

## Index

### A

#### ABUSE

Defamation, persons charged with child abuse, § 21:9  
Process. Abuse of Process (this index)  
Repression of Childhood Sexual Abuse (this index)  
Sexual abuse, AIDS Vaccine Victims Compensation Fund, § 24:8

#### ABUSE OF PROCESS

Attachment, cross-complaint for abuse based on excessive attachment, § 19:38  
Cross-complaint for abuse based on excessive attachment, § 19:38  
Damages, § 19:35  
Defenses, privilege, §§ 19:37, 19:39  
Elements, §§ 19:32 to 19:34  
Forms  
    allegation of litigation privilege as affirmative defense [Civ Code § 47 subd (b)], § 19:39  
    cross-complaint for abuse based on excessive attachment, § 19:38  
    jury instructions, § 19:40  
Injunctive relief, § 19:36  
Jury instructions, § 19:40  
Legal malpractice, basis of action by non-client, § 33:32  
Legal principles, §§ 19:31 to 19:40  
Malicious prosecution distinguished, § 19:2  
Nature of action, § 19:31  
Overview of cause of action, § 19:31

#### ABUSE OF PROCESS—Cont'd

Process misused, element of action, § 19:32  
Remedies, §§ 19:35, 19:36  
Ulterior motive as element of action, § 19:34  
Willful act as element of action, § 19:33

#### ACCIDENT INSURANCE

Automobile Insurance Litigation (this index)

#### ACCOUNTANT MALPRACTICE

Generally, §§ 34:18 to 34:22  
Definitions, § 34:18  
Duty of care to clients, § 34:19  
Duty of care to third parties, § 34:20  
Forms  
    negligence in performing services, complaint by client, § 34:21  
    negligence in performing services, complaint by third party, § 34:22  
Legal principles, §§ 34:18 to 34:20  
Negligence in performing services  
    complaint by client, form, § 34:21  
    complaint by third party, form, § 34:22

#### ACTS OF OTHERS, LIABILITY

Checklist of matters to be considered in respondeat superior case, § 3:14  
Dangerous instrumentality, entrustment, § 3:2  
Definitions  
    independent contractor, § 3:19  
    joint venture, § 3:37

## ACTS OF OTHERS, LIABILITY

### —Cont'd

#### Definitions—Cont'd

principal-agent relations, § 3:27  
vicarious liability, § 3:1

#### Employer liability for acts of contractor

agents, employees, and independent contracts distinguished, § 3:28

allegation against employer of independent contractor for negligence performance of nondelegable duty, form, § 3:26

allegation of liability of owner or general contractor for failure to take precautions against peculiar risk, form, § 3:25

common carriers, public franchise to employer, § 3:23

definition of independent contractor, § 3:19

forms, §§ 3:25, 3:26

general rule of nonliability, § 3:20

hirer liability for injury to employee of independent contractor, § 3:24

independent contractor defined, § 3:19

legal principles, §§ 3:19 to 3:24

nondelegable duty, § 3:23

peculiar risk doctrine, § 3:22

policy exceptions, § 3:21

public franchise to employer, § 3:23

#### Employer liability for acts of employee

actions, § 3:13

agents, employees, and independent contracts distinguished, § 3:28

allegation in answer that no employee was not acting

## ACTS OF OTHERS, LIABILITY

### —Cont'd

#### Employer liability for acts of employee—Cont'd

within scope of employment, form, § 3:18

allegation in answer that no employment relationship existed, form, § 3:17

allegation of direct liability in negligent hiring or retention, form, § 3:16

allegation of injury caused by employee acting within scope of employment [Civ Code § 2338], form, § 3:15

borrowed employees, § 3:7

direct and vicarious liability distinguished, § 3:4

doctrine of respondeat superior, § 3:3

dual employment, § 3:7

employment relationship distinguished from other relationships, § 3:6

forms, §§ 3:15 to 3:18

going and coming rule, § 3:10

instructions of employer violated, § 3:11

intentional torts, § 3:12

legal principles, §§ 3:3 to 3:13

nature of employment relationship, § 3:5

rule of employer violated, § 3:11

scope of employment, §§ 3:8, 3:9

violation of employer's rules or instructions, § 3:11

workers' compensation cases, applicability to scope of employment analysis, § 3:9

#### Entrustment of dangerous instrumentality, § 3:2

#### Forms

allegation against employer of independent contractor for

## INDEX

### ACTS OF OTHERS, LIABILITY

#### —Cont'd

##### Forms—Cont'd

- negligence performance of  
nondelegable duty, § 3:26
- allegation by third party for  
liability of principal for acts of  
ostensible agent, form, § 3:32
- allegation by third party that act  
was committed by agent in  
scope of agency [Civ Code  
§§ 2338, 2339], § 3:31
- allegation in answer that no  
employee was not acting  
within scope of employment,  
§ 3:18
- allegation in answer that no  
employment relationship  
existed, § 3:17
- allegation of direct liability in  
negligent hiring or retention,  
§ 3:16
- allegation of injury caused by  
employee acting within scope  
of employment [Civ Code  
§ 2338], § 3:15
- allegation of liability of owner or  
general contractor for failure  
to take precautions against  
peculiar risk, § 3:25
- employer liability for acts of  
contractor, §§ 3:25, 3:26
- employer liability for acts of  
employee, §§ 3:15 to 3:18
- principal liability for acts of  
agent, §§ 3:31, 3:32
- General principles, §§ 3:1, 3:2
- General rule of nonliability
  - employer liability for acts of  
contractor, § 3:20
  - parent liability for torts of child,  
§ 3:33
- Joint venture liability for acts of par-  
ticipant
  - joint venture defined, § 3:37
  - nature of liability, § 3:38

### ACTS OF OTHERS, LIABILITY

#### —Cont'd

- Parent liability for torts of child
    - agency relationship, § 3:36
    - general rule of nonliability,  
§ 3:33
    - knowledge of prior misconduct  
and negligent control, § 3:34
    - negligent control, § 3:34
    - willful misconduct, statutory  
liability, § 3:35
  - Principal liability for acts of agent
    - agents, employees, and indepen-  
dent contracts distinguished,  
§ 3:28
    - allegation by third party for  
liability of principal for acts of  
ostensible agent, form, § 3:32
    - allegation by third party that act  
was committed by agent in  
scope of agency [Civ Code  
§§ 2338, 2339], form, § 3:31
    - definition of principal-agent rela-  
tions, § 3:27
    - forms, §§ 3:31, 3:32
    - legal principles, §§ 3:27 to 3:30
    - ostensible agency, § 3:30
    - scope of liability, § 3:29
  - Vicarious liability defined, § 3:1
- ### AFFIRMATIVE DEFENSE
- Strict Liability (this index)
- ### AFFIRMATIVE DEFENSES
- Assault and Battery (this index)  
Bad Faith Actions (this index)  
False Imprisonment and False Arrest  
(this index)  
Governmental Immunity (this index)  
Intentional Infliction of Emotional  
Distress (this index)  
Invasion of Privacy (this index)  
Malicious Prosecution (this index)
- ### AIDERS AND ABETTORS
- Assault and battery, liability, § 12:11

**AIRCRAFT**

See also Aviation (this index)  
Products Liability (this index)

**ANNOYANCE**

Trespass, remedies, § 18:16

**ANONYMOUS WITNESS  
PROGRAMS**

Defamation, specific privilege,  
§ 21:43

**APPROPRIATION OF NAME  
OR LIKENESS**

Invasion of Privacy (this index)

**ARBITRATION/APPRAISAL**

Appraisal

- checklist for motion for stay  
pending appraisal, § 43:11
- declaration of attorney in support  
of petition to compel, § 43:7
- insurance bad faith litigation,  
plaintiff's motion in limine  
excluding statements made at  
appraisal, form, § 45:8
- insurer's memorandum of points  
and authorities in support of  
petition to compel, § 43:6
- notice of hearing on petition to  
compel, § 43:8
- petition to compel appraisal by  
insurer, § 43:5

Arbitration

- application for correction of  
award, § 43:29
- checklist for motion for stay  
pending arbitration, § 43:11
- checklist for preparing and serv-  
ing petition to compel arbitra-  
tion, § 43:4
- checklist for procedure for cor-  
recting award, § 43:28
- confirmation of arbitration,  
§ 43:15
- confirmation of award, §§ 43:16  
to 43:21

**ARBITRATION/APPRAISAL**

—Cont'd

Arbitration—Cont'd

- confirmation of award, overview  
of procedure to petition for,  
§ 43:16
- correcting award, §§ 43:27 to  
43:35
- declaration of attorney in support  
of petition for order correcting  
award, § 43:34
- declaration of attorney in support  
of petition for order to vacate  
award, § 43:39
- declaration of attorney in support  
of petition to confirm award,  
§ 43:20
- homeowner's petition for order  
correcting award, § 43:32
- insured's memorandum of points  
and authorities in support of  
petition to compel, § 43:9
- medical malpractice [Civ Code  
§ 1295], § 32:46
- memorandum of points and  
authorities in support of peti-  
tion for order confirming  
award, § 43:19
- memorandum of points and  
authorities in support of peti-  
tion for order correcting  
award, § 43:33
- memorandum of points and  
authorities in support of peti-  
tion for order vacating award,  
§ 43:38
- notice of motion to stay proceed-  
ings pending arbitration,  
§ 43:12
- notice of petition for order  
confirming award, § 43:17
- notice of petition for order cor-  
recting award, § 43:31
- notice of petition for order vacat-  
ing award, § 43:36

## INDEX

### ARBITRATION/APPRAISAL

#### —Cont'd

#### Arbitration—Cont'd

- objection to application for correction of award, § **43:30**
- order correcting award, § **43:35**
- order granting petition to confirm award, § **43:21**
- order vacating award, § **43:40**
- petition for order confirming award, § **43:18**
- petition for order correcting award by homeowner, § **43:32**
- petition for order vacating award, § **43:37**
- Uninsured Motorists Claims (this index)
- vacating award, §§ **43:26, 43:36 to 43:40**

#### Checklist

- correcting arbitration award, § **43:28**
- motion for stay pending appraisal or arbitration, § **43:11**
- preparing and serving petition to compel arbitration, § **43:4**
- uninsured motorists claims, matters to consider, § **38:23**

#### Declaration of attorney

- support of motion to lift stay on proceedings, § **43:24**
- support of petition for order correcting arbitration award, § **43:34**
- support of petition for order to vacate arbitration award, § **43:39**
- support of petition to compel appraisal, § **43:7**
- support of petition to confirm arbitration award, § **43:20**

#### Fire insurance policy provisions, § **43:3**

#### Insurance claims, generally, § **43:1 et seq.**

#### Legal malpractice, defense, § **33:66**

### ARBITRATION/APPRAISAL

#### —Cont'd

- Loss of consortium, nature and measure of damages, arbitration agreements, § **10:16**
- Medical malpractice [Civ Code § 1295], § **32:46**
- Memorandum of points and authorities
  - supporting defendant/insurer motion for stay, § **43:13**
  - supporting motion to lift stay on proceedings, § **43:23**
  - supporting petition for order confirming arbitration award, § **43:19**
  - supporting petition for order correcting arbitration award, § **43:33**
  - supporting petition to compel appraisal, § **43:6**
  - supporting petition to compel arbitration, § **43:9**
- Notice of hearing on petition to compel appraisal, § **43:8**
- Petition to compel
  - generally, § **43:2**
  - appraisal by insurer, § **43:5**
  - arbitration, § **43:4**
- Stay of proceedings
  - checklist for motion for stay pending appraisal or arbitration, § **43:11**
  - declaration in support of motion to stay, § **43:14**
  - declaration of counsel in support of motion to lift stay on proceedings, § **43:24**
  - memorandum of points and authorities in support of defendant/insurer motion for stay, § **43:13**
  - memorandum of points and authorities in support of motion to lift stay on proceedings, § **43:23**

## ARBITRATION/APPRAISAL

### —Cont'd

Stay of proceedings—Cont'd  
     motion for stay, § **43:10**  
     notice of motion to lift stay on proceedings, § **43:22**  
     notice of motion to stay pending arbitration, § **43:12**  
     order lifting stay on proceedings, § **43:25**  
 Uninsured Motorists Claims (this index)

## ARCHITECT MALPRACTICE

Generally, §§ **34:23 to 34:34**  
 Declaration supporting motion to file undertaking [Code Civ Proc § 1029.5], form, § **34:33**  
 Defective plans and specifications, liability, § **34:24**  
 Defense that action is barred by statute of limitation [Code Civ Proc § 337.15], form, § **34:31**  
 Forms  
     declaration supporting motion to file undertaking [Code Civ Proc § 1029.5], § **34:33**  
     defense that action is barred by statute of limitation [Code Civ Proc § 337.15], § **34:31**  
     negligent preparation of plans and specification, complaint for damages by client, § **34:28**  
     negligent supervision of construction site, complaint for damages by client, § **34:29**  
     notice of motion to file undertaking [Code Civ Proc § 1029.5], § **34:32**  
     order to file undertaking [Code Civ Proc § 1029.5], § **34:34**  
     personal injury caused by negligent preparation of plans and specification and negligent supervision of construction site, complaint for damages by

## ARCHITECT MALPRACTICE

### —Cont'd

Forms—Cont'd  
     third party, § **34:30**  
 Negligent preparation of plans and specification, complaint for damages by client, form, § **34:28**  
 Negligent supervision, liability, § **34:25**  
 Negligent supervision of construction site, complaint for damages by client, form, § **34:29**  
 Notice of motion to file undertaking [Code Civ Proc § 1029.5], form, § **34:32**  
 Order to file undertaking [Code Civ Proc § 1029.5], form, § **34:34**  
 Personal injury caused by negligent preparation of plans and specification and negligent supervision of construction site, complaint for damages by third party, form, § **34:30**  
 Special procedural requirements, § **34:27**  
 Standard of care, § **34:23**  
 Statute of limitations, §§ **34:26, 34:31**

## ASSAULT AND BATTERY

Affirmative defenses  
     allegation by physician that medical procedure was necessitated by emergency [Bus & Prof Code § 2397 subd (a)], § **12:44**  
     allegation of use of reasonable force in defense of property against intruder, § **12:46**  
     allegation that defendant acted in self-defense, § **12:45**  
     childhood sexual abuse action not commenced within eight years after age of majority [Code Civ Proc § 340.1 subd (a)], § **12:47**

## INDEX

### ASSAULT AND BATTERY

#### —Cont'd

Affirmative defenses—Cont'd  
    repression of childhood sexual abuse, allegation that action not commenced within eight years after majority, form, § 12:47  
Aiders and abettors, liability, § 12:11  
Applicability of Penal Code, § 12:2  
Arrest, allegation of battery by plaintiff injured during arrest, form, § 12:32  
Arrest or other lawful act, defense, § 12:22  
Checklist for actions, § 12:25  
Childhood sexual abuse. Repression of Childhood Sexual Abuse (this index)  
Consent  
    defenses, §§ 12:18, 12:19  
    illegal activity, § 12:19  
    lack of consent as element of battery, § 12:9  
    medical procedures without consent, below  
    plaintiff's consent to defendant's act, § 12:18  
Defense of property  
    affirmative defense, allegation of use of reasonable force against intruder, § 12:46  
    privilege, § 12:21  
Defenses  
    affirmative defenses, above  
    arrest or other lawful act, § 12:22  
    consent, §§ 12:18, 12:19  
    defense of property, § 12:21  
    defense of self or others, § 12:20  
    illegal activity, consent, § 12:19  
    intoxication not constituting defense, § 12:23  
    negligence of plaintiff not constituting defense, § 12:23  
    plaintiff's consent to defendant's act, § 12:18

### ASSAULT AND BATTERY

#### —Cont'd

Defenses—Cont'd  
    pleading, § 12:24  
    privilege, §§ 12:20 to 12:22  
    provocation not constituting defense, § 12:23  
Definitions  
    assault, § 12:3  
    battery, § 12:7  
Discovery, § 12:24  
Distinctions, § 12:1  
Drive-by shooting, assault allegation by plaintiff who was object of, form, § 12:27  
Elements of assault  
    generally, § 12:3  
    apprehension of contact, § 12:4  
    definition, § 12:3  
    intent, § 12:5  
    present ability, § 12:6  
Elements of battery  
    generally, § 12:7  
    definition, § 12:7  
    intent, § 12:8  
    lack of consent, § 12:9  
    sexual contact, battery involving, § 12:10  
Employers, liability, § 12:13  
Employment  
    assault and battery allegations by fellow employee, form, § 12:35  
    assault and battery allegations by plaintiff sexually harassed by employer, form, § 12:37  
Fistfight, complaint for assault and battery by plaintiff injured in fistfight, form, § 12:29  
Flight, assault allegation by plaintiff injured in fall while fleeing from assailant, form, § 12:28  
Forms  
    allegation in childhood sexual abuse action that subconscious



## ASSAULT AND BATTERY

### —Cont'd

#### Forms—Cont'd

- defense mechanisms prevented realizing causal connection between abuse and subsequent psychological injuries, § **12:42**
- allegation of battery by plaintiff injured during arrest, § **12:32**
- allegations of sexual battery [Civ Code § 1708.5], § **12:36**
- allegation that defendant aided and abetted assault and battery perpetrated by another, § **12:33**
- assault allegation by plaintiff injured in fall while fleeing from assailant, § **12:28**
- assault allegation by plaintiff who was object of drive-by shooting, § **12:27**
- assault and battery allegations by fellow employee, § **12:35**
- assault and battery allegations by plaintiff sexually harassed by employer, § **12:37**
- assault and battery allegations by rape victim, § **12:38**
- battery allegation by plaintiff injured by defendant who intended to harm third person with firearm, § **12:34**
- battery allegations by patient against physician who performed operation substantially different from operation consented to, § **12:43**
- battery allegations by plaintiff who contracted sexually transmitted disease from sexual partner, § **12:40**
- complaint for assault and battery by plaintiff injured in fistfight, § **12:29**

## ASSAULT AND BATTERY

### —Cont'd

#### Forms—Cont'd

- complaint for assault by plaintiff threatened with knife during argument, § **12:26**
- complaint for battery, negligence, intentional infliction of emotional distress and fraud by plaintiff who contracted sexually transmitted disease from sexual partner, § **12:39**
- complaint for damages caused by childhood sexual abuse by parent and alleging subconscious repression and denial of memory of abuse, § **12:41**
- intentional tort cause of action form for assault [Judicial Council Form 982.1(4)], § **12:30**
- intentional tort cause of action form for battery [Judicial Council Form 982.1(4)], § **12:31**
- plaintiff's pleadings, §§ **12:26 to 12:43**
- Fraud, complaint by plaintiff who contracted sexually transmitted disease from sexual partner, form, § **12:39**
- Illegal activity, consent defense, § **12:19**
- Intent
  - element of assault, § **12:5**
  - element of battery, § **12:8**
- Intentional infliction of emotional distress, complaint by plaintiff who contracted sexually transmitted disease from sexual partner, form, § **12:39**
- Intentional tort cause of action form assault [Judicial Council Form 982.1(4)], § **12:30**



## INDEX

### ASSAULT AND BATTERY

#### —Cont'd

Intentional tort cause of action form

#### —Cont'd

battery [Judicial Council Form  
982.1(4)], § **12:31**

Intoxication not constituting defense,  
§ **12:23**

Legal principles

generally, §§ **12:1 to 12:13**

defenses, §§ **12:18 to 12:23**

medical procedures without  
consent, §§ **12:14 to 12:17**

procedure, § **12:24**

Medical care

affirmative defense, allegation by  
physician that medical proce-  
dure was necessitated by emer-  
gency [Bus & Prof Code  
§ 2397 subd (a)], § **12:44**

battery allegations by patient  
against physician who  
performed operation  
substantially different from  
operation consented to, form,  
§ **12:43**

Medical procedures without consent

battery, § **12:14**

emergency exception, § **12:17**  
fraud, consent obtained by,  
§ **12:16**

implied consent, § **12:15**

Minors, liability, § **12:12**

Negligence

complaint for by plaintiff who  
contracted sexually transmitted  
disease from sexual partner,  
§ **12:39**

plaintiff's negligence not  
constituting defense, § **12:23**

Others, defense of, § **12:20**

Penal Code, applicability, § **12:2**

Persons liable

aiders and abettors, § **12:11**

employers, § **12:13**

minors, § **12:12**

### ASSAULT AND BATTERY

#### —Cont'd

Pleading

defenses, § **12:24**

plaintiff's pleadings, form,  
§§ **12:26 to 12:43**

Procedural checklist for actions,  
§ **12:25**

Property, defense of, § **12:21**

Provocation not constituting defense,  
§ **12:23**

Rape victim, assault and battery  
allegations by, form, § **12:38**

Repression of Childhood Sexual  
Abuse (this index)

Self-defense

affirmative defense, allegation of  
self-defense, § **12:45**  
privilege, § **12:20**

Sexual battery, allegations, [Civ  
Code § 1708.5], form, § **12:36**

Sexually transmitted disease

battery allegations by plaintiff  
who contracted, form, § **12:40**  
complaint for battery,  
negligence, intentional inflic-  
tion of emotional distress and  
fraud by plaintiff who  
contracted sexually transmitted  
disease, § **12:39**

Stalking (this index)

Statute of limitations, § **12:24**

Threatened by knife, complaint for  
assault by plaintiff threatened with  
knife during argument, form,  
§ **12:26**

### ASSUMPTION OF RISK

Allegation of express, form, § **1:65**

Allegation of primary, form, § **1:66**

Common carriers of freight, express  
assumption of risk as defense,  
§ **28:31**

