CHAPTER I

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 - (b) Real Estate Agent's Right to Commissions.
 - (1) [§393] Nature and Effect of Statute.
 - (2) Scope of Statute.
 - (aa) [§394] Oral Agreement To Lease.
 - (bb) [§395] Oral Agreement To Obtain Option.
 - (cc) [§396] Oral Finders Agreement.
 - (3) [§397] Exception: Agreement To Sell Personal Property.
 - (4) [§398] Distinctions.
- 8. [§399] Contract To Loan Money or Extend Credit.
- 9. [§400] Marital and Premarital Agreements.
- 10. [§401] Miscellaneous Provisions.

E. Where Statute Does Not Apply.

- 1. [§402] Executed Oral Agreement.
- 2. Part Performance: Transfer of Land.
 - (a) [§403] Scope of Exception.

- (b) What Constitutes Part Performance.
 - (1) [§404] In General.
 - (2) [§405] Sufficiency of Possession.
 - (3) [§406] Restatement 2d.
- 3. Estoppel To Plead Statute.
 - (a) In General.
 - (1) [§407] Theory of Exception.
 - (2) [§408] Restatement 2d: Promissory Estoppel.
 - (b) Conduct of Defendant.
 - (1) [§409] In General.
 - (2) Change of Position and Unjust Enrichment.
 - (aa) [§410] In General.
 - (bb) [§411] Real Estate Broker's Authorization.
 - (cc) [§412] Finder's Agreement.
 - (dd) [§413] Other Situations.
 - (c) Where Recovery Will Be Denied.
 - (1) No Substantial Change of Position.
 - (aa) [§414] In General.
 - (bb) [§415] Real Estate Broker's Authorization.
 - (2) [§416] No Unjust Enrichment.
 - (3) [§417] Contract Made by Agent.
- 4. [§418] Qualified Financial Contract.
- 5. [§419] Personal Property Leases.

IX. ILLEGALITY: IN GENERAL

- A. What Constitutes Illegality.
 - 1. [§420] Illegal Consideration.
 - 2. [§421] Illegal Object.

- 3. Partial Illegality and Severability.
 - (a) [§422] General Principles.
 - (b) [§423] Liberal Rule of Severability.
- 4. Indirect Connection With Illegal Transaction.
 - (a) Remote Connection or Mere Knowledge.
 - (1) [§424] General Rule and Theory.
 - (2) [§425] Seller of Goods.
 - (3) Lender of Money.
 - (aa) [§426] In General.
 - (bb) [§427] Loan to Gambler.
 - (b) Severance of Executory and Executed Phases.
 - (1) [§428] Agreement To Sell and Sale.
 - (2) [§429] Title Resulting From Performance.
 - (c) [§430] Executory Agreement Superseding Illegal Agreement.
- 5. [§431] Illegal Contract Is Foundation of Suit.

B. Effect of Illegality.

- 1. In General: Contract Void.
 - (a) [§432] Malum In Se and Malum Prohibitum.
 - (b) [§433] No Ratification, Waiver, or Estoppel.
 - (c) [§434] No Validity by Statutory Repeal.
 - (d) [§435] Pleading Unnecessary.
 - (e) [§436] Form Disregarded: Use of Parol Evidence.
 - (f) [§437] No Quasi-Contract Recovery.
 - (g) [§438] No Setoff Where Public Interest Is Involved.
- 2. Effect of Being, or Not Being, In Pari Delicto.
 - (a) Restitution or Quasi-Contract Recovery.
 - (1) [§439] Plaintiff's Right to Restitution.
 - (2) [§440] Sales Contract.

- (b) Enforcement of Contract.
 - (1) [§441] General Rule: No Enforcement.
 - (2) When Contract Will Be Enforced.
 - (aa) [§442] In General.
 - (bb) [§443] License Cases.
 - (cc) [§444] Plaintiff In Pari Delicto.
 - (dd) [§445] Illegal Partnership.
- (c) [§446] Member of Protected Class.
- (d) [§447] Determination of Relative Wrong.
- 3. [§448] Voluntary Withdrawal From Executory Contract.
- 4. [§449] Illegal Provision Inserted by Mistake.
- 5. [§450] Relief Against Forfeiture.
- 6. [§451] Attempt To Evade Illegality by Arbitration.

C. Classes of Illegal Contracts.

- 1. [§452] In General.
- 2. Contracts Contrary to Public Policy.
 - (a) [§453] General Principle.
 - (b) [§454] Restatement 2d.
 - (c) [§455] Illustrations.

X. ILLEGALITY: PARTICULAR ILLEGAL CONTRACTS.

A. Usury.

- 1. California Legislation.
 - (a) [§456] Usury Law.
 - (b) Constitutional Provision.
 - (1) [§457] Former Section and Revision.
 - (2) Exemptions.
 - (aa) [§458] In General.

- (bb) [§459] Real Estate Brokers.
- (c) [§460] Pawnbroker Regulations.
- (d) [§461] Industrial Loan Law.
- (e) [§462] Loans Secured by Real Property.
- (f) California Finance Lenders Law.
 - (1) In General.
 - (aa) [§463] Statutory Development.
 - (bb) [§464] Scope and Effect.
 - (cc) [§465] Exemptions.
 - (2) Consumer Loans.
 - (aa) [§466] Definitions.
 - (bb) [§467] Rate of Charges.
 - (3) [§468] Commercial Loans.
- 2. Effect of Usurious Provision.
 - (a) [§469] In General.
 - (b) [§470] Penalty of Treble Interest.
 - (c) [§471] Recovery of Interest.
- 3. What Constitutes Usury.
 - (a) [§472] General Rule and Test.
 - (b) Excessive Interest, Charges, or Bonus.
 - (1) [§473] In General.
 - (2) [§474] Compound Interest.
 - (c) [§475] Payments Under Collateral Contract.
 - (d) [§476] Forbearance.
- 4. Where Statute Does Not Apply.
 - (a) Sale of Property.
 - (1) [§477] In General.
 - (2) [§478] Modification of Interest Rate on Secured Note.
 - (b) [§479] Purchase of Property Subject to Loan.

- (c) [§480] Purchase of Note at Discount.
- (d) [§481] Partnership or Joint Venture.
- (e) [§482] Payments Contingent.
- (f) [§483] Voluntary Exercise of Prepayment Option.
- (g) [§484] Forbearance Fees.

B. Consumer Credit Laws.

- 1. [§485] Federal Law.
- 2. [§486] California Law.

C. Contracts of Unlicensed Persons.

- 1. General Principles.
 - (a) [§487] Scope of Rule.
 - (b) [§488] Test: Regulatory Statute.
- 2. Illustrations.
 - (a) [§489] Architects.
 - (b) Contractors.
 - (1) Scope of Act.
 - (aa) [§490] In General.
 - (bb) [§491] No Exemption for Exceptional Circumstances.
 - (2) Licensing Requirement.
 - (aa) [§492] In General.
 - (bb) [§493] Burden of Proof of Due Licensure.
 - (cc) [§494] Time When License Is Acquired.
 - (dd) [§495] Unlicensed Status as Defense Against Assignees.
 - (ee) [§496] No Requirement That Contract Be for Payment of Money.
 - (ff) [§497] General Building Contractor's License as Covering Site Preparation Work.
 - (gg) [§498] License Held Under Fictitious

Business Name.

- (3) Where Act Does Not Apply.
 - (aa) [§499] In General.
 - (bb) [§500] Employees.
- 3. Distinctions and Exceptions.
 - (a) [§501] Tort or Breach of Separate Contract.
 - (b) [§502] Action To Dissolve Joint Venture.
 - (c) Substantial Compliance by Contractor.
 - (1) [§503] Earlier Conflicting Cases.
 - (2) [§504] Modern Test.
 - (3) [§505] Legislative Changes.
 - (d) [§506] Paramount Public Policy Involved.

D. Penalties and Liquidated Damages.

- 1. Law Preceding Revised Statute.
 - (a) What Constitutes Unenforceable Penalty.
 - (1) [§507] In General.
 - (2) [§508] Illustrations.
 - (3) [§509] Late-Charge Interest.
 - (b) Valid Provisions: In General.
 - (1) [§510] Rule and Test.
 - (2) Illustrations.
 - (aa) [§511] Cooperative Marketing Agreements.
 - (bb) [§512] Service Installations.
 - (cc) [§513] Contract Payment or Rate.
 - (dd) [§514] Alternative Contract.
 - (ee) [§515] Commitment Fee to Lender.
 - (ff) [§516] Prepayment Penalty.
 - (gg) [§517] Deposit by Bidder on Government Contract.
 - (hh) [§518] Renewal Commissions Dependent on Continued Agency.

- (ii) [§519] Faithful Performance Bond.
- (c) Provisions in Leases.
 - (1) [§520] Unenforceable Penalties.
 - (2) Valid Provisions.
 - (aa) [§521] Advance Rent Payment.
 - (bb) [§522] Bonus for Execution.
 - (cc) [§523] Options.
 - (dd) [§524] Increased Rent for Holding Over.
- (d) Deposit To Secure Performance.
 - (1) [§525] In General.
 - (2) Residential Leases.
 - (aa) [§526] In General.
 - (bb) [§527] Tenant's Right to Initial Inspection by Landlord.
 - (cc) [§528] Termination of Landlord's Interest.
 - (dd) [§529] Disposition of Security.
 - (ee) [§530] What Constitutes Security.
 - (ff) [§531] Landlord Need Not Pay Interest to Tenant.
 - (gg) [§532] Payment of Unreturnable Deposits to Tenants' Organization.
 - (hh) [§533] Landlord's Right to Setoff Despite Failure To Comply With Statute.
 - (3) [§534] Other Property.
- (e) [§535] Recovery Without Actual Damages Suffered.
- 2. [§536] Restatement 2d.
- 3. Revised Liquidated Damages Law.
 - (a) In General.
 - (1) [§537] Nature and Purpose of Revision.
 - (2) [§538] Organization and Scope of Law.
 - (3) [§539] General Rule of Validity.

- (b) Illustrative Applications of General Rule.
 - (1) [§540] Deposits.
 - (2) [§541] Prepayment Fee Contingent on Late Interest Payments.
 - (3) [§542] Service Installations.
 - (4) [§543] Bank's Charge for Insufficient Funds Checks.
 - (5) [§544] Other Applications.
- (c) Consumer's Contract for Property or Services.
 - (1) [§545] In General.
 - (2) [§546] Fees Against Credit Card Customers.
 - (3) [§547] Agreement To Pay Collection Costs.
- (d) [§548] Lease of Dwelling.
- (e) Real Property Purchase Contract.
 - (1) [§549] Scope of Statutes.
 - (2) [§550] Residential Property: In General.
 - (3) [§551] Residential Property: Proof.
 - (4) [§552] Condominiums.
 - (5) [§553] Other Real Property.
- (f) [§554] Public Works Construction Contracts.

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- 1. Federal Law.
 - (a) In General.
 - (1) [§555] Common Law and Statutory Policy.
 - (2) [§556] Federal Statutes.
 - (3) Enforcement and Procedure.
 - (aa) [§557] In General.
 - (bb) [§558] Private Suits: Cause of Action.
 - (cc) [§559] Private Suits: Remedies.
 - (b) Activities Subject to Regulation.
 - (1) [§560] In General.

- (2) [§561] Sports.
- (c) Exempt Activities.
 - (1) [§562] Regulated Businesses.
 - (2) [§563] Labor Organizations.
 - (3) [§564] State Action.
 - (4) Other Activities.
 - (aa) [§565] Agricultural Cooperatives.
 - (bb) [§566] Insurance.
 - (cc) [§567] Attempts To Influence Government Action.
- (d) Sherman Antitrust Act.
 - (1) [§568] The Statute.
 - (2) [§569] Monopolies and Rule of Reason.
 - (3) [§570] Price Fixing and Control.
 - (4) [§571] Boycott.
 - (5) [§572] Other Prohibited Acts.
- (e) [§573] Federal Trade Commission Act.
- (f) Clayton Act.
 - (1) [§574] In General.
 - (2) [§575] Tying and Exclusive Dealing Provisions.
 - (3) [§576] Acquisitions of Stock and Mergers.
- (g) Robinson-Patman Act.
 - (1) [§577] Price Discrimination Prohibited.
 - (2) [§578] Permissible Practices and Defenses.
- (h) Racketeer Influenced and Corrupt Organizations Act.
 - (1) [§579] Nature and Scope of Statute.
 - (2) [§580] Offenses.
 - (3) [§581] State Court Jurisdiction Over Actions.
 - (4) [§582] Procedure.
 - (5) [§583] Penalties and Remedies.

2. California Law.

- (a) Contracts Not To Compete.
 - (1) [§584] In General.
 - (2) [§585] Restatement 2d.
 - (3) Employment Agreements.
 - (aa) [§586] General Rule of Invalidity.
 - (bb) [§587] Edwards Case.
 - (cc) [§588] Rejection of Doctrine of Inevitable Disclosure.
 - (dd) [§589] Employee's Pension Plan.
 - (ee) [§590] No-Hire Provision.
 - (ff) [§591] Distinction: Customer List.
 - (gg) [§592] Valid Noninterference Agreement.
 - (4) Exceptions.
 - (aa) [§593] Sale of Goodwill of Business.
 - (bb) [§594] Sale of Ownership Interest in Business.
 - (cc) [§595] Dissolution of Partnership.
 - (dd) [§596] Dissolution of Limited Liability Company.
 - (ee) [§597] Partially Valid Agreements.
 - (ff) [§598] Division of Marital Property.
 - (5) [§599] Enjoining Attempt To Enforce Out-of-State Covenant Not To Compete.
- (b) Contracts for Exclusive Dealing.
 - (1) [§600] In General.
 - (2) [§601] Tying Agreements.
- (c) Cartwright Act.
 - (1) [§602] Nature of Act.
 - (2) [§603] Requirement of Separate Entities.
 - (3) [§604] Scope of Act.
 - (4) [§605] Relationship to Patent Law.

- (5) Activities Not Covered.
 - (aa) [§606] Statutory and Case Law Exceptions.
 - (bb) [§607] Efforts To Influence Governmental Action.
 - (cc) [§608] Mergers.
- (6) [§609] Validity of Act.
- (7) Applicability of Federal Cases.
 - (aa) [§610] In General.
 - (bb) [§611] Rule of Reason.
- (8) Enforcement.
 - (aa) [§612] In General.
 - (bb) [§613] Action by Attorney General or District Attorney.
 - (cc) [§614] Remedies Available to State or Subdivision.
 - (dd) [§615] Treble Damage Action by Private Person.
 - (ee) [§616] Parens Patriae Action.
 - (ff) [§617] Action for Indirect Injury.
 - (gg) [§618] Jury Instructions.
- (9) Illustrations.
 - (aa) [§619] Bid Depositories.
 - (bb) [§620] Tying Arrangements.
 - (cc) [§621] Realtors Multiple Listing Service.
 - (dd) [§622] Interest Rates.
- (d) Unfair Practices Act.
 - (1) [§623] Nature of Act.
 - (2) [§624] Scope of Act and Distinctions.
 - (3) [§625] Enforcement.
 - (4) [§626] Price Differential to Subdistributor.
 - (5) [§627] Secret Payment of Rebates or Unearned Discounts.
 - (6) [§628] Loss Leaders.

- (7) [§629] Discount to Cigarette Distributors.
- (8) [§630] Cellular Telephones.
- (9) [§631] Jury Instructions.
- (e) [§632] Royalty Contracts for Performance of Copyrighted Musical Works.
- (f) [§633] Fair Trade Laws Abrogated.

F. Contracts Concerning Domestic Relations.

- 1. Invalid Agreements.
 - (a) [§634] Contract Restraining Marriage.
 - (b) Contract Promotive of Divorce (Dissolution).
 - (1) [§635] In General.
 - (2) [§636] Married Person's Promise To Marry.
 - (3) [§637] Agreement for Compensation on Divorce.
 - (c) [§638] Contract To Alter Marital Obligations.
 - (d) [§639] Contract To Compensate for Domestic Services.
 - (e) [§640] Traditional Surrogacy Contract.
- 2. Valid Agreements.
 - (a) [§641] Separation and Property Agreements.
 - (b) [§642] Contract Affecting Child Custody.
 - (c) [§643] Surrogate Motherhood Contracts.
 - (d) [§644] Other Agreements.

G. Wagering and Gambling Contracts.

- 1. What Constitutes Illegal Wager.
 - (a) [§645] In General.
 - (b) [§646] Lottery.
 - (c) [§647] Raffles by Nonprofit Organizations.
 - (d) [§648] Endless Chain Scheme.
 - (e) [§649] Gambling on Indian Land.
- 2. [§650] Where Promisor Receives Agreed Exchange.

H. Contracts Obstructing Administration of Justice.

- 1. [§651] Contracts Involving Evidence.
- 2. [§652] Agreement With Heir Hunter.
- 3. Contract To Refrain From Prosecution.
 - (a) [§653] In General.
 - (b) [§654] Distinction: Contract for Dismissal of Charge.
- 4. [§655] Illegal Contracts of Attorney.
- 5. [§656] Contract To Pay Child Sex Victim.
- 6. [§657] Contract To Refrain From Performing Legally Required Act.

I. Agreement Tending To Defraud Third Person.

- 1. [§658] In General.
- 2. [§659] Collusive Settlement in Joint Tort Action.
- 3. [§660] Agreement Seeking To Evade Taxes.

