITY FOR NEGLIGENCE OF OTHERS
A. §1220 Circumstances Justifying Vicarious Liability.
B. Entrustment of Dangerous Instrumentality.
   1. §1221 In General.
   2. Incompetent, Reckless, or Intoxicated Driver.
      (a) §1222 In General.
      (b) §1223 No Duty To Inquire into Competency.
      (c) §1224 Seller of Vehicle Is Not Liable.
      (d) §1225 Gift of Vehicle.
   3. §1226 Respondeat Superior Liability Distinguished.
C. Torts of Child.
   1. §1227 General Rule of Nonliability.
   2. Exceptions.
      (a) §1228 Knowledge of Past Misconduct.
      (b) Statutory Liability for Wilful Misconduct.
         (1) §1229 Nature and Scope of Statute.
(2) §1230 Illustrations.
(3) §1231 Injury to School Students, Personnel, or Property.
(4) §1232 Theft From Merchant or Library.
(c) Permitting Access to Firearm.
(1) §1233 Common Law.
(2) §1234 California Statute.

D. §1235 Members of Joint Enterprise.
E. Employers of Independent Contractors.

1. §1236 In General.
2. Where Employer Is at Fault.
   (a) §1237 Employment of Incompetent Contractor.
   (b) §1238 Defective Plans.
   (c) §1239 Failure To Supervise Concessionaire.
   (d) §1240 No Liability to Independent Contractor's Employee for Negligent Hiring.
   (e) §1241 Limited Liability to Independent Contractor's Employee for Negligent Exercise of Retained Control.

3. Inherently Dangerous Work.
   (a) Theory of Liability: Peculiar Risk Doctrine.
      (1) §1242 Restatement 2d.
      (2) §1243 California Cases.
   (b) §1244 Distinction: Collateral Negligence.
   (c) Distinction: Claim by Employee of Independent Contractor.
      (1) §1245 Peculiar Risk Doctrine Is Not Applicable.
      (2) §1246 Direct and Vicarious Liability.
   (d) §1246A (New) Restatement 3d.

   (a) §1247 Theory of Liability.
   (b) §1248 Work Under Public License.
   (c) §1249 Creation of Nuisance.
   (d) §1250 Performance of Owner's or Possessor's Duty.
   (e) §1251 Automobile Driver's Duty.
   (f) §1252 Hazardous Waste Disposal.
   (g) §1252A (New) Compliance With Safety Regulations.

5. §1253 Public Franchise to Employer.
6. §1254 General Contractor's Liability for Subcontractor's Negligence.
7. §1255 Hospital's Liability for Doctor's Negligence.

F. Statutory Liability for Operation of Automobile.
1. Parent or Custodian of Minor.
   (a) §1256 Signer of Driver's License.
   (b) §1257 Minor Driving With Permission.
   (c) §1258 Nature and Scope of Liability.
   (d) §1259 Termination of Liability.
2. Driving With Permission.
   (a) In General.
      (1) §1260 Statutory Development.
§1261 Limited Liability.
§1262 Vehicle and Operation.
§1263 Effect of Settlement.
§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.

   (a) §1276 In General.
   (b) §1277 Security Following Accident.
   (c) §1278 Insurance Coverage.


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. 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.
2. [§1328] Restatement 3d.
3. [§1329] Adoption of Doctrine in California.
4. [§1330] Limited Retroactivity.
5. [§1331] Joint and Several Liability Retained.
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.
4. Primary Versus Secondary Assumption of Risk.
   (a) In General.
      (1) [§1339] Adoption of Theory.
      (2) [§1340] Extension to Noncompetitive Recreational Activity.
      (3) [§1341] Restatement 3d.
      (4) [§1342] Determining Whether Primary Assumption of Risk Doctrine Applies.
   (b) Sports or Recreation.
      (1) [§1343] Baseball.
      (2) [§1344] Boating and Rafting.
      (3) [§1345] Dancing.
      (4) [§1346] Equestrian Activities.
      (5) [§1347] Football.
      (6) [§1348] Skating.
      (7) [§1349] Skiing and Snowboarding.
      (8) [§1350] Other Sports.
      (9) [§1351] Athletic Instruction.
      (10) [§1351A] (New) Amusement Parks.
   (c) Job Performance.
      (1) [§1352] Animal Care.
      (2) [§1353] Medicine.
      (3) [§1354] Public or Private Safety.
      (4) [§1355] Other Jobs.
   (d) [§1356] Miscellaneous Activities.

F. Comparative Negligence: Comparative Partial Indemnity.
1. In General.
   (a) [§1357] Adoption of Doctrine.
   (b) [§1358] No Apportionment Among Defendants.
   (c) [§1359] Where One Defendant Is Judgment Proof.
2. Implied Indemnity Upheld.
   (a) [§1360] Where Indemnitor Is Strictly Liable.
   (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.
   2. [§1372] Setoff.
   4. [§1374] Parties.
   5. [§1375] Special Verdict.

XV. WRONGFUL DEATH

A. In General.
   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.

   (a) [§1383] In General.

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.
D. Defenses.
   1. [§1400] Negligence of Decedent.

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.
      (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.
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.
   (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.
   (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.

   (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.
      (5) Breach of Covenant of Good Faith.
         (bb) [§1591] Bad Faith Rule Limited to Insurance Cases.
         (cc) [§1592] Breach by Surety.
(6) Products Liability Action.
   (aa) [§1593] In General.
(7) [§1595] Civil Rights 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.
   (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.
   (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.
F. Attorneys' Fees and Other Litigation Expense.
2. [§1656] Expense of Previous Litigation.
G. Proposition 213: Limitation on Recovery of Damages.
1. [§1657] In General.
2. Uninsured Motorists.
XVIII. DAMAGES: KINDS OF INJURY

A. Injuries to Person.

1. [§1665] In General.

2. [§1666] Loss of Past Earnings or Value of Time.

   (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.


7. [§1677] Susceptibility to Subsequent Disease or Injury.

   (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.


B. Wrongful Death.

1. In General.
   (a) [§1690] Recovery of Loss.
   (b) [§1691] Value of Society and Companionship.

2. Death of Spouse and Parent.
   (a) [§1692] Earnings of Husband and Father.
(b) §1693] Services of Wife and Mother.
(c) §1694] Child's Loss of Advice and Training.

3. Death of Child.
   (a) §1695] Minor Child.
   (b) §1696] Adult Child.

4. §1697] Death of Other Relative.

C. Other Torts to Person, Reputation, and Similar Interests.
1. §1698] False Imprisonment.
4. Defamation.
   (a) §1701] General Damages.
   (b) §1702] Special Damages.
5. §1703] Slander of Title and Trade Libel.
6. §1704] Invasion of Privacy.
   (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.
   (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.

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.
   (a) §1724] In General.
   (b) §1725] Use Value in Excess of Value of Property.
G. Trespass and Injury to Real Property.
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.