Comparative negligence, §§ **1:43 to  
1:45**

Defense, form, §§ **1:43 to 1:45**

**ASSUMPTION OF RISK—Cont'd**

Medical malpractice, § 32:71  
 Negligence, answer and affirmative defenses claims, §§ 1:65, 1:66  
 Premises liability, § 16:31  
 Reasonable implied, § 1:45  
 Strict Liability (this index)  
 Wrongful death, § 23:16

**ATTORNEY'S FEES**

Bad faith actions, sample demand letter to insurer by counsel, § 44:74  
 Compensatory damages, calculation of award, § 5:29  
 Conversion, § 15:13  
 Declaratory relief, right to attorney's fees, § 39:29  
 Indemnity, contribution, and setoff, § 4:19  
 Legal malpractice, § 33:52  
 Medical malpractice, damages and costs, § 32:57  
 Nuisance, § 17:26  
 Trespass, § 18:18

**AUTOMOBILE INSURANCE LITIGATION**

Accident insurance  
   generally, § 37:1  
   cancellation, § 37:9  
   definitions, § 37:2  
   exclusions and limits, § 37:7  
   financial responsibility laws, § 37:3  
   insurance exclusions and limits, § 37:7  
   limits on insurance coverage, § 37:8  
   nonrenewal, § 37:9  
   required terms of liability insurance, § 37:5  
   underinsured motorist coverage, §§ 37:6, 37:8  
   uninsured motorist coverage, §§ 37:6, 37:8

**AUTOMOBILE INSURANCE LITIGATION—Cont'd**

Accident report, § 37:12  
 Accident report and photographs, letter to law enforcement agency requesting, § 37:43  
 Arbitration, § 37:19  
 Attorneys. Representation of plaintiff, below  
 Bad faith actions, complaint, § 41:9  
 California Department of Insurance (CDI), compliance with, § 37:4  
 Checklist, uninsured motorist claim, § 37:31  
 Compliance with California Department of Insurance (CDI), § 37:4  
 Contents of medical authorization, § 37:16  
 Defense  
   coverage issues, § 37:22  
   multiple policies, § 37:23  
   offset, § 37:24  
   reimbursement, § 37:26  
   strategy of insurer, § 37:21  
   subrogation, § 37:25  
 Depositions, sample questions, § 37:18  
 Discovery  
   accident report and photographs, letter to law enforcement agency requesting, § 37:43  
   authorization for release of records to plaintiff's attorney, § 37:38  
   doctor's narrative report, letter requesting, § 37:37  
   formal discovery  
     forms, §§ 37:50 to 37:52  
     production of documents, §§ 37:51, 37:52  
     request for production of documents by defense, § 37:51  
     response to demand for production of documents by plaintiff, § 37:52

## INDEX

### **AUTOMOBILE INSURANCE LITIGATION—Cont'd**

#### **Discovery—Cont'd**

formal discovery—Cont'd  
special interrogatories,  
§ 37:50

#### **forms**

formal discovery, §§ 37:50 to  
37:52  
informal discovery, §§ 37:36  
to 37:49

future medical treatment, letter  
requesting report, § 37:42

#### **informal discovery and case preparation**

accident report and  
photographs, letter to law  
enforcement agency  
requesting, § 37:43

authorization for release of  
records to plaintiff's  
attorney, § 37:38

doctor's narrative report, let-  
ter requesting, § 37:37

forms, §§ 37:36 to 37:49

future medical treatment,  
letter requesting report,  
§ 37:42

inspection of medical records  
by defense attorney, autho-  
rization, § 37:41

inspection of medical records  
by insurer, authorization,  
§ 37:40

letter to witness, § 37:48

loss of earnings, letter to  
employer, § 37:45

loss of earnings, letter to self-  
employed client, § 37:46

medical authorization with  
lien, § 37:39

medical records and bills,  
letter requesting copies,  
§ 37:36

preservation of evidence,  
letter regarding, § 37:44

### **AUTOMOBILE INSURANCE LITIGATION—Cont'd**

#### **Discovery—Cont'd**

informal discovery and case  
preparation—Cont'd

records, authorization for  
release to plaintiff's  
attorney, § 37:38

statement by insured, letter to  
insurer regarding, § 37:47

statement by witness, § 37:49

witness, letter to, § 37:48

witness statement, § 37:49

inspection of medical records by  
defense attorney, authoriza-  
tion, § 37:41

inspection of medical records by  
insurer, authorization, § 37:40

letter to witness, § 37:48

loss of earnings, letter to  
employer, § 37:45

loss of earnings, letter to self-  
employed client, § 37:46

medical authorization with lien,  
§ 37:39

medical records and bills, letter  
requesting copies, § 37:36

plan for discovery, § 37:14

policy, discovery of, § 37:17

preparation of plaintiff's case,  
§§ 37:14, 37:17

preservation of evidence, letter  
regarding, § 37:44

production of documents, formal  
discovery, §§ 37:51, 37:52

records, authorization for release  
to plaintiff's attorney, § 37:38

request for production of docu-  
ments by defense, § 37:51

response to demand for produc-  
tion of documents by plaintiff,  
§ 37:52

special interrogatories, formal  
discovery, § 37:50

statement by insured, letter to  
insurer regarding, § 37:47

**AUTOMOBILE INSURANCE  
LITIGATION—Cont’d**

Discovery—Cont’d  
    statement by witness, § 37:49  
    time-limited demand to insurer  
    by plaintiff, § 37:53  
    witness, letter to, § 37:48  
    witness statement, § 37:49  
Doctor’s narrative report, letter  
requesting, § 37:37  
Forms  
    discovery, above  
    representation of plaintiff, below  
Future medical treatment, letter  
requesting report, § 37:42  
Legal principles, §§ 37:1 to 37:30  
Loss of earnings  
    letter to employer, § 37:45  
    letter to self-employed client,  
    § 37:46  
Medical authorization, format and  
contents, § 37:16  
Medical expenses, letter requesting  
copies of records and bills,  
§ 37:36  
Medical records  
    authorization for release of  
    records to plaintiff’s attorney,  
    § 37:38  
    inspection of medical records by  
    defense attorney, authoriza-  
    tion, § 37:41  
    inspection of medical records by  
    insurer, authorization, § 37:40  
    letter requesting copies of  
    records and bills, § 37:36  
    release, § 37:15  
Preliminary evaluation of case,  
§ 37:10  
Preparation of plaintiff’s case  
    accident report, § 37:12  
    arbitration, § 37:19  
    contents of medical authoriza-  
    tion, § 37:16  
    defendants, potential, § 37:11

**AUTOMOBILE INSURANCE  
LITIGATION—Cont’d**

Preparation of plaintiff’s case  
—Cont’d  
    depositions, sample questions,  
    § 37:18  
    discovery of policy, § 37:17  
    discovery plan, § 37:14  
    format of medical authorization,  
    § 37:16  
    informal discovery. Discovery,  
    above  
    medical authorization, format  
    and contents, § 37:16  
    medical records, release, § 37:15  
    plan for discovery, § 37:14  
    policy-related discovery, § 37:17  
    preliminary evaluation of case,  
    § 37:10  
    release of medical records,  
    § 37:15  
    sample deposition questions,  
    § 37:18  
    special evidence issues, § 37:20  
    uninsured motorist claim require-  
    ments, § 37:13  
Preservation of evidence, letter  
regarding, § 37:44  
Procedural checklist, uninsured  
motorist claim, § 37:31  
Release of medical records, § 37:15  
Representation of plaintiff  
    initial letter to insurer, § 37:35  
    letter advising plaintiff’s insurer  
    of representation, § 37:33  
    letter to client with instructions,  
    § 37:32  
    letter to potential defendant  
    regarding insurance coverage,  
    § 37:34  
Settlement  
    adjuster, contact with, § 37:28  
    contact with adjuster, § 37:28  
    demand, § 37:29

## INDEX

### **AUTOMOBILE INSURANCE LITIGATION—Cont'd**

Settlement—Cont'd  
    factors affecting settlement,  
        § 37:30  
    timing, § 37:27  
Special evidence issues, § 37:20  
Special interrogatories, formal  
    discovery, § 37:50  
Underinsured motorist claim,  
    accident coverage, §§ 37:6, 37:8  
Uninsured Motorists (this index)

### **AUTOMOBILES**

Automobile Insurance Litigation  
    (this index)  
Motor Vehicles (this index)  
Products Liability (this index)

### **AVIATION**

Generally, § 26:1 *et seq.*  
Advertising fees and penalties, strict  
    liability, § 26:24  
Air carrier as party, § 26:8  
Aircraft owner as party, § 26:10  
Airline advertising fees and penal-  
    ties, strict liability, § 26:24  
Airplane pilot as party, § 26:9  
Airport and employees as parties,  
    § 26:14  
Air traffic controller as party,  
    § 26:13  
Applicability of state tort law, § 26:1  
Bailee as party, § 26:9  
Burdens of proof, defenses and limi-  
    tations on recovery, § 26:34  
Choice of law, § 26:5  
Common carriers  
    air carrier as party, § 26:8  
    strict liability, § 26:19  
Comparative negligence, § 26:28  
Defective products, strict liability,  
    § 26:18  
Defenses and limitations on recovery  
    affirmative defenses, § 26:38

### **AVIATION—Cont'd**

Defenses and limitations on recovery  
    —Cont'd  
        answer with affirmative defenses,  
            § 26:38  
        burdens of proof, § 26:34  
        comparative negligence, § 26:28  
        defensive strategies, § 26:25  
        federal preemption, § 26:27  
        General Aviation Revitalization  
            Act of 1994, statute of repose,  
            § 26:32  
        government immunity, § 26:26  
        instructions to jury, § 26:39  
        jury instructions, § 26:39  
        limitation of actions, § 26:31  
        limits on insurance, § 26:30  
        limits on liability, § 26:29  
        regulation, effect of violation,  
            § 26:36  
        res ipsa loquitur, § 26:35  
        statute, effect of violation,  
            § 26:36  
        statute of limitations, § 26:31  
        statute of repose, General Avia-  
            tion Revitalization Act of  
            1994, § 26:32  
        unexplained crash, complaint for  
            wrongful death, § 26:37  
        violation of statute or regulation,  
            § 26:36  
        wrongful death from unexplained  
            crash, complaint for, § 26:37  
Evidence, defenses and limitations  
    on recovery, § 26:34  
Federal preemption, § 26:27  
Federal regulation, § 26:2  
Fees and penalties, strict liability,  
    § 26:24  
Financial responsibility statutes,  
    § 26:4  
Forced landings, strict liability for,  
    § 26:22  
General Aviation Revitalization Act  
    of 1994, statute of repose, § 26:32  
    *et seq.*

**AVIATION—Cont'd**

Governing law, § 26:5  
 Government immunity, § 26:26  
 Instructions to jury, § 26:39  
 Insurance limits, § 26:30  
 International treaties  
     aviation tort law, § 26:3  
     strict liability, § 26:20  
 Invasion of privacy, strict liability, § 26:23  
 Inverse condemnation, strict liability, § 26:23  
 Jurisdiction, § 26:6  
 Jury instructions, § 26:39  
 Legal principles, § 26:1 et seq.  
 Liability theories, §§ 26:17 to 26:24  
 Limitation of actions, § 26:31  
 Limits on insurance, § 26:30  
 Limits on liability, § 26:29  
 Manufacturer as party, § 26:11  
 Mechanic as party, § 26:12  
 Negligence, § 26:17  
 Nuisance, strict liability, § 26:23  
 Owner as party, § 26:10  
 Parties  
     air carrier, § 26:8  
     airport and employees, § 26:14  
     air traffic controller, § 26:13  
     bailee, § 26:9  
     manufacturer, § 26:11  
     mechanic, § 26:12  
     overview, § 26:7  
     owner, § 26:10  
     pilot, § 26:9  
     supplier, § 26:11  
     third parties, § 26:16  
     unmanned aircraft owners and operators, § 26:15  
 Pilot as party, § 26:9  
 Products Liability (this index)  
 Regulation, effect of violation, § 26:36  
 Res ipsa loquitur, § 26:35  
 Special procedures, § 26:6  
 State tort law, § 26:1

**AVIATION—Cont'd**

Statute, effect of violation, § 26:36  
 Statute of limitations, § 26:31  
 Statute of repose, General Aviation Revitalization Act of 1994, § 26:32  
 Strict liability  
     airline advertising fees and penalties, § 26:24  
     common carriers, § 26:19  
     defective products, § 26:18  
     forced landings, § 26:22  
     international treaties, § 26:20  
     invasion of privacy, § 26:23  
     inverse condemnation, § 26:23  
     nuisance, § 26:23  
     trespass, § 26:23  
     ultrahazardous activities, § 26:21  
 Supplier as party, § 26:11  
 Theories of liability, §§ 26:17 to 26:24  
 Third parties, § 26:16  
 Trespass, strict liability, § 26:23  
 Ultrahazardous activities, strict liability, § 26:21  
 Unexplained crash, complaint for wrongful death, § 26:37  
 Unmanned aircraft owners and operators, § 26:15  
 Wrongful death from unexplained crash, complaint for, § 26:37

**B**

**BAD FAITH ACTIONS**

Generally, § 40:1 et seq.  
 Admissibility of inadequate offer during litigation, § 44:70  
 Advantages of cross-complaint, evaluation, § 41:21  
 Affirmative defenses  
     causation, § 42:70  
     checklist of common defenses to bad faith actions, § 42:52  
     damages, § 42:70

## INDEX

### **BAD FAITH ACTIONS—Cont'd**

Affirmative defenses—Cont'd  
equitable defenses, § 42:72  
failure to mitigate, § 42:70  
filing and service, § 42:53  
general affirmative defenses,  
§ 42:55  
general policy conditions  
absence of impairment/  
subrogation, § 42:66  
concealment/fraud, § 42:67  
general defenses after citing  
relevant policy provisions,  
§ 42:68  
period of policy, § 42:65  
good faith defenses, § 42:71  
insurance policy-based affirma-  
tive defenses  
comprehensive general  
liability provision, third  
party bad faith, § 42:57  
conditions, §§ 42:61 to 42:68  
covered cause of loss provi-  
sion, first-party bad faith,  
§ 42:59  
duties after loss condition,  
§ 42:61  
first-party bad faith,  
§§ 42:59, 42:60  
general defense, § 42:56  
lawsuit condition, § 42:63  
non-covered cause of loss  
exclusion, first-party bad  
faith, § 42:60  
other insurance condition,  
§ 42:64  
persons insured provision,  
third party bad faith,  
§ 42:58  
settlement of loss condition,  
§ 42:62  
third party bad faith,  
§§ 42:57, 42:58  
other affirmative defenses,  
§ 42:74

### **BAD FAITH ACTIONS—Cont'd**

Affirmative defenses—Cont'd  
punitive damages defenses,  
§ 42:73  
sample answer to third party  
complaint, § 42:54  
service and filing, § 42:53  
statutory-based defenses, § 42:69  
Answers and other responsive  
procedures  
generally, § 42:48  
affirmative defenses, above  
body of answer, § 42:51  
demurrer, below  
denials, § 42:50  
motion to strike, below  
remand, below  
removal of action, below  
sample answer to third party  
complaint, § 42:54  
time for filing answer, § 42:49  
Arbitration clause, § 41:6  
Assignee of injured party, complaint  
against insurer for bad faith failure  
to defend and indemnify insured  
corporation, § 41:18  
Assignment of insured's action to  
injured party in exchange for cov-  
enant not to execute against  
insured, § 41:19  
Attorney fees, demand for, sample  
demand letter to insurer by  
counsel, § 44:74  
Automobile insurance policy com-  
plaint, § 41:9  
Availability of discovery to support  
punitive damages, § 44:19  
Breach of  
contract  
claims limited, § 22:51  
demurrer to complaint for  
insurance bad faith,  
§ 42:13  
failure to defend, § 40:12  
inducing, § 22:54



**BAD FAITH ACTIONS—Cont'd**

Breach of—Cont'd

implied covenant of good faith and fair dealing, demurrer to complaint for insurance bad faith, § 42:13

Business insurance policy complaint alleging property damage, § 41:12

Business liability policy complaint, § 41:11

Causes of action, complaints and cross-complaints, § 41:4

Collusion, defenses of insurer, § 40:23

Colonial Life discovery

declaration in support of motion to compel further response to request for Colonial life discovery, § 44:46

memorandum of points and authorities in support of motion to compel further response to request for Colonial life discovery, § 44:44

motion to compel further response to request for Colonial life discovery, § 44:43

order granting motion to compel, § 44:49

policyholder consent form, § 44:48

preparing and serving request, § 44:27

request, generally, § 44:17

request for production of documents, § 44:41

sample policyholder letter, § 44:47

special interrogatories seeking Colonial life discovery, § 44:42

statement of disputed requests and responses in support of motion to compel further response to request for Colonial life discovery, § 44:45

**BAD FAITH ACTIONS—Cont'd**

Complaints and cross-complaints

generally, §§ 41:1 to 41:23

advantages of cross-complaint, evaluation, § 41:21

arbitration clause, § 41:6

assignee of injured party, complaint against insurer for bad faith failure to defend and indemnify insured corporation, § 41:18

assignment of insured's action to injured party in exchange for covenant not to execute against insured, § 41:19

automobile insurance policy complaint, § 41:9

business insurance policy complaint alleging property damage, § 41:12

business liability policy complaint, § 41:11

causes of action, § 41:4

damages, § 41:5

declaratory relief, §§ 41:20, 41:23

disability insurance policy complaint, § 41:13

draft, file, and serve complaint, § 41:8

ERISA, § 41:6

homeowner's insurance complaint against insurer alleging property damage, § 41:14

insurer's cross complaint for declaratory relief, § 41:23

life insurance policy complaint against insurer, § 41:15

limitations period applicable to insurance bad faith complaints, § 41:1

other preliminary considerations, § 41:7

parties to bad faith action, § 41:2

## INDEX

### **BAD FAITH ACTIONS—Cont'd**

#### Complaints and cross-complaints

##### —Cont'd

permissive driver, complaint  
against automobile insurer,

§ 41:10

preparation of cross-complaint,

§ 41:22

service of cross-complaint,

§ 41:22

third party claim, complaint by  
insured for insurer's refusal to  
settle, § 41:17

Unfair Competition Act viola-  
tion, complaint for injunctive  
relief [Bus & Prof Code  
§ 17200], § 41:16

venue, § 41:3

Damages, complaints and cross-  
complaints, § 41:5

Declaratory relief, complaints and  
cross-complaints, §§ 41:20, 41:23

#### Defenses of insurer

bad faith of insured, § 40:22

collusion, § 40:23

statute of limitations, § 40:21

#### Demand letters, § 44:68

#### Demurrer

breach of contract, demurrer to  
complaint for insurance bad  
faith, § 42:13

breach of implied covenant of  
good faith and fair dealing,  
demurrer to complaint for  
insurance bad faith, § 42:13

clarification of issues, § 42:5

common grounds in insurance  
bad faith actions, § 42:8

contract not attached to com-  
plaint, memorandum of points  
and authorities in support of  
demurer to complaint for  
insurance bad faith, § 42:14

declaratory relief, demurrer to  
complaint for insurance bad  
faith, § 42:13

### **BAD FAITH ACTIONS—Cont'd**

#### Demurrer—Cont'd

demurrer to complaint for insur-  
ance bad faith on ground of  
failure to state cause of action,  
§§ 42:9, 42:10

expiration of policy prior to loss,  
memorandum of points and  
authorities in support of  
demurer to complaint for  
insurance bad faith, § 42:14

filing and service, § 42:7

format, § 42:6

fraud and deceit, demurrer to  
complaint for insurance bad  
faith, § 42:13

importance of, § 42:2

intentional misrepresentation,  
demurrer to complaint for  
insurance bad faith, § 42:13

memorandum of points and  
authorities in support of  
demurrer

complaint for insurance bad  
faith, § 42:14 et seq.

failure to attach contract or  
plead contract terms,  
§ 42:11

fraud, §§ 42:15, 42:16

Insurance Code section  
790.03, cause of action  
under, § 42:18

intentional infliction of emo-  
tional distress, § 42:17

lack of coverage pursuant to  
express terms of policy,  
§ 42:15

lack of standing, § 42:15

policy expiration prior to loss  
and no contract attached to  
complaint, § 42:14

notice of demurrer and demurrer  
to specific cause of action in  
complaint for insurance bad  
faith, § 42:12

**BAD FAITH ACTIONS—Cont'd**

Demurrer—Cont'd

notice of demurrer to complaint  
for insurance bad faith on  
ground of failure to state cause  
of action, § 42:9

parties, correct  
defendants, § 42:3  
plaintiffs or other individuals,  
§ 42:4

purpose of, § 42:1  
reformation, demurrer to com-  
plaint for insurance bad faith,  
§ 42:13

Denial of coverage, wrongful  
termination claim, sample demand  
letter to insurer by counsel,  
§ 44:72

Depositions

generally, § 44:12  
apex depositions, § 44:16  
high-level corporate officers  
(Apex depositions), § 44:16  
most qualified person (MQP)  
deposition, § 44:15  
notice of deposition of insurance  
agent with request for docu-  
ment production, § 44:39  
notice of deposition of insurance  
company employee with  
request for document produc-  
tion, § 44:38  
notice of deposition of insurance  
underwriter with request for  
document production, § 44:40  
opposing expert witnesses, mat-  
ters to consider, § 44:30  
place, § 44:14  
preparing and serving notice,  
§ 44:26  
subpoena, § 44:13

Disability benefits, sample  
policyholder letter demanding  
action from insurer, § 44:71