J. Contracts Adversely Affecting Public Welfare.

- 1. [§661] Contracts To Influence Public Officers.
- 2. [§662] Contract Without Competitive Bidding.
- 3. Contract Violating Public Debt Limitation.
 - (a) [§663] Constitutional Provisions and General Rule.
 - (b) [§664] Exceptions.
- 4. Contract of Interested Public Officer.
 - (a) [§665] In General.
 - (b) California Legislation.
 - (1) [§666] General Statute.
 - (2) [§667] Honig Case.
 - (3) [§668] Other Statutes.

- (c) [§669] What Constitutes Making of Contract.
- (d) [§670] What Constitutes Financial Interest.
- (e) [§671] Remote Nondisqualifying Interest.
- (f) [§672] Other Nondisqualifying Interest.
- (g) [§673] Effect of Violation.
- 5. [§674] Contracts of Health Care Service Plans.
- 6. [§675] Contracts for Bringing Worker to United States.
- 7. [§676] Subcontractor Enrolled in Wrap-Up Insurance Policy.
- 8. [§677] Provision in Consumer Contract Waiving Consumer's Right To Make Statements.

K. Exemption From and Limitation of Liability.

- 1. In General.
 - (a) [§678] Restatement 2d.
 - (b) [§679] California Law.
 - (c) [§680] Distinctions.
- 2. Invalid Provisions.
 - (a) Areas Involving Public Interest.
 - (1) [§681] Medicine.
 - (2) [§682] Automobiles.
 - (3) [§683] Employment.
 - (4) [§684] Other Areas.
 - (b) Construction and Trucking Indemnity Contracts.
 - (1) [§685] Statutory Prohibitions.
 - (2) [§686] Exceptions.
 - (c) Residential Leases.
 - (1) [§687] Former Law: Exemption Upheld.
 - (2) [§688] Exemption Limited to Passive Negligence.
 - (3) [§689] Exemption Rejected.

- 3. Valid Exemption Where No Public Interest Is Involved.
 - (a) In General.
 - (1) [§690] Valid Despite C.C. 1668.
 - (2) [§691] Distinction: "Any Negligent Act" Does Not Include Gross Negligence.
 - (3) [§692] Meaning of Term "Negligent" in C.C. 1668.
 - (4) [§693] Exemption Is Strictly Construed.
 - (b) Illustrations.
 - (1) [§694] Purchase of Airplane.
 - (2) [§695] "Sole Remedy" Provision in Employment Contract.
 - (3) [§696] Other Illustrations.
- 4. Valid Limitation Provisions.
 - (a) [§697] In General.
 - (b) [§698] Regulated Public Utility.

L. Waivers of Statutory Rights.

- 1. Valid Waivers.
 - (a) [§699] Procedural Provisions.
 - (b) [§700] Other Rights.
- 2. Invalid Waivers.
 - (a) [§701] Waivers by Mortgagors.
 - (b) [§702] Waivers by Employees.
 - (c) [§703] Waivers by Tenants.
 - (d) [§704] Miscellaneous Substantive Rights.

XI. RIGHTS AND OBLIGATIONS OF THIRD PARTIES

- A. Third-Party Beneficiaries.
 - 1. [§705] Nature of Right.

- 2. Classification.
 - (a) [§706] Creditor and Donee Beneficiaries.
 - (b) Intended and Incidental Beneficiaries.
 - (1) [§707] Restatement 2d.
 - (2) [§708] Intended Beneficiaries.
 - (3) Incidental Beneficiaries.
 - (aa) [§709] General Rule.
 - (bb) [§710] Audit Reports.
 - (cc) [§711] No Action Against Government Contractor.
 - (dd) [§712] Other Illustrations.
- 3. Rights, Remedies, Duties, and Defenses.
 - (a) [§713] Duties of Promisor.
 - (b) [§714] Rights and Remedies of Beneficiary.
 - (c) [§715] Defenses of Promisor.
 - (d) [§716] Promisee's Right To Bring Damage Action Against Promisor.
- 4. Particular Beneficiaries Who May Enforce Agreement.
 - (a) [§717] Beneficiary of Assumption Agreement.
 - (b) [§718] Prospective Beneficiary of Will.
 - (c) [§719] Express Though Not Sole Beneficiary.
 - (d) Express Beneficiary Not Identified.
 - (1) In General.
 - (aa) [§720] Identification of Beneficiary.
 - (bb) [§721] Illustrations.
 - (2) [§722] Collective Labor Agreement.
 - (3) [§723] Beneficiary Not in Existence When Contract Was Formed.
- 5. Rescission or Modification.
 - (a) [§724] In General.
 - (b) [§725] California Law.

(c) [§726] Distinction: Plaintiff Promisee.

B. Assignment.

- 1. In General.
 - (a) [§727] Nature of Assignment.
 - (b) [§728] Classification of Assignments.
 - (c) [§729] Requisites of Assignment.
 - (d) Assignment for Benefit of Creditors.
 - (1) [§730] In General.
 - (2) [§731] Conformity With Federal Statutes.
- 2. Assignment of Contracts.
 - (a) [§732] Contracts Ordinarily Assignable.
 - (b) Contracts Not Assignable.
 - (1) Contractual Provision Against Assignment.
 - (aa) [§733] Nature and Effect.
 - (bb) [§734] Waiver by Promisee.
 - (cc) [§735] Formal or Technical Assignment.
 - (dd) [§736] Assignment of Money Due or To Become Due.
 - (2) [§737] Statutory Prohibition of Assignment.
 - (3) Contract Personal in Character.
 - (aa) [§738] General Rule and Test.
 - (bb) [§739] Contracts Held Assignable.
- 3. Assignment of Choses in Action.
 - (a) Rights Ordinarily Assignable.
 - (1) [§740] In General.
 - (2) [§741] Distinctions.
 - (b) Assignment of Future Rights.
 - (1) [§742] Expectancies.
 - (2) [§743] Rights Under Contract or Employment.

- (c) Assignment of Wages.
 - (1) Statutory Restrictions.
 - (aa) [§744] Formal Requisites.
 - (bb) [§745] Other Conditions.
 - (2) [§746] Scope and Waiver of Restrictions.
- (d) Nonassignable Rights.
 - (1) [§747] Claims for Personal Wrongs.
 - (2) [§748] Statutory Penalty.
 - (3) Claim for Legal Malpractice.
 - (aa) [§749] In General.
 - (bb) [§750] Bankruptcy.
 - (cc) [§751] Limited Exception to General Rule Against Assignment.
- 4. Effect of Assignment.
 - (a) Liabilities of Assignor.
 - (1) [§752] Liability to Promisee.
 - (2) [§753] Liability to Assignee.
 - (b) Rights of Assignee.
 - (1) In General.
 - (aa) [§754] Complete Assignment.
 - (bb) [§755] Partial Assignment.
 - (2) Incidental Rights Pass With Assignment.
 - (aa) [§756] General Rules.
 - (bb) [§757] Matters That Are Not Incidental.
 - (3) Notice and Defenses of Obligor.
 - (aa) [§758] In General.
 - (bb) [§759] Rights Under Executory Contract.
 - (4) [§760] Latent Equities.
 - (5) Priorities Among Successive Assignees.
 - (aa) [§761] In General.
 - (bb) [§762] Nonnotification Financing of

Accounts Receivable.

(c) [§763] Liability of Assignee.

XII. INTERPRETATION

A. In General.

- 1. [§764] Nature of Interpretation.
- 2. [§765] General Application of Rules.
- 3. [§766] Distinctions.

B. Rules of Interpretation.

- 1. [§767] Intention of Parties: Objective Test.
- 2. [§768] Ordinary Words and Technical Language.
- 3. Interpretation as a Whole.
 - (a) [§769] Single Writing.
 - (b) [§770] Several Writings.
- 4. [§771] Surrounding Circumstances.
- 5. [§772] Subsequent Conduct of Parties.
- 6. Reasonable, Operative, and Lawful Interpretation.
 - (a) [§773] General Rule.
 - (b) [§774] Rejecting or Supplying Words.
 - (c) [§775] Applicable Laws Become Part of Contract.
 - (d) [§776] Effect of Change in Law: Old Law Governs.
- 7. [§777] Inconsistency Between Parts of Contract.
- 8. Usage and Custom as Aid to Interpretation.
 - (a) [§778] In General.
 - (b) [§779] Assent or Knowledge.
- 9. [§780] Interpretation Against Party Causing Uncertainty.

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10. [§781] Contracts Containing Medium of Payment in European Currency.

XIII. PERFORMANCE

A. In General.

- 1. [§782] Discharge by Performance.
- 2. [§783] Demand of Performance.
- 3. [§784] Place of Performance.
- 4. Time of Performance.
 - (a) [§785] Reasonable Time.
 - (b) [§786] Payment of Money.
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 - (c) [§419] Causes of Action Subject to Immunity.
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 - (4) Acts of Other Public Employees.
 - (aa) [§423] Immunity Applicable.
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- 6. Medical, Hospital, and Public Health Activities.
 - (a) [§430] Liabilities.
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- 7. [§432] Operation of Motor Vehicles.
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 - (a) [§457] Nature of Defense.
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 - (c) [§501] Methods of Restraint.
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 - (bb) [§509] Reasonable Cause.
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- F. [§547] Domestic Violence.
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 - (b) [§553] Other Torts Distinguished.
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 - (c) Favorable Termination.
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 - (2) [§563] Termination Consistent With Guilt.
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 - (1) [§565] Nature of Requirement.
 - (2) [§566] Proof and Determination of Issue.
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 - (aa) [§568] Action Unfavorable to Accused.
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 - (2) [§574] Ancillary Proceeding.
 - (3) [§575] Order To Show Cause.
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 - (1) [§578] Subsidiary or Defensive Procedures Within Action.
 - (2) [§579] Small Claims Proceeding.
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 - (a) [§806] Entry by Consent.
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- 2. [§941] Tort as Form of Deceit.
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 - (1) [§953] Tort Not Waived.
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 - 1. [§956] Definitions.
 - 2. [§957] Jury Instructions.
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 - (a) [§971] Adoption of Firefighter's Rule.
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 - (2) [§984] Exception Applicable.
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- 3. [§986] Parking on Shoulder of Interstate Highway.
- 4. [§987] Injuries to Worker's Family Members.

F. Questions of Law and Fact.

- 1. Legal Duty.
 - (a) [§988] Question of Law.
 - (b) Illustrations.
 - (1) [§989] School District and Children on School Property.
 - (2) [§990] Negligent Motorist and Tow Truck Driver.
 - (3) [§991] Negligent Motorist and Child Not Yet Conceived.
 - (4) [§992] Lender and Borrower.
 - (5) [§993] Duty of Police Officer.
 - (6) [§994] Duty of Insurer.
 - (7) [§995] Other Illustrations.
- 2. [§996] Due Care and Causation Are Questions of Fact.
- G. [§997] Jury Instructions.

XI. NEGLIGENCE: GENERAL DUTY TO EXERCISE DUE CARE

- A. Standard of Due Care: In General.
 - 1. [§998] The Ordinarily Prudent Person.
 - 2. [§999] Foreseeability of Unreasonable Risk.
 - 3. [§1000] Degrees of Care and Negligence.
 - 4. [§1001] Wilful Misconduct.

B. Standard of Due Care: Negligence Per Se.

- 1. In General.
 - (a) [§1002] Nature of Doctrine.
 - (b) [§1003] Federal Law Violations.

- (c) [§1004] Codification of Doctrine.
- (d) [§1005] Illustrations.
- 2. Statute, Ordinance, or Administrative Regulation.
 - (a) In General.
 - (1) [§1006] Statute or Ordinance.
 - (2) [§1007] Administrative Regulation.
 - (3) [§1008] Agency Manual Is Not Regulation.
 - (b) Motor Vehicles.
 - (1) [§1009] Speed Limits.
 - (2) Right-of-Way: Driver and Other Motorists.
 - (aa) [§1010] Intersections.
 - (bb) [§1011] Other Situations.
 - (3) Right-of-Way: Driver and Pedestrian.
 - (aa) [§1012] In General.
 - (bb) [§1013] Crosswalks.
 - (4) Other Driving Rules.
 - (aa) [§1014] Driving in Wrong Location or Manner.
 - (bb) [§1015] Obstruction of View.
 - (cc) [§1016] Equipment and Signals.
 - (dd) [§1017] Other Situations.
 - (5) [§1018] Parking.
 - (6) [§1019] Jury Instructions.
 - (c) [§1020] Bicycles.
 - (d) [§1021] Boats.
 - (e) [§1021A] (New) Automatic External Defibrillators.
- 3. Excuses Rebutting Presumption of Negligence.
 - (a) [§1022] In General.
 - (b) [§1023] Illustrations.

- 4. Legal Duty and Type of Harm.
 - (a) [§1024] Class of Persons.
 - (b) [§1025] Type of Harm.
 - (c) [§1026] Vehicle Cases.
- 5. [§1027] Proximate Cause.
- 6. [§1028] Doctrine Is Inapplicable to Immature Children.

C. Due Care in Specific Situations.

- 1. Custom and Regulations.
 - (a) [§1029] Customary Conduct.
 - (b) [§1030] Departure From Custom.
 - (c) [§1031] Compliance With Safety Regulations.
- 2. Emergency: Doctrine of Imminent Peril.
 - (a) [§1032] In General.
 - (b) [§1033] Illustrations.
- 3. [§1034] Unavoidable Accident.
- 4. [§1035] Lack of Necessary Skill or Care.
- 5. [§1036] Lack of Preparation or Inspection.
- 6. Failure To Give Warning.
 - (a) [§1037] Warning Before Acts.
 - (b) [§1038] Warning of Conditions.
 - (c) [§1039] Signals at Railroad Crossing.
- 7. Failure To Take Precautions.
 - (a) [§1040] Safety Belts.
 - (b) [§1041] Other Precautions.
- 8. [§1042] Absence of Similar Occurrence.
- 9. [§1043] Operation of Machinery Near Horses.
- 10. [§1044] Risk of Venereal Disease.

- 11. [§1045] False Diagnosis of Recovered Memory.
- 12. Radio, Television, or Motion Picture Production.
 - (a) [§1046] Promotion.
 - (b) [§1047] Film Depicting Violence.
 - (c) [§1048] Song About Suicide.
 - (d) [§1049] Unauthorized Viewing of Movie.

D. Degree or Kind of Care in Special Situations.

- 1. Dangerous Activities or Devices.
 - (a) [§1050] In General.
 - (b) [§1051] Electricity.
 - (c) [§1052] Firearms and Ammunition.
 - (d) [§1053] Explosives.
 - (e) [§1054] Gas and Other Flammable Materials.

2. Carriers.

- (a) [§1055] In General.
- (b) [§1056] What Constitutes Carrier.
- (b-1) [§1056A] (New) What Is Not a Carrier.
- (c) [§1057] Private Carrier for Hire.
- (d) [§1058] Charterer of Excursion Boat.
- (e) When Plaintiff Is Passenger.
 - (1) [§1059] In General.
 - (2) [§1060] Airline Passenger Changing Planes.
- (f) [§1061] Carrier's Duty Owed to Stranger.
- (g) Carrier's Duty To Prevent Assault.
 - (1) [§1062] Occurrence or Allegation of Prior Assault.
 - (2) [§1063] No Evidence of Prior Assault.
- (h) [§1064] Carrier's Duty To Collect Evidence.
- (i) [§1065] Jury Instructions.

- 3. Medical Practitioners.
 - (a) In General.
 - (1) [§1066] Degree of Skill or Care.
 - (2) [§1067] Ordinary Versus Professional Negligence.
 - (3) [§1068] Physician-Patient Relationship.
 - (4) [§1069] Health Care Provider.
 - (5) [§1070] HMO.
 - (b) Commentary and Practice Works.
 - (1) [§1071] In General.
 - (2) [§1072] Related Fields and Peripheral Matters.
 - (c) Medical Injury Compensation Reform Act (MICRA).
 - (1) [§1073] Nature and Purpose of Act.
 - (2) [§1074] Constitutionality of Act.
 - (3) Limitations on Attorney's Compensation.
 - (aa) [§1075] Statutory Provisions.
 - (bb) [§1076] Constitutionality.
 - (cc) [§1077] Hybrid Action.
 - (dd) [§1078] Computation of Fee.
 - (4) Compulsory Arbitration Agreements.
 - (aa) [§1079] In General.
 - (bb) [§1080] Subsequent Medical Services.
 - (cc) [§1081] Persons Who Did Not Sign: In General.
 - (dd) [§1082] Persons Who Did Not Sign: Cross-Complainants.
 - (ee) [§1083] Retroactive Agreements.
 - (ff) [§1084] Intentional Torts.
 - (gg) [§1085] Punitive Damages.
 - (5) Notice of Intent To Sue.
 - (aa) [§1086] In General.
 - (bb) [§1087] Extension of Applicable Statute of

Limitations.

- (cc) [§1088] Government Tort Claim Is Not Notice of Intent To Sue.
- (6) Evidence of Collateral Sources.
 - (aa) [§1089] In General.
 - (bb) [§1090] Constitutionality and Construction.
- (7) Maximum Recovery for Noneconomic Loss.
 - (aa) [§1091] In General.
 - (bb) [§1092] Constitutionality.
 - (cc) [§1093] Comparative Negligence.
 - (dd) [§1094] Action by Spouse for Loss of Consortium.
 - (ee) [§1095] Action for Equitable Indemnity.
 - (ff) [§1096] Action Under Federal Patient-Dumping Statute.
 - (gg) [§1097] Periodic Payments.
 - (hh) [§1098] Intentional Torts.
- (8) Periodic Payments.
 - (aa) [§1099] Authorization.
 - (bb) [§1100] Purpose.
 - (cc) [§1101] Procedure.
 - (dd) [§1102] No Interest on Periodic Payments.
 - (ee) [§1103] Attorneys' Fees When Periodic Payments Are Awarded.
- (d) Diagnosis or Treatment.
 - (1) [§1104] In General.
 - (2) [§1105] Diagnosis of Battered Child Syndrome.
 - (3) [§1106] Sexual Relations With Patient.
 - (4) [§1107] Delayed Diagnosis.
 - (5) [§1108] Annotations and Practice Works.
- (e) [§1109] Surgery.