Disability claim settlement, sample  
demand letter to insurer by

**BAD FAITH ACTIONS—Cont'd**

policyholder counsel, § 44:75

Disability insurance policy com-  
plaint, § 41:13

Discovery and motions

generally, § 44:1 *et seq.*  
admissibility of inadequate offer  
during litigation, § 44:70

Colonial Life discovery, above  
confidentiality of documents  
produced, stipulations for  
maintaining, § 44:3

demand letters, § 44:68

denial of coverage, wrongful  
termination claim, sample  
demand letter to insurer by  
counsel, § 44:72

depositions, above  
disability benefits, sample  
policyholder letter demanding  
action from insurer, § 44:71

expert witnesses, below  
financial discovery, below  
interrogatories, below  
motion to compel, § 44:18

preparing and serving Colonial  
Life discovery request,  
§ 44:27

preparing and serving motion for  
financial discovery, § 44:28

production of documents, below  
punitive damages, availability in  
support, § 44:19

purpose of interrogatories, § 44:4

sample policyholder letter  
demanding action from  
insurer, § 44:71

specific documents to request in  
insurance action, § 44:2

stipulations for maintaining  
confidentiality of documents  
produced, § 44:3

stipulation to confidentiality of  
settlement negotiations (white  
waiver), §§ 44:69, 44:78

## INDEX

### **BAD FAITH ACTIONS—Cont'd**

Discovery and motions—Cont'd  
    timing of request and responses, § 44:1  
    use of interrogatories, § 44:4  
Draft, file, and serve complaint, § 41:8  
ERISA, complaints and cross-complaints, § 41:6  
Expert witnesses  
    generally, § 44:20  
    deposing opposing expert witnesses, matters to consider, § 44:30  
    exchanging information respecting, § 44:29  
    timing of deposition of claims handling expert witness, § 44:21  
Financial discovery  
    declaration in support of motion for order permitting discovery of insurance company financial condition, § 44:52  
    memorandum of points and authorities in support of motion for order permitting discovery of insurance company financial condition, § 44:51  
    motion for order permitting discovery of insurance company financial condition, § 44:50  
    order permitting discovery of insurance company financial condition, § 44:53  
    preparing and serving motion for financial discovery, § 44:28  
Fire claim on property policy, sample policyholder settlement demand letter, § 44:77  
First party actions  
    duty not to unreasonably withhold benefits, § 40:19  
    nature of claims, § 40:18

### **BAD FAITH ACTIONS—Cont'd**

First party actions—Cont'd  
    unreasonable withholding of benefits, §§ 40:19, 40:20  
Form interrogatories, § 44:7  
Fraudulent inducement to enter contract, § 22:52  
Hearings, setting date, matters to be considered, § 44:64  
Homeowner's insurance complaint against insurer alleging property damage, § 41:14  
Implied covenant of good faith and fair dealing  
    generally, § 40:1  
    nature of implied covenant, § 40:2  
Insurance Bad Faith Litigation (this index)  
Insured's bad faith as insurer's defense, § 40:22  
Insurer's cross complaint for declaratory relief, § 41:23  
Intentional inference with contractual relations, § 22:53  
    prospective economic advantage, § 22:55  
Interrogatories  
    answers, § 44:9  
    declaration of counsel in support of additional discovery by interrogatories, § 44:36  
    first party claims of underinsurance, special interrogatories to insured, § 44:35  
    form interrogatories, § 44:7  
    homeowner's policy, special interrogatories to insurance company, § 44:34  
    preparing and serving, § 44:24  
    purpose and use, § 44:4  
    service, § 44:6  
    special interrogatories, § 44:8  
    special interrogatories seeking Colonial life discovery, § 44:42

**BAD FAITH ACTIONS—Cont'd**

Interrogatories—Cont'd  
supplemental, § 44:10  
timing, § 44:5  
who may be served interrogatory, § 44:6

Judgment on pleadings  
determining whether to move for judgment on pleadings, § 44:63  
grounds for motion for on pleadings, § 44:57  
memorandum of points and authorities supporting insurance company's motion for judgment on pleadings on professional liability policy, § 44:67  
motion for judgment on pleadings, § 44:56  
preparing motion, matters to be considered, § 44:64  
strategy in bringing motion for judgment on pleadings, § 44:59

Judicial notice request, § 44:58

Life insurance policy complaint against insurer, § 41:15

Limitations period applicable to insurance bad faith complaints, § 41:1

Medical benefits, unreasonable denial, sample policyholder demand letter, § 44:76

Memorandum of points and authorities in support of demurrer complaint for insurance bad faith, § 42:14 *et seq.*  
failure to attach contract or plead contract terms, § 42:11  
fraud, §§ 42:15, 42:16  
Insurance Code section 790.03, cause of action under, § 42:18  
intentional infliction of emotional distress, § 42:17

**BAD FAITH ACTIONS—Cont'd**

Memorandum of points and authorities in support of demurrer—Cont'd  
lack of coverage pursuant to express terms of policy, § 42:15  
lack of standing, § 42:15  
policy expiration prior to loss and no contract attached to complaint, § 42:14

Memorandum of points and authorities in support of motion for order permitting discovery of insurance company financial condition, § 44:51

Memorandum of points and authorities in support of motion to compel further response to request for Colonial life discovery, § 44:44

Memorandum of points and authorities in support of motion to remand, § 42:44

Memorandum of points and authorities in support of motion to strike notice of motion to strike, § 42:22  
support of motion to strike prayer for punitive damages, § 42:25

Memorandum of points and authorities supporting insurance company's motion for judgment on pleadings on professional liability policy, § 44:67

Memorandum of points and authorities supporting insured's motion for summary adjudication on duty to defend, § 44:65

Motion to strike  
filing and service of documents, § 42:23  
grounds to appear on face of pleading, § 42:20  
insurance bad faith actions, § 42:21

## INDEX

### **BAD FAITH ACTIONS—Cont'd**

#### **Motion to strike—Cont'd**

memorandum of points and  
authorities

notice of motion to strike,  
§ 42:22

support of motion to strike  
prayer for punitive dam-  
ages, § 42:25

notice of motion, § 42:24

prayer for punitive damages,  
§§ 42:24, 42:25

preparation of motion and memo-  
randum of points and authori-  
ties, § 42:22

purpose, § 42:19

support of motion to strike prayer  
for punitive damages, § 42:25

#### **Parties to bad faith action**

complaints and cross-complaints,  
§ 41:2

third party actions, below

#### **Permissive driver, complaint against automobile insurer, § 41:10**

#### **Production of documents**

determining need, § 44:22

insurance agent, request from,  
§ 44:32

insurance company, request  
from, § 44:31

notice of deposition of insurance  
agent with request for docu-  
ment production, § 44:39

notice of deposition of insurance  
company employee with  
request for document produc-  
tion, § 44:38

notice of deposition of insurance  
underwriter with request for  
document production, § 44:40

preparing and serving request,  
§ 44:23

protective order, stipulation,  
§ 44:33

### **BAD FAITH ACTIONS—Cont'd**

#### **Production of documents—Cont'd**

request for production seeking  
Colonial Life discovery,  
§ 44:41

Punitive damages, availability of  
discovery to support, § 44:19

#### **Remand**

costs award, § 42:37

declaration in support of motion  
to remand, § 42:45

defective removal and lack of  
federal question memorandum  
of points and authorities in  
support of motion to remand,  
§ 42:44

lack of subject matter jurisdiction  
or defect, remand based on,  
§ 42:36

memorandum of points and  
authorities in support of  
motion to remand, § 42:44

motion to remand to state court,  
§ 42:39

notice of motion to remand and  
supporting documents, § 42:43

opposition to motion to remand  
to state court, § 42:40

order for remand, § 42:41  
order granting motion to remand,  
§ 42:46

original state court, remand to,  
§ 42:38

parallel proceeding in state court,  
notice of motion to remand  
and supporting documents,  
§ 42:43

stipulation, § 42:42

stipulation and order to remand  
to state court, § 42:47

#### **Removal of action**

adverse party, notice to of  
removal to federal court,  
§ 42:34

diversity of citizenship require-  
ment, § 42:27

**BAD FAITH ACTIONS—Cont'd**

Removal of action—Cont'd  
     federal court, removal to, § 42:29  
     notice of consent to removal, § 42:32  
     notice of removal based on diversity jurisdiction, §§ 42:31, 42:33  
     objection to same-state defendant fraudulently named, notice of removal based on diversity jurisdiction, § 42:33  
     order of removal, § 42:30  
     reasons for removal, § 42:26  
     removal usually based on diversity jurisdiction, § 42:35  
     waiver of right to remove, § 42:28  
 Request for admissions  
     generally, § 44:11  
     insurance company's requests, § 44:37  
     preparing and serving, § 44:25  
 Service of cross-complaint, § 41:22  
 Service of Interrogatories, § 44:6  
 Settlement  
     authority, demand for, sample demand letter to insurer by counsel, § 44:74  
     disability claim, sample demand letter to insurer by policyholder counsel, § 44:75  
     fire claim on property policy, sample policyholder settlement demand letter, § 44:77  
     medical benefits, unreasonable denial, sample policyholder demand letter, § 44:76  
     participation in settlement, sample demand letter to insurer by counsel, § 44:73  
     stipulation to confidentiality of settlement negotiations, § 44:69  
 Special interrogatories, § 44:8

**BAD FAITH ACTIONS—Cont'd**

Statute of limitations, defenses of insurer, § 40:21  
 Stipulation  
     confidentiality during litigation (white waiver stipulation), §§ 44:69, 44:78  
     confidentiality of settlement negotiations, § 44:69  
     confidentiality of settlement negotiations (white waiver), § 44:69  
     maintaining confidentiality of documents produced, § 44:3  
     production of documents, protective order, § 44:33  
 Summary adjudication  
     denial of defendant's motion for summary adjudication, memorandum of points and authorities supporting insured's motion for summary adjudication on duty to defend, § 44:65  
     determining whether to move for summary judgment or summary adjudication, § 44:60  
     gathering evidence to support motion for summary judgment or summary adjudication, § 44:61  
     lack of coverage for property manager, memorandum of points and authorities supporting insurance company's motion for summary judgment or summary adjudication, § 44:66  
     memorandum of points and authorities supporting insurance company's motion for summary judgment or summary adjudication on lack of coverage, § 44:66  
     memorandum of points and authorities supporting insured's motion for summary



## INDEX

### **BAD FAITH ACTIONS—Cont'd**

Summary adjudication—Cont'd  
adjudication on duty to defend,  
§ 44:65  
preparing, serving and filing  
motion for summary judgment  
or summary adjudication,  
§ 44:62  
Summary judgment  
generally, § 44:55  
determining whether to move for  
summary judgment or sum-  
mary adjudication, § 44:60  
gathering evidence to support  
motion for summary judgment  
or summary adjudication,  
§ 44:61  
general nature and purpose of  
motion for, § 44:54  
grounds for motion for summary  
judgment on pleadings,  
§ 44:57  
lack of coverage for property  
manager, memorandum of  
points and authorities support-  
ing insurance company's  
motion for summary judgment  
or summary adjudication,  
§ 44:66  
memorandum of points and  
authorities supporting insur-  
ance company's motion for  
summary judgment or sum-  
mary adjudication on lack of  
coverage, § 44:66  
motion for summary judgment on  
pleadings, § 44:56  
preparing, serving and filing  
motion for summary judgment  
or summary adjudication,  
§ 44:62  
strategy in bringing motion for  
judgment on pleadings,  
§ 44:59  
Supplemental interrogatories,  
§ 44:10

### **BAD FAITH ACTIONS—Cont'd**

Third party actions  
assignment of insured's cause of  
action for breach of insurer's  
duty to accept reasonable  
settlement offer, § 40:9  
bad faith in settling claim, § 40:7  
complaint by insured for  
insurer's refusal to settle third  
party claim, § 41:17  
evidence of failure to accept rea-  
sonable settlement offer,  
§ 40:5  
failure to defend  
competent defense, duty to  
provide, § 40:11  
constructive notice, § 40:14  
duty to defend, § 40:10  
duty to provide competent  
defense, § 40:11  
insurer's defense of insured  
under reservation of rights,  
§ 40:17  
insurer's defenses against  
failure to defend, § 40:15  
insurer's settlement with  
claimant after insurer's  
refusal to defend, § 40:16  
notice of action against  
insured, § 40:13  
refusal to defend as breach of  
contract or bad faith,  
§ 40:12  
grounds for third party actions,  
§ 40:3  
liability for unreasonable failure  
to settle, § 40:4  
opportunity to settle, § 40:6  
punitive damages, § 40:8  
unreasonable failure to settle,  
§ 40:4  
Timing of interrogatories, § 44:5  
Unfair Competition Act violation,  
complaint for injunctive relief  
[Bus & Prof Code § 17200],  
§ 41:16

**BAD FAITH ACTIONS—Cont'd**

Venue, complaints and cross-complaints, § **41:3**  
 White waiver, stipulation to confidentiality of settlement negotiations, §§ **44:69, 44:78**  
 Wrongful termination claim, denial of coverage, sample demand letter to insurer by counsel, § **44:72**

**BANKRUPTCY**

Legal malpractice  
     bankruptcy matter, complaint by former client against solo practitioner for negligence, § **33:72**  
     negligent handling of bankruptcy matter, § **33:8**  
 Malicious prosecution, preemption by federal bankruptcy law, § **19:27**  
 Punitive damages generally not dischargeable, § **7:38**

**BATHHOUSE**

Nuisance, allegations for use in complaint [Pen Code §§ 11225, 11227], § **17:32**

**BATTERY**

Assault and Battery (this index)

**BELOW SURFACE TRESPASS**

Generally, § **18:8**

**BOATS AND VESSELS**

Admiralty, actions in, § **27:6**  
 Age requirement for operation of motor boats [Harb & Nav Code § 658.5], § **27:9**  
 Aquaplane or similar device, requirements for towing person [Harb & Nav Code §§ 658, 658.7], § **27:15**  
 Collision between boats  
     duties of persons involved in collision, § **27:11**  
     immunity from liability for rendering assistance [Harb &

**BOATS AND VESSELS—Cont'd**

Collision between boats—Cont'd  
     Nav Code § 656, subd (b)], § **27:13**  
     negligence of operator, liability of owner [Harb & Nav Code § 661], § **27:12**  
     owner's liability for negligence of operator [Harb & Nav Code § 661], § **27:12**  
 Navigational rules [Harb & Nav Code §§ 250 to 259], § **27:8**  
 Rules for operation  
     age requirement for operation of motor boats [Harb & Nav Code § 658.5], § **27:9**  
     alcohol or drugs, prohibition of operation under influence [Harb & Nav Code §§ 655, 655.6, subd (a)], § **27:10**  
     jet skis, application of boating statutes, § **27:7**  
     navigational rules [Harb & Nav Code §§ 250 to 259], § **27:8**  
     negligent operation, prohibition [Harb & Nav Code §§ 655, 655.6, subd (a)], § **27:10**  
 Speed limit near bathing and bathing areas [Harb & Nav Code § 655.2], § **27:14**  
 Towing person on water skis, aquaplane, or similar device, requirements [Harb & Nav Code §§ 658, 658.7], § **27:15**  
 Water-skiers and swimmers, boating rules  
     bathing and bathing area, speed limit [Harb & Nav Code § 655.2], § **27:14**  
     five-mile per hour speed limit near bathing and bathing areas [Harb & Nav Code § 655.2], § **27:14**  
     speed limit near bathing and bathing areas [Harb & Nav Code § 655.2], § **27:14**

## INDEX

### **BOATS AND VESSELS—Cont'd**

Water-skiers and swimmers, boating rules—Cont'd  
towing person on water skis, aquaplane, or similar device, requirements [Harb & Nav Code §§ 658, 658.7], § **27:15**

### **BROADCASTERS**

Defamation, common law and specific statutory provisions, §§ **21:55, 21:56**

### **BUSINESS**

Privacy actions in, § **20:21**

## **C**

### **CALIFORNIA DEPARTMENT OF INSURANCE (CDI)**

Compliance with, § **37:4**

### **CARRIERS**

Common Carriers (this index)  
Strict liability, complaint by mail carrier under dog bite statute, § **2:22**

### **CHILDHOOD SEXUAL ABUSE**

Repression of Childhood Sexual Abuse (this index)

### **CHILDREN AND MINORS**

Defamation, persons charged with child abuse, § **21:9**  
False imprisonment and false arrest, statutory defense for social worker or peace officer detaining child, § **13:12**  
Loss of child's consortium, availability of claim, § **10:3**  
Motor vehicle operator liability, child pedestrian struck by owner-operator, allegation, form, § **25:44**  
Negligence  
breach of duty of care, § **1:25**  
duty owed to children, § **1:7**

### **CHILDREN AND MINORS —Cont'd**

Parent liability for torts of child  
agency relationship, § **3:36**  
general rule of nonliability, § **3:33**  
knowledge of prior misconduct and negligent control, § **3:34**  
negligent control, § **3:34**  
willful misconduct, statutory liability, § **3:35**  
Wrongful Death (this index)

### **COLLATERAL SOURCE RULE**

Medical Injury Compensation Reform Act (MICRA), §§ **8:9, 8:10**  
Mitigation of Damages (this index)  
Wrongful death, § **23:9**

### **COLLUSION**

Bad faith actions, insurer's defenses, § **40:23**

### **COMMON CARRIERS**

Generally, § **28:1 et seq.**  
Acts of others, liability, employer liability for acts of contractor, public franchise to employer, § **3:23**  
Aviation (this index)  
Checklists  
loss of or damage to goods, action against carrier of goods, § **28:36**  
personal injury action against passenger common carrier, § **28:35**  
Definitions  
private carriers distinguished, § **28:2**  
types, § **28:1**  
Employer liability for acts of contractor, public franchise to employer, § **3:23**

**COMMON CARRIERS—Cont'd**  
Forms

- affirmative defenses, §§ **28:43 to 28:48**
- assault and battery by fellow passenger, complaint by passenger [Civ Code § 2100], § **28:41**
- comparative negligence of motorist injured in collision with train at railroad crossing, affirmative defense, § **28:44**
- comparative negligence of passenger injured while boarding, affirmative defense, § **28:43**
- complaints and allegations, §§ **28:37 to 28:42**
- contractual limitation of liability of freight carrier, defense of [Cal Com Code § 7309(2)], § **28:47**
- defective seat on vehicle, complaint by passenger based on injuries from [Civ Code § 2101], § **28:40**
- failure to comply with notice of claim provision in bill of lading as defense [Cal Com Code § 7309(3)], § **28:48**
- imminent peril, defense of reduction of carrier's duty of care, § **28:45**
- injury to or loss of property, complaint alleging strict liability and negligence [Civ Code §§ 2194, 2195], § **28:42**
- injury to passenger, complaints and allegations, §§ **28:37 to 28:41**
- passenger's injuries sustained when passenger slipped on step while boarding, complaint form [Civ Code § 2100], § **28:38**
- sudden stopping of vehicle, allegation of personal injury

**COMMON CARRIERS—Cont'd**  
Forms—Cont'd

- caused by, § **28:39**
- trespasser on moving train, defense that action barred by statute limiting liability as to [Civ Code § 1714.7], § **28:46**
- wrongful ejection of passenger, complaint form [Civ Code § 2188], § **28:37**
- Freight carriers
  - actions against common carriers
    - negligence per se, applicability, § **28:30**
    - notice of claim, § **28:27**
    - preconditions to action, § **28:27**
    - res ipsa loquitur, applicability, § **28:29**
    - statutes of limitation, § **28:28**
  - comparative negligence, defense of, § **28:32**
  - condition of goods delivered to carrier, defense of, § **28:33**
  - contractual limitations on liability, § **28:25**
  - defenses, §§ **28:31 to 28:34**
  - express assumption of risk as defense, § **28:31**
  - imminent peril doctrine as defense, § **28:34**
  - injury to or loss of property [Civ Code §§ 2194, 2195], § **28:42**
  - limitations on liability
    - contractual, § **28:25**
    - statutory, § **28:26**
  - loss of or injury to goods
    - insurer, liability as, § **28:23**
    - negligence, liability for, § **28:24**
    - statutes of limitation, § **28:28**
    - statutory limitations on liability, § **28:26**
- General duty of care
  - baggage of passengers, duty of care regarding, § **28:8**

## INDEX

### COMMON CARRIERS—Cont'd

General duty of care—Cont'd  
    employees, carrier's liability for acts of, § 28:9  
    standard of care owed to passengers, § 28:6  
    time to apply duty, § 28:7  
Governing law  
    federal regulation, § 28:3  
    general obligations, § 28:5  
    personal injury actions, § 28:4  
    state regulation, § 28:3  
Legal principles, §§ 28:1 to 28:34  
Negligence, breach of duty of care, § 1:22  
Passenger carriers  
    alighting from or boarding vehicle, specific liabilities, § 28:11  
    assault and battery by fellow passenger, complaint by passenger [Civ Code § 2100], § 28:41  
    assault by fellow passenger, specific liabilities, § 28:16  
    boarding or alighting from vehicle, specific liabilities, § 28:11  
    defective equipment, specific liabilities, § 28:15  
    defective seat on vehicle, complaint by passenger based on injuries from [Civ Code § 2101], § 28:40  
    ejection of passenger, liability, § 28:19  
    evidence gathering following accident, duty of, § 28:17  
    general duty of care  
        baggage, duty of care regarding, § 28:8  
        employees, carrier's liability for acts of, § 28:9  
        standard of care owed, § 28:6  
        time to apply duty, § 28:7  
    injury to or loss of property, complaint alleging strict liability and negligence [Civ

### COMMON CARRIERS—Cont'd

Passenger carriers—Cont'd  
    Code §§ 2194, 2195], § 28:42  
    injury to passenger, complaints and allegations, §§ 28:37 to 28:41  
    negligences, specific liabilities to nonpassengers  
        negligent operation of vehicle, § 28:20  
        property or equipment owned by railroad, condition of, § 28:21  
        railroad's liability to trespassers, § 28:22  
        trespassers, railroad's liability to, § 28:22  
    negligences, specific liabilities to passengers  
        assault by fellow passenger, § 28:16  
        boarding or alighting from vehicle, § 28:11  
        defective equipment, § 28:15  
        evidence gathering following accident, duty of, § 28:17  
        negligent operation of vehicle, § 28:13  
        overcrowding, § 28:12  
        platform or waiting area, condition of, § 28:10  
        station, condition of, § 28:10  
        sudden movement, § 28:14  
    negligent operation of vehicle  
        nonpassengers, specific liabilities to, § 28:20  
        passengers, specific liabilities to, § 28:13  
    overcrowding, specific liabilities, § 28:12  
    passenger's injuries sustained when passenger slipped on step while boarding, complaint form [Civ Code § 2100], § 28:38

**COMMON CARRIERS—Cont'd**

Passenger carriers—Cont'd

platform or waiting area, specific liabilities as to condition of, § 28:10

property or equipment owned by railroad, condition of, § 28:21  
refusal to admit passenger, liability, § 28:18

station, specific liabilities as to condition of, § 28:10

sudden movement, specific liabilities, § 28:14

sudden stopping of vehicle, allegation of personal injury caused by, form, § 28:39

trespassers, railroad's liability to, § 28:22

wrongful ejection of passenger, complaint form [Civ Code § 2188], § 28:37

wrongful ejection of passenger, liability, § 28:19

wrongful refusal to admit passenger, liability, § 28:18

Personal injury actions

checklist, personal injury action against passenger common carrier, § 28:35

governing law, § 28:4

sudden stopping of vehicle, allegation of personal injury caused by, form, § 28:39

Public franchises, employer liability for acts of contractor, § 3:23

Statutes of limitation, freight carriers, § 28:28

Trespasser on moving train, defense that action barred by statute limiting liability as to [Civ Code § 1714.7], § 28:46

Trespassers, railroad's liability to, § 28:22

**COMMON LAW ACTIONS**

Defamation (this index)

**COMMON LAW ACTIONS**

—Cont'd

Indemnity, Contribution, and Setoff (this index)

Invasion of Privacy (this index)

Strict liability, §§ 2:3, 2:18 to 2:21

**COMPARATIVE NEGLIGENCE**

Allegation of, form, § 1:63

Apportionment, plaintiff and multiple defendants, § 1:46

Aviation, § 26:28

Common carriers

freight carriers, defense of comparative negligence, § 28:32

passenger carriers

comparative negligence of motorist injured in collision with train at railroad crossing, affirmative defense, § 28:44

comparative negligence of passenger injured while boarding, affirmative defense, § 28:43

Implied 8220primary assumption of risk8221 remains complete defense, § 1:44

Last clear chance doctrine, effect on, § 1:43

Legal malpractice, §§ 33:61, 33:78

Medical malpractice, §§ 32:69, 32:81

Negligence, allegation of comparative negligence, § 1:63

Nuisance, defense considerations, §§ 17:22, 17:36

Premises liability, § 16:31

Primary assumption of risk, § 1:45

Products liability, defense applicable to strict liability and negligence, § 24:104

Pure form, adoption, § 1:42

Reasonable implied assumption of risk, effect on, § 1:45

## INDEX

### COMPARATIVE NEGLIGENCE

#### —Cont'd

Secondary assumption of risk, § 1:43  
Successor attorney, § 33:78  
Ultrahazardous activities, § 2:9  
Unreasonable implied assumption of risk, § 1:43  
Wrongful death, § 23:16

### COMPENSATORY DAMAGES

#### Calculation of award

attorney fees, § 5:29  
double recovery, § 5:25  
inflation, §§ 5:26, 5:27  
past inflation loss, § 5:27  
prejudgment interest, § 5:28  
prohibition of double recovery, § 5:25  
reduction to present cash value, § 5:26  
taxability of award, § 5:30

#### Causation, § 5:2

#### Certainty, § 5:3

#### Death and survival, § 9:2

#### Defamation, § 21:65

#### Definition, § 5:1

#### Extent of damages, § 5:2

#### False imprisonment and false arrest, § 13:14

#### Forms

allegation of damages for complete destruction of property, § 5:31  
allegation of damages for loss of use of property, § 5:34  
allegation of damages for lost profits caused by damage to property, § 5:33  
allegation of damages in actions for destruction of property, § 5:32  
allegation of damages in actions for destruction of property having market value and special value [Civ Code § 3355], § 5:32

### COMPENSATORY DAMAGES

#### —Cont'd

#### Forms—Cont'd

demand for relief in action in superior court alleging personal injury [Code Civ Proc § 425.10 subd (b)], § 5:35  
request for statement of damages [Code Civ Proc § 425.11], § 5:36

statement of damages (personal injury or death) [Judicial Council Form 982(a)(24)], § 5:37

statement preserving right to seek punitive damages [Code Civ Proc § 425.115], § 5:38

#### Future damages, § 5:3

#### General damages versus special damages, § 5:4

#### Legal principles, §§ 5:1 to 5:30

#### Noneconomic damages, several liability (Proposition 51), § 5:5

#### Personal injury

aggravation of preexisting condition, elements of recovery, § 5:12

demand for relief in action in superior court alleging personal injury [Code Civ Proc § 425.10 subd (b)], form, § 5:35

earnings and earning capacity, elements of recovery for loss, § 5:14

elements of recovery, §§ 5:11 to 5:17

increased living expenses, elements of recovery, § 5:16

loss of earnings and earning capacity, elements of recovery, § 5:14

lost profits, elements of recovery, § 5:15

medical care subsequent to aggravation of preexisting



## COMPENSATORY DAMAGES

### —Cont'd

Personal injury—Cont'd  
     condition, elements of recovery, § 5:12  
     medical expenses, elements of recovery, §§ 5:12, 5:13  
     pain and suffering, elements of recovery, § 5:11  
     preexisting condition, aggravation and subsequent medical care, elements of recovery, § 5:12  
     prospective damages, elements of recovery, § 5:17  
     special pleading rules  
         amount of damages awarded, § 5:10  
         amount of damages not stated in complaint, § 5:6  
         award amount, § 5:10  
         method of service, § 5:9  
         request for statement of damages, § 5:7  
         service, § 5:9  
         statement of damages, generally, § 5:8  
     statement of damages [Judicial Council Form 982(a)(24)], form, § 5:37  
 Personal property  
     allegation of damages for complete destruction of property, form, § 5:31  
     allegation of damages for lost profits caused by damage to property, form, § 5:33  
     allegation of damages in actions for destruction of property having market value and special value [Civ Code § 3355], form, § 5:32  
     converted property, elements of recovery, § 5:20  
     damaged property, elements of recovery, § 5:18

## COMPENSATORY DAMAGES

### —Cont'd

Personal property—Cont'd  
     destroyed property, elements of recovery, § 5:19  
     elements of recovery, generally, §§ 5:18 to 5:20  
 Pleading issues, § 5:4  
 Proposition 51, several liability for noneconomic damages, § 5:5  
 Punitive damages, statement preserving right to seek, form, § 5:38  
 Purpose, § 5:1  
 Real property  
     allegation of damages for complete destruction of property, form, § 5:31  
     allegation of damages for loss of use of property, form, § 5:34  
     allegation of damages for lost profits caused by damage to property, form, § 5:33  
     allegation of damages in actions for destruction of property having market value and special value [Civ Code § 3355], form, § 5:32  
     annoyance and discomfort, elements of recovery, § 5:23  
     crops, elements of recovery, § 5:24  
     damaged, elements of recovery, § 5:22  
     discomfort and annoyance, elements of recovery, § 5:23  
     elements of recovery, generally, §§ 5:21 to 5:24  
     minerals, elements of recovery, § 5:24  
     trees, elements of recovery, § 5:24  
     wrongfully occupied, elements of recovery, § 5:21  
 Reasonableness, § 5:3  
 Special damages versus general damages, § 5:4

## INDEX

### COMPENSATORY DAMAGES

#### —Cont'd

- Statement of damages, personal injury or wrongful death, form, § 5:37
- Statement preserving right to seek punitive damages form, § 5:38
- Trespass, § 18:13
- Wrongful death
  - special pleading rules
    - amount of damages awarded, § 5:10
    - amount of damages not stated in complaint, § 5:6
    - award amount, § 5:10
    - method of service, § 5:9
    - request for statement of damages, § 5:7
    - service, § 5:9
    - statement of damages, generally, § 5:8
  - statement of damages [Judicial Council Form 982(a)(24)], form, § 5:37

### COMPROMISE

- Negligence (this index)
- Wrongful death
  - order approving minor's compromise of wrongful death action, § 23:52
  - petition of guardian ad litem for order approving compromise of minor's wrongful death action, § 23:51

### CONSTITUTIONAL LAW

- Defamation (this index)
- Intentional infliction of emotional distress, constitutional privilege as potential defense, § 14:12
- Invasion of privacy, actions under California constitution, §§ 20:18 to 20:20
- Medical Injury Compensation Reform Act (MICRA), § 8:6

### CONSTITUTIONAL LAW

#### —Cont'd

- Stalking, defense that alleged stalking is constitutionally protected activity [Civ Code § 1708.7 subd (f)], form, § 12:55

### CONTRACTORS

- Employer liability for acts of contractor. Acts of Others, Liability (this index)
- Highway contractors, negligence, duty owed, § 1:11
- Products liability, defense alleging design defect, government contractor's defense, form, § 24:114
- Products liability, government contractor's defense alleging design defect, form, § 24:114

### CONTRIBUTION

- Indemnity, Contribution, and Setoff (this index)

### CONVERSION

- Actual interference with possessory or ownership interests in property, § 15:6
- Allegation of conversion against sheriff for wrongful seizure and sale of property, form, § 15:26
- Allegation of demand for return of property initially acquired lawfully, form, § 15:25
- Alternative causes of action, § 15:2
- Attorney's fees, § 15:13
- Checklist, matters to consider, § 15:22
- Complaints
  - allegation of conversion against sheriff for wrongful seizure and sale of property, § 15:26
  - allegation of demand for return of property initially acquired lawfully, § 15:25

**CONVERSION—Cont'd**

Complaints—Cont'd

- alternative damages provision [Civ Code § 3336], § **15:24**
- demand for return of property initially acquired lawfully, § **15:25**
- tangible personal property, damages for conversion [Civ Code § 3336], § **15:23**
- wrongful seizure and sale by sheriff, allegation of conversion, § **15:26**

Damages

- attorney's fees, § **15:13**
- complaints [Civ Code § 3336], §§ **15:23, 15:24**
- expense incurred in pursuit of property, § **15:13**
- interest, § **15:14**
- mitigation of damages, § **15:16**
- peculiar value to plaintiff, § **15:11**
- presumed damages, § **15:9**
- punitive damages, § **15:15**
- recovery of special or limited interest in property, § **15:12**
- special or limited interest in property, § **15:12**
- value of converted property, §§ **15:10, 15:11**

Defense considerations

- consent, § **15:18**
- demand for return of property, § **15:20**
- estoppel, § **15:19**
- immunity of personal representative, § **15:21**
- personal representative's immunity, § **15:21**
- privilege, § **15:18**
- statute of limitations, § **15:17**
- waiver and estoppel, § **15:19**

Elements, § **15:1**

Emotional distress damages, § **15:11**

**CONVERSION—Cont'd**

Expense incurred in pursuit of property, § **15:13**

Forms

- affirmative defense of privilege, § **15:27**
- complaints, above

Intentional conduct and strict liability, § **15:7**

Interest, damages, § **15:14**

Interference with possessory or ownership interests in property, § **15:2**

Legal principles, §§ **15:1 to 15:21**

Limited interest in property, § **15:12**

Methods of converting property, § **15:8**

Mitigation of damages, § **15:16**

Money as property subject to conversion, § **15:5**

Nature, § **15:1**

Presumed damages, § **15:9**

Procedural checklist, matters to consider, § **15:22**

Property

- emotional distress damages, § **15:11**
- money, § **15:5**
- owned by plaintiff, § **15:3**
- possessed by plaintiff, § **15:3**
- tangible personal property, § **15:4**
- value of converted property, §§ **15:10, 15:11**

Punitive damages, § **15:15**

Recovery of special or limited interest in property, § **15:12**

Related causes of action, § **15:2**

Remedies, § **15:2**

Special or limited interest in property, § **15:12**

Statute of limitations, § **15:17**

Strict liability, § **15:7**

## INDEX

### **CONVERSION—Cont'd**

Substantial interference with possessory or ownership interests in property, § 15:6

Tangible personal property  
complaint, damages for conversion of tangible personal property [Civ Code § 3336], § 15:23

property subject to conversion, § 15:4

Value of converted property, §§ 15:10, 15:11

Value of converted property, damages, §§ 15:10, 15:11

### **CORPORATIONS**

Defamation, § 21:5

Defendants, restrictions on liability, punitive damages, § 7:8

### **CORRECTIONAL FACILITIES**

Public entities, liability as to condition of facilities [Gov Code §§ 844.6 subd (c), 845.2], § 31:28

### **CREDIT REPORTING**

Privacy actions in, § 20:21

### **CREDIT REPORTING AGENCIES**

Defamation, statutory privilege for, § 21:42

### **CRIMINAL TRESPASS**

Generally, § 18:2

### **CROSSWALKS**

Allegation by pedestrian against owner-operator of motor vehicle that struck pedestrian in unmarked crosswalk, form, § 25:40

## **D**

### **DALKON SHIELD LIABILITY CLAIMANT'S TRUST**

Limitation period [Code Civ Proc § 340.7], § 24:74

### **DAMAGES**

Compensatory Damages (this index)

Death and Survival (this index)

Drivers' licenses. Motor Vehicles (this index)

Emotional Distress (this index)

Mitigation of Damages (this index)

Motor Vehicles (this index)

Punitive Damages (this index)

### **DANGEROUS CONDITION OF PRODUCT**

Products liability, negligence, manufacturer's and seller's duty to warn of dangerous condition of product, §§ 24:40 to 24:42

### **DANGEROUS CONDITION OF PROPERTY**

Correctional facilities, governmental immunity [Gov Code §§ 844 et seq.], § 29:13

Governmental immunity  
generally [Gov Code §§ 830.6 et seq.], § 29:12

correctional facilities [Gov Code §§ 844 et seq.], § 29:13

firefighting activities, dangerous condition of property, provision of services, and facilities [Gov Code §§ 850 et seq.], § 29:14

health care services [Gov Code §§ 850 et seq.], § 29:14

police services and correctional facilities [Gov Code §§ 844 et seq.], § 29:13

Premises liability, duties of landlord, §§ 16:14, 16:15

### **DEATH AND SURVIVAL**

Allegation for punitive damages, notice of motion and motion to strike allegation and portion of prayer in action being continued [Code Civ Proc § 435, 377.42], form, § 9:16

## DEATH AND SURVIVAL

### —Cont'd

Allegation of death of plaintiff and right of to bring action, form, **§ 9:14**

Allegation of pain and suffering being continued, notice of motion and motion to strike [Code Civ Proc § 435, 377.34], form, **§ 9:15**

Capacity as successor in interest, declaration by person seeking to commence or continue action in [Code Civ Proc § 377.32], form, **§ 9:10**

### Checklists

defendant, instituting or continuing action after death, **§ 9:9**

plaintiff, instituting or continuing action after death, **§ 9:8**

Compensatory damages, **§ 9:2**

Consolidation of survival action with wrongful death action, **§ 9:4**

### Damages

compensatory damages, **§ 9:2**

punitive damages, **§ 9:3**

### Defendant's death

checklist for instituting or continuing action after death, **§ 9:9**

supplemental complaint alleging compliance with claim requirement after death, form, **§ 9:13**

survival action, instituting or continuing action after death, **§ 9:6**

### Forms

allegation of death of plaintiff and right of to bring action, **§ 9:14**

allegation of pain and suffering being continued, notice of motion and motion to strike [Code Civ Proc § 435, 377.34], **§ 9:15**

## DEATH AND SURVIVAL

### —Cont'd

### Forms—Cont'd

capacity as successor in interest, declaration by person seeking to commence or continue action in [Code Civ Proc § 377.32], **§ 9:10**

declaration by successor in interest [Code Civ Proc § 377.32], **§ 9:10**

notice of motion and motion to continue action by or against personal representative or successor in interest [Code Civ Proc § 377.31, 377.41], **§ 9:11**

notice of motion and motion to strike allegation of pain and suffering in action being continued [Code Civ Proc § 435, 377.34], **§ 9:15**

notice of motion and motion to strike punitive damages allegation and portion of prayer in action being continued [Code Civ Proc § 435, 377.42], **§ 9:16**

order permitting action to be continued by or against personal representative or successor in interest, **§ 9:12**

supplemental complaint alleging compliance with claim requirement after death of defendant, **§ 9:13**

Wrongful Death (this index)

### Legal principles

checklists, §§ **9:8, 9:9**

damages, §§ **9:2, 9:3**

procedure for bringing survival action, §§ **9:4 to 9:7**

survival of actions, **§ 9:1**

Notice of motion and motion to continue action by or against personal representative or successor in interest [Code Civ Proc

## INDEX

### DEATH AND SURVIVAL

#### —Cont'd

- § 377.31, 377.41], form, § **9:11**
- Notice of motion and motion to strike allegation of pain and suffering in action being continued [Code Civ Proc § 435, 377.34], form, § **9:15**
- Notice of motion and motion to strike punitive damages allegation and portion of prayer in action being continued [Code Civ Proc § 435, 377.42], form, § **9:16**
- Order permitting action to be continued by or against personal representative or successor in interest, form, § **9:12**
- Plaintiff's death
  - allegation of death of plaintiff and right of to bring action, form, § **9:14**
  - checklist for instituting or continuing action after, § **9:8**
  - survival action, instituting or continuing after death, § **9:5**
- Punitive damages
  - legal principles, § **9:3**
  - notice of motion and motion to strike allegation and portion of prayer in action being continued [Code Civ Proc § 435, 377.42], form, § **9:16**
- Right to institute or continue cause of action after death of party, § **9:1**
- Statutes of limitations, § **9:7**
- Successor in interest, declaration by [Code Civ Proc § 377.32], form, § **9:10**
- Supplemental complaint alleging compliance with claim requirement after death of defendant, form, § **9:13**
- Survival of actions
  - consolidation with wrongful death action, § **9:4**

### DEATH AND SURVIVAL

#### —Cont'd

- Survival of actions—Cont'd
    - defendant's death, instituting or continuing action after, § **9:6**
    - plaintiff's death, instituting or continuing action after, § **9:5**
    - procedure for bringing survival action, §§ **9:4 to 9:7**
    - right to institute or continue cause of action after death of party, § **9:1**
    - statutes of limitations, § **9:7**
  - Wrongful Death (this index)
- ### DECLARATORY RELIEF
- Generally, § **39:1 et seq.**
  - Attorney's fees, right to, § **39:29**
  - Checklist, matters to be considered when filing action, § **39:30**
  - Complaint, § **39:15**
  - Contractual disputes
    - initiating action [Code Civ Proc § 1060], § **39:7**
  - Denial of coverage, risk to insurer, § **39:6**
  - Grounds for denial
    - alternate remedy, § **39:22**
    - discretion of court, § **39:20**
    - failure to exhaust remedies, § **39:24**
    - present controversy lacking, § **39:21**
    - res judicata, § **39:24**
    - statute of limitations, § **39:23**
  - Initiating action
    - additional insureds, § **39:12**
    - complaint, § **39:15**
    - contractual dispute [Code Civ Proc § 1060], § **39:7**
    - filing complaint, §§ **39:9 to 39:11**
    - insurers and insureds as parties, §§ **39:11, 39:12**
    - jurisdiction, § **39:10**
-

## DECLARATORY RELIEF

### —Cont'd

Initiating action—Cont'd  
     medical malpractice actions, § 39:8  
     other policy beneficiaries as parties, § 39:13  
     parties, §§ 39:11 to 39:14  
     proper defendants, § 39:14  
     stating cause of action, § 39:9  
     statutory authority, §§ 39:7, 39:8  
     venue, § 39:10  
 Insurer's reservation of rights, § 39:5  
 Insurer's risk when denying coverage, § 39:6  
 Judicial interpretation of insurance policies, §§ 39:3, 39:4  
 Jury trial right, § 39:28  
 Legal principles, §§ 39:1 to 39:30  
 Medical malpractice actions, initiating action [Code Civ Proc § 1062.5], § 39:8  
 Motion for judgment on pleadings, § 39:25  
 Nature of relief, § 39:1  
 Priority in trial setting, § 39:27  
 Reservation of rights by insurer, § 39:5  
 Responding to action  
     answer, § 39:16  
     cross-complaint, § 39:19  
     demurrer, § 39:17  
     motions to dismiss, § 39:18  
     pleadings  
         answer, § 39:16  
         cross-complaint, § 39:19  
         demurrer, § 39:17  
         motions to dismiss, § 39:18  
 Right to jury trial, § 39:28  
 Risk to insurer when denying coverage, § 39:6  
 Rules of construction, judicial interpretation of insurance policies, § 39:3

## DECLARATORY RELIEF

### —Cont'd

Statutes, effect of, judicial interpretation of insurance policies, § 39:4  
 Subjects of dispute, § 39:2  
 Summary judgment, § 39:26  
 Trial or other resolution of action  
     attorney's fees, § 39:29  
     jury trial right, § 39:28  
     motion for judgment on pleadings, § 39:25  
     priority in trial setting, § 39:27  
     right to attorney's fees, § 39:29  
     right to jury trial, § 39:28  
     summary judgment, § 39:26