- (f) Wrongful Birth: Action by Parent.
 - (1) [§1110] In General.
 - (2) [§1111] Proximate Cause.
- (g) Wrongful Life: Action by Child.
 - (1) [§1112] In General.
 - (2) [§1113] Cause of Action Recognized.
 - (3) [§1114] No Cause of Action Against Parent.
 - (4) [§1115] Recovery Limited to Special Damages.
 - (5) Specific Failures.
 - (aa) [§1116] Failure To Prevent Birth.
 - (bb) [§1117] Failure To Diagnose Spina Bifida.
 - (cc) [§1118] Failure To Secure Consent of Husband for Artificial Insemination.
- (h) [§1119] Jury Instructions.
- 4. Hospitals.
 - (a) [§1120] In General.
 - (b) [§1121] Improper Restraints.
 - (c) [§1122] Negligent Postoperative Care.
 - (d) [§1123] Scope of Immunity Statute.
- 5. Accountants.
 - (a) [§1124] In General.
 - (b) Duty to Unintended Recipients of Information.
 - (1) [§1125] Former Foreseeability Approach.
 - (2) [§1126] Liability Limited to Client.
 - (3) [§1127] Audit Filed With Insurance Commissioner.
 - (c) [§1128] Litigation Support.
- 6. Other Professionals.
 - (a) [§1129] In General.
 - (b) [§1130] Architects.

- (c) [§1131] Miscellaneous Professionals.
- 7. Children.
 - (a) Duty Owed by Child.
 - (1) [§1132] Child Held to Lesser Standard.
 - (2) [§1133] Child Incapable of Negligence.
 - (3) [§1134] Child Held to Same Standard as Adult.
 - (4) [§1135] Illustrations.
 - (b) Duty Owed to Child.
 - (1) [§1136] General Principle.
 - (2) [§1137] Illustrations.
- 8. [§1138] Person With Mental or Physical Disability.

E. Negligent Infliction of Emotional Distress.

- 1. In General.
 - (a) Nature of Tort.
 - (1) [§1139] In General.
 - (2) [§1140] Distinctions.
 - (3) [§1141] Restatement.
 - (b) [§1142] Injury Without Impact.
 - (c) [§1143] Imputation of Negligence.
- 2. Physical Trauma Present: Third Person Injured.
 - (a) [§1144] Former Law: No Recovery.
 - (b) [§1145] Current Law: Recovery Allowed.
 - (c) [§1146] Dillon Guidelines Are Binding.
 - (d) [§1147] Nearness of Plaintiff.
 - (e) Contemporaneous Observance.
 - (1) [§1148] Condition Met: Recovery Allowed.
 - (2) [§1149] Condition Not Met: Recovery Denied.
 - (3) [§1150] Event Need Not Be Sudden.
 - (4) [§1151] Plaintiff May Be Voluntarily Present.

- (5) [§1152] Seriousness of Event Must Be Apparent.
- (6) [§1153] Event Must Be Visible.
- (7) [§1154] Observation May Be While Event Is Occurring.
- (f) Close Relationship.
 - (1) [§1155] Family Relationship.
 - (2) [§1156] Foster Parent.
 - (3) [§1157] Unmarried Cohabitant.
 - (4) [§1158] Other Relationships.
- (g) [§1159] Defective Product as Source of Emotional Distress.
- 3. Physical Trauma Present: No Impact or Injury.
 - (a) [§1160] Development of Rule.
 - (b) Cases Upholding Recovery.
 - (1) [§1161] In General.
 - (2) [§1162] Counseling.
 - (3) [§1163] Legal Malpractice.
 - (4) [§1164] Childbirth.
 - (c) Cases Denying Recovery.
 - (1) [§1165] In General.
 - (2) [§1166] Airplane Crash.
 - (3) [§1167] Legal Malpractice.
 - (4) [§1168] Incorrect Prescription.
- 4. Physical Trauma Not Present.
 - (a) [§1169] Financial Injury.
 - (b) [§1170] Injury to Property.
 - (c) [§1171] Report Causing Arrest.
 - (d) [§1172] Wrongful Termination of Employment.
 - (e) [§1173] Assisting in Removal of Child.
 - (f) [§1174] Fear of Contracting Disease.
 - (g) [§1175] Negligent Construction.

5. [§1176] Jury Instructions.

XII. NEGLIGENCE: AFFIRMATIVE DUTIES ARISING FROM SPECIAL RELATIONSHIPS

A. In General.

- 1. Necessity of Relationship.
 - (a) [§1177] General Principle.
 - (b) Illustrations: Situations Where No Duty Arises.
 - (1) [§1178] Probation Department.
 - (2) [§1179] Intoxicated Patron of Business Establishment.
 - (3) [§1180] Knowledge of Another's Violent Tendencies.
 - (4) [§1181] Faith Healer.
 - (5) Suicide Prevention.
 - (aa) [§1182] Clergy.
 - (bb) [§1183] Police Officer.
 - (cc) [§1184] Mental Health Practitioner.
 - (6) Clergy.
 - (aa) [§1185] In General.
 - (bb) [§1186] Duty Provable, But Not Established.
 - (7) [§1187] Other Illustrations.
 - (c) Illustrations: Relationships Giving Rise to Duty.
 - (1) [§1188] In General.
 - (2) Psychotherapist's Duty To Warn.
 - (aa) [§1189] In General.
 - (bb) [§1190] Statutory Limitation.
 - (3) [§1191] Medical Consultant.
 - (4) [§1192] Private Security Guard.
 - (5) [§1193] School District.
 - (5a) [§1193A] (New) College or University.

- (6) Suicide Prevention.
 - (aa) [§1194] Care Facility for Elderly.
 - (bb) [§1195] Mental Health Practitioner.
- (7) [§1196] Party Endangering Unidentified Victim.
- (8) Person Inviting Minor into Home.
 - (aa) [§1197] Where Minor's Parent Is Not Present.
 - (bb) [§1198] Where Minor's Parent Is Present.
 - (cc) [§1198A] (New) Where Duty To Supervise Is Delegated.
- (9) [§1199] Other Relationships.
- 2. Exceptions: Affirmative Duty Without Relationship.
 - (a) In General.
 - (1) [§1200] Statutory Duty.
 - (2) [§1201] Contractual Duty.
 - (3) [§1202] Active Force Under Defendant's Control.
 - (4) [§1203] Creation of Peril.
 - (5) [§1204] Interference With Attempt To Aid.
 - (b) Voluntary or Gratuitous Undertaking.
 - (1) [§1205] Liability for Negligent Performance.
 - (2) [§1206] Conditions for Liability.
 - (3) [§1207] Illustration: Street Vendor's Duty to Child.
 - (4) [§1208] Distinction: Casual Advice.
 - (5) [§1209] Distinction: Medical Proctor.
 - (6) [§1210] No Liability for Failure To Perform.
 - (c) Furnishing Liquor to Intoxicated Person.
 - (1) [§1211] Common Law Rule of Nonliability.
 - (2) Former Judicial Rule of Liability.
 - (aa) [§1212] Liability to Third Person.
 - (bb) [§1213] Liability to Intoxicated Person.

- (cc) [§1214] Liability to Social Guest.
- (3) Legislative Abrogation of Liability.
 - (aa) [§1215] Statutory Framework.
 - (bb) [§1216] General Rule: No Civil Liability.
 - (cc) [§1217] Liability of Social Host.
 - (dd) [§1218] Furnishing Liquor to Intoxicated Minor.
 - (ee) [§1219] Constitutionality of Statutes.
 - (ff) [§1220] Furnishing Liquor to Sober Minor.
 - (gg) [§1221] Furnishing Liquor to Disabled Person.
 - (hh) [§1222] Entrusting Vehicle to Intoxicated Driver.
 - (ii) [§1223] Failure To Prevent Driving by Intoxicated Person.

B. Landowners and Possessors.

- 1. In General.
 - (a) [§1224] Nature of Liability.
 - (b) Owner or Possessor.
 - (1) [§1225] In General.
 - (2) [§1226] Holder of Bare Legal Title.
 - (c) Duty to Person Coming on Land.
 - (1) [§1227] Traditional Status Classification.
 - (2) [§1228] Repudiation of Traditional Classification.
 - (d) Duty to Person Outside Land.
 - (1) [§1229] In General.
 - (2) [§1230] Natural Conditions.
 - (e) Conditions or Activities Outside Land.
 - (1) [§1231] General Rule of Nonliability.
 - (2) [§1232] Defective Structure.
 - (3) [§1233] Hazardous Condition.

- (4) [§1234] City's Liability and Right of Indemnity.
- (f) [§1235] Jury Instructions.
- 2. Trespassers.
 - (a) [§1236] Who Are Trespassers.
 - (b) [§1237] Former Limited Duties.
 - (c) [§1238] Current Bases of Liability.
 - (d) Trespasser on Railroad Car.
 - (1) [§1239] In General.
 - (2) [§1240] Authority Must Be Express.
 - (e) [§1241] Person Committing Serious Felony.
- 3. Licensees.
 - (a) [§1242] Who Are Licensees.
 - (b) [§1243] Former Limited Duties.
 - (c) [§1244] Current Bases of Liability.
 - (d) No Liability to Recreational Licensees.
 - (1) [§1245] In General.
 - (2) [§1246] Constitutionality of Statute.
 - (3) Recreational Purpose.
 - (aa) [§1247] In General.
 - (bb) [§1248] Playing on Machinery.
 - (4) Land Unsuited for Recreation.
 - (aa) [§1249] In General.
 - (bb) [§1250] Suitability Requirement Abrogated.
 - (5) [§1251] Owner of Estate or Interest in Real Property.
 - (6) [§1252] Exception for Public Property.
 - (7) [§1253] Liability for Wilful Misconduct.
 - (e) [§1254] No Liability to Gleaners of Agricultural Products.

- 4. Invitees or Business Visitors.
 - (a) Who Are Invitees.
 - (1) Theory of Mutual Business Interest.
 - (aa) [§1255] In General.
 - (bb) [§1256] Nonbusiness Activity as Business.
 - (cc) [§1257] Circumstances and Custom.
 - (2) [§1258] Theory of Public Invitation.
 - (3) [§1259] Illustrations.
 - (b) [§1260] Bases of Liability.
 - (c) Dangerous Physical Condition.
 - (1) [§1261] In General.
 - (2) [§1262] Knowledge of Condition.
 - (3) [§1263] Failure To Inspect: Recovery Allowed.
 - (4) No Breach of Duty: Recovery Denied.
 - (aa) [§1264] In General.
 - (bb) [§1265] Where Inspection Would Not Disclose Defect.
 - (cc) [§1266] Injury From Insect Bite.
 - (5) Obvious Dangers.
 - (aa) [§1267] Theory of Contributory Negligence.
 - (bb) [§1268] Theory of No Breach of Duty.
 - (cc) [§1269] Effect of Rowland Case.
 - (6) [§1270] Exceeding Scope of Invitation.
 - (d) Dangerous Activity on Premises.
 - (1) [§1271] Nature of Duty.
 - (2) Foreseeability: Activity of Third Person.
 - (aa) [§1272] In General: Prior Incidents.
 - (bb) [§1273] Assault Involving Firearms.
 - (cc) [§1274] Assault Not Involving Firearms.
 - (dd) [§1275] Spilled Liquid.

- (3) Foreseeability: Absence of Prior Incidents.
 - (aa) [§1276] In General.
 - (bb) [§1277] Parking Garages.
 - (cc) [§1278] Other Structures.
- (4) [§1279] Warning of Danger.
- (5) [§1280] Proximate Cause.
- (6) Liability of Owner of Business Premises.
 - (aa) [§1281] Parking Garage Owner.
 - (bb) [§1282] Store Owner.
 - (cc) [§1283] No Duty To Comply With Criminal's Demand.
- (7) Liability of Landlord.
 - (aa) [§1284] Liability Upheld.
 - (bb) [§1285] Liability Denied.
- (8) [§1286] Liability of Lessee to Guest.
- (9) [§1287] Injury to or Loss of Property.
- (e) Dangerous Activity Off Premises.
 - (1) [§1288] In General.
 - (2) [§1289] Vicious Dog In Neighborhood.
 - (3) [§1290] Failure To Correct or Warn of Flammable Structure.
 - (4) [§1291] Failure To Build Barrier.
 - (5) Criminal Acts of Third Parties: Location of Assault.
 - (aa) [§1292] Near School.
 - (bb) [§1293] Near Bar.
 - (cc) [§1294] Near Store.
 - (dd) [§1295] Near Restaurant.
 - (ee) [§1296] Near Apartment.
 - (ff) [§1297] Near Public Telephone.

- 5. Trespassing Children.
 - (a) Former Doctrine of Attractive Nuisance.
 - (1) [§1298] Rule and Classification.
 - (2) [§1299] Extension of Liability Under Restatement.
 - (3) [§1300] Application in Particular Situations.
 - (b) [§1301] Current Foreseeable Risk Approach.

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

- 1. Vendor and Lessor.
 - (a) [§1302] General Rule of Nonliability.
 - (b) [§1303] Former Owner's Liability for Improvement.
- 2. Contractor.
 - (a) [§1304] In General.
 - (b) [§1305] Illustrations.

D. Construction Defects.

- 1. [§1306] In General.
- 2. [§1307] Scope of Legislation.
- 3. [§1308] Actionable Defects.
- 4. [§1309] Right To Repair and Other Prelitigation Requirements.
- 5. [§1310] Action and Relief.
- 6. Liability of Contractors, Suppliers, Product Manufacturers, and Design Professionals.
 - (a) [§1311] In General.
 - (b) [§1312] Builder's Right of Recovery for Economic Losses Caused by Product Manufacturer.

E. Manufacturers and Other Suppliers of Goods.

- 1. In General.
 - (a) [§1313] Privity Requirement Repudiated.
 - (b) [§1314] Restatement and California Law.
 - (c) [§1315] Injury to Property.
 - (d) [§1316] Jury Instructions.
- 2. Knowledge of Danger and Duty To Warn.
 - (a) [§1317] In General.
 - (b) [§1318] Dangerous Chemicals.
 - (c) [§1319] State of Emergency.
 - (d) [§1320] Dangerous Design.
 - (e) [§1321] Sophisticated User Defense.
 - (f) [§1322] Sophisticated Intermediary Doctrine.
- 3. [§1323] Duty To Inspect.
- 4. [§1324] Food and Beverages.
- 5. [§1325] Drugs and Cosmetics.
- 6. [§1326] Secondhand Equipment.

F. Negligent Performance of Ordinary Contract.

- 1. [§1327] Recovery Allowed.
- 2. [§1328] Recovery Denied.

XIII. NEGLIGENCE: PROXIMATE OR LEGAL CAUSE

A. In General.

- 1. Nature of Doctrine.
 - (a) [§1329] Development.
 - (b) [§1330] Restatement 2d.

- (c) Restatement 3d.
 - (1) [§1331] Factual and Proximate Cause.
 - (2) [§1332] Apportionment of Liability.
- 2. [§1333] Question of Fact or Law.
- 3. Cause in Fact and Proximate Cause.
 - (a) [§1334] Cause in Fact.
 - (b) Proximate Cause.
 - (1) [§1335] In General.
 - (2) [§1336] Restatement 3d.
 - (c) [§1337] Jury Instructions.
 - (d) Illustrations.
 - (1) [§1338] Negligence of Medical Personnel or Facility.
 - (2) [§1339] Negligence Resulting in Violent Act.
 - (3) Negligent Hiring of Tortfeasor.
 - (aa) [§1340] Tortfeasor Committing Sexual Offense.
 - (bb) [§1341] Tortfeasor Committing Nonsexual Offense.
 - (4) [§1342] Other Acts of Negligence.

B. Direct Causation.

- 1. [§1343] Liability for Unforeseeable Consequences.
- 2. [§1344] Concurring Causes.
- 3. [§1345] Concurrent Negligence but Single Unidentified Cause.
- 4. [§1346] Unknown Cause.

C. [§1347] Normal Intervening Forces.

D. Independent Intervening Act.

- 1. Test of Foreseeability.
 - (a) [§1348] In General.
 - (b) [§1349] Precise Act or Harm Need Not Be Foreseen.
- 2. [§1350] Natural Forces and Animals.
- 3. [§1351] Irresponsible or Innocent Act of Third Person.
- 4. Negligent Act or Omission of Third Person.
 - (a) [§1352] Object Left in Path of Vehicle.
 - (b) [§1353] Obstruction Diverting Pedestrian From Safe Place.
 - (c) [§1354] Illegal Parking.
 - (d) [§1355] Accident Leaving Plaintiff Helpless.
 - (e) Intervening Negligent Driver.
 - (1) [§1356] In General.
 - (2) [§1357] Realizable Likelihood of Act.
 - (f) [§1358] Unknown Intervening Act.
 - (g) Manufacturer's Negligence and Intervening Negligence.
 - (1) [§1359] Intervening Party's Knowledge.
 - (2) [§1360] Intervening Party's Failure To Inspect.
 - (3) [§1361] Intervening Negligent Act of Stranger.
 - (h) [§1362] Subcontractor's Negligence and Contractor's Intervening Negligence.
 - (i) [§1363] Intervening Negligence of Hospital Staff.
 - (j) [§1364] Intervening Negligence of Attorney.
- 5. Intentional Act of Third Person.
 - (a) [§1365] Unforeseeable Act.
 - (b) [§1366] Likelihood of Act.
 - (c) [§1367] Act Not Highly Extraordinary.
 - (d) [§1368] Act of Responsible Child.
 - (e) [§1369] Arrest and Prosecution by Authorities.