## DEFAMATION

Anonymous witness programs, specific privilege, § 21:43  
 Broadcasters, common law and specific statutory provisions, §§ 21:55, 21:56  
 Checklists  
     appropriate responses for defendant, § 21:68  
     matters for plaintiff to consider, § 21:67  
 Child abuse, persons charged with, § 21:9  
 Classes or groups that may be defamed, § 21:4  
 Common law and specific statutory provisions  
     generally, §§ 21:54 to 21:58  
     broadcasters, protection for, § 21:55  
     correction by newspaper or broadcaster, § 21:56  
     demand for correction, § 21:58  
     fair comment, § 21:54  
     scope of correction statute, § 21:57  
 Compensatory damages, § 21:65  
 Complaints  
     allegations necessary for slander not per se by private individual



## INDEX

### DEFAMATION—Cont'd

#### Complaints—Cont'd

plaintiff against private individual defendant [Civ Code § 46, subd (e)], § **21:76**

allegations of malice and falsity where private individual sues media defendant for libel per se on matter of public concern, § **21:73**

allegations of special damages and plaintiff's interpretation of defamatory character where statement is not libelous per se, § **21:71**

cause of action for damages for intentional tort [Judicial Council Form 982.1(4)], § **21:69**

complaint for libel per se by public official suing newspaper, § **21:74**

complaint for slander per se by private individual plaintiff against private individual defendant based on allegations of unchastity [Civ Code § 46(d)], § **21:75**

libel per se, complaint by private individual against newspaper where topic involved is not matter of public concern, § **21:72**

libel per se based on letter alleging embezzlement, complaint by private individual plaintiff against private individual defendant and corporation, § **21:70**

private individual plaintiff, complaint against private individual defendant and corporation, § **21:70**

Conduct of public officers, absolute privileges, § **21:31**

### DEFAMATION—Cont'd

#### Constitutional qualified privilege

generally, §§ **21:45 to 21:53**

actual malice, appellate review, § **21:51**

appellate review of actual malice, § **21:51**

inquiry into editorial decision-making, § **21:49**

meaning of constitutional malice, § **21:46**

non-media defendants, § **21:50**

private figure plaintiffs, § **21:52**

proof of falsity, § **21:53**

public figures, statements

concerning, § **21:48**

public officials, statements

concerning, § **21:47**

summary of protections, § **21:45**

Corporations as subject to defamation, § **21:5**

Credit reporting agencies, statutory privilege for, § **21:42**

#### Damages

compensatory damages, § **21:65**

overview, § **21:64**

punitive damages, § **21:66**

Deceased, § **21:3**

#### Defenses

consent to publication, § **21:28**

privilege, below

truth as complete defense, § **21:27**

#### Definitions

defamation, § **21:1**

libel and slander distinguished, § **21:2**

malice, § **21:38**

Education authorities, liability for defamation, § **21:12**

Electoral candidates, liability for defamation, § **21:11**

#### Elements

false publication, §§ **21:13 to 21:21**

**DEFAMATION—Cont'd**

Elements—Cont'd

fault, proof requirements,  
§ 21:26

harm to plaintiff, §§ 21:22 to  
21:25

False publication

elements, §§ 21:13 to 21:23

false statement of fact, § 21:20

falsity, § 21:19

fictional context, identification of  
plaintiff in, § 21:18

hyperbole, § 21:21

jokes, § 21:21

parody, § 21:21

publication, generally, § 21:13

reference to plaintiff, § 21:17

republication, § 21:15

Uniform Single Publication Act,  
§ 21:16

unintentional publication,  
§ 21:14

Fault, proof requirements, § 21:26

Forms

allegations in suit by private  
plaintiff against newspaper  
asserting defense that media  
defendant acted without  
malice in publishing allegedly  
defamatory statement involv-  
ing matter of public concern,  
§ 21:78

allegations of affirmative  
defenses in defamation action  
where defendant is newspaper,  
§ 21:77

complaints, above  
pleadings by defendant,  
§§ 21:77, 21:78

Groups or classes that may be  
defamed, § 21:4

Harm to plaintiff

defamatory character of state-  
ment, § 21:22

elements, §§ 21:22 to 21:25

**DEFAMATION—Cont'd**

Harm to plaintiff—Cont'd

good reputation of plaintiff,  
§ 21:23

libel per se and effect on special  
damages, § 21:24

slander per se, effect on special  
damages, § 12:25

special damages, §§ 12:25, 21:24

Hyperbole, § 21:21

Injunctions, § 21:62

Jokes, § 21:21

Judicial proceedings, absolute privi-  
leges, § 21:33

Jurisdiction, § 21:59

Legislative proceedings, absolute  
privileges, § 21:32

Liability for defamation, §§ 21:10 to  
21:12

Malicious prosecution distinguished,  
§ 19:4

Municipal corporations as subject to  
defamation, § 21:6

Parody, § 21:21

Parties responsible for publication,  
liability for defamation, § 21:10

Partnerships as subject to defama-  
tion, § 21:5

Peace officers as subject to defama-  
tion, § 21:8

Persons charged with child abuse,  
§ 21:9

Physician's personnel information,  
statutory privilege for sharing,  
§ 21:44

Private figure plaintiffs,  
constitutional qualified privilege,  
§ 21:52

Privilege

absolute privileges, §§ 21:30 to  
21:36

anonymous witness programs,  
§ 21:43

common interest privilege,  
§ 21:40

## INDEX

### DEFAMATION—Cont'd

#### Privilege—Cont'd

- common law and specific statutory provisions, above
- conduct of public officers, absolute privileges, § 21:31
- constitutional qualified privilege, above
- credit reporting agencies, statutory privilege for, § 21:42
- defenses, §§ 21:29 to 21:58
- fair and true reports, absolute privileges, § 21:36
- judicial proceedings, absolute privileges, § 21:33
- legislative proceedings, absolute privileges, § 21:32
- malice defined, § 21:38
- nature of privilege, § 21:29
- nature of statutory qualified privilege, § 21:37
- nonofficial proceedings, absolute privileges, § 21:35
- other official proceedings, absolute privileges, § 21:34
- physician's personnel information, statutory privilege for sharing, § 21:44
- pleading and proof of malice, § 21:39
- request for information, § 21:41
- specific statutory qualified privileges, §§ 21:40 to 21:44
- statutory qualified privileges, below
- summary of absolute privileges, § 21:30

#### Procedural matters

- injunctions, § 21:62
- jurisdiction, § 21:59
- order shortening time to respond, § 21:63
- statute of limitations, § 21:60
- summary judgment, § 21:61

### DEFAMATION—Cont'd

- Public figures, statements concerning, constitutional qualified privilege, § 21:48
- Public officials, statements concerning, constitutional qualified privilege, § 21:47
- Punitive damages, § 21:66
- Republication, § 21:15
- Response time, order shortening, § 21:63
- Statute of limitations, § 21:60
- Statutory qualified privileges
  - generally, §§ 21:37 to 21:44
  - anonymous witness programs, § 21:43
  - common interest privilege, § 21:40
  - nature of privilege, § 21:37
  - physician's personnel information, statutory privilege for sharing, § 21:44
  - pleading and proof of malice, § 21:39
  - request for information, § 21:41
  - specific statutory qualified privileges, §§ 21:40 to 21:44
- Subject of defamation, §§ 21:3 to 21:9
- Summary judgment, § 21:61
- Truth as complete defense, § 21:27
- Uniform Single Publication Act, § 21:16
- Unincorporated associations as subject to defamation, § 21:7
- Unintentional publication, § 21:14
- Who may be defamed, §§ 21:3 to 21:9

### DEFENSES

- Affirmative Defenses (this index)
- Bad faith actions, collusion, § 40:23
- Comparative negligence, §§ 1:42 to 1:46
- Felony, no recovery of damages for injuries arising from, § 1:49

**DEFENSES—Cont'd**

Negligence, workers' compensation as exclusive remedy, § 1:48  
 No recovery of damages for injuries arising from commission of felony, § 1:49  
 Statutes of limitation, negligence, § 1:47  
 Workers' compensation as exclusive remedy, negligence, § 1:48

**DEFINITIONS**

Accountant malpractice, § 34:18  
 Assault, § 12:3  
 Automobile insurance litigation, § 37:2  
 Battery, § 12:7  
 Common carriers, §§ 28:1, 28:2  
 Compensatory damages, § 5:1  
 Defamation, § 21:1  
 False imprisonment and false arrest, § 13:1  
 Independent contractor, § 3:19  
 Insurance, § 35:1  
 Insured, § 35:1  
 Insurer, § 35:1  
 Joint venture, § 3:37  
 Malice, § 21:38  
 Malicious prosecution, § 19:1  
 Medical negligence, § 32:1  
 Negligence, § 1:1  
 Nuisance, § 17:1  
 Principal-agent relationship, § 3:27  
 Punitive damages, § 7:1  
 Strict liability, § 2:1  
 Trespass, § 18:1  
 Vicarious liability, § 2:1

**DIRECTED VERDICT**

Insurance Bad Faith Litigation (this index)

**DISCLOSURE**

Private information. Invasion of Privacy (this index)

**DISCOMFORT**

Trespass, remedies, § 18:16

**DISCOVERY**

Assault and battery, § 12:24  
 Automobile Insurance Litigation (this index)  
 Bad Faith Actions (this index)  
 Legal malpractice, belated discovery of facts or legal theories, § 33:60  
 Medical malpractice, limitations on discovery [Evid Code § 1157], § 32:45  
 Premises Liability (this index)  
 Products liability, §§ 24:69, 24:77  
 Punitive damages, §§ 7:26, 7:43  
 Uninsured motorist claims, § 38:16  
 Wrongful death, § 23:30

**DISCRETION**

Declaratory relief, grounds for denial, discretion of court, § 39:20  
 Governmental Immunity (this index)  
 Punitive damages, discretion of trier of fact  
     amount of award, determination, § 7:37  
     proving-up damages, § 7:32

**DUTIES OF INSURED**

Generally, § 36:1 et seq.  
 Breach of covenant by insured, § 36:2  
 Breach of duty to cooperate and assist in defense, examples, § 36:12  
 Consent to settlement, duty of insured, § 36:14  
 Contract formation, relationship of premium to, § 36:3  
 Cooperation and assistance in defense  
     breach of duty, examples, § 36:12  
     cooperation clause, § 36:9  
     disclosure of information, duty as to, § 36:11

## INDEX

### **DUTIES OF INSURED—Cont'd**

Cooperation and assistance in defense—Cont'd  
    duty to cooperate, § 36:9  
    duty to disclose information, § 36:11  
    duty to notify, relationship to duty to cooperate, § 36:10  
    examples of breach of duty, § 36:12  
    notify, relationship of duty to cooperate to duty to notify, § 36:10  
    relationship of duty to cooperate to duty to notify, § 36:10  
    showing of substantial prejudice by insurer, requirement, § 36:13  
    substantial prejudice, requirement that insurer show, § 36:13  
Covenant of good faith and fair dealing, §§ 36:1 to 36:15  
Formation of contract, relationship of premium to, § 36:3  
Good faith, duty to act in, § 36:1  
Legal principles, §§ 36:1 to 36:15  
Necessity of notice of loss, § 36:5  
Nonpayment of premium, effect, § 36:4  
Notice of loss  
    necessity of notice, § 36:5  
    ‘notice-prejudice’ rule, § 36:8  
    policy notice requirements, § 36:6  
    relationship of duty to cooperate to duty to notify, § 36:10  
    time of notice, § 36:7  
    “Notice-prejudice” rule, § 36:8  
Payment of premium  
    formation of contract, relationship of premium to, § 36:3  
    nonpayment, effect, § 36:4  
Settlement and claim  
    consent to settlement, § 36:14

### **DUTIES OF INSURED—Cont'd**

Settlement and claim—Cont'd  
    duty not to settle with claimant, § 36:15  
Time of notice of loss, § 36:7

### **DUTIES OF INSURER**

Generally, § 35:1 et seq.  
Acceptance of reasonable settlement, duty to, relationship to covenant of good faith, § 35:26  
Application, insurer’s reliance on, § 35:11  
Breach of covenant of good faith and fair dealing, i.e. “bad faith,” § 35:8  
Breach of duty to defend, § 35:25  
Breach of duty to investigate, § 35:17  
Complaints  
    failure to settle within policy limits, complaint against insurer, § 35:32  
    homeowner’s liability policy, complaint against insurer for failure to indemnify insured, § 35:34  
    recovery of costs of defense, complaint against insurer by insured, § 35:33  
Construction of policy, § 35:4  
Covenant of good faith, relationship to duty to accept reasonable settlement, § 35:26  
Criminal proceedings, § 35:21  
Damages for breach of covenant of good faith and fair dealing, § 35:9  
Defend  
    generally, § 35:18  
    duty to indemnify, relationship to duty to defend, § 35:19  
    effect of breach of duty to defend, § 35:25  
    scope and extent of duty to defend, § 35:20

**DUTIES OF INSURER—Cont'd**

Defense that failure to settle was based on insured's written concurrence in rejection of settlement offer, § 35:35

Definitions

- insurance, § 35:1
- insured, § 35:1
- insurer, § 35:1

Duty of excess insurer, § 35:22

Duty to accept reasonable settlement, relationship to covenant of good faith, § 35:26

Duty to indemnify, relationship to duty to defend, § 35:19

Duty to investigate, § 35:12

Excess insurance level of coverage, § 35:3

Excess insurer, duty of, § 35:22

First party policy, § 35:2

Good faith, insurer's duty to act in, § 35:7

Indemnification

- basis and scope of duty to indemnify, § 35:30
- breach of duty to indemnify, § 35:31
- complaint against insurer for failure to indemnify insured under homeowner's liability policy, § 35:34
- duty to defend, relationship to duty to indemnify, § 35:19
- relationship of duty to defend and duty to indemnify, § 35:19

Independent counsel for insured, § 35:24

Insurer defense considerations, § 35:10

Insuring clause, § 35:6

Interpretation of policy, § 35:5

Investigation

- benefits, duty to investigate policy for, § 35:13
- breach of duty to investigate, § 35:17

**DUTIES OF INSURER—Cont'd**

Investigation—Cont'd

- duty to investigate, § 35:12
- notice of claim, receipt triggering duty to investigate, § 35:14
- restrictions on scope of insurer's duty to investigate, § 35:16
- scope of insurer's duty to investigate, §§ 35:15, 35:16

Nonwaiver agreement, § 35:23

Primary level of coverage, § 35:3

Punitive damages, § 35:21

Reasonable settlement, relationship of duty to accept to covenant of good faith, § 35:26

Reliance by insurer on application, § 35:11

Reservation of rights, § 35:23

Settlement

- acceptance of reasonable settlement, duty to, relationship to covenant of good faith, § 35:26
- complaint against insurer for failure to settle within policy limits, § 35:32
- defense that failure to settle was based on insured's written concurrence in rejection of settlement offer, § 35:35
- duty to accept reasonable settlement, relationship to covenant of good faith, § 35:26
- failure to settle within policy limits, § 35:29
- reasonableness of settlement offer, § 35:28
- reasonable settlement, relationship of duty to accept to covenant of good faith, § 35:26
- scope and extent of duty to settle, § 35:27

Statute of limitations, § 35:10

Third party policy, § 35:2

Time when duty to investigate arises, § 35:12

## INDEX

**DUTIES OF INSURER—Cont'd**  
Umbrella insurance coverage, § 35:3

## E

### EASEMENT

Trespass, complaint for injunction and damages, § 18:21

### EDUCATION AUTHORITIES

Liability for defamation, § 21:12

### ELECTORAL CANDIDATES

Liability for defamation, § 21:11

### EMERGENCY MEDICAL SERVICES

Public entities, duty of care regarding services, § 31:10

### EMOTIONAL DISTRESS

Continuing pain, recovery, § 11:2

Continuing suffering, recovery for, § 11:2

Damages

intentional infliction cases, § 11:5

negligent infliction cases, § 11:3

theories for recovery, § 11:6

Element of pain and suffering, § 11:1

Intentional infliction cases, damages, § 11:5

Negligent infliction cases, damages, § 11:3

Negligently damaged property or injury to pets, § 11:4

Other theories for recovery, § 11:6

Pain and suffering, element, § 11:1

Pets, injury to, § 11:4

Property damage, § 11:4

Recovery for continuing pain and suffering, § 11:2

Theories for recovery, § 11:6

### ERISA

Bad faith actions, complaints and cross-complaints, § 41:6

### EXPLOITATION OF NAME OR LIKENESS

Invasion of Privacy (this index)

## F

### FALSE IMPRISONMENT AND FALSE ARREST

Affirmative defense by law enforcement officer that officer had reasonable cause to believe person arrested committed felony [Pen Code § 836 subd (a)(3)], § 13:39

Affirmative defense that actions were not within scope of employment, § 13:18

Affirmative defense that detention was based on probable cause and investigation conducted in reasonable manner [Pen Code § 490.5(f)], § 13:19

Allegation of false arrest by police officer pursuant to warrant, form, § 13:36

Allegation of unreasonable delay in taking plaintiff before magistrate, § 13:40

Allegation of warrantless arrest against law enforcement officer and city, form, § 13:35

Allegation that police officer executing warrant did not have reasonable belief that person arrested was named in warrant [Civ Code § 43.55], form, § 13:37

Civil rights actions, § 13:3

Compensatory damages, § 13:14

Complaint, detention based on shoplifting, form, § 13:16

Cross-complaint, store owner against security guard agency for negligent hiring and retention, form, § 13:17

Damages

compensatory damage, § 13:14



**FALSE IMPRISONMENT AND  
FALSE ARREST—Cont'd**

Damages—Cont'd  
detention following arrest,  
determining damages, § 13:34  
punitive damages, § 13:15

Defenses  
consent, § 13:13  
forms, actions involving false  
arrest, §§ 13:38, 13:39  
forms, false imprisonment not  
involving arrest, §§ 13:18,  
13:19  
merchants, statutory defense,  
§ 13:11  
peace officers detaining child,  
statutory defense, § 13:12  
“shopkeeper’s privilege,”  
§ 13:11  
social workers detaining child,  
statutory defense, § 13:12  
statutory defenses, §§ 13:11,  
13:12

Definition, § 13:1

Detention following arrest  
allegation of unreasonable delay  
in taking plaintiff before mag-  
istrate, § 13:40  
damages determination, § 13:34  
delay in bringing before magis-  
trate, § 13:31  
detention after dismissal of  
charges, § 13:33  
failure to release prison on bail,  
§ 13:32

Elements, §§ 13:8 to 13:10

Employers as persons liable, § 13:4

Form, illegal detention following  
arrest, § 13:40

Forms, actions involving false arrest  
absence of malice, affirmative  
defense by law enforcement  
officer, § 13:38  
affirmative defense by law  
enforcement officer that officer  
had reasonable cause to

**FALSE IMPRISONMENT AND  
FALSE ARREST—Cont'd**

Forms, actions involving false arrest  
—Cont'd

believe person arrested com-  
mitted felony [Pen Code § 836  
subd (a)(3)], § 13:39  
allegation of false arrest by  
police officer pursuant to war-  
rant, § 13:36  
allegation of warrantless arrest  
against law enforcement  
officer and city, § 13:35  
allegation that police officer exe-  
cuting warrant did not have  
reasonable belief that person  
arrested was named in warrant  
[Civ Code § 43.55], § 13:37  
defenses, §§ 13:38, 13:39  
reasonable belief that person  
arrested was person named in  
warrant, affirmative defense by  
law enforcement officer [Civ  
Code § 43.55], § 13:39  
warrant regular on face, affirma-  
tive defense by law enforce-  
ment officer, § 13:38

Forms, false imprisonment not  
involving arrest

affirmative defense that actions  
were not within scope of  
employment, § 13:18  
affirmative defense that detention  
was based on probable cause  
and investigation conducted in  
reasonable manner [Pen Code  
§ 490.5(f)], § 13:19  
complaint based on detention for  
shoplifting, § 13:16  
cross-complaint for indemnity by  
store owner against security  
guard agency for negligent  
hiring and retention, § 13:17  
defenses, §§ 13:18, 13:19  
Health facility, confinement in for  
nonpayment, § 13:7

## INDEX

### **FALSE IMPRISONMENT AND FALSE ARREST—Cont'd**

Inebriated person, persons detaining,  
§ 13:6

Intent, § 13:9

Malicious prosecution distinguished  
from false imprisonment, § 19:3

Mentally disordered or inebriated  
person, persons detaining, § 13:6

Overview, §§ 13:1 to 13:3

Peace officer immunity for warrant-  
less arrest, § 13:23

Person effecting confinement in  
health facility for nonpayment,  
§ 13:7

Persons detaining mentally  
disordered or inebriated person,  
§ 13:6

Persons liable, §§ 13:4 to 13:7

Public entities and employees [Gov  
Code §§ 815.2, 815.6, 820.4],  
§ 13:5

Punitive damages, § 13:15

Reasonable cause for warrantless  
arrest, § 13:22

Restraint, § 13:10

“Shopkeeper’s privilege,” § 13:11

Statute of limitations [Civ Proc Code  
§ 340 subd (c)], § 13:2

Statutory defense, “shopkeeper’s  
privilege,” § 13:11

Statutory defense for social worker  
or peace officer detaining child,  
§ 13:12