6. [§1370] Suicide.

XIV. NEGLIGENCE: LIABILITY FOR NEGLIGENCE OF OTHERS

- A. [§1371] Circumstances Justifying Vicarious Liability.
- B. Entrustment of Dangerous Instrumentality.
 - 1. [§1372] In General.
 - 2. Incompetent, Reckless, or Intoxicated Driver.
 - (a) [§1373] In General.
 - (b) [§1374] No Duty To Inquire into Competency.
 - (c) [§1375] Seller of Vehicle Is Not Liable.
 - (d) [§1376] Gift of Vehicle.
 - 3. [§1377] Respondeat Superior Liability Distinguished.

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- 1. [§1378] General Rule of Nonliability.
- 2. Exceptions.
 - (a) [§1379] Knowledge of Past Misconduct.
 - (b) Statutory Liability for Wilful Misconduct.
 - (1) [§1380] Nature and Scope of Statute.
 - (2) [§1381] Illustrations.
 - (3) [§1382] Injury to School Students, Personnel, or Property.
 - (4) [§1383] Theft From Merchant or Library.
 - (c) Permitting Access to Firearm.
 - (1) [§1384] Common Law.
 - (2) [§1385] California Statute.
- D. [§1386] Members of Joint Enterprise.
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 - 1. [§1387] In General.

- 2. Where Employer Is at Fault.
 - (a) [§1388] Employment of Incompetent Contractor.
 - (b) [§1389] Defective Plans.
 - (c) [§1390] Failure To Supervise Concessionaire.
 - (d) [§1391] No Liability to Independent Contractor's Employee for Negligent Hiring.
 - (e) Limited Liability to Independent Contractor's Employee for Negligent Exercise of Retained Control.
 - (1) [§1392] In General.
 - (2) [§1393] Breach of Regulatory Duty.
- 3. Inherently Dangerous Work.
 - (a) Theory of Liability: Peculiar Risk Doctrine.
 - (1) [§1394] Restatement 2d.
 - (2) [§1395] California Cases.
 - (b) [§1396] Distinction: Collateral Negligence.
 - (c) Distinction: Claim by Employee of Independent Contractor.
 - (1) Peculiar Risk Doctrine Is Not Applicable.
 - (aa) [§1397] In General.
 - (bb) [§1398] No Liability of Hirer's Agent.
 - (2) [§1399] Direct and Vicarious Liability.
 - (d) [§1400] Restatement 3d.
- 4. Nondelegable Duty.
 - (a) [§1401] Theory of Liability.
 - (b) [§1402] Work Under Public License.
 - (c) [§1403] Creation of Nuisance.
 - (d) [§1404] Performance of Owner's or Possessor's Duty.
 - (e) [§1405] Automobile Driver's Duty.
 - (f) [§1406] Hazardous Waste Disposal.
 - (g) [§1407] Compliance With Safety Regulations.
- 5. [§1408] Public Franchise to Employer.

- 6. [§1409] General Contractor's Liability for Subcontractor's Negligence.
- 7. [§1410] Hospital's Liability for Doctor's Negligence.
- 8. [§1411] Jury Instructions.

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- 1. Parent or Custodian of Minor.
 - (a) [§1412] Signer of Driver's License.
 - (b) [§1413] Minor Driving With Permission.
 - (c) [§1414] Nature and Scope of Liability.
 - (d) [§1415] Termination of Liability.
- 2. Driving With Permission.
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 - (1) [§1416] Statutory Development.
 - (2) [§1417] Limited Liability.
 - (3) [§1418] Vehicle and Operation.
 - (4) [§1419] Effect of Settlement.
 - (5) [§1420] Effect of Unsatisfied Judgment.
 - (b) Liability of Owner.
 - (1) [§1421] In General.
 - (2) [§1422] Notification to Department.
 - (3) [§1423] Minor Who Disaffirms.
 - (4) [§1424] Community and Joint Ownership.
 - (c) [§1425] Liability of Bailee or Personal Representative.
 - (d) [§1426] Liability of Operator.
 - (e) Permission.
 - (1) [§1427] Express and Implied Permission.
 - (2) [§1428] Restricted Permission.
- 3. [§1429] Jury Instructions.

- G. [§1430] Statutory Liability for Operation of Vessel.
- H. Statutory Liability for Operation of Aircraft.
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 - (a) [§1431] In General.
 - (b) [§1432] Who Is Owner of Aircraft.
 - 2. Uniform Aircraft Financial Responsibility Act.
 - (a) [§1433] In General.
 - (b) [§1434] Security Following Accident.
 - (c) [§1435] Insurance Coverage.
- I. [§1436] Distinction: Financing Agency Is Not Liable.

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- A. [§1437] Available Defenses.
- B. Assumption of Risk.
 - 1. In General.
 - (a) [§1438] Definition.
 - (b) [§1439] Relation to Contributory Negligence.
 - (c) [§1440] Relation to Comparative Negligence.
 - 2. Implied.
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 - (1) [§1441] Risk of Defendant's Negligence.
 - (2) [§1442] Plaintiff's Knowledge of Danger.
 - (b) Illustrations of Risk Assumed.
 - (1) [§1443] Spectator at Athletic Contest.
 - (2) [§1444] Dangerous Activity or Appliance.
 - (c) When Risk Is Not Assumed.
 - (1) [§1445] No Actual Knowledge of Danger.
 - (2) [§1446] No Knowledge of Particular Danger.

- (3) [§1447] Unusually Dangerous Condition or Activity.
- (4) [§1448] Violation of Safety Regulations.
- 3. Express.
 - (a) [§1449] In General.
 - (b) [§1450] Restatement 3d.
 - (c) [§1451] Release in Wrongful Death Action.

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- 1. In General.
 - (a) [§1452] Contributory Negligence and Comparative Negligence.
 - (b) [§1453] Pleading and Proof.
 - (c) Standard of Due Care.
 - (1) [§1454] In General.
 - (2) [§1455] Children and Disabled Persons.
 - (d) [§1456] Causal Connection With Injury.
 - (e) [§1457] Question of Law or Fact.
 - (f) [§1458] Action Based on Negligence Per Se.
 - (g) When Doctrine Is Not Applicable.
 - (1) [§1459] Intentional Tort and Wilful Misconduct.
 - (2) [§1460] Injury to Property.
- 2. Illustrations of Contributory Negligence.
 - (a) Voluntary Exposure to Danger.
 - (1) [§1461] Rule and Illustrations.
 - (2) [§1462] Distinctions.
 - (3) Exception: Rescue of Person or Property.
 - (aa) [§1463] The Rescue Rule.
 - (bb) [§1464] Peril Not Created by Defendant.
 - (cc) [§1465] Rescue of Property.
 - (b) [§1466] Forgetfulness of Known Danger.

- (c) Negligent Failure To Discover Danger.
 - (1) [§1467] In General.
 - (2) Reliance on Defendant's Duty of Care.
 - (aa) [§1468] In General.
 - (bb) [§1469] Employees.
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- 3. Contributory Negligence Per Se.
 - (a) In General.
 - (1) [§1472] Violation of Statute.
 - (2) [§1473] Causation.
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 - (b) [§1475] Violation of Traffic Rules.
 - (c) [§1476] Passenger in Wrong Place.
 - (d) [§1477] Drunken Pedestrian.
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- 4. Imputed Contributory Negligence.
 - (a) [§1481] Nature and Scope of Rule.
 - (b) [§1482] What Constitutes Joint Enterprise.
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- 1. [§1484] Nature and Purpose of Doctrine.
- 2. [§1485] Restatement 3d.
- 3. [§1486] Adoption of Doctrine in California.
- 4. [§1487] Limited Retroactivity.
- 5. [§1488] Joint and Several Liability Retained.

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- 6. [§1489] Assigning Shares of Responsibility.
- 7. [§1490] Defendant's Negligence or Other Fault.
- 8. [§1491] Plaintiff's Contributory Fault Generally.
- 9. [§1492] Jury Instructions.

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- 1. [§1493] Former Law: Overlapping Defenses.
- 2. [§1494] Unreasonable Assumption of Risk: Defense Abolished.
- 3. [§1495] Reasonable Assumption of Risk: Conflict of Authority.
- 4. Primary Versus Secondary Assumption of Risk.
 - (a) In General.
 - (1) [§1496] Adoption of Theory.
 - (2) [§1497] Extension to Noncompetitive Recreational Activity.
 - (3) [§1498] Restatement 3d.
 - (4) [§1499] Determining Whether Primary Assumption of Risk Doctrine Applies.
 - (5) [§1500] Applicability of Primary Assumption of Risk Doctrine in Products Liability Action.
 - (b) Sports or Recreation.
 - (1) [§1501] Baseball.
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 - (5) [§1505] Football.
 - (6) [§1506] Skating.
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- (8) [§1508] Other Sports.
- (9) [§1509] Athletic Instruction.
- (10) [§1510] Fitness Training.
- (11) [§1511] Amusement Parks.
- (c) Job Performance.
 - (1) [§1512] Animal Care.
 - (2) [§1513] Medicine.
 - (3) [§1514] Public or Private Safety.
 - (4) [§1515] Other Jobs.
- (d) [§1516] Miscellaneous Activities.

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- 1. In General.
 - (a) [§1517] Adoption of Doctrine.
 - (b) [§1518] No Apportionment Among Defendants.
 - (c) [§1519] Where One Defendant Is Judgment Proof.
- 2. Implied Indemnity Upheld.
 - (a) [§1520] Where Indemnitor Is Strictly Liable.
 - (b) [§1521] Where Indemnitor Is Not Joined in Original Action.
 - (c) [§1522] Where Indemnitee Settles.
 - (d) [§1523] Where Indemnitee's Liability Is Not Based on Tort.
 - (e) [§1524] Where Cause of Action Against Indemnitor Is Dismissed.
 - (f) [§1525] Intentional Tortfeasors.
 - (g) [§1526] Other Situations.
- 3. Implied Indemnity Denied.
 - (a) [§1527] Homeowners Association.
 - (b) [§1528] Practice of Law.
 - (c) [§1529] Other Situations Where Indemnity Is Denied.
 - (d) [§1530] Implied Contractual Indemnity.

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- 1. [§1531] Applicability of Doctrine in Particular Cases.
- 2. [§1532] Setoff.
- 3. [§1533] Release.
- 4. [§1534] Parties.
- 5. [§1535] Special Verdict.
- 6. [§1536] Judgment.

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- 1. [§1537] No Common Law Right of Action.
- 2. Statutory Cause of Action.
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 - (b) [§1539] Statute of Limitations.
 - (c) [§1540] Lump Sum Verdict.
 - (d) [§1541] Scope of Action.
 - (e) [§1542] No Action for Death of Unborn Child.
- 3. Federal Acts.
 - (a) [§1543] In General.
 - (b) [§1544] Action Under Federal Civil Rights Act.

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- 1. Single Joint Cause of Action.
 - (a) [§1545] In General.
 - (b) [§1546] Effect of Settlement by One Plaintiff.
 - (c) [§1547] Action by Omitted Person.
- 2. Persons Entitled To Sue.
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- (b) [§1549] Listed Persons Under Current Law.
- (c) [§1550] Putative Spouse.
- (d) [§1551] Domestic Partner.
- (e) [§1552] Dependent Parents.
- (f) [§1553] Child of Presumed Parent.
- (g) [§1554] Other Persons.
- 3. Persons Not Entitled To Sue.
 - (a) [§1555] Nonmarital Cohabitant.
 - (b) [§1556] Heir Where Listed Persons Disclaim.
 - (c) [§1557] Other Persons.
- 4. [§1558] Right by Compromise and Estoppel.

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- 1. [§1560] Negligence of Decedent.
- 2. [§1561] Negligence of Listed Person.
- 3. [§1562] Prior Action or Release.

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A. Liability for Dangerous Animals.

- 1. In General.
 - (a) [§1563] Necessity of Knowledge.
 - (b) [§1564] Liability Based on Negligence.
 - (c) [§1565] Liability to Trespasser.
 - (d) [§1566] Liability for Trespassing Animal.
 - (e) [§1567] Restatement 3d: When Strict Liability Is Not Applicable.

2. Dogs.

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- (b) Dog-Bite Statute.
 - (1) [§1569] In General.
 - (2) [§1570] Private Place.
 - (3) [§1571] Veterinarian's Assumption of Risk.
 - (4) [§1572] Immunity for Military and Police Dogs.
- (c) [§1573] Liability Independent of Statute.
- 3. [§1574] Causation and Contributory Fault.

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- 1. [§1575] Theory of Ultrahazardous Activity.
- 2. Development of California Law.
 - (a) [§1576] Earlier Cases.
 - (b) [§1577] Adoption of Restatement Rule.
- 3. [§1578] Causation and Contributory Fault.
- 4. Activities Classed as Ultrahazardous.
 - (a) [§1579] Using Explosives.
 - (b) [§1580] Fumigating.
 - (c) [§1581] Crop Dusting.
 - (d) [§1582] Testing Rocket Motor.
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- 5. Activities Not Classed as Ultrahazardous.
 - (a) [§1585] Impounding Water.
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- 1. In General.
 - (a) [§1591] Background: Negligence and Warranty.
 - (b) [§1592] Liability Irrespective of Fault.
 - (c) [§1593] Restatement.
 - (d) [§1594] Negligence Liability Compared.
 - (e) [§1595] Indemnity.
 - (f) [§1596] Recovery for Emotional Distress.
 - (g) [§1597] No Avoidance of Liability by Written Agreement.
 - (h) [§1598] Jury Instructions.
- 2. What Constitutes Defective Product.
 - (a) In General.
 - (1) [§1599] Nature and Scope of Defect.
 - (2) [§1600] Evidence of Defect.
 - (3) [§1601] Product Need Not Be Unreasonably Dangerous.
 - (b) Particular Products.
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 - (2) [§1603] Machinery and Equipment.
 - (3) [§1604] Food and Beverages.
 - (4) [§1605] Drugs, Medical Devices, and Personal Care Products.
 - (5) [§1606] Household Furnishings and Appliances.
 - (6) [§1607] Motor Vehicle Equipment.
 - (7) [§1608] Sports and Recreational Equipment.
 - (8) [§1609] Miscellaneous Products.
 - (9) Electrical Facilities and Power.
 - (aa) [§1610] Electrical Facilities: No Strict Liability.
 - (bb) [§1611] Delivery of Electricity: Strict Liability.

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- (10) [§1612] Restatement Rules Applicable to Particular Products.
- (c) Obvious Defects.
 - (1) [§1613] Strict Liability for Obvious Defects.
 - (2) [§1614] Contradictory Instructions.
- 3. Defects in Design.
 - (a) [§1615] In General.
 - (b) [§1616] Restatement 3d.
 - (c) [§1617] All Components Considered.
 - (d) [§1618] Possibility of Alternative Design.
 - (e) [§1619] Product Need Not Be Unreasonably Dangerous.
 - (f) [§1620] Dangerous Location.
 - (g) Consumer Expectations and Risk-Benefit Tests: In General.
 - (1) [§1621] Nature and Scope of Tests.
 - (2) [§1622] Design Merits Are Irrelevant in Consumer Expectations Analysis.
 - (3) [§1623] Warning Is Relevant in Risk-Benefit Analysis.
 - (3a) [§1623A] (New) Consideration of Industry Custom and Practice in Risk-Benefit Analysis.
 - (4) [§1624] Propriety of Instruction on Consumer Expectations Where Product Is Not Readily Available.
 - (5) [§1625] Establishing Prima Facie Case.
 - (h) Consumer Expectations and Risk-Benefit Tests: Application.
 - (1) [§1626] Breast Implants.
 - (2) [§1627] Motorcycles.
 - (3) [§1628] Arthroscopic Scissors.
 - (4) [§1629] Firearms and Ammunition.
 - (5) [§1630] Other Decisions.

- 4. Failure To Warn.
 - (a) In General.
 - (1) [§1631] Duty To Warn.
 - (2) [§1632] Risk-Benefit Analysis.
 - (3) [§1633] Product of Another Manufacturer.
 - (b) Drugs.
 - (1) [§1634] In General.
 - (2) [§1635] Prescription Drugs.
 - (3) [§1636] Warning in Languages Other Than English.
 - (4) [§1637] Restatement 3d.
 - (c) Lack of Knowledge of Danger.
 - (1) [§1638] Unforeseeable Danger.
 - (2) [§1639] Duty Despite Lack of Knowledge.
 - (d) [§1640] Adequacy of Warning.
 - (e) [§1641] Knowledge or Knowability.
 - (f) [§1642] Postsale Failure To Warn.
- 5. [§1643] Failure To Recall Product.
- 6. Persons Liable.
 - (a) Manufacturer.
 - (1) [§1644] In General.
 - (2) Manufacturer: Successor Corporations.
 - (aa) [§1645] Liability Where Assets Are Acquired.
 - (bb) [§1646] Distinction: Acquisition of Capital Stock.
 - (cc) [§1647] Distinction: Negligence Action.
 - (dd) [§1648] Distinction: Acquisition Through Bankruptcy.
 - (ee) [§1649] Liability for Failure To Warn.

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- (3) Manufacturer: Unidentified Maker of Fungible Goods.
 - (aa) [§1650] DES Case.
 - (bb) [§1651] Drug Marketed for Different Purpose.
 - (cc) [§1652] Defective Vaccine.
 - (dd) [§1653] Insufficient Share of Market.
- (4) Asbestos Cases.
 - (aa) [§1654] Where Market Share Theory Is Inapplicable.
 - (bb) [§1655] Where Market Share Theory Is Applicable.
 - (cc) [§1656] Erroneous Burden-Shifting Instruction.
- (5) [§1657] Manufacturer: Multiple Toxin Cases.
- (6) [§1658] Manufacturer: Apparent Manufacturer.
- (b) Retail Dealer.
 - (1) [§1659] In General.
 - (2) [§1660] Seller of Secondhand Goods.
 - (3) [§1661] Pharmacist.
- (c) Wholesaler or Distributor.
 - (1) [§1662] In General.
 - (2) [§1663] Successor Corporation.
- (d) [§1664] Licensor or Franchisor.
- (e) Mass Produced Homes.
 - (1) [§1665] Seller.
 - (2) [§1666] Manufacturer or Supplier of Component Part.
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- (h) [§1669] Subcontractor.
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 - (1) [§1670] Lessor of Personal Property.

- (2) [§1671] Lessor of Residential Premises.
- (3) [§1672] Finance Lessor.
- (j) [§1673] Scope of Liability Under Third Restatement.
- 7. Persons Entitled To Recover.
 - (a) [§1674] Foreseeable User or Consumer.
 - (b) [§1675] Commercial Customer.
 - (c) [§1676] Bystander.
 - (d) [§1677] Licensee.
- 8. Scope of Liability.
 - (a) Kinds of Injury or Damage.
 - (1) [§1678] Physical Injury or Wrongful Death.
 - (2) Economic Loss.
 - (aa) [§1679] No Recovery Rule.
 - (bb) [§1680] Rule Applied to Strict Liability Action.
 - (cc) [§1681] Rule Applied to Negligence Action.
 - (dd) [§1682] Distinction: Intentional Tort.
 - (ee) [§1683] Restatement Rule.
 - (b) [§1684] Enhancement of Harm.
 - (c) Where Liability Is Not Imposed.
 - (1) [§1685] Sales Not in Course of Business.
 - (2) Performance of Services.
 - (aa) [§1686] In General.
 - (bb) [§1687] Medical Operation.
 - (cc) [§1688] Other Medical Procedure.
 - (dd) [§1689] Latent Defect in Hospital Premises.
 - (3) [§1690] Commercial Transaction.
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- 9. Defenses.
 - (a) Defect Is Not Proximate Cause of Injury.
 - (1) [§1692] In General.
 - (2) [§1693] Vehicle Cases.
 - (3) Article To Be Processed.
 - (aa) [§1694] In General.
 - (bb) [§1695] Raw Material and Sophisticated Buyer Defenses.
 - (4) Abnormal Use.
 - (aa) [§1696] Unforeseeable Use.
 - (bb) [§1697] Foreseeable Use.
 - (b) Unavoidably Unsafe Products.
 - (1) In General.
 - (aa) [§1698] Drugs and Vaccines.
 - (bb) [§1699] Other Products.
 - (2) Statutory Immunity for Inherently Unsafe Product.
 - (aa) [§1700] In General.
 - (bb) [§1701] Revocation of Immunity for Tobacco Manufacturers.
 - (cc) [§1702] Retroactivity.
 - (c) [§1703] Adequate Warning.
 - (d) [§1704] Government Contractor Defense.
 - (e) Compliance With Federal Standards.
 - (1) [§1705] Automobile Safety Equipment.
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 - (3) [§1707] Distinction: Drugs.
 - (f) Doctrine of Comparative Fault.
 - (1) [§1708] Former Law: Assumption of Risk.
 - (2) [§1709] Adoption of Doctrine.
 - (3) [§1710] Restatement Rule.
 - (g) [§1711] Contractual Exculpation.

XVIII. DAMAGES: IN GENERAL

A. Nominal Damages.

- 1. [§1712] Right to Nominal Damages.
- 2. [§1713] Where Award Is Proper.
- 3. [§1714] Amount Must Be Trivial.

B. Compensatory Damages.

- 1. In General.
 - (a) [§1715] Theory and Distinctions.
 - (b) [§1716] General and Special Damages.
 - (c) [§1717] No Double Recovery.
 - (d) [§1718] Certainty.
 - (e) [§1719] Prospective Damages.
 - (f) [§1720] Jury Instructions.
- 2. Causation.
 - (a) [§1721] Nature of Requirement.
 - (b) [§1722] Burden of Proof Where Causation Is Uncertain.
- 3. Compensatory Damages in Particular Circumstances.
 - (a) [§1723] Anticipated Punitive Damages in Malpractice Action.
 - (b) [§1724] Postresignation Damages in Employment Action.
- 4. Tax Treatment of Tort Recovery.
 - (a) [§1725] In General.
 - (b) [§1726] Punitive Damages.

C. Punitive or Exemplary Damages.

- 1. In General.
 - (a) [§1727] Nature and Purpose of Award.

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- (b) [§1728] Statutory Authorization.
- (c) [§1729] Restatement 2d.
- (d) [§1730] Model Punitive Damages Act.
- (e) [§1731] Jury Instructions.
- (f) [§1732] Awards in Multiple Litigation.
- (g) [§1733] No Insurance Against Award.
- (h) [§1734] Is Award Disfavored?
- 2. Constitutionality of Awards.
 - (a) [§1735] In General.
 - (b) [§1736] No Due Process Violation.
 - (c) [§1737] Due Process Violation.
 - (d) [§1738] Disgorgement of Profits.
 - (e) [§1739] Harm to Nonparties.
- 3. Statutory Penalties Distinguished.
 - (a) [§1740] Nature and Validity of Penalties.
 - (b) [§1741] Treble Damages.
 - (c) [§1742] Recovery of Both Penalty and Punitive Damages.
- 4. Malice.
 - (a) [§1743] Requirement of Actual Malice.
 - (b) [§1744] Inference From Circumstances.
 - (c) Conscious Disregard of Rights or Safety.
 - (1) [§1745] Nature of Problem and Earlier Cases.
 - (2) [§1746] Rule That Conscious Disregard of Safety Is Sufficient.
 - (3) [§1747] Rule Is Retroactive.
 - (d) [§1748] Ignorance of Injured Party's Identity.
- 5. Proper and Improper Plaintiffs.
 - (a) [§1749] In General.
 - (b) [§1750] Recovery by Public Entities.

- 6. Proper and Improper Defendants.
 - (a) [§1751] In General.
 - (b) Employer.
 - (1) [§1752] General Rule of Nonliability.
 - (2) [§1753] Definition of Managing Agent.
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 - (3) [§223] Desertion or Draft Evasion.

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- 1. [§225] General Rule: No Imprisonment for Debt.
- 2. Exceptions.
 - (a) [§226] Economic Oppression.
 - (b) [§227] Criminal Nonpayment of Fee or Tax.
 - (c) [§228] Other Exceptions.

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- 1. [§229] In General.
- 2. Bill of Attainder.
 - (a) [§230] Nature of Prohibition.
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- 1. In Federal Courts.
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 - (1) [§233] In General.
 - (2) [§234] Composition of Jury.
 - (3) [§235] Size of Jury.
 - (b) [§236] Exceptions.
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 - (3) [§241] Jury of Less Than Six Is Invalid.
 - (c) [§242] Exceptions.

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- 2. [§244] Incorporation Theory.
- 3. [§245] Rights of Criminal Defendants.
- 4. Fundamental Civil Rights.
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 - (2) [§248] Constitutional Right to Treatment.
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 - (2) [§252] Constitutional and Statutory Amendments.
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 - (4) [§254] United States Supreme Court Decision.
 - (e) [§255] Distinction: Corporal Punishment of Pupil.

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- 2. Federal Voting Rights Act.
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 - (b) [§258] No Tests or Devices.
 - (c) [§259] Prohibited Practices.
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 - (1) [§260] States and Political Subdivisions.
 - (2) [§261] Preclearance for Changes in Voting Regulations.
- 3. California Law.
 - (a) [§262] In General.
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 - (c) [§264] Write-in Voting.
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- C. Invalid Restrictions.
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 - 2. [§269] Required Designation of Race.
 - 3. English Literacy Tests.
 - (a) [§270] Discrimination Against Black Persons.
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 - (1) [§271] Federal Law.
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 - 4. [§273] Poll Tax.
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- 6. Disenfranchisement for Criminal Conviction.
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- 1. Regulation of Primary Elections.
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 - (c) [§281] Open Primaries.
 - (d) [§282] Independent Candidates.
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- 2. Political Activities of Public Employees.
 - (a) [§284] Federal Employees.
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 - (1) [§285] In General.
 - (2) [§286] Case Law.
- 3. Federal Regulation of Campaigns.
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 - (c) [§289] Contributions From Corporations or Labor Organizations.
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 - (b) [§292] Filing Fee.
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 - (f) [§296] Content of Candidate's Statement.
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 - (h) [§298] Party's Endorsement of Candidate.

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- 5. Term Limits.
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 - (1) [§300] In General.
 - (2) [§301] Constitutional Challenge.
- 6. [§302] Ballot Regulations.
- 7. [§303] Election Contests.

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 - (a) [§304] Nature and Purpose of Act.
 - (b) [§305] Statutory Framework.
 - (c) [§306] Enforcement.
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- 3. Campaign Disclosures.
 - (a) [§308] In General.
 - (b) [§309] Campaign Statements.
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 - (d) [§311] Prohibited Practices.
- 4. Lobbyists.
 - (a) [§312] In General.
 - (b) [§313] Prohibited Acts.
- 5. Conflicts of Interest.
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- 7. Limitations on Campaign Spending and Contributions.
 - (a) [§320] Statutory Development.
 - (b) [§321] Filing and Account Requirements.
 - (c) [§322] Contribution Limits.
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 - (e) [§324] Use of Funds.
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 - 1. [§327] In General.
 - 2. Gerrymandering.
 - (a) [§328] In General.
 - (b) [§329] To Benefit Racial Minority Groups.
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 - (a) [§333] Reynolds v. Sims.
 - (b) [§334] Subsequent U.S. Supreme Court Decisions.
 - (c) [§335] California Decisions.
 - (d) [§336] Reapportionment by Independent Commission.
 - 6. [§337] County Supervisorial Districts.
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- 2. [§343] Requirement of More Than Majority.
- K. [§344] Incorporation of City or Annexation.
- L. [§345] Referendum on County Charter.

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- 1. Constitutional Provisions.
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 - (c) [§348] Texts and Law Reviews.
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 - (1) [§350] Under U.S. Constitution.
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 - (a) [§356] In General.
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- 4. [§358] Entertainment and Symbolic Speech.

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 - (1) [§359] Historical Development.
 - (2) [§360] Virginia State Board Case.
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 - (4) [§362] Texts and Law Reviews.
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 - (1) [§363] In General.
 - (2) [§364] Permissible Advertising.
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 - (4) [§370] Required Funding for Generic Advertising.
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 - (1) [§373] In General.
 - (2) [§374] Solicitation by Accountant.
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 - (a) [§376] In General.
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- 7. Political Speech.
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 - (c) [§382] Restrictions on Initiatives.
 - (d) [§383] Restrictions on Candidates.
 - (e) [§384] Restrictions on Electioneering.
 - (f) [§385] Distinction: Nonpublic Forum.
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- 9. Right To Circulate or Distribute.
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 - (c) [§400] Restraint by Injunction.
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- (e) Restrictions on Newspapers and Magazines.
 - (1) [§402] In General.
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 - (4) [§405] Distinction: Action for Breach of Promise of Confidentiality.
- (f) Restrictions on Books.
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- (g) [§409] Restrictions on Mail.
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 - (1) [§411] In General.
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 - (a) [§417] General Principle.
 - (b) [§418] Texts and Law Reviews.
 - (c) Confidentiality of Membership.
 - (1) [§419] In General.
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 - (d) [§423] Furnishing Attorneys for Group Members.
 - (e) [§424] Patronage Appointment of Public Employees.

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- (f) Agency Shop for Public Employees.
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 - (2) [§426] Procedural Safeguards.
- (g) [§427] Politically Motivated Economic Boycott.
- (h) [§428] Restrictions on Prisoners' Rights.
- (i) Rights of Political Parties.
 - (1) [§429] Development of the Law.
 - (2) [§430] California Law.
- (j) [§431] Exclusion of Women From Membership.
- (k) [§432] Exclusion of Group From Parade.
- (1) [§433] Exclusion of Group From Street Fair.
- (m) [§434] Exclusion of Homosexual Scoutmaster.
- (n) [§435] Exclusion From Subsidized Program.
- 3. Right of Peaceable Assembly.
 - (a) [§436] In General.
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 - (1) [§437] U.S. Supreme Court Decisions.
 - (2) [§438] California Decisions.
 - (c) [§439] Semipublic Forum.
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 - (1) [§440] In General.
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 - (1) [§443] Earlier Cases.
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 - (a) [§449] Rights Are Not Absolute.
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- 2. Interference With Judicial Process.
 - (a) [§456] Publications as Contempt.
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 - (1) [§457] Right of Media To Report Proceedings.
 - (2) [§458] Disclosure of Grand Jury Testimony.
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 - (4) Control of Publicity To Insure Fair Trial.
 - (aa) [§460] In General.
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 - (5) [§462] Unauthorized Photographs of Courtroom Proceedings.
 - (6) [§463] Public Broadcast of Trial.
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 - (c) Public Access to Court Proceedings.
 - (1) [§465] Criminal Pretrial Hearing.
 - (2) [§466] Criminal Trial.
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- (6) [§470] Conservatorship Proceedings.
- 3. [§471] Fraud.
- 4. Libel.
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 - (b) New York Times Rule.
 - (1) [§473] Public Officials.
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 - (b) [§477] Publication of Name of Rape Victim.
 - (c) [§478] Information Initially Obtained Illegally.
 - (d) [§479] Infliction of Emotional Distress.
 - (e) [§480] Distinction: Right of Publicity.
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 - (b) [§482] Requirement of Knowledge.
 - (c) Determination of Obscenity.
 - (1) [§483] Roth Test.
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 - (3) [§485] Subsequent Decisions.
 - (d) Protection of Minors.
 - (1) [§486] In General.
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- (h) [§499] Nudity: Public Indecency Statutes.
- (i) California Law.
 - (1) [§500] In General.
 - (2) [§501] Books.
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 - (4) [§503] Live Entertainment.
 - (5) [§504] Validity of Local Ordinances.
- (j) [§505] Civil Proceedings Against Obscene Matter.
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- 8. [§507] Animal Cruelty.
- 9. [§508] Street Meetings and Parades.
- 10. Violence and Incitement to Violence.
 - (a) [§509] In General.
 - (b) [§510] Statutes Providing Civil and Criminal Remedies.
 - (c) [§511] Statements Not "Fighting Words".
 - (d) Cross Burning.
 - (1) [§512] General Prohibition.
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- (f) [§515] Picketing Court or Legislature.
- (g) [§516] Sit-in or Stand-in.
- 11. [§517] Anti-Noise Regulations.
- 12. Registration and Identification.
 - (a) [§518] In General.
 - (b) [§519] Handbill Distributor.
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 - (1) [§523] Earlier Statutes.
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 - (3) [§525] Federal Preemption.
 - (4) [§526] Burning Draft Card.
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 - (1) [§528] Exclusion and Registration.
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 - (3) [§530] Texts and Law Reviews.
 - (c) [§531] Registration of Subversive Organizations.
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- 2. College and University Students.
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 - (b) [§543] Freedom of Association.
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 - (1) [§548] In General.
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 - (5) [§552] Obscene Speech.
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 - (3) [§556] Censorship of Unofficial Newspaper.
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- 4. Statutory Declaration of Rights.
 - (a) [§559] Legislative Findings and Intent.
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- 2. [§562] Protected Speech.
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- 2. [§565] Texts and Commentary.
- 3. [§566] Exemptions From Anti-Discrimination Statutes.

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 - (a) [§567] In General.
 - (b) [§568] Prayer.
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 - (e) [§571] Exemption From Landmark Preservation Laws.
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- 1. Direct Restraints.
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 - (i) [§586] Defamation Action Against Church.
 - (j) [§587] Intentional Infliction of Emotional Distress.
 - (k) [§588] Religious Discrimination Against Advertisers.
 - (l) [§589] Fair Employment and Housing Act.
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- 2. Prayers and Bible Reading.
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- 4. [§598] Flag Salute.
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- 1. [§600] In General.
- 2. [§601] Furnishing Transportation.
- 3. Lending Textbooks and Equipment.
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- 4. Financial Assistance.
 - (a) [§604] Development of Law.
 - (b) [§605] Money for Salaries and Books.
 - (c) [§606] Grants for Special Purposes.
 - (d) [§607] Shared Time of Public School Teacher.
 - (e) Tuition Reimbursement.
 - (1) [§608] In General.
 - (2) [§609] State Income Tax Deduction.
 - (f) Construction Aid to Colleges.
 - (1) [§610] United States Supreme Court Decisions.
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- 5. [§612] Aid to Disabled Students in Private Schools.