Warrant, arrest pursuant to  
absence of malice in executing  
warrant, § 13:28

judicial immunity, § 13:30

officer’s determination of valid-  
ity of warrant, § 13:27

privilege, § 13:26

reasonable belief in identity of  
person arrested, § 13:29

Warrantless arrest

allegation of warrantless arrest  
against law enforcement

### **FALSE IMPRISONMENT AND FALSE ARREST—Cont'd**

Warrantless arrest—Cont'd

officer and city, form, § 13:35

defenses, §§ 13:22 to 13:25

detention and release procedure,  
§ 13:21

limited liability for providing  
information to police and mag-  
istrates, § 13:25

peace officer immunity, § 13:23

prima facie claim, § 13:20

probable cause, § 13:22

public officer or employee  
immunity, § 13:24

### **FALSE LIGHT INVASION OF PRIVACY**

Invasion of Privacy (this index)

### **FELONIES**

No recovery of damages for injuries  
arising from commission of  
felony, § 1:49

### **FICTION**

Defamation, false publication,  
§ 21:18

### **FINANCIAL RESPONSIBILITY LAWS**

Automobile insurance litigation,  
§ 37:3

### **FINANCIAL RESPONSIBILITY STATUTES**

Aviation, § 26:4

### **FIREARMS AND AMMUNITION**

Battery allegation by plaintiff injured  
by defendant who intended to  
harm third person, form, § 12:34

Products liability

defective ammunition, complaint,  
§ 24:97

defective handgun, complaint,  
§ 24:96

**FIREMAN’S RULE AS BAR**

Negligence, allegation that plaintiff’s action is barred by fireman’s rule, § 1:64

**FIRE PROTECTION SERVICES AND FACILITIES**

Complaints

negligent performance of firefighting services outside fire protection area, complaint against fire district and firefighter [Gov Code § 850.6], § 31:64

transporting person injured in fire, complaint against public employee for willful misconduct [Gov Code § 850.8], § 31:65

Governmental immunity

affirmative defenses for injuries from [Gov Code § 850.4], § 29:36

dangerous condition of property, provision of services, and facilities [Gov Code §§ 850 et seq.], § 29:14

Public entities, personal injuries, liability, §§ 31:33, 31:35

**FISTFIGHT**

Complaint for assault and battery by plaintiff injured in fistfight, form, § 12:29

**FLIGHT**

Assault allegation by plaintiff injured in fall while fleeing from assailant, form, § 12:28

Premises liability

felony commission or flight therefrom, injury arising from [Civ Code § 3333.3], § 16:33  
felony commission or immediate flight therefrom, defense of injury to plaintiff during [Civ Code § 3333.3], § 16:53

**FRAUD AND DECEIT**

Actual fraud by party to contract, § 22:3

Assault and battery, complaint by plaintiff who contracted sexually transmitted disease from sexual partner, form, § 12:39

Checklists

defense of action for fraud or deceit, factors, § 22:44

prosecuting action for fraud or deceit, factors, § 22:43

Constructive fraud, § 22:4

Damages

foreseeability, § 22:38

interest on damage award, § 22:41

necessary element, § 22:37

physical injury, deceit damages, § 22:40

punitive damages, § 22:42

purchase, sale or exchange of property, fraud in, § 22:39

Deceit

business transactions, duty to disclose in, § 22:19

categories of deceit, §§ 22:13 to 22:21

disclosure duty in business transactions, § 22:19

disclosure duty in real estate transactions, § 22:20

disclosure duty of fiduciary, § 22:18

duty to disclose

business transactions, § 22:19

fiduciary’s duty, § 22:18

real estate transactions, § 22:20

false promise, § 22:21

fiduciary’s duty to disclose, § 22:18

financial matters, negligent misrepresentation, § 22:15

fraudulent concealment, § 22:17

## INDEX

### FRAUD AND DECEIT—Cont'd

#### Deceit—Cont'd

- intentional misrepresentation, § 22:13
- negligent misrepresentation, categories of deceit, §§ 22:14 to 22:16
- overview, § 22:2
- personal safety, negligent misrepresentation, § 22:16
- real estate transactions, duty to disclose in, § 22:20

#### Election of remedies, §§ 22:5, 22:6

#### Elements

- actionable opinions, §§ 22:22 to 22:30, 22:50
- damages, above
- exceptions to rule that opinions are not actionable, § 22:24
- fiduciaries, statements made by, § 22:26
- intent to induce action, § 22:31
- law, statements of, § 22:28
- materiality of representations, § 22:30
- misrepresentation and actionable opinions, §§ 22:22 to 22:30
- misrepresentation of fact, § 22:22
- opinions, §§ 22:23, 22:24
- opinions not honestly held, statements of, § 22:27
- product safety, statements regarding, § 22:29
- reliance, below
- required intent, § 22:31
- superior knowledge or special information, statements by one with, § 22:25

#### Exceptions to rule of specificity in pleading, § 22:10

#### Exculpatory clauses, § 22:7

#### Factors to consider in electing remedy, § 22:6

#### Fiduciaries

- deceit, duty to disclose, § 22:18

### FRAUD AND DECEIT—Cont'd

#### Fiduciaries—Cont'd

- elements, statements made by, § 22:26

#### Forms

- complaint for concealment of preexisting soil conditions [Civ Code §§ 1572(3), 1710(3)], § 22:48
- complaint for intentional and negligent misrepresentation of acreage [Civ Code §§ 1572(1), 1572(2), 1710(1), 1710(2)], § 22:45
- complaint for intentional misrepresentation of safety of apartment complex [Civ Code §§ 1572(1), 1710(1)], § 22:46
- complaint for negligent concealment of fact in failing to correct representation that had become false [Civ Code §§ 1572(3), 1710(3)], § 22:47
- defense that statements were nonactionable opinions, § 22:50
- demurrer to entire complaint for fraud or deceit [Civ Code §§ 430.10, 430.50, subd (a)], § 22:49

#### Fraudulent concealment, § 22:17

#### Negligent misrepresentation, categories of deceit, §§ 22:14 to 22:16

#### Pleading requirements, § 22:9

#### Privilege, § 22:12

#### Privity, § 22:8

#### Product safety, statements regarding, § 22:29

#### Reliance

- actual and justifiable, § 22:32
- independent investigation, § 22:34
- misrepresentations not made directly to plaintiff, reliance on, § 22:35

**FRAUD AND DECEIT—Cont'd**

Reliance—Cont'd  
     reasonableness of reliance,  
         § **22:33**  
     sub purchaser, § **22:36**  
 Statute of limitations, § **22:11**  
 Terminology, § **22:1**

**G**

**GAMBLING**

Nuisance, allegations for use in complaint [Pen Code §§ 11225, 11227], § **17:32**

**GOOD FAITH**

Bad Faith Actions (this index)

**GOVERNING LAW**

Aviation, § **26:5**  
 Common carriers, §§ **28:3 to 28:5**  
 Motor vehicles, service of process on nonresident motorists, § **25:73**  
 Uninsured Motorist Claims (this index)

**GOVERNMENTAL IMMUNITY**

Generally, §§ **29:1 to 29:24**  
 Actions against both public entities and public employees, affirmative defenses, §§ **29:27 to 29:34**  
 Adoption or enforcement of law, affirmative defenses for injuries from [Gov Code §§ 818.2, 821], § **29:28**  
 Affirmative defenses  
     actions against both public entities and public employees, §§ **29:27 to 29:34**  
     adoption or enforcement of law, injuries from [Gov Code §§ 818.2, 821], § **29:28**  
     approved plan or design, injuries from [Gov Code § 830.6], § **29:33**  
     discretionary act or omission by public employee, actions

**GOVERNMENTAL IMMUNITY—Cont'd**

Affirmative defenses—Cont'd  
     against both public entities and public employees [Gov Code § 820.2], §§ **29:27 to 29:34**  
     discretionary act or omission by public employee [Gov Code § 820.2], § **29:42**  
     firefighting activities, injuries from [Gov Code § 850.4], § **29:36**  
     immunity of public employee [Gov Code § 815.2, subd (b)], § **29:39**  
     inspection of, or failure to inspect, private property, injuries from [Gov Code §§ 818.6, 821.4], § **29:30**  
     licensing, injuries arising from action or inaction [Gov Code §§ 818.4, 821.2], § **29:29**  
     malicious prosecution, injuries from [Gov Code § 821.6], § **29:32**  
     mental illness or addiction, injuries from failure to diagnose [Gov Code § 855.8, subd (a)], § **29:38**  
     misrepresentation, injuries from [Gov Code §§ 818.8, 822.2], § **29:31**  
     natural condition of unimproved public property, injuries from [Gov Code § 831.2], § **29:34**  
     police protection, injuries from failure to provide [Gov Code § 845], § **29:35**  
     public employees, generally, §§ **29:41, 29:42**  
     public entities, generally, §§ **29:39, 29:40**  
     punitive damages, immunity from liability for [Gov Code § 818], § **29:40**

## INDEX

### GOVERNMENTAL IMMUNITY

#### —Cont'd

- Affirmative defenses—Cont'd
  - released prisoner, injuries from [Gov Code § 845.8, subd (a)], § **29:37**
  - services, actions alleging injuries related to provision of, §§ **29:35 to 29:38**
  - statutory immunity under Government Claims Act [Gov Code §§ 810 et seq.], § **29:27**
  - third person act or omission [Gov Code § 820.8], § **29:41**
- Approved plan or design, injuries from, affirmative defenses [Gov Code § 830.6], § **29:33**
- Aviation, § **26:26**
- Checklists
  - answering complaint or cross-complaint, matters to be considered by public entity or public employee, § **29:26**
  - demurring to complaint or cross-complaint, matters to be considered by public entity or public employee, § **29:25**
- Construction claims, § **29:9**
- Correctional facilities, dangerous condition of property, provision of services, and facilities [Gov Code §§ 844 et seq.], § **29:13**
- Dangerous condition of property [Gov Code §§ 830.6 et seq.], § **29:12**
- Discretionary act or omission
  - Emergency Services Act, immunity for discretionary functions [Gov Code § 8655], § **29:6**
  - public employee
    - actions against both public entities and public employees [Gov Code § 820.2], §§ **29:27 to 29:34**

### GOVERNMENTAL IMMUNITY

#### —Cont'd

- Discretionary act or omission
  - Cont'd
    - public employee—Cont'd
      - affirmative defenses [Gov Code § 820.2], § **29:42**
      - determination of discretionary act, § **29:18**
      - discretionary acts, absence of immunity [Gov Code § 820.2], § **29:16**
      - examples of discretionary acts, § **29:19**
      - ministerial and discretionary functions involved in act, § **29:20**
    - public entities and public employee, affirmative defenses in actions against both [Gov Code § 820.2], §§ **29:27 to 29:34**
- Emergency Services Act, immunity for discretionary functions [Gov Code § 8655], § **29:6**
- Enforcement of law, affirmative defenses for injuries from [Gov Code §§ 818.2, 821], § **29:28**
- Federal government immunity, § **29:7**
- Firefighting activities
  - affirmative defenses for injuries from [Gov Code § 850.4], § **29:36**
  - dangerous condition of property, provision of services, and facilities [Gov Code §§ 850 et seq.], § **29:14**
- Forms. Affirmative defenses, above
- Health care services, dangerous condition of property, provision of services, and facilities [Gov Code §§ 850 et seq.], § **29:14**
- Immunities common to both public entities and public employees, § **29:8**

## GOVERNMENTAL IMMUNITY

### —Cont'd

Immunity of public employee, affirmative defenses [Gov Code § 815.2, subd (b)], § **29:39**

Inspection of, or failure to inspect, private property, affirmative defenses for injuries from [Gov Code §§ 818.6, 821.4], § **29:30**

Law enforcement officials [Gov Code § 820.25], § **29:17**

Licensing, affirmative defenses for injuries arising from action or inaction [Gov Code §§ 818.4, 821.2], § **29:29**

Local public officials immune from liability for acts of public entities [Gov Code § 820.9], § **29:5**

Malicious prosecution, affirmative defenses for injuries from [Gov Code § 821.6], § **29:32**

Mandatory duty, violation of statute imposing [Gov Code § 815.6], § **29:10**

Mental illness or addiction, affirmative defenses for injuries from failure to diagnose [Gov Code § 855.8, subd (a)], § **29:38**

Misrepresentation, affirmative defenses for injuries from [Gov Code §§ 818.8, 822.2], § **29:31**

Natural condition of unimproved public property, affirmative defenses for injuries from [Gov Code § 831.2], § **29:34**

Overview, §§ **29:1 to 29:11**

Peace officer, immunity for warrantless arrest, § **13:23**

Police protection, affirmative defenses for injuries from failure to provide [Gov Code § 845], § **29:35**

Police services and correctional facilities, dangerous condition of property, provision of services,

## GOVERNMENTAL IMMUNITY

### —Cont'd

and facilities [Gov Code §§ 844 et seq.], § **29:13**

Private property, affirmative defenses for injuries from inspection of, or failure to inspect [Gov Code §§ 818.6, 821.4], § **29:30**

Public employees

- affirmative defenses, generally, §§ **29:41, 29:42**
- checklist, answering complaint or cross-complaint, matters to be considered, § **29:26**
- determination of discretionary act, § **29:18**
- discretionary acts, absence of immunity [Gov Code § 820.2], § **29:16**
- examples of discretionary acts, § **29:19**
- examples of ministerial acts, § **29:21**
- extent of immunity, generally [Gov Code § 820], § **29:15**
- law enforcement officials [Gov Code § 820.25], § **29:17**
- malicious acts [Gov Code § 821.6], § **29:24**
- ministerial and discretionary functions involved in act, § **29:20**
- peace officer, immunity for warrantless arrest, § **13:23**
- punitive damages [Gov Code §§ 820, subd (a), 818, 825], § **29:23**
- specific statutory immunities [Gov Code §§ 820.4 et seq.], § **29:22**
- warrantless arrest, immunity of public officer or employee, § **13:24**

Public entities

- affirmative defenses, generally, §§ **29:39, 29:40**



## INDEX

### GOVERNMENTAL IMMUNITY

#### —Cont'd

#### Public entities—Cont'd

checklist, answering complaint or cross-complaint, matters to be considered, § **29:26**

employee immunity, immunity based on [Gov Code § 815.2], § **29:3**

immunity pursuant to Gov Code § 815, § **29:2**

intentional torts of elected officials, immunity [Gov Code § 815.3], § **29:4**

Public property, affirmative defenses to injuries from natural condition of unimproved public property [Gov Code § 831.2], § **29:34**

#### Punitive damages

immunity from liability for [Gov Code § 818], § **29:40**

public employees [Gov Code §§ 820, subd (a), 818, 825], § **29:23**

Punitive damages [Gov Code § 818], §§ **29:11, 29:40**

Released prisoner, affirmative defenses for injuries from [Gov Code § 845.8, subd (a)], § **29:37**

Services, actions alleging injuries related to provision of, affirmative defenses, §§ **29:35 to 29:38**

Statutory immunity under Government Claims Act [Gov Code §§ 810 et seq.], § **29:27**

Third person act or omission, affirmative defenses [Gov Code § 820.8], § **29:41**

Time when immunity arises [Gov Code §§ 814, 814.2], § **29:1**

Violation of statute imposing mandatory duty [Gov Code § 815.6], § **29:10**

When immunity arises [Gov Code §§ 814, 814.2], § **29:1**

### GOVERNMENT CLAIMS ACT

Generally, § **30:1 et seq.**

Accrual of claim [Gov Code § 901], § **30:9**

Action on claim by local public entity [Gov Code § 912.6], § **30:22**

Affirmative defenses, statutory immunity under Act [Gov Code §§ 810 et seq.], § **29:27**

Amending claims [Gov Code § 910.6], § **30:18**

Application for leave to present late claim

claimant's forms [Gov Code § 911.4, 911.6], § **30:32**

claims presentation [Gov Code § 911.4], § **30:12**

Board action on application to present late claim [Gov Code § 911.6], § **30:13**

Checklists of matters to consider

acting on timely claim, § **30:26**

claims presentation, § **30:24**

filing application for leave to present late claim, § **30:27**

filing petition for order relieving claimant of claim requirements, § **30:29**

presenting claim, § **30:24**

responding to application for leave to present late claim, § **30:28**

responding to claim on procedural basis, § **30:25**

Claims presentation

accrual of claim [Gov Code § 901], § **30:9**

action on claim by local public entity [Gov Code § 912.6], § **30:22**

amending claims [Gov Code § 910.6], § **30:18**

application for leave to present late claim [Gov Code § 911.4], § **30:12**

**GOVERNMENT CLAIMS ACT**

**—Cont'd**

Claims presentation—Cont'd  
     board action on application to  
         present late claim [Gov Code  
         § 911.6], **§ 30:13**  
     checklist of matters to consider,  
         **§ 30:24**  
     contents of claim [Gov Code  
         §§ 910, 910.2], **§ 30:5**  
     court action on petition for relief  
         [Gov Code § 946.6], **§ 30:16**  
     deemed rejection of claim [Gov  
         Code § 912.4, subd (c)],  
         **§ 30:20**  
     exceptions to claims requirement,  
         **§ 30:4**  
     hearing and action on state  
         claims [Gov Code § 912.8; Cal  
         Code Reg., tit. 2, § 632.9],  
         **§ 30:21**  
     method of submitting claim [Gov  
         Code § 915], **§ 30:10**  
     notice of board action on applica-  
         tion to present late claim [Gov  
         Code § 911.8], **§ 30:14**  
     notice of board action on claim  
         [Gov Code § 913], **§ 30:23**  
     notice of insufficient claim [Gov  
         Code § 910.8], **§ 30:17**  
     notice of untimely claim [Gov  
         Code § 911.3], **§ 30:11**  
     official claim forms [Gov Code  
         § 910.4], **§ 30:6**  
     petition for relief from claim pre-  
         sentation requirements [Gov  
         Code § 946.6], **§ 30:15**  
     potential actions [Gov Code  
         § 912.4], **§ 30:19**  
     process of preparing claim,  
         **§§ 30:5 to 30:23**  
     public employees, claims against,  
         **§ 30:3**  
     purpose and function of Act,  
         **§ 30:1**

**GOVERNMENT CLAIMS ACT**

**—Cont'd**

Claims presentation—Cont'd  
     scope of claim requirement,  
         **§ 30:2**  
     state claims, hearing and action  
         [Gov Code § 912.8; Cal Code  
         Reg., tit. 2, § 632.9], **§ 30:21**  
     substantial compliance with  
         claims requirement, **§ 30:7**  
     time for action [Gov Code  
         § 912.4], **§ 30:19**  
     time for presentment [Gov Code  
         § 911.2], **§ 30:8**  
     Contents of claim [Gov Code  
         §§ 910, 910.2], **§ 30:5**  
     Court action on petition for relief  
         [Gov Code § 946.6], **§ 30:16**  
     Deemed rejection of claim [Gov  
         Code § 912.4, subd (c)], **§ 30:20**  
     Exceptions to claims requirement,  
         **§ 30:4**  
     Forms  
         application for leave to present  
             late claim [Gov Code § 911.4,  
             911.6], **§ 30:32**  
         notice of action on application to  
             present late claim [Gov Code  
             § 911.8], **§ 30:37**  
         notice of action on claim [Gov  
             Code § 913], **§ 30:38**  
         notice of insufficient claim [Gov  
             Code § 910.8], **§ 30:36**  
         notice of untimely claim [Gov  
             Code § 911.3], **§ 30:35**  
         order granting relief from claim  
             presentation requirements  
             [Gov Code § 946.6], **§ 30:34**  
         petition for order relieving claim-  
             ant of claim presentation  
             requirements [Gov Code  
             § 946.6], **§ 30:33**  
     State Board of California official  
         claim form [Gov Code  
         § 910.4; Form BC-1A],  
         **§ 30:31**

## INDEX

### GOVERNMENT CLAIMS ACT

#### —Cont'd

##### Forms—Cont'd

state or local entity, claim against  
[Gov Code § 910], § **30:30**

Hearing and action on state claims  
[Gov Code § 912.8; Cal Code  
Reg., tit. 2, § 632.9], § **30:21**

Method of submitting claim [Gov  
Code § 915], § **30:10**

Notice of action on application to  
present late claim [Gov Code  
§ 911.8], § **30:37**

Notice of action on claim [Gov Code  
§ 913], § **30:38**

Notice of board action on application  
to present late claim [Gov Code  
§ 911.8], § **30:14**

Notice of board action on claim [Gov  
Code § 913], § **30:23**

Notice of insufficient claim [Gov  
Code § 910.8]

claimant's forms, § **30:36**

claims presentation, § **30:17**

Notice of untimely claim [Gov Code  
§ 911.3]

claimant's forms, § **30:35**

claims presentation, § **30:11**

Official claim forms [Gov Code  
§ 910.4], § **30:6**

Order granting relief from claim pre-  
sentation requirements [Gov Code  
§ 946.6]

claimant's forms, § **30:34**

Petition for order relieving claimant  
of claim presentation requirements  
[Gov Code § 946.6], § **30:33**

Petition for relief from claim presen-  
tation requirements [Gov Code  
§ 946.6], § **30:15**

Potential actions [Gov Code  
§ 912.4], § **30:19**

Process of preparing claim, §§ **30:5**  
**to 30:23**

Public employees, claims against,  
§ **30:3**

### GOVERNMENT CLAIMS ACT

#### —Cont'd

Purpose and function of Act, § **30:1**

Scope of claim requirement, § **30:2**

State Board of California official  
claim form [Gov Code § 910.4;  
Form BC-1A], § **30:31**

State claims, hearing and action  
[Gov Code § 912.8; Cal Code  
Reg., tit. 2, § 632.9], § **30:21**