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- 1. Work on Religious Holiday.
 - (a) [§613] In General.
 - (b) [§614] Broader Protection Under California Constitution.
- 2. [§615] Labor Regulations.
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- 4. Government-Sponsored Christmas Displays.
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 - (b) [§618] California Decisions.
- 5. [§619] Other Government-Sponsored Religious Displays.
- 6. [§620] State Religious Holiday.
- 7. [§621] Patriotic Message on License Plates.

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- 1. [§622] Theory of Peripheral Rights Doctrine.
- 2. [§623] Texts and Law Reviews.
- 3. [§624] Contraceptives.
- 4. Abortion.
 - (a) Woman's Right To Have Abortion.
 - (1) [§625] In General: Roe v. Wade.
 - (2) [§626] Development of Law.
 - (3) [§627] Webster Case.
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 - (5) [§629] Undue Burdens on Access to Abortion.
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 - (d) [§634] Public Funding of Abortion.
- 5. [§635] Right To Marry.
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- 7. [§637] Withdrawal of Life Support.
- 8. [§638] Assisted Suicide.
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- 1. California Constitutional Provision.
 - (a) In General.
 - (1) [§642] Nature and Scope.
 - (2) [§643] Elements and Analysis.
 - (3) [§644] Rights of Partnership or Corporation.
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- (g) [§797] Welfare Benefits.
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 - (1) Employment.
 - (aa) [§1065] In General.
 - (bb) [§1066] Civil Action.
 - (cc) [§1067] Remedies.
 - (dd) [§1068] Exhaustion of Administrative Remedies.
 - (ee) [§1069] Failure To Exhaust Administrative Remedies.
 - (2) Housing.
 - (aa) [§1070] In General.
 - (bb) [§1071] Civil Action.
 - (cc) [§1072] Damages and Penalties.
- 4. Rights of Disabled Persons.
 - (a) [§1073] In General.
 - (b) [§1074] Physical Access.
 - (c) [§1075] Construction and Alteration of Buildings.
 - (d) [§1076] Enforcement.
- 5. Rights of Public Safety Officers.
 - (a) [§1077] In General.
 - (b) [§1078] Personnel Files and Privacy.
 - (c) [§1079] Notice of Discipline.
 - (d) Interrogation and Investigation.
 - (1) [§1080] In General.
 - (2) [§1081] Investigation by Other Persons.
 - (3) [§1082] Time for Investigation.
 - (e) [§1083] Waiver of Rights.
 - (f) [§1084] Actions and Remedies.
 - (g) [§1085] Administrative Appeal.

F. Affirmative Action Programs.

- 1. In General.
 - (a) [§1086] Nature of Programs.
 - (b) [§1087] California Statutes.
 - (c) Proposition 209: Affirmative Action Prohibited.
 - (1) [§1088] In General.
 - (2) [§1089] Proposition Is Constitutional.
- 2. Programs Directed at Discrimination in Education.
 - (a) [§1090] Bakke Case: California Decision.
 - (b) [§1091] Bakke Case: United States Supreme Court Decision.
 - (c) [§1092] Gratz, Grutter, and Fisher Cases.
 - (d) [§1093] Other Decisions.
- 3. Programs Directed at Discrimination in Employment.
 - (a) [§1094] Programs Created Through Collective Bargaining.
 - (b) Programs Mandated by Statute, Ordinance, or Rule.
 - (1) [§1095] United States Supreme Court Cases.
 - (2) [§1096] California Cases.
 - (c) [§1097] Programs Created by Court Order.

XII. POLICE POWER

A. In General.

- 1. Nature of Police Power.
 - (a) [§1098] Inherent Power To Regulate.
 - (b) [§1099] Paramount Power.
 - (c) [§1100] Elastic Power.
 - (d) [§1101] Legislative Judgment.
- 2. [§1102] Other Powers Distinguished.

- 3. Methods of Exercising Power.
 - (a) [§1103] Regulation and Prohibition.
 - (b) [§1104] Taxation and Eminent Domain.
- 4. [§1105] Limitations on Power.

B. Exercise of Police Power by Local Subdivision.

- 1. In General.
 - (a) [§1106] Constitutional Authorization.
 - (b) [§1107] Subjects of Regulation.
- 2. Where State Legislates on Same Subject.
 - (a) [§1108] Test of Valid Regulation.
 - (b) [§1109] Legislative Authorization of Local Regulations.
 - (c) Local Regulations Held Valid.
 - (1) [§1110] In General.
 - (2) [§1111] Alcoholic Beverages.
 - (3) [§1112] Criminal Activities.
 - (4) [§1113] Activity on State-Owned Land.
 - (d) Local Regulations Held Void.
 - (1) [§1114] In General.
 - (2) [§1115] Criminal Activities.
 - (3) [§1116] Sewage and Waste Disposal.
- 3. Exclusive Power Over Municipal Affairs.
 - (a) [§1117] Constitutional Provisions and Theory.
 - (b) [§1118] Charter.
 - (c) [§1119] Unlawful Surrender of Control.
 - (d) Determination of Issue.
 - (1) [§1120] In General.
 - (2) [§1121] Consideration of Purpose.
 - (e) What Are Municipal Affairs.
 - (1) [§1122] In General.

- (2) [§1123] Financing of Local Political Campaigns.
- (3) [§1124] Term Limits for Elected Officials.
- (f) Matters of Statewide Concern.
 - (1) [§1125] In General.
 - (2) [§1126] District Formation and Dissolution.
 - (3) [§1127] School System.
 - (4) [§1128] Traffic.
- 4. [§1129] Extraterritorial Municipal Regulations.

C. Zoning.

- 1. In General.
 - (a) [§1130] Nature of Power.
 - (b) [§1131] Commentary and Practice Works.
 - (c) [§1132] Prohibiting Removal of Natural Products.
 - (d) [§1133] Taking of Property.
 - (e) [§1134] Invalid Regulations.
- 2. Planning and Zoning Ordinances.
 - (a) In General.
 - (1) [§1135] Local Power and State Law.
 - (2) Statutes of Limitation on Attack.
 - (aa) [§1136] In General.
 - (bb) [§1137] Actions Encouraging Low or Moderate Income Housing.
 - (b) General Plan.
 - (1) [§1138] Nature and Scope.
 - (2) [§1139] Housing Element.
 - (3) [§1140] Consistency Requirement.
 - (4) [§1141] Adoption and Implementation.
 - (5) [§1142] Judicial Review.
 - (6) [§1143] Amendment.
 - (c) [§1144] Specific Plans.

- (d) Local Zoning Regulations.
 - (1) [§1145] In General.
 - (2) [§1146] Scope of Zoning Power.
 - (3) [§1147] Consistency With General Plan.
 - (4) [§1148] Zoning Procedure.
 - (5) [§1149] Interim Ordinance.
- (e) [§1150] Exemptions.
- (f) Administration and Enforcement.
 - (1) [§1151] Administration.
 - (2) [§1152] Judicial Enforcement.
- 3. Zoning by Initiative or Referendum.
 - (a) [§1153] In General.
 - (b) [§1154] Valid Initiative or Referendum Measures.
 - (c) [§1155] Invalid Initiative or Referendum Measures.
- 4. Exclusionary Zoning.
 - (a) In General.
 - (1) [§1156] United States Supreme Court Decisions.
 - (2) [§1157] Tests for Validity.
 - (3) [§1158] Invalid Ordinances.
 - (b) [§1159] Business and Commercial Activity.
 - (c) [§1160] Transient Commercial Use of Residential Property.
 - (d) [§1161] Churches.
 - (e) [§1162] Schools.
 - (f) [§1163] Miscellaneous Classifications.
- 5. Type of Lot or Dwelling.
 - (a) [§1164] Lot Area and Open Space.
 - (b) [§1165] Other Regulations.
- 6. [§1166] Retroactive Zoning.

- 7. Nonconforming Uses.
 - (a) [§1167] In General.
 - (b) [§1168] No Rebuilding or Expansion.
 - (c) [§1169] Distinction: Mining Operations.
 - (d) [§1170] Amortization Provisions.
 - (e) [§1171] Uses Not Protected.
- 8. Individual Hardship.
 - (a) As Defense Against Enforcement.
 - (1) [§1172] Where General Plan Is Reasonable.
 - (2) Where Provision Is Arbitrary.
 - (aa) [§1173] In General.
 - (bb) [§1174] Illustrations.
 - (3) [§1175] Where Required Use Is Uneconomic.
 - (b) As Basis for Exception or Variance.
 - (1) Conditional Use Permit.
 - (aa) [§1176] Nature and Purpose.
 - (bb) [§1177] Conditions and Criteria.
 - (cc) [§1178] Challenge by Nonresident.
 - (2) Variance.
 - (aa) [§1179] Nature and Grounds.
 - (bb) [§1180] Discretion of Governing Body.
 - (cc) [§1181] Imposition of Conditions.
 - (3) [§1182] Judicial Review of Findings.
 - (c) As Basis for Compensation.
 - (1) [§1183] Nature of Problem.
 - (2) [§1184] Agins Case.
 - (3) [§1185] Subsequent Decisions.

D. Other Restrictions on Use of Property.

1. [§1186] Regulation or Prohibition of Inimical Activity.

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- 2. Regulation of Nondangerous Activity.
 - (a) [§1187] General Principles.
 - (b) [§1188] Invalid Regulations.
- 3. Aesthetic Regulations.
 - (a) [§1189] In General.
 - (b) Billboards and Other Outdoor Advertising.
 - (1) [§1190] In General.
 - (2) [§1191] Notice and Hearing.
 - (3) [§1192] On-Site Advertising.
 - (4) Off-Site Advertising.
 - (aa) [§1193] Invalid Restrictions.
 - (bb) [§1194] Valid Restrictions.
 - (5) [§1195] Posting Signs on Public Property.
- 4. [§1196] Conservation and Prevention of Waste.

E. [§1197] Restrictions on Freedom of Contract.

- F. Regulation of Personal Rights.
 - 1. [§1198] In General.
 - 2. [§1199] School Attendance.

G. Regulation of Business.

- 1. [§1200] In General.
- 2. Health and Safety.
 - (a) [§1201] Food, Drugs, and Water.
 - (b) [§1202] Air Pollution.
 - (c) [§1203] Closing and Working Hours.
 - (d) [§1204] Fire Protection.
- 3. Fraud and Other Improper Practices.
 - (a) [§1205] In General.
 - (b) [§1206] Regulation of Franchises.

- 4. [§1207] Licensing for Regulatory Purposes.
- 5. [§1208] Limitations on Right To Do Business.
- 6. Regulation of Prices and Rates.
 - (a) [§1209] Valid Regulations.
 - (b) [§1210] Invalid Regulations.
 - (c) [§1211] Insurance Rates.
- 7. Public Utilities in California.
 - (a) [§1212] Public Utilities Commission.
 - (b) Jurisdiction of Commission.
 - (1) [§1213] In General.
 - (2) [§1214] Judicial Powers of Commission.
 - (3) [§1215] Power To Obtain Injunction.
 - (4) [§1216] Powers of Other Governmental Agencies.
 - (c) Jurisdiction of Courts.
 - (1) [§1217] In General.
 - (2) [§1218] Private Right of Action Allowed.
 - (3) [§1219] Private Right of Action Rejected.
 - (d) Public Utilities Regulated by Commission.
 - (1) [§1220] In General.
 - (2) [§1221] Public Transportation Authority.
 - (e) Public Utilities Outside Jurisdiction of Commission.
 - (1) [§1222] In General.
 - (2) [§1223] Exceptions Based on Source of Power.
 - (3) [§1224] Specialized Transportation Vehicles.
 - (f) [§1225] Private Utilities.
 - (g) Nature and Extent of Regulation.
 - (1) [§1226] Permission To Enter Business.
 - (2) Regulation of Rates.
 - (aa) [§1227] In General.

- (bb) [§1228] Test of Reasonableness.
- (cc) [§1229] Distribution of Rate Refunds.
- (3) Regulation of Service.
 - (aa) [§1230] In General.
 - (bb) [§1231] Adequate Service.
- (4) [§1232] Other Regulatory Powers.
- (h) [§1233] Right To Abandon Operation.
- (i) Procedure Before Commission.
 - (1) [§1234] In General.
 - (2) [§1235] Hearing and Determination.
- (i) Review of Commission's Orders.
 - (1) [§1236] In General.
 - (2) [§1237] Exclusive Method.
 - (3) [§1238] Scope of Review.

H. [§1239] Regulation of Labor Relations.

XIII. EMINENT DOMAIN

A. In General.

- 1. [§1240] Nature of Power.
- 2. [§1241] Property That May Be Taken.
- 3. Who May Exercise Power.
 - (a) [§1242] In General.
 - (b) [§1243] Municipal Corporation.
 - (c) [§1244] Federal Government Acting for State.
 - (d) [§1245] Private Person.
- 4. Public Use.
 - (a) [§1246] In General.
 - (b) [§1247] Airport Purposes.
 - (c) [§1248] Review of Legislative Determination.

- (d) [§1249] Change of Use After Judgment.
- 5. Public Purpose in Private Use.
 - (a) [§1250] In General.
 - (b) [§1251] Economic Development.
 - (c) [§1252] Correcting Market Failure.
- 6. [§1253] Public Necessity.

B. Taking Under Federal Constitution.

- 1. What Constitutes Taking.
 - (a) [§1254] Acquisition of Title or Possession.
 - (b) Damage to Property or Interests.
 - (1) [§1255] In General.
 - (2) [§1256] Insubstantial Permanent Physical Occupation.
 - (3) [§1257] Damage From Airplanes.
 - (4) [§1258] Water and Power Projects.
 - (c) [§1259] Temporary Taking of Going Business.
- 2. [§1260] Noncompensable Injury.

C. Taking or Damage Under California Constitution.

- 1. What Constitutes Damage.
 - (a) [§1261] In General.
 - (b) [§1262] Limitations on Right to Compensation.
 - (c) [§1263] Compensation Without Tort Liability.
 - (d) [§1264] Mitigation Damages.
 - (e) [§1265] Service Duplication.
 - (f) [§1266] Violation of Deed Restriction.
 - (g) [§1267] Compensation to Option Holder.
- 2. Noncompensable Injury.
 - (a) [§1268] Emergency Exercise of Police Power.
 - (b) [§1269] No Property Right.

- (c) [§1270] Access to Navigable Waters.
- (d) [§1271] Damage Occurring During Arrest.

D. Inverse Condemnation.

- 1. In General.
 - (a) [§1272] Nature of Action.
 - (b) [§1273] Entity Without Eminent Domain Power.
 - (c) [§1274] Recovery for Loss of Goodwill.
- 2. Physical Taking or Damage.
 - (a) Flood and Water Damage.
 - (1) [§1275] In General.
 - (2) [§1276] Surface Waters.
 - (3) [§1277] Intentional Diversion.
 - (b) [§1278] Land Subsidence.
 - (c) Impairment of Access to Street or Highway.
 - (1) [§1279] In General.
 - (2) [§1280] Direct Access Cut Off.
 - (3) [§1281] Circuity of Travel and Loss of Traffic.
 - (4) [§1282] Miscellaneous Inconveniences.
 - (d) [§1283] Nuisance Rendering Property Uninhabitable.
- 3. Regulatory Taking.
 - (a) In General.
 - (1) [§1284] Valid Exercise of Police Power.
 - (2) Landlord and Tenant Regulations.
 - (aa) [§1285] In General.
 - (bb) [§1286] Rent Control.
 - (3) [§1287] Fee as Condition for Use or Building Permit.
 - (4) [§1288] Affordable Housing Requirements.
 - (5) Taking Requiring Compensation.
 - (aa) [§1289] In General.

- (bb) [§1290] Permit Conditions and Exactions.
- (cc) [§1291] Partial Taking.
- (dd) [§1292] Categorical Taking.
- (6) [§1293] Texts and Law Reviews.
- (b) Temporary Taking.
 - (1) [§1294] In General.
 - (2) [§1295] Delay in Development Process.
 - (3) [§1296] Building Moratorium.
 - (4) [§1297] Taking During Pendency of Proceedings.

4. Procedure.

- (a) [§1298] In General.
- (b) Standing and Ripeness.
 - (1) [§1299] In General.
 - (2) [§1300] Case Not Ripe for Adjudication.
- (c) [§1301] Statute of Limitations.
- (d) [§1302] Interest.
- (e) [§1303] Costs and Attorneys' Fees.
- (f) [§1304] Action Prior to Taking or Damage.

E. Statutory Eminent Domain Law.

- 1. In General.
 - (a) [§1305] Nature, Organization, and Scope.
 - (b) [§1306] Definitions.
 - (c) [§1307] Rules of Practice.
 - (d) [§1308] Jury Instructions.
 - (e) [§1309] Jurisdiction of Public Utilities Commission.
- 2. The Right To Take.
 - (a) General Limitations on Exercise of Power.
 - (1) Public Use Limitations.
 - (aa) [§1310] In General.
 - (bb) [§1311] Condemnation of Sport Franchise.