State or local entity, claim against  
[Gov Code § 910], § **30:30**

Substantial compliance with claims  
requirement, § **30:7**

Time for action [Gov Code § 912.4],  
§ **30:19**

Time for presentment [Gov Code  
§ 911.2], § **30:8**

## H

### HEALTH CARE SERVICES

Governmental immunity, dangerous  
condition of property, provision of  
services, and facilities [Gov Code  
§§ 850 et seq.], § **29:14**

### HIGHWAY CONTRACTORS

Negligence, § **1:11**

## I

### IMMUNITY

Governmental Immunity (this index)

### INDEMNITY, CONTRIBUTION, AND SETOFF

Bad faith actions, complaint against  
insurer for bad faith failure to  
defend and indemnify insured  
corporation, § **41:18**

#### Checklists

multiple tortfeasors or  
co-obligors, action involving,  
§ **4:30**

settlement by one tortfeasor or  
co-obligor, § **4:31**

**INDEMNITY, CONTRIBUTION,  
AND SETOFF—Cont'd**

Common law rules  
    amelioration of harshness of  
    rules, §§ **4:2 to 4:5**  
    comparative equitable indemnity,  
    § **4:3**  
    contribution and equitable  
    indemnity, § **4:2**  
    encouragement of good faith  
    settlement, § **4:4**  
    evolution of law of liability of  
    multiple tortfeasors, §§ **4:1 to**  
    **4:5**  
    neither apportionment nor contri-  
    bution, § **4:1**  
    Proposition 51: modification of  
    rule of joint and several  
    liability, § **4:5**  
Comparable equitable indemnity  
    adoption, § **4:16**  
    American Motorcycle, equitable  
    indemnity prior, § **4:15**  
    apportionment in cases of partial  
    settlement or insolvency,  
    § **4:17**  
    attorney fees, § **4:19**  
    methods of raising claim, § **4:18**  
    partial settlement or insolvency,  
    apportionment, § **4:17**  
Complaints and cross-complaints  
    apportionment of fault,  
    indemnification and declara-  
    tory relief [Judicial Council  
    Form 982.1(14)], cross-com-  
    plaint, § **4:34**  
    cross-complaints  
        apportionment of fault,  
        indemnification and  
        declaratory relief [Judicial  
        Council Form 982.1(14)],  
        § **4:34**  
        express indemnity, § **4:33**  
    equitable indemnity after settle-  
    ment of original action, com-  
    plaint for, § **4:35**

**INDEMNITY, CONTRIBUTION,  
AND SETOFF—Cont'd**

Complaints and cross-complaints  
    —Cont'd  
        express indemnity  
            complaint for, § **4:32**  
            cross-complaint for, § **4:33**  
Contractual indemnity  
    express indemnity, §§ **4:10 to**  
    **4:13**  
    implied indemnity, § **4:14**  
Contribution among joint debtors  
    joint debtors who are not joint  
    tortfeasors, §§ **4:8, 4:9**  
    joint tortfeasors, §§ **4:6, 4:7**  
    judgment of contribution, § **4:7**  
    procedure, contribution among  
    non-joint debtors, § **4:9**  
    right of contribution among joint  
    tortfeasors, § **4:6**  
    right to contribution among non-  
    joint debtors, § **4:8**  
Contribution among joint tortfeasors  
    judgment of contribution, § **4:7**  
    other judgment of contribution,  
    § **4:7**  
    right of contribution, § **4:6**  
Duties of Insurer (this index)  
Evolution of law of liability of  
    multiple tortfeasors, common law  
    rules, §§ **4:1 to 4:5**  
Express contractual indemnity  
    construction industry, nature and  
    use of contracts, § **4:11**  
    interpretation rules, § **4:13**  
    nature and use of contracts,  
    §§ **4:10, 4:11**  
    rules of interpretation, § **4:13**  
    void provisions, § **4:12**  
False imprisonment not involving  
    arrest, cross-complaint for  
    indemnity by store owner against  
    security guard agency for  
    negligent hiring and retention,  
    § **13:17**

## INDEX

### INDEMNITY, CONTRIBUTION, AND SETOFF—Cont'd

#### Forms

- application for determination of good faith settlement [Code Civ Proc § 877.6 subd (a)(2)], § **4:41**
- apportionment of fault, indemnification and declaratory relief [Judicial Council Form 982.1(14)], cross-complaint, § **4:34**
- complaints and cross-complaints, §§ **4:32 to 4:36**
- cross-complaints
  - apportionment of fault, indemnification and declaratory relief [Judicial Council Form 982.1(14)], § **4:34**
  - express indemnity, § **4:33**
- declaration in support of motion for determination of good faith settlement [Code Civ Proc § 877.6 subd (b), 2015.5], § **4:38**
- equitable indemnity after settlement of original action, complaint for, § **4:35**
- express indemnity
  - complaint for, § **4:32**
  - cross-complaint for, § **4:33**
- motions, declarations and orders, §§ **4:36 to 4:42**
- notice of motion and motion for determination of good faith settlement [Code Civ Proc § 877.6, 1005 subd (b)], § **4:37**
- notice of motion for order determining liability from non-tort joint debtor [Code Civ Proc § 883 subd (a)], § **4:36**
- notice of settlement [Code Civ Proc § 877.6 subd (a)(2)], § **4:40**

### INDEMNITY, CONTRIBUTION, AND SETOFF—Cont'd

#### Forms—Cont'd

- order determining that settlement made in good faith [Code Civ Proc § 877.6], § **4:39**
- proposed order determining that settlement was made in good faith [Code Civ Proc § 877.6 subd (b)], § **4:42**
- Good faith settlement
  - determination whether settlement is in good faith, §§ **4:22 to 4:26**
  - effect of good faith determination, § **4:25**
  - factors, determination whether settlement is in good faith, § **4:22**
  - later joined tortfeasor not bound by determination, § **4:26**
  - one defendant
    - generally, §§ **4:20, 4:21**
    - further liability, discharge from, § **4:20**
    - total indemnity, bar to claim, § **4:21**
  - procedure in good faith determination, § **4:25**
  - right to hearing, § **4:24**
  - sliding scale recovery agreement, § **4:23**
- Implied contractual indemnity, § **4:14**
- Legal Malpractice (this index)
- Medical malpractice, §§ **32:70, 32:81**
- Motions, declarations and orders
  - generally, §§ **4:36 to 4:42**
  - application for determination of good faith settlement [Code Civ Proc § 877.6 subd (a)(2)], § **4:41**
  - declaration in support of motion for determination of good faith settlement [Code Civ Proc

**INDEMNITY, CONTRIBUTION,  
AND SETOFF—Cont'd**

Motions, declarations and orders  
—Cont'd

§ 877.6 subd (b), 2015.5],  
§ **4:38**

notice of motion and motion for  
determination of good faith  
settlement [Code Civ Proc  
§ 877.6, 1005 subd (b)], § **4:37**

notice of motion for order  
determining liability from non-  
tort joint debtor [Code Civ  
Proc § 883 subd (a)], § **4:36**

notice of settlement [Code Civ  
Proc § 877.6 subd (a)(2)],  
§ **4:40**

order determining that settlement  
made in good faith [Code Civ  
Proc § 877.6], § **4:39**

proposed order determining that  
settlement was made in good  
faith [Code Civ Proc § 877.6  
subd (b)], § **4:42**

Products liability, cross-complaints  
for indemnification, §§ **24:125 to  
24:127**

Public employees, § **31:9**

Setoff

automatic setoff, § **4:29**

equitable setoff, § **4:28**

statutory setoff, § **4:27**

**INDEPENDENT  
CONTRACTORS**

Public entity liability for conduct  
[Gov Code § 815.4], § **31:14**

**INJUNCTIONS**

Defamation, § **21:62**

**INSURANCE**

California Department of Insurance  
(CDI), compliance with, § **37:4**

Privacy actions in, § **20:21**

**INSURANCE BAD FAITH  
LITIGATION**

Generally, § **45:1 et seq.**

Checklists

preparation of motion, § **45:6**

serve and file response, § **45:7**

Directed verdict. Motion for directed  
verdict, below

Forms

defendant's combined sample  
motions in limine, § **45:12**

evidence requested during  
discovery but not produced by  
defendants, plaintiff's motion  
in limine excluding, § **45:11**

expert testimony of defendants,  
plaintiff's motion in limine  
excluding, § **45:10**

statements made at appraisal,  
plaintiff's motion in limine  
excluding, § **45:8**

witnesses, plaintiff's motion in  
limine excluding, § **45:9**

Juror questionnaires

availability in bad faith actions,  
§ **45:13**

checklist for preparation, § **45:14**  
forms

defendant's juror question-  
naires, § **45:16**

plaintiff's juror question-  
naires, § **45:15**

practice checklists, § **45:14**  
use of juror questionnaires,  
§ **45:13**

Jury instructions

attributes of proper instructions,  
§ **45:30**

availability in bad faith actions,  
§§ **45:29 to 45:32**

checklists, §§ **45:33 to 45:36**

court's action on requests for  
instructions, checklist, § **45:35**

forms

sample BAJI jury instruc-  
tions, § **45:38**

## INDEX

### INSURANCE BAD FAITH LITIGATION—Cont'd

- Jury instructions—Cont'd
  - forms—Cont'd
    - sample CACI jury instructions, § 45:37
  - improper instructions, § 45:31
  - preparation of final instructions, checklist, § 45:36
  - purpose and use, § 45:29
  - request for CACI/BAJI instructions, checklist, § 45:33
  - request for original instructions, checklist, § 45:34
  - source of jury instructions, § 45:32
  - use of instructions, § 45:29
- Limitations period applicable to insurance bad faith complaints, § 41:1
- Motion for directed verdict
  - availability in bad faith actions, §§ 45:23 to 45:26
  - checklist, oral vs. written motion, § 45:27
  - form, sample memorandum of points and authorities supporting motion on cause of action for intentional misrepresentation, § 45:28
  - intentional misrepresentation, sample memorandum of points and authorities supporting motion, form, § 45:28
  - making the motion, § 45:25
  - practice checklist, § 45:27
  - tactical considerations, § 45:26
  - timing of motion, § 45:24
- Motion for nonsuit
  - availability in bad faith actions, §§ 45:17 to 45:20
  - making motion for nonsuit, § 45:19
  - tactical considerations, § 45:20
  - timing of motion, § 45:18

### INSURANCE BAD FAITH LITIGATION—Cont'd

- Motions in limine
    - areas of use, § 45:3
    - availability, § 45:1
    - bifurcate, motions to, § 45:5
    - checklist, oral vs. written motion, § 45:21
    - effects at trial, § 45:2
    - forms
      - negligence cause of action, sample memorandum of points and authorities supporting motion, § 45:22
      - sample memorandum of points and authorities supporting motion against negligence cause of action, § 45:22
    - making motions in limine, § 45:4
    - practice checklist, § 45:21
    - purpose, § 45:1
    - violations of granted motions, § 45:2
  - Nonsuit. Motion for nonsuit, above
- ### INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
- Actual cause, § 14:7
  - Advice of counsel, reliance on, § 14:10
  - Affirmative defenses
    - creditor's qualified privilege to protect economic interest, § 14:26
    - federal labor law, preemption, § 14:28
    - litigation privilege [Civ Code § 47(b)(2)], § 14:25
    - preemption, §§ 14:28, 14:29
    - statute of limitations [Civ Code Proc § 340(3)], § 14:27
    - workers' compensation exclusive remedy provisions, § 14:29
  - Bodily remains of relative, complaint for undignified handling, § 14:24



**INTENTIONAL INFLICTION  
OF EMOTIONAL DISTRESS  
—Cont’d**

**Complaints**

- bodily remains of relative,  
undignified handling, § 14:24
- conspiracy to inflict emotional  
distress, § 14:20
- intentional infliction based on  
dumping of toxic waste,  
§ 14:21
- racial epithets, § 14:23
- rape of plaintiff’s wife by third  
party, § 14:22
- sexual harassment in workplace,  
§ 14:19
- toxic waste, intentional infliction  
based on dumping of, § 14:21

**Conspiracy to inflict emotional  
distress, complaint, § 14:20**

**Creditor’s qualified privilege to  
protect economic interest, affirma-  
tive defense, § 14:26**

**Defendant’s position or relationship  
to plaintiff, § 14:3**

**Defenses, potential**

- advice of counsel, reliance on,  
§ 14:10
- consent, § 14:11
- constitutional privileges, § 14:12
- federal statute preemption,  
§ 14:16
- preemption by federal statute,  
§ 14:16
- preemption by state statute,  
§ 14:17
- privilege, § 14:13
- public policy, § 14:14
- reliance on advice of counsel,  
§ 14:10
- state statute preemption, § 14:17
- statute of limitations, § 14:15
- workers’ compensation law,  
§ 14:17

**Elements, §§ 14:1 to 14:7**

**INTENTIONAL INFLICTION  
OF EMOTIONAL DISTRESS  
—Cont’d**

**Extreme and outrageous conduct,  
§ 14:2**

**Federal labor law, preemption,  
§ 14:28**

**Forms**

- affirmative defenses, above  
cause of action, intentional tort  
[Judicial Council Form  
982.1(4)], § 14:18

- complaints, above  
sexual harassment in workplace,  
complaint, § 14:19

**Intentional conduct, § 14:5**

**Intentional infliction based on dump-  
ing of toxic waste, complaint,  
§ 14:21**

**Legal principles, §§ 14:1 to 14:17**

**Litigation privilege as affirmative  
defense [Civ Code § 47(b)(2)],  
§ 14:25**

**Outrageous conduct, § 14:2**

**Parties**

- defendants, potential, § 14:9
- plaintiffs, potential, § 14:8
- potential plaintiffs, § 14:8

**Position of defendant relative to  
plaintiff, § 14:3**

**Preemption, affirmative defenses,  
§§ 14:28, 14:29**

**Proximate cause, § 14:7**

**Racial epithets, complaint for use,  
§ 14:23**

**Rape of plaintiff’s wife by third  
party, complaint, § 14:22**

**Reckless conduct, § 14:5**

**Relationship of defendant to  
plaintiff, § 14:3**

**Required elements of cause of  
action, § 14:1**

**Severe emotional distress, § 14:6**

**Sexual harassment in workplace,  
complaint based on, § 14:19**

## INDEX

### INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

#### —Cont'd

Statute of limitations [Civ Code Proc  
§ 340(3)], § 14:27

Susceptibility to emotional distress,  
§ 14:4

Toxic waste, complaint for  
intentional infliction based on  
dumping of, § 14:21

Workers' compensation exclusive  
remedy provisions, § 14:29

### INTENTIONAL TORTS OF PUBLIC OFFICIALS

Immunity of public entity, § 29:4

### INTEREST

Wrongful death, prejudgment inter-  
est, § 23:10

### INTRUSION INTO AFFAIRS OR SOLITUDE

Invasion of Privacy (this index)

### INTRUSION ON OR ABOVE SURFACE LEVEL

Trespass, § 18:7

### INVASION OF PRIVACY

Affirmative defenses

plaintiff is public figure, § 20:36  
publication is newsworthy,  
§ 20:37

statutory duty to disclose infor-  
mation, § 20:38

Appropriation or exploitation of  
name or likeness

common law action, § 20:16  
statutory cause of action [Civ  
Code § 3344], § 20:17

Authority for tort, § 20:1

Common law actions

appropriation of name or like-  
ness, § 20:16

disclosure of private information,  
§ 20:10

false light, § 20:12

### INVASION OF PRIVACY

#### —Cont'd

Common law actions—Cont'd  
intrusion on plaintiff's affairs or  
solitude, § 20:8

Common law actions. Traditional  
common law actions and statutory  
variations, below

Consent, § 20:23

Damages, §§ 20:15, 20:28

Deceased personality, § 20:4

Defamation, relation to false light,  
§ 20:13

Defenses

affirmative defenses, above  
common law privileges, § 20:24  
consent, § 20:23

disclosure of newsworthy mat-  
ters, § 20:25

inadvertence, § 20:23

mistake, § 20:23

newsworthy matters disclosed,  
§ 20:25

public officials and public  
figures, requirements, § 20:26

statute of limitations, § 20:27

statutory and common law privi-  
leges, § 20:24

Disclosure of private information  
common law actions, § 20:10

government agencies, statutory  
actions for disclosure of infor-  
mation held by, § 20:11

Distinctions from related torts,  
§ 20:2

False light

common law actions, § 20:12  
defamation, relation to, § 20:13  
malice in false light actions,  
§ 20:14

retraction requirements, § 20:15  
special damages, § 20:15

Forms

affirmative defenses, above

## INVASION OF PRIVACY

### —Cont'd

#### Forms—Cont'd

cause of action for intentional tort [Judicial Council Form PLD-PI-001(3), formerly 982.1(4)], § **20:30**

false light invasion of privacy, complaint against newspaper, § **20:33**

name and personality, complaint for appropriation, § **20:34**

name and photograph, complaint for appropriation [Civ Code § 3344], § **20:35**

pleadings by plaintiff, §§ **20:30 to 20:35**

public disclosure of private facts, complaint for damages and injunctive relief, § **20:31**

“reality TV” type television production, complaint by victim of motor vehicle accident against producer for intrusion into private affairs, § **20:32**

Government agencies, statutory actions for disclosure of information held by, § **20:11**

Identification of potential plaintiff, § **20:3**

Inadvertence, § **20:23**

Injunctive relief, § **20:29**

Interest protected, § **20:2**

Intrusion on plaintiff’s affairs or solitude

common law action, § **20:8**

related statutory actions, § **20:9**

Invasion of privacy actions, § **20:7**

Legal principles, §§ **20:1 to 20:29**

#### Malice

false light actions, § **20:14**

nature of tort, § **20:6**

Mistake, § **20:23**

Origin of tort, § **20:1**

## INVASION OF PRIVACY

### —Cont'd

Pleadings by plaintiff, forms, §§ **20:30 to 20:35**

Potential plaintiff, § **20:3**

Public disclosure requirement, § **20:5**

Public officials and public figures, requirements, § **20:26**

Related torts distinguished, § **20:2**

#### Remedies

damages, § **20:28**

injunctions, § **20:29**

“Smart TV” consumers, § **20:22**

Statute of limitations, § **20:27**

Survival of action, § **20:4**

Traditional common law actions and statutory variations

generally, §§ **20:8, 20:9**

appropriation or exploitation of name or likeness, §§ **20:16, 20:17**

disclosure of private information, §§ **20:10, 20:11**

false light, §§ **20:12 to 20:15**

intrusion on plaintiff’s affairs or solitude, §§ **20:8, 20:9**

#### Types of privacy actions

appropriation of name or likeness, §§ **20:16, 20:17**

business and other contexts, privacy actions in, § **20:21**

California constitution, actions under, §§ **20:18 to 20:20**

common law actions, appropriation of name or likeness, § **20:16**

constitutional privacy right, actions under California constitution, § **20:19**

credit reporting, privacy actions in, § **20:21**

disclosure of private information, §§ **20:10, 20:11**

false light, §§ **20:12 to 20:15**

## INDEX

### INVASION OF PRIVACY

#### —Cont'd

- Types of privacy actions—Cont'd
  - grant of right to privacy, actions under California constitution, § 20:20
  - insurance, privacy actions in, § 20:21
  - intrusion on plaintiff's affairs or solitude, §§ 20:8, 20:9
  - invasion of privacy actions, § 20:7
  - justification for intrusion, actions under California constitution, § 20:20
  - “Smart TV” consumers, § 20:22
  - special statutory actions, § 20:21
  - statutory cause of action [Civ Code § 3344], § 20:17
- Victim of motor vehicle accident against producer of “reality TV” type television production for intrusion into private affairs, complaint form, § 20:32

## J

### JOINT VENTURES

- Acts of others, liability for acts of participant
  - joint venture defined, § 3:37
  - nature of liability, § 3:38
- Definition, § 3:37
- Liability of persons other than driver of vehicle. Motor Vehicles (this index)

### JURISDICTION

- Defamation, § 21:59

### JUROR QUESTIONNAIRES

- Insurance Bad Faith Litigation (this index)

### JURY INSTRUCTIONS

- Abuse of process, form, § 19:40
- Aviation, § 26:39

### JURY INSTRUCTIONS—Cont'd

- Insurance Bad Faith Litigation (this index)
- Mitigation of damages, § 6:6
- Trespass, complaints, § 18:24
- Wrongful death damages, § 23:37

## L

### LABOR AND EMPLOYMENT

- Employers and Employees (this index)

### LACHES

- Nuisance, § 17:18

### LEGAL MALPRACTICE

- Generally, § 33:1 et seq.
- Bankruptcy (this index)
- Basis of action by client
  - breach of contract, § 33:19
  - breach of fiduciary duty, § 33:20
  - fraud, § 33:22
  - intentional infliction of emotional distress, § 33:21
  - negligence, § 33:18
- Basis of action by non-client
  - abuse of process, § 33:32
  - civil conspiracy with client, §§ 33:29, 33:30
  - intentional infliction of emotional distress, § 33:28
  - malicious prosecution, § 33:31
  - negligent misrepresentation, § 33:27
  - prerequisites under Civi Code § 1714.10 to action for civil conspiracy, § 33:30
- Causation
  - generally, § 33:39
  - case-within-a-case requirement, § 33:40
- Damages
  - attorney's fees and costs, § 33:52
  - collectibility, § 33:47

## LEGAL MALPRACTICE

### —Cont'd

#### Damages—Cont'd

- element of cause of action for professional negligence, § 33:46
- emotional distress damages, § 33:50
- measure of damages, § 33:48
- punitive damages, § 33:51
- reduction, § 33:49