- (2) Statutory Authorization Is Required.
 - (aa) [§1312] In General.
 - (bb) [§1313] Private Person's Utility Easement.
 - (cc) [§1314] Private Person's Repair Easement.
- (3) [§1315] Public Necessity Is Required.
- (4) [§1316] Extraterritorial Condemnation.
- (b) Rights Included in Grant of Authority.
 - (1) [§1317] Necessary Interests in Property.
 - (2) [§1318] Property To Make Principal Use Effective.
 - (3) [§1319] Acquisition of Remainder With Consent.
 - (4) [§1320] Joint Exercise of Power.
 - (5) [§1321] Acquisition by Gift, Purchase, Lease, or Other Means.
- (c) [§1322] Future Use.
- (d) Substitute Condemnation.
 - (1) [§1323] In General.
 - (2) [§1324] To Relocate Public Use.
 - (3) [§1325] To Provide Utility Service or Access to Road.
- (e) [§1326] Excess Condemnation.
- (f) Property Appropriated to Public Use.
 - (1) Condemnation for Compatible Joint Use.
 - (aa) [§1327] Nature of Power.
 - (bb) [§1328] Terms and Conditions of Joint Use.
 - (2) Condemnation for More Necessary Public Use.
 - (aa) [§1329] Nature of Power.
 - (bb) [§1330] Uses Presumed To Be More Necessary.
- 3. Precondemnation Activities.
 - (a) Preliminary Location, Survey, and Tests.
 - (1) [§1331] Right To Enter.

- (2) [§1332] Entry Under Court Order.
- (3) [§1333] Owner's Action for Damages.
- (b) Resolution of Necessity.
 - (1) [§1334] Requirement.
 - (2) [§1335] Effect of Resolution.
 - (3) [§1336] Judicial Review.
 - (4) [§1337] Remedies If Proceeding Is Not Promptly Commenced.
 - (5) [§1338] Consent to Proceeding by Quasi-Public Entity.
- 4. Commencement of Proceeding.
 - (a) [§1339] Jurisdiction and Venue.
 - (b) [§1340] Parties.
 - (c) [§1341] Pleading.
 - (d) [§1342] Process.
 - (e) Pretrial Settlement Offers.
 - (1) [§1343] In General.
 - (2) [§1344] Reasonableness of Offer.
 - (3) [§1345] Award of Litigation Expenses.
 - (f) [§1346] Alternative Dispute Resolution.
 - (g) [§1347] Discovery and Exchange of Valuation Data.
- 5. Deposit and Possession Before Judgment.
 - (a) Deposit of Probable Compensation.
 - (1) [§1348] In General.
 - (2) [§1349] Procedure.
 - (3) [§1350] Increase or Decrease of Deposit.
 - (4) [§1351] Deposit on Demand of Homeowner or Lessor.
 - (5) [§1352] Withdrawal of Deposit.
 - (b) Possession Prior to Judgment.
 - (1) [§1353] Application and Order.

- (2) [§1354] Service of Order.
- 6. [§1355] Owner's Right to Leaseback.
- 7. Trial.
 - (a) [§1356] In General.
 - (b) [§1357] Contesting Right To Take.
 - (c) Determining Compensation.
 - (1) [§1358] In General.
 - (2) [§1359] Valuation of Divided Interests.
- 8. Compensation.
 - (a) [§1360] Right to Compensation.
 - (b) [§1361] Date of Valuation.
 - (c) Compensation for Improvements to Realty.
 - (1) [§1362] In General.
 - (2) [§1363] Effect of Leasehold Interest.
 - (3) [§1364] Improvements Removed or Destroyed.
 - (4) [§1365] Improvements Made After Summons Is Served.
 - (d) [§1366] Compensation for Crops.
 - (e) Measure of Compensation for Property Taken.
 - (1) Fair Market Value.
 - (aa) [§1367] In General.
 - (bb) [§1368] Determining Market Value.
 - (cc) [§1369] Admissible Matters.
 - (dd) [§1370] Inadmissible Matters.
 - (ee) [§1371] Value of Easement.
 - (2) Changes Due to Imminence of Project.
 - (aa) [§1372] Project Enhancement.
 - (bb) [§1373] Condemnation Blight.
 - (f) Injury to Remainder.
 - (1) [§1374] Right to Compensation.

- (2) Severance Damages.
 - (aa) [§1375] In General.
 - (bb) [§1376] Unity of Title.
 - (cc) [§1377] Contiguity.
 - (dd) [§1378] Unity of Use.
- (3) Measure of Damages.
 - (aa) [§1379] In General.
 - (bb) [§1380] Improper Elements.
- (4) Benefit to Remainder.
 - (aa) [§1381] When Offset Is Proper.
 - (bb) [§1382] When Offset Is Improper.
- (g) Compensation for Loss of Goodwill.
 - (1) [§1383] In General.
 - (2) [§1384] Conditions for Recovery.
 - (3) [§1385] Valuation and Proof of Loss.
- (h) [§1386] Personal Property of Destroyed Business.
- (i) [§1387] Mitigation Work by Condemnor.
- (j) [§1388] Protective Work by Owner.
- 9. Divided Interests.
 - (a) [§1389] Leases.
 - (b) [§1390] Encumbrances.
 - (c) [§1391] Partial Taking and Impairment of Security.
 - (d) [§1392] Future Interests.
- 10. Postjudgment Procedure.
 - (a) [§1393] Payment and Final Order.
 - (b) Deposit and Withdrawal of Award.
 - (1) [§1394] Deposit After Judgment.
 - (2) [§1395] Withdrawal of Deposit.
 - (c) [§1396] Possession After Judgment.

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- (d) Interest.
 - (1) [§1397] In General.
 - (2) [§1398] Market Rate of Interest.
- (e) Ad Valorem Property Taxes.
 - (1) [§1399] Liability, Proration, and Payment.
 - (2) [§1400] Exempt Property.
 - (3) [§1401] Cancellation of Taxes.
- (f) [§1402] Special Assessment Liens.
- (g) [§1403] Abandonment and Dismissal.
- (h) Expenses and Damages on Dismissal or Defeat of Right To Condemn.
 - (1) [§1404] Litigation Expenses.
 - (2) [§1405] Damages Caused by Dispossession.
- (i) [§1406] Costs.
- 11. Arbitration.
 - (a) [§1407] In General.
 - (b) [§1408] Effect and Enforcement of Agreement.
 - (c) [§1409] Abandonment of Acquisition.

F. Removal and Relocation Costs.

- 1. [§1410] In General.
- 2. [§1411] Authorized Payments and Assistance.
- 3. [§1412] Displaced Person.
- 4. [§1413] Comparable Replacement Housing.
- 5. [§1414] Review.
- 6. [§1415] Cross-Complaint in Condemnation Action.
- 7. [§1416] Inverse Condemnation Action.

XIV. OBLIGATION OF CONTRACTS

A. Nature of Protection.

- 1. [§1417] In General.
- 2. [§1418] Distinctions.

B. What Constitutes Contract.

- 1. [§1419] In General.
- 2. [§1420] Corporate Charter.
- 3. [§1421] Public Franchise or Grant.
- 4. [§1422] Bond of Public District.
- 5. Public Pension System.
 - (a) [§1423] Contractual Theory.
 - (b) [§1424] Valid Modifications.
 - (c) [§1425] Invalid Modifications.

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- 1. [§1426] Valid Changes in Remedy or Procedure.
- 2. [§1427] Invalid Changes in Obligation.
- 3. Valid Impairment Under Police Power.
 - (a) [§1428] Emergency Legislation.
 - (b) [§1429] Non-Emergency Legislation.
 - (c) [§1430] Insurance Contracts.
 - (d) [§1431] Stipulated Judgment for Welfare Benefits.

XV. FEDERAL POWERS

A. [§1432] Nature of Federal Powers.

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- 1. What Constitutes Interstate and Foreign Commerce.
 - (a) [§1433] In General.
 - (b) [§1434] Transportation.
 - (c) [§1435] Interstate Activity Without Transportation.
 - (d) [§1436] Local Activity as Part of Interstate Movement.
- 2. State Power and Interstate Commerce.
 - (a) Prohibitory Legislation.
 - (1) [§1437] General Principle.
 - (2) [§1438] Export of Natural Resources.
 - (b) Burdens on Commerce.
 - (1) [§1439] In General: Dormant Commerce Clause.
 - (2) [§1440] Legislation Protecting Local Industry.
 - (3) [§1441] Restrictions on Waste Disposal.
 - (4) [§1442] Condemnation of Sports Franchise.
 - (5) [§1443] Other Restrictions.
 - (c) State Regulatory Powers Generally.
 - (1) [§1444] Local Phases of Commerce.
 - (2) [§1445] Local Activities of Interstate Salespersons.
 - (3) [§1446] Localized Foreign Commerce.
 - (4) [§1447] Interstate Reach of California Law.
 - (5) Congressional Silence.
 - (aa) [§1448] In General.
 - (bb) [§1449] Coincidence of Federal and State Statutes.
 - (6) Express Congressional Authority.
 - (aa) [§1450] Rule and Illustrations.
 - (bb) [§1451] Distinctions.
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- (d) Police Power Regulations.
 - (1) [§1453] Health and Safety Measures.
 - (2) [§1454] State as Market Participant.
 - (3) [§1455] Economic Restrictions on Imports.
 - (4) [§1456] Economic Restrictions on Exports.
 - (5) [§1457] Use of Highways.
- 3. Federal Power Over Commerce.
 - (a) Regulation of Interstate Commerce.
 - (1) [§1458] In General.
 - (2) [§1459] Labor Relations.
 - (b) Regulation of Intrastate Activity.
 - (1) [§1460] In General.
 - (2) Regulation of Local Production.
 - (aa) [§1461] In General.
 - (bb) [§1462] Labor Regulations.
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C. War Power.

- 1. [§1464] In General.
- 2. [§1465] Economic Regulations.
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CHAPTER XV

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- (b) [§323] Disqualified Persons.
- (c) [§324] Who Is Care Custodian.
- (d) [§325] Excluded Transactions.
- 2. Presumption of Fraud or Undue Influence.
 - (a) [§326] In General.
 - (b) [§327] Definitions.
 - (c) [§328] Disqualified Persons.
 - (d) [§329] Excluded Transactions.

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- 1. [§330] Recommendation and Enactment.
- 2. [§331] Authorized Transfers.
- 3. [§332] Rights and Liabilities of Holder.
- 4. Community Property.
 - (a) [§333] Recommendation and Enactment.
 - (b) [§334] Nature and Scope of Statute.
 - (c) [§335] Consent.
 - (d) [§336] Transmutation of Community Property Distinguished.
 - (e) [§337] Revocation of Consent.
- 5. [§338] Vehicles, Vessels, and Manufactured Homes.
- 6. Security Registration.
 - (a) [§339] In General.
 - (b) [§340] Registration in Beneficiary Form.
 - (c) [§341] Death of Owner.
 - (d) [§342] Protection of Registering Entity.
- 7. Nonprobate Transfers to Former Spouse.
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- (c) [§345] Joint Tenancy With Former Spouse.
- (d) [§346] Real Property Affidavit.
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 - (a) [§347] In General.
 - (b) [§348] Execution and Revocation.
 - (c) [§349] Effect of Deed.
 - (d) [§350] Rights of Creditors and Enforcement of Liability.
 - (e) [§351] Effectuation of Transfer.
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 - (a) [§353] Case Law Development.
 - (b) [§354] Nature and Scope of Statute.
 - (c) [§355] Requisites and Defenses.
 - (d) [§356] Enforcement.
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- 3. [§362] Definitions.
- 4. [§363] Interests That May Be Disclaimed.
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- 7. Procedure.
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 - (c) [§368] Disclaimer for Minor, Conservatee, or Decedent.
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- 1. [§372] Corporations and Associations.
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- 1. Jurisdiction Over Decedents' Estates.
 - (a) [§383] Death.

- (b) [§384] Property To Be Administered.
- (c) [§385] Venue.
- 2. Controversies Involving Title to Property.
 - (a) [§386] Former Law: No Jurisdiction.
 - (b) [§387] Rule Abrogated.
 - (c) [§388] Petition.
 - (d) [§389] Notice and Service.
 - (e) [§390] Conduct of Proceeding.
 - (f) [§391] Order.
- 3. Nonprobate Transfer to Trustee Named in Will.
 - (a) [§392] In General.
 - (b) [§393] Designation of Trustee.
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 - (d) [§395] Authority of Court.
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- 4. Estates of Missing Persons Presumed Dead.
 - (a) [§397] Statutory Development.
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 - (c) [§399] Petition.
 - (d) [§400] Notice and Hearing.
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- 1. General Provisions.
 - (a) [§403] General Rules of Practice.
 - (b) [§404] Probate Rules.
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- (f) [§408] Petitions and Other Papers.
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- 2. Fees in Probate Code Proceedings.
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 - (a) [§420] In General.
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 - (d) Persons Entitled to Notice.
 - (1) [§427] Heirs and Devisees.
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- (g) [§433] Posted Notice.
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- 1. Nature and Necessity of Administration.
 - (a) [§443] Title to Decedent's Property.
 - (b) [§444] Probate and Administration.
 - (c) [§445] Nature of Probate Proceeding.
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 - (a) [§447] Judicial Council Forms.
 - (b) [§448] New Trial and Relief From Default.
 - (c) [§449] Right To Appeal in Estate Administration Proceedings.
 - (d) [§450] Appealable Orders in Estate Administration Proceedings.
 - (e) [§451] Transactions Affecting Property.
- 3. Control of Decedent's Property.
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 - (b) Temporary Possession or Control of Property.
 - (1) [§456] Report to Public Administrator.
 - (2) [§457] Duties of Public Administrator.
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 - (1) [§458] Procedure.
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 - (e) Summary Disposition of Small Estate.
 - (1) [§461] Law Revision Commission Report.
 - (2) [§462] Authority, Records, and Compensation.
 - (3) [§463] Procedure.
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 - (a) [§464] Grounds for Appointment.
 - (b) [§465] Procedure for Appointment.
 - (c) [§466] Powers.
 - (d) [§467] Termination of Authority.
 - (e) [§468] Compensation.
 - 3. [§469] Administrator With Will Annexed.
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- 1. [§472] Competency and Qualifications.
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 - (a) [§473] Testator's Direction or Intention.
 - (b) [§474] Power To Designate Executor.
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 - (d) [§478] Relatives.
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 - (f) [§480] Guardian or Conservator of Person Entitled.
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- 1. [§485] Letters and Oath.
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- (d) [§493] Protection of Estate or Interested Persons.
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- (f) [§495] Contempt of Court.
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- (a) [§497] Who May Seek Removal.
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- 1. [§499] Death, Resignation, Removal, or Other Termination.
- 2. [§500] Vacancy of Fewer Than All Representatives.
- 3. [§501] Vacancy of All Representatives.
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 - (a) [§503] Fiduciary Relationship.
 - (b) [§504] Standard of Care.
 - (c) [§505] Decedent's Contracts and New Contracts.
 - (d) [§506] Employment of Attorney and Tax Advisors.
 - (e) [§507] Summary Determination of Disputes.
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 - (1) [§508] Authority To Act.
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- (b) [§511] Instructions or Confirmation.
- (c) [§512] Order To Act or Not To Act.
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- 3. Possession and Management of Estate.
 - (a) Duty To Take Possession.
 - (1) [§514] Right and Duty.
 - (2) [§515] Mistaken Possession in Good Faith.
 - (b) [§516] Duty To Care for Property.
 - (c) [§517] Duty To Recover Property.
 - (d) [§518] Exercise of Shareholder and Membership Rights.
 - (e) [§519] Deposit of Money and Personal Property.
 - (f) Investments.
 - (1) [§520] Investments Without Court Approval.
 - (2) [§521] Investments With Court Approval.
 - (3) [§522] Investments Provided in Will.
 - (g) [§523] Purchase of Property.
- 4. Operation of Decedent's Business.
 - (a) [§524] Former Law and Law Revision Commission Report.
 - (b) [§525] Decedent's Nonpartnership Business.
 - (c) [§526] Decedent's Partnership Business.
- 5. Borrowing Money and Encumbering Property.
 - (a) [§527] Authority To Borrow and Encumber.
 - (b) [§528] Authority To Act With Other Owners.
 - (c) [§529] Petition and Notice.
 - (d) [§530] Order.
 - (e) [§531] Execution of Instruments.
 - (f) [§532] Effect of Encumbrance Under Order.
 - (g) [§533] Restriction on Deficiency After Foreclosure or Sale.
 - (h) [§534] Transactions Under Mortgage or Deed of Trust.

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- 6. Sale, Exchange, or Dedication of Property.
 - (a) [§535] Sale of Property.
 - (b) [§536] Exchange of Property.
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- 7. Option To Purchase Property.
 - (a) [§538] Authority To Grant Option.
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- 8. Purchase of Estate Property by Representative or Attorney.
 - (a) [§540] Prohibition and Exemptions.
 - (b) [§541] Petition, Hearing, and Order.
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 - (a) [§542] In General.
 - (b) [§543] Petition, Notice, Hearing, and Determination.
 - (c) [§544] Order and Lease.
- 10. Compromise of Claims and Actions.
 - (a) [§545] Former Law and Law Revision Commission Report.
 - (b) [§546] Compromise With Court Approval.
 - (c) [§547] Compromise Without Court Approval.
 - (d) [§548] Procedure.
- 11. Abandonment of Tangible Personal Property.
 - (a) [§549] Power To Abandon.
 - (b) [§550] Procedure.
- 12. Actions Involving Estate.
 - (a) [§551] Statutory Framework.
 - (b) Probate Code Actions.
 - (1) [§552] In General.
 - (2) [§553] Particular Actions by and Against Personal Representative.

- (3) [§554] Where Decedent's Liability Is Covered by Insurance.
- (c) Limitation of Actions.
 - (1) [§555] In General.
 - (2) [§556] Applicable Statute.
 - (3) [§557] Tolling and Extension.
- (d) Effect of Death on Parties to Civil Actions.
 - (1) [§558] In General.
 - (2) [§559] Nature of Decedent's Cause of Action.
 - (3) [§560] Damages Recoverable on Decedent's Cause of Action.
 - (4) [§561] Nature of Cause of Action Against Decedent.
 - (5) [§562] Damages Recoverable on Cause of Action Against Decedent.
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- 1. [§564] In General.
- 2. [§565] Limitations.
- 3. [§566] Liability of Surety.
- 4. Breach of Fiduciary Duty.
 - (a) [§567] Statutory Framework.
 - (b) [§568] Case Law Illustrations.

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- 1. In General.
 - (a) [§570] Percentage of Value of Estate.
 - (b) [§571] Statutory Schedule.
 - (c) [§572] Provision in Will.
 - (d) [§573] Determination of Amount.

- (e) [§574] Apportionment Among Several Representatives.
- (f) [§575] Representative Acting as Own Attorney.
- 2. Compensation for Extraordinary Services.
 - (a) In General.
 - (1) [§576] Nature of Allowance.
 - (2) [§577] Compensation Under Contingent Fee Agreement.
 - (3) [§578] Distinctions.
 - (b) Services Considered Extraordinary.
 - (1) [§579] In General.
 - (2) [§580] Fee-Related Services.
 - (c) Considerations Governing Allowance and Amount.
 - (1) [§581] Discretion of Court.
 - (2) [§582] Sufficiency of Showing.
- 3. Procedure in Obtaining Compensation.
 - (a) [§583] In General.
 - (b) [§584] Advance Payment.
 - (c) [§585] Personal Liability of Representative for Attorney's Compensation.

XI. ESTATE ADMINISTRATION

A. Probate of Will.

- 1. [§586] Production of Will.
- 2. [§587] Petition for Probate.
- 3. Proof of Will.
 - (a) [§588] Proof by Subscribing Witness.
 - (b) [§589] Proof When Subscribing Witness Is Unavailable.

- (c) [§590] Proof of Holographic Will.
- 4. [§591] Admission to Probate.
- 5. [§592] Effect of Order Admitting Will to Probate.
- 6. [§593] Admission of More Than One Will.
- 7. Probate of Lost or Destroyed Will.
 - (a) [§594] In General.
 - (b) [§595] Former Restrictions.
 - (c) [§596] Presumption of Revocation.
 - (d) [§597] Showing To Overcome Presumption.

B. Contest of Will.

- 1. Right To Contest.
 - (a) [§598] Necessity of Pecuniary Interest.
 - (b) [§599] Prima Facie Showing Is Sufficient.
 - (c) Persons Entitled To Contest.
 - (1) [§600] Heir at Law.
 - (2) [§601] Devisee Under Will.
 - (3) [§602] Assignee or Survivor of Interested Person.
 - (4) [§603] Judgment Creditor With Lien.
 - (5) [§604] Executor Under Admitted Will.
 - (d) [§605] Persons Not Entitled To Contest.
- 2. No Contest Clause.
 - (a) [§606] Original Law Revision Commission Report.
 - (b) [§607] Revised No Contest Clause Statutes.
 - (c) [§608] Definitions.
 - (d) [§609] Validity and Effect of Clause.
 - (e) [§610] Strict Construction.
 - (f) Limitations on Enforcement.
 - (1) [§611] Direct Contest.
 - (2) [§612] Menace, Duress, Fraud, or Undue

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Influence.

- (3) [§613] Lack of Capacity.
- (4) [§614] Disqualification of Specified Beneficiaries.
- (5) [§615] Claim of Creditor.
- (6) [§616] Action To Determine Character, Title, or Ownership of Property.
- (7) [§617] Property Claimed Independent of Instrument.
- (8) [§618] Challenge to Validity of Another Instrument.
- (9) [§619] Public Policy Limitations.
- (g) [§620] Safe Harbor Determination Whether Act Constitutes Contest.

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- (a) Contest Before Probate.
 - (1) [§621] Objection, Summons, and Response.
 - (2) [§622] Dismissal.
 - (3) [§623] Trial.
 - (4) [§624] Orders and Judgment.
- (b) Revocation of Probate.
 - (1) [§625] Former Statutes and Case Law.
 - (2) [§626] Petition, Summons, and Response.
 - (3) [§627] Hearing and Determination.

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- 1. Petition for Administration.
 - (a) [§628] In General.
 - (b) [§629] Content and Attachments.
 - (c) [§630] Filing Fee.
 - (d) [§631] Contest.

- 2. Notice of Hearing.
 - (a) [§632] Content and Form.
 - (b) [§633] Service of Notice.
 - (c) [§634] Publication of Notice.
- 3. [§635] Hearing and Determination.

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- 1. In General.
 - (a) [§636] Statutory Development.
 - (b) [§637] Requirement of Inventory and Appraisal.
 - (c) [§638] Effect of Failure To File.
- 2. Probate Referees.
 - (a) [§639] Appointment and Qualifications.
 - (b) [§640] Prohibited Political Activity.
 - (c) [§641] Revocation of Appointment.
 - (d) [§642] Powers of Probate Referee.
- 3. Inventory.
 - (a) [§643] Contents.
 - (b) [§644] Verification.
 - (c) [§645] Discovery of Decedent's Property.
- 4. Appraisal.
 - (a) [§646] In General.
 - (b) [§647] Appraisal by Personal Representative.
 - (c) [§648] Appraisal by Probate Referee.
 - (d) [§649] Appraisal by Independent Expert.
 - (e) [§650] Waiver of Appraisal by Referee.
 - (f) [§651] Designation of Referee.
 - (g) [§652] Removal of Referee.
 - (h) [§653] Time for Referee Appraisal.
 - (i) [§654] Referee's Appraisal Report and Data.

- (j) [§655] Objection to Appraisal.
- (k) [§656] Referee's Commission and Expenses.

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- 1. Filing Requirement.
 - (a) [§657] In General.
 - (b) [§658] Failure To File.
 - (c) [§659] Estoppel and Waiver.
- 2. Notice to Creditors.
 - (a) [§660] Requirement of Notice.
 - (b) [§661] Sufficiency of Notice.
 - (c) [§662] Immunity for Good Faith Acts or Omissions.
 - (d) [§663] Liability of Distributee to Known or Ascertainable Creditors.
- 3. Claims That Must Be Filed.
 - (a) [§664] In General.
 - (b) [§665] Contract Claims.
 - (c) [§666] Tort Claims.
 - (d) Claims by Public Entities.
 - (1) [§667] Filing Requirement.
 - (2) [§668] Claims Under Specific Statutes.
 - (3) [§669] Effect of Failure To Give Notice.
 - (e) Claims in Litigation.
 - (1) [§670] Claim on Cause of Action.
 - (2) [§671] Claim on Pending Action or Proceeding.
 - (f) Claims Established by Judgment.
 - (1) [§672] Former Statutes and Revision.
 - (2) [§673] Money and Nonmoney Judgments.
 - (3) [§674] Conversion of Attachment Lien to Judgment Lien.

- 4. Claims That Need Not Be Filed.
 - (a) [§675] Claim to Specific Property.
 - (b) [§676] Claim for Restitution After Rescission.
 - (c) [§677] Action on Claim Covered by Insurance.
 - (d) [§678] Action To Enforce Security Interest.
- 5. Time for Filing Claim.
 - (a) [§679] Time Period.
 - (b) [§680] Amended and Revised Claims.
 - (c) [§681] Petition To File Late Claim.
- 6. Procedure for Filing Claim.
 - (a) [§682] How Claim Is Filed.
 - (b) [§683] Form and Content.
 - (c) [§684] Supporting Documents.
 - (d) [§685] Waiver of Formal Defects.
- 7. Allowance and Rejection.
 - (a) [§686] Allowance or Rejection by Personal Representative.
 - (b) [§687] Approval or Rejection by Court.
 - (c) [§688] Barred Claims Must Be Rejected.
 - (d) [§689] Contest of Allowed and Approved Claims.
 - (e) [§690] Status of Approved Claims.
- 8. Action on Rejected Claim.
 - (a) [§691] Right To Bring Action.
 - (b) [§692] Statute of Limitations.
 - (c) [§693] Procedure.

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- 1. [§694] In General.
- 2. [§695] Priority Among Claimants.

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- 3. Time and Procedure for Payment.
 - (a) [§696] Time for Payment.
 - (b) [§697] Interest.
 - (c) [§698] Rights of Unpaid Creditor.
 - (d) [§699] Deposit for Missing Creditor.
 - (e) [§700] Disputed, Contingent, and Not Due Debts.
- 4. Allocation Between Estate and Spouse.
 - (a) [§701] In General.
 - (b) [§702] Allocation Rules.
- 5. Liability for Funeral Expenses.
 - (a) [§703] In General.
 - (b) [§704] Excessive Charges.
 - (c) [§705] Voluntary Payment.
- 6. Abatement of Shares of Beneficiaries.
 - (a) [§706] In General.
 - (b) [§707] Former Statutes and Case Law.
 - (c) [§708] Order of Abatement.
 - (d) [§709] Contribution for Abatement.
- 7. [§710] Exoneration of Devise.
- 8. Proration of Estate Taxes.
 - (a) [§711] In General.
 - (b) [§712] Equitable Proration.
 - (c) [§713] Decedent's Direction Otherwise.
 - (d) [§714] Qualified Real Property.
 - (e) [§715] Contribution and Reimbursement.
 - (f) [§716] Judicial Proceedings.
 - (g) [§717] Taxes on Generation-Skipping Transfer.

G. Sale of Property.

- 1. In General.
 - (a) [§718] Former Law and Revision.
 - (b) [§719] When Property May Be Sold.
 - (c) [§720] Petition To Compel Sale.
 - (d) [§721] Discretion of Personal Representative.
 - (e) [§722] Directions in Will.
 - (f) [§723] Appraisal and Sale as Unit.
 - (g) [§724] Excess Profit or Loss on Sale.
 - (h) [§725] Sale of Undivided Interest.
- 2. Contract With Agent, Broker, or Auctioneer.
 - (a) Nature of Contract.
 - (1) [§726] Agent or Broker.
 - (2) [§727] Auctioneer.
 - (b) Compensation of Agent or Broker.
 - (1) [§728] Requirements for Liability.
 - (2) [§729] Limitations on Amount.
 - (3) [§730] Compensation in Absence of Exclusive Contract.
 - (4) [§731] Compensation Under Exclusive Contract.
- 3. Manner of Sale.
 - (a) Personal Property.
 - (1) [§732] Notice of Sale.
 - (2) [§733] Sale at Public Auction.
 - (3) [§734] Private Sale.
 - (4) [§735] Sale on Credit.
 - (5) [§736] Passage of Title Without Confirmation.
 - (6) [§737] Report and Hearing.
 - (7) [§738] Overbid and Confirmation.

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- (b) Real Property.
 - (1) [§739] Notice of Sale.
 - (2) [§740] Sale at Public Auction.
 - (3) [§741] Private Sale.
 - (4) [§742] Sale on Credit.
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JUVENILE COURT LAW

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- 5. Child in Custody of Parent or Guardian.
 - (a) [§414] In General.
 - (b) [§415] Determination Whether To Continue Jurisdiction.
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 - (a) [§416] In General.
 - (b) [§417] Planned Permanent Living Arrangement.
 - (c) [§418] Required Determinations.
 - (d) [§419] Educational and Developmental Services Decisions.
 - (e) [§420] Selection and Implementation Hearing.
 - (f) [§421] Placement Outside California.
 - (g) [§422] Application of Provisions Affecting Older Foster Children.
- 7. Issues Common to Review Hearings.
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 - (aa) [§424] In General.
 - (bb) [§425] Illustrations: Finding of Detriment

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 - (1) [§427] In General.
 - (2) [§428] Illustrations: Services Were Reasonable.
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- (c) [§430] Setting Selection and Implementation Hearing.
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 - (b) Placement Options.
 - (1) [§435] In General.
 - (2) [§436] Continuation Based on Substantial Probability of Return.
 - (3) [§437] Continuation Due to Immigration Complications.
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 - (1) [§441] In General.
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- 11. Twenty-Four Month Review.
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- 1. [§447] Statutory Procedure Is Exclusive.
- 2. Hearing Procedure.
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 - (1) [§448] In General.
 - (2) [§449] Content of Notice.
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 - (5) [§452] Effect of Failure To Give Notice.
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 - (e) [§456] Hearing.
- 3. Development of Plan.
 - (a) Alternative Dispositions.
 - (1) [§457] In General.
 - (2) [§458] Selection of Alternative.
 - (3) [§459] Limitations on Disposition.
 - (b) Termination of Parental Rights To Free Child for Adoption.
 - (1) [§460] In General.
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 - (aa) [§461] In General.
 - (bb) [§462] Sufficiency of Evidence.
 - (c) [§463] Tribal Customary Adoption.
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- (e) Legal Guardianship or Foster Care.
 - (1) [§465] Consideration of Legal Guardianship.
 - (2) [§466] Where Child Remains in Foster Care.
 - (3) [§467] Visitation.
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- (f) Limitations on Termination of Parental Rights.
 - (1) [§469] In General.
 - (2) [§470] Requirements Applicable to Indian Child.
 - (3) [§471] Where Relative Is Willing To Be Legal Guardian.
 - (4) Termination Would Be Detrimental to Child.
 - (aa) [§472] In General.
 - (bb) [§473] Circumstances Establishing Detriment.
 - (cc) [§474] Benefit to Child.
 - (dd) [§475] Sibling Exception.
 - (ee) [§476] Illustrations.
- (g) Constitutionality of Termination Procedure.
 - (1) [§477] In General.
 - (2) [§478] Parental Unfitness and Detriment to Child.
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- (c) [§483] Visitation Orders.
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- (e) Prospective Adoptive Parent.
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 - (2) [§487] Designation of Prospective Adoptive Parent.
 - (3) [§488] Nonemergency Removal From Prospective Adoptive Parent.
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- 5. Adoption Proceeding.
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 - (b) [§492] Preference for Caretaker.
 - (c) [§493] Tribal Customary Adoption.
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- 7. Posthearing Procedure.
 - (a) Continuing Jurisdiction.
 - (1) [§495] In General.
 - (2) [§496] Effect of Establishment of Legal Guardianship.
 - (b) Status Review Hearings.
 - (1) [§497] In General.
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 - (3) [§499] Participation by Parents.
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 - (1) [§500] In General.
 - (2) [§501] Child Placed in Foster Care.
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 - (aa) [§502] In General.
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- 1. [§505] In General.
- 2. [§506] Placement Agreement.
- 3. [§507] Reunification Services.
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 - (a) [§512] Nature and Purpose.
 - (b) [§513] Form and Content.
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- 3. Petition for Modification.
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 - (1) [§519] In General.
 - (2) [§520] Change of Circumstances or New Evidence.
 - (3) [§521] Consideration of Petition on Remand.
 - (4) [§522] Petition To Assert Sibling Relationship.
 - (5) [§523] Petition To Terminate Reunification Services.
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- (c) [§526] Ex Parte Denial.
- (d) [§527] Grounds for Granting.
- (e) Right to Hearing.
 - (1) [§528] In General.
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- 1. Right To Appeal.
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 - (c) [§543] Dismissal of Dependency Petition.
 - (d) Standing of Parent To Appeal.
 - (1) [§544] In General.
 - (2) [§545] Where Jurisdiction Is Based on Conduct of Only One Parent.
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- 2. Appealable Judgments and Orders.
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- (b) [§549] Selection and Implementation Hearing.
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- (f) [§553] Appeal From Restraining Order.
- (g) [§554] Miscellaneous Orders.
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 - (b) [§556] Waiver of Appellate Review.
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- 4. [§558] Counsel on Appeal.
- 5. Procedure.
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 - (b) [§560] Confidentiality.
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 - (d) [§562] Dismissal of Moot Appeal.
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- 2. [§587] Statutory Framework.
- 3. Status Offenses Under Welf.C. 601.
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 - (1) [§594] Test.
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- (h) Certification of Minor Charged With Crime.
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 - (1) [§607] Segregation of Classes of Minors.
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 - (1) [§626] Elements of Program.
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 - (a) [§716] In General.
 - (b) [§717] Effect of Transfer on Earlier Petition.
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 - (a) [§722] Criminal Charge and Proceeding.
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 - (1) [§751] In General.
 - (2) [§752] Immunity in Welf.C. 601 Proceeding.
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- 1. [§756] Social Study.
- 2. Case Plan.
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- (c) [§759] Plan for Permanency Hearing.
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- 4. [§761] Conduct of Hearing.
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- 6. Judgment and Orders.
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- (e) Placement in Foster Care.
 - (1) [§785] Nature of Placement.
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 - (aa) [§790] In General.
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 - (b) [§804] Conditions of Supervised Probation.

- (c) [§805] Conditions of Unsupervised Probation.
- (d) [§806] Conditions After Commitment to Division of Juvenile Facilities.
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- (b) [§829] Invalid Commitment.
- (c) Limits on Physical Commitment.
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 - (bb) [§832] Commitment Based on Prior Offenses.
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- 2. Division of Juvenile Facilities.
 - (a) [§840] In General.
 - (b) Commitment to Division of Juvenile Facilities.
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 - (2) [§842] Matters Considered.
 - (3) [§843] Rights of Minors.
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 - (aa) [§844] In General.
 - (bb) [§845] Nonqualifying Offenses.
 - (cc) [§846] Effect of Dismissal of Petition or Probation Violation.
 - (5) [§847] Duties of Court and Division on Commitment.
 - (6) [§848] Concurrent Jurisdiction of Court and Division.

- (7) [§849] Modification of Previous Order.
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- 1. [§883] Minor's Right To Appeal.
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- (c) [§890] Abandoning Appeal.
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