#### Defenses

- arbitration, § 33:66
- attorney's work product, § 33:65
- comparative negligence, § 33:61
- legal malpractice insurance, § 33:67
- mistake in law, § 33:62
- privilege under Civ Code § 47, subd (b), § 33:64
- statute of limitation
  - appeal, § 33:58
  - belated discovery of facts or legal theories, § 33:60
  - form, § 33:77
  - overview, § 33:57
  - tolling during time client has not sustained actual injury, § 33:58
  - tolling during time of continued representation, § 33:59
- unclean hands, § 33:63
- unsettled area of law, § 33:62

#### Duty owed to client by attorney

- attorney-client relationship, § 33:12
- conflicting obligations, § 33:16
- conflict of interest, § 33:15
- duty to refer to specialist, § 33:17
- fiduciary duty owed to client, § 33:13
- fiduciary duty owed to former client, § 33:14

## LEGAL MALPRACTICE

### —Cont'd

#### Duty owed to client by attorney

##### —Cont'd

- general duty, § 33:11

#### Duty owed to non-client by attorney

- generally, § 33:23
- assignment of action for legal malpractice, § 33:26
- duty to client's adversary, § 33:25
- fiduciary duty, § 33:24

#### Examples of situations giving rise to cause of action, §§ 33:2 to 33:10

#### Failure to file complaint before expiration of statute of limitations, § 33:2

#### Failure to file responsive pleading, § 33:4

#### Failure to serve summons in timely manner, § 33:3

#### Forms

- administration of will, complaint by former client against law firm for negligence, § 33:71
- allegation of breach of contract, § 33:76
- allegation of breach of fiduciary duty owed to former client, § 33:75
- bankruptcy matter, complaint by former client against solo practitioner for negligence, § 33:72

#### defenses

- comparative negligence of successor attorney, § 33:78
- equitable defense of unclean hands, § 33:80
- litigation privilege [Civ Code § 47, subd (b)], § 33:79
- statute of limitations, § 33:77

- expiration of statute of limitations, complaint by former client against law firm for negligence in failing to file complaint before, § 33:68

## INDEX

### LEGAL MALPRACTICE

#### —Cont'd

##### Forms—Cont'd

failing to file responsive pleading, complaint by former client against law firm for negligence, § 33:69

intended beneficiary of will, complaint against law firm for negligence in drafting will, § 33:74

intentional infliction of emotional distress, complaint by former client against solo practitioner, § 33:73

marital settlement agreement, complaint by former client against law firm for negligence in drafting, § 33:70

##### Indemnification

associate, § 33:55

attorney representing insurance claimant, § 33:56

attorney's fees and costs, § 33:52

successor attorney, § 33:54

tortfeasor, § 33:53

##### Nature of action, § 33:1

##### Negligent

drafting of marital settlement agreement, § 33:6

drafting of will, § 33:5

handling of bankruptcy matter, § 33:8

handling of business matter, § 33:9

handling of criminal matter, § 33:10

handling of lawsuit, § 33:7

##### Standard of care

expert testimony, §§ 33:35 to 33:37

general standard of care, § 33:33

qualification of experts, § 33:37

rules of professional conduct, § 33:38

specialist, § 33:34

### LEGAL MALPRACTICE

#### —Cont'd

##### Standard of care—Cont'd

use of expert testimony to establish, § 33:35

use of expert testimony where attorney is specialist, § 33:36

##### Vicarious liability

co-counsel, § 33:44

dissociation of partner, § 33:42

dissolution of partnership, § 33:42

employees of attorney, § 33:45

law corporation, § 33:43

partnership, §§ 33:41, 33:42

### LIMITATION PERIODS

Product liability, §§ 24:70 to 24:75

### LIMITATIONS ON RECOVERY

Damages for injuries to drunk or uninsured driver or uninsured motor vehicle owner, § 25:96

Damages for injuries to drunk or uninsured driver or uninsured motor vehicle owner [Civ Code § 3333.4], § 25:89

### LOSS OF CONSORTIUM

Allegation of damages with incorporation paragraph, form, § 10:19

Allegation that claim is barred by statute of limitations, form, § 10:20

Arbitration agreements, effect on damages, § 10:16

##### Availability of claim

child's consortium, § 10:3

either spouse, § 10:2

parent's consortium, § 10:3

Child's consortium, availability of claim, § 10:3

##### Complaint

checklist for complaint, § 10:17

negligence of defendant, complaint for damages, § 10:18

## LOSS OF CONSORTIUM

### —Cont'd

Complaint forms, § 24:93

Contributory negligence of spouse,  
effect on damages, Proposition 51,  
§ 10:12

### Damages

allegation of damages with  
incorporation paragraph, form,  
§ 10:19

amount, § 10:10

arbitration agreements, § 10:16

complaint for damages resulting  
from negligence of defendant,  
§ 10:18

components, § 10:10

contributory negligence of  
spouse, Proposition 51,  
§ 10:12

duplicate recovery, § 10:11

insurance policy limits, § 10:13

limits of insurance policy,  
§ 10:13

medical malpractice claims,  
§ 10:15

nature and measure, §§ 10:10 to  
10:16

statutory medical malpractice  
claims, § 10:15

workers' compensation, § 10:14

Estoppel, § 10:8

### Forms

allegation of damages with  
incorporation paragraph,  
§ 10:19

allegation that claim is barred by  
statute of limitations, § 10:20  
complaint for damages resulting  
from negligence of defendant,  
§ 10:18

Injury to spouse, pleading require-  
ments, § 10:6

Insurance policy limits, § 10:13

Joinder of actions, § 10:8

### Legal principles

checklist for complaint, § 10:17

## LOSS OF CONSORTIUM

### —Cont'd

Legal principles—Cont'd

damages, nature and measure,  
§§ 10:10 to 10:16

pleading requirements, §§ 10:4  
to 10:7

procedural checklist, § 10:17

procedural matters, §§ 10:8, 10:9

Medical malpractice claims, dam-  
ages, § 10:15

Nature and extent of loss of  
consortium, pleading requirement,  
§ 10:7

Nature of claim, § 10:1

### Negligence

complaint for damages, § 10:18

contributory negligence of  
spouse, effect on damages,  
Proposition 51, § 10:12

Parent's consortium, availability of  
claim, § 10:3

Personal injury to spouse, pleading  
requirements, § 10:6

### Pleading requirements

injury to spouse, § 10:6

nature and extent of loss of  
consortium, § 10:7

summary, § 10:4

valid and lawful marriage, § 10:5

Proposition 51, contributory  
negligence of spouse, § 10:12

Statute of limitations, §§ 10:9, 10:20

Statutory medical malpractice  
claims, damages, § 10:15

Valid and lawful marriage, pleading  
requirement, § 10:5

Workers' compensation, effect on  
damages, § 10:14

## M

### MALICE

Governmental immunity, malicious  
acts by public employee, § 29:24



## INDEX

### **MALICE—Cont'd**

Invasion of privacy  
false light actions, § 20:14  
nature of tort, § 20:6

### **MALICIOUS PROSECUTION**

Abuse of process distinguished, § 19:2  
Affirmative defenses  
federal bankruptcy law, preemption by, § 19:27  
governmental immunity [Gov Code § 821.6], § 29:32  
independent investigation, § 19:26  
preemption by federal bankruptcy law, § 19:27  
probable cause to bring civil action, § 19:24  
probable cause to bring criminal action, § 19:25  
public employee immunity [Gov Code § 821.6], § 19:29  
public entity immunity [Gov Code § 815.2 subd (b)], § 19:30  
statute of limitations [Code Civ Proc § 340(3)], § 19:28  
Anonymous witness programs, immunities, § 19:18  
Causation, § 19:14  
Damages and causation  
causation, § 19:14  
punitive damages, § 19:13  
Defamation distinguished, § 19:4  
Defenses and immunities  
affirmative defenses, above  
anonymous witness programs, immunities, § 19:18  
governmental immunity [Gov Code § 821.6], § 29:32  
negation of prima facie element, § 19:16  
overview, § 19:15  
public employee immunity [Gov Code § 821.6], § 19:29

### **MALICIOUS PROSECUTION —Cont'd**

Defenses and immunities—Cont'd  
public employees and entities, immunities, § 19:17  
public entity immunity [Gov Code § 815.2 subd (b)], § 19:30  
Definition, § 19:1  
Distinctions from other torts, §§ 19:2 to 19:4  
Elements of cause of action  
action commenced at direction of defendant, § 19:7  
civil proceeding, favorable termination of underlying, § 19:8  
criminal proceeding, favorable termination of underlying, § 19:9  
favorable legal termination, §§ 19:8, 19:9  
prior actions commenced by or at direction of defendant, §§ 19:5 to 19:7  
support of action by underlying proceedings, §§ 19:5, 19:6  
False imprisonment distinguished, § 19:3  
Governmental immunity, affirmative defenses for injuries from [Gov Code § 821.6], § 29:32  
Legal principles, §§ 19:1 to 19:30  
Nature of action, § 19:1  
Probable cause, lack of  
court, role of, § 19:10  
evidentiary issues, § 19:11  
jury, role of, § 19:10  
role of court and jury, § 19:10  
standard applicable for civil and criminal proceedings, § 19:12  
Procedure  
civil proceedings, complaint based on wrongful institution, § 19:23

**MALICIOUS PROSECUTION**  
—Cont'd

Procedure—Cont'd  
     criminal proceedings, complaint based on wrongful institution, § 19:22  
     potential defendants, § 19:20  
     potential plaintiffs, § 19:19  
     statute of limitations, § 19:21  
     venue, § 19:18  
     wrongful institution of civil proceedings, complaint based on, § 19:23  
     wrongful institution of criminal proceedings, complaint based on, § 19:22  
 Punitive damages, § 19:13  
 Statute of limitations, § 19:21  
 Venue, § 19:18  
 Wrongful institution of criminal proceedings, complaint based on, § 19:22

**MEDICAL INJURY**  
**COMPENSATION REFORM**  
**ACT (MICRA)**

Actions not subject, § 8:3  
 Actions subject to MICRA, § 8:2  
 Affirmative defense for periodic payment of future damages [Code Civ Proc 667.7], form, § 8:16  
 Avoiding MICRA limitations, § 8:5  
 Collateral source rule modification [Civ Code 3333.1]  
     evidence of collateral benefits admissible, § 8:9  
     recovery, collateral source recovery, § 8:10  
 Constitutionality, § 8:6  
 Form, affirmative defense for periodic payment of future damages [Code Civ Proc 667.7], § 8:16  
 Law source, § 8:1  
 Legal principles, §§ 8:1 to 8:15

**MEDICAL INJURY**  
**COMPENSATION REFORM**  
**ACT (MICRA)—Cont'd**

Limitations  
     avoiding MICRA limitations, § 8:5  
     noneconomic damages limitation [Civ Code 3333.2], §§ 8:7, 8:8  
 Medical Malpractice (this index)  
 Noneconomic damages limitation [Civ Code 3333.2]  
     cap of \$ 250,000, § 8:7  
     exceeding cap of \$ 250,000, § 8:8  
 Periodic payment option [Code Civ Proc 667.7]  
     affirmative defense for periodic payment of future damages [Code Civ Proc 667.7], form, § 8:16  
     future damage awards over \$ 250,000, § 8:11  
     “lost years” damages exception, § 8:12  
     modification of request, § 8:15  
     prejudgment request, § 8:14  
     role of court and jury, § 8:13  
 Source of law, § 8:1  
 Statute of limitations, § 8:4

**MEDICAL MALPRACTICE**

Generally, § 32:1 et seq.  
 Arbitration [Civ Code § 1295], § 32:46  
 Attorney fee provision [Bus & Prof Code § 61.46], § 32:57  
 Authorization for release of medical records, §§ 32:44, 32:49  
 Damages and costs  
     attorney fee provision [Bus & Prof Code § 61.46], § 32:57  
     forms  
         costs of defense, declaration in support of motion for order requiring plaintiff to file undertaking [Code Civ

## INDEX

### MEDICAL MALPRACTICE

#### —Cont'd

#### Damages and costs—Cont'd

##### forms—Cont'd

Proc § 1029.6, subd (a)],  
**§ 32:61**

costs of defense, notice of  
motion for order requiring  
plaintiff to file undertaking  
[Code Civ Proc § 1029.6,  
subd (a)], **§ 32:60**

punitive damages, declaration  
of plaintiff's attorney in  
support of motion for order  
allowing filing of claim  
[Code Civ Proc § 425.13,  
subd (a)], **§ 32:59**

punitive damages, notice of  
motion for order allowing  
filing of claim [Code Civ  
Proc § 425.13, subd (a)],  
**§ 32:58**

legal principles, §§ **32:54 to**  
**32:57**

MICRA damages provisions,  
**§ 32:54**

MICRA's attorney fee provision  
[Bus & Prof Code § 61.46],  
**§ 32:57**

mitigation of damages, allowance  
of evidence of collateral  
benefits, **§ 6:12**

punitive damages [Code Civ Proc  
§ 425.13, subd (a)], **§ 32:55**

security for costs [Code Civ Proc  
§ 1029.6], **§ 32:56**

#### Defenses

comparative negligence, **§ 32:69**  
express assumption of risk,  
**§ 32:71**

##### forms

action barred by statute limit-  
ing liability of physician  
who renders emergency  
care at scene of emergency  
[Bus & Prof Code § 2395],

### MEDICAL MALPRACTICE

#### —Cont'd

#### Defenses—Cont'd

##### forms—Cont'd

affirmative defense,  
**§ 32:83**

affirmative defense that  
plaintiff's action is barred  
by statute of limitations,  
**§ 32:76**

comparative negligence,  
**§ 32:82**

declaration in support of  
motion for order requiring  
issues raised by statute of  
limitations defense to be  
tried separately [Code Civ  
Proc § 597.5], **§ 32:78**

declaration in support of  
motion for order requiring  
that case be tried on merits  
immediately following  
verdict on statute of limita-  
tions defense and by same  
jury, **§ 32:80**

equitable indemnity,  
physician's cross-com-  
plaint against initial  
tortfeasor and another  
physician [Code Civ Proc  
§§ 428.10, 428.20],  
**§ 32:81**

notice of motion for order  
requiring issues raised by  
statute of limitations  
defense to be tried  
separately [Code Civ Proc  
§ 597.5], **§ 32:77**

notice of motion for order  
requiring that case be tried  
on merits immediately fol-  
lowing verdict on statute of  
limitations defense and by  
same jury, **§ 32:79**

workers' compensation as  
exclusive remedy, affirma-

## MEDICAL MALPRACTICE

### —Cont'd

Defenses—Cont'd  
     forms—Cont'd  
         tive defense, § 32:84  
     Good Samaritan immunity [Bus  
         & Prof Code §§ 2395, 2396],  
         § 32:73  
     indemnity, § 32:70  
     natural course of disease [Civ  
         Code § 1714.8], § 32:72  
     other defenses, §§ 32:69 to 32:75  
     other statutory immunity,  
         § 32:74  
     statute of limitations  
         actions by minors [Code Civ  
             Proc § 340.5], § 32:67  
         affirmative defense that  
             plaintiff's action is barred  
             by statute of limitations,  
             form, § 32:76  
         applicable statutes, § 32:62  
         commencement of one-year  
             limitations period [Code  
                 Civ Proc § 340.5], § 32:64  
         commencement of three-year  
             limitations period [Code  
                 Civ Proc § 340.5], § 32:63  
         declaration in support of  
             motion for order requiring  
             issues raised by statute of  
             limitations defense to be  
             tried separately [Code Civ  
                 Proc § 597.5], § 32:78  
         declaration in support of  
             motion for order requiring  
             that case be tried on merits  
             immediately following  
             verdict on statute of limita-  
             tions defense and by same  
             jury, § 32:80  
         notice of motion for order  
             requiring issues raised by  
             statute of limitations  
             defense to be tried  
             separately, form [Code Civ

## MEDICAL MALPRACTICE

### —Cont'd

Defenses—Cont'd  
     statute of limitations—Cont'd  
         Proc § 597.5], § 32:77  
     notice of motion for order  
         requiring that case be tried  
         on merits immediately fol-  
         lowing verdict on statute of  
         limitations defense and by  
         same jury, § 32:79  
     pretrial resolution of defense  
         [Code Civ Proc § 597.5],  
         § 32:68  
     tolling effect of Code Civ  
         Proc § 364 on statute of  
         limitations, § 32:66  
     tolling of Code Civ Proc  
         § 340.5 provisions, § 32:65  
     workers' compensation as  
         exclusive remedy, §§ 32:75,  
         32:84  
     Definition of medical negligence,  
         § 32:1  
     Duty of physician to inform patient  
         causation in informed consent  
         and informed refusal cases,  
         § 32:11  
         exceptions to duty to inform,  
         § 32:10  
         informed consent, § 32:8  
         informed refusal, § 32:9  
     Duty of physician to third parties  
         general circumstances in which  
         duty arises, § 32:12  
         negligent infliction of emotional  
         distress on third party, § 32:14  
         protection of third party from  
         harm from patient, § 32:13  
     Duty of physician to use care in  
         diagnosis and treatment  
         emergencies, standard of care in  
         [Health & Saf Code  
             § 1799.110], § 32:5  
         existence of physician-patient  
         relationship, § 32:3

## INDEX

### MEDICAL MALPRACTICE

#### —Cont'd

- Duty of physician to use care in diagnosis and treatment—Cont'd
  - general standard of care, § 32:4
  - Medical Injury Compensation Reform Act, effect on medical negligence claims, § 32:2
  - regulatory duties, § 32:7
  - specific duties involved in diagnosing and treating patient, § 32:6
  - standard of care of specialists, § 32:4
  - statutory duties, § 32:7
- Forms
  - allegation affirmatively pleading compliance with statute of limitations, § 32:22
  - authorization for release of medical records [Civ Code § 56.11], § 32:49
  - battery, allegations for cause of action for, § 32:34
  - breach of contract, allegations for cause of action for, § 32:33
  - corporate negligence in selection and review of staff physician, complaint against hospital, § 32:41
  - costs of defense, notice of motion for order requiring plaintiff to file undertaking [Code Civ Proc § 1029.6, subd (a)], § 32:60
  - declaration by plaintiff's parent in support of motion for order granting preference in trial setting for party under 14 years of age [Code Civ Proc § 36, subd (b)], § 32:53
  - diagnosis and treatment, complain against physician and clinic for professional negligence in, § 32:21

### MEDICAL MALPRACTICE

#### —Cont'd

- Forms—Cont'd
  - failure to obtain patient's informed consent to treatment, complaint against physician and clinic, § 32:21
  - fraudulent misrepresentation, complaint against dentist, § 32:35
  - negligent infliction of emotional distress, complaint by one who observed negligently inflicted injury of third person, § 32:23
  - notice of intention to bring action for professional negligence against health care provider [Code Civ Proc § 364], § 32:50
  - notice of motion for order granting preference in trial setting for party under 14 years of age [Code Civ Proc § 36, subd (b)], § 32:52
  - paramedic, complaint for negligence, § 32:42
  - petition to compel arbitration [Code Civ Proc § 1281.2], § 32:51
  - punitive damages, declaration of plaintiff's attorney in support of motion for order allowing filing of claim [Code Civ Proc § 425.13, subd (a)], § 32:59
  - punitive damages, notice of motion for order allowing filing of claim [Code Civ Proc § 425.13, subd (a)], § 32:58
  - vicarious liability of physician or hospital for acts of physician, nurse, or other assistant [Civ Code § 2338], § 32:32
  - wrongful birth, complaint for professional negligence resulting in, § 32:24

**MEDICAL MALPRACTICE**

**—Cont'd**

Forms—Cont'd

wrongful life, complaint for professional negligence resulting in, § 32:24

Health care providers other than physicians  
forms

corporate negligence in selection and review of staff physician, complaint against hospital, § 32:41  
paramedic, complaint for negligence, § 32:42

health plans, § 32:40

hospitals, § 32:38

MICRA definition of other health care providers, § 32:36

nurses, § 32:37

paramedics, § 32:39

Limitations on discovery [Evid Code § 1157], § 32:45

Local rule establishing procedural requirements, § 32:48

Medical Injury Compensation Reform Act (MICRA)

attorney fee provision [Bus & Prof Code § 61.46], § 32:57

damages provisions, § 32:54

definition of other health care providers, § 32:36

duty of physician to use care in diagnosis and treatment, effect of MICRA on medical negligence claims, § 32:2

Medical records, authorization for release, §§ 32:44, 32:49

Negligence

definition of medical negligence, § 32:1

duty of physician to inform patient, §§ 32:8 to 32:11

duty of physician to third parties, §§ 32:12 to 32:14

**MEDICAL MALPRACTICE**

**—Cont'd**

Negligence—Cont'd

duty of physician to use care in diagnosis and treatment, §§ 32:2 to 32:7

forms

allegation affirmatively pleading compliance with statute of limitations, § 32:22

diagnosis and treatment, complain against physician and clinic for professional negligence in, § 32:21

failure to obtain patient's informed consent to treatment, complaint against physician and clinic, § 32:21

negligent infliction of emotional distress, complaint by one who observed negligently inflicted injury of third person, § 32:23

wrongful birth, complaint for professional negligence resulting in, § 32:24

wrongful life, complaint for professional negligence resulting in, § 32:24

ordinary negligence

distinguished from medical negligence, § 32:1

proof of negligence and causation, §§ 32:17 to 32:20

Notice of intent to sue [Code Civ Proc § 364], § 32:43

Procedural considerations and requirements, §§ 32:43 to 32:53

Proof of negligence and causation  
causation principles, § 32:17

expert testimony, § 32:18

negligence per se [Evid Code § 669, subd (a)], § 32:20

res ipsa loquitur, § 32:19

## INDEX

### MEDICAL MALPRACTICE

#### —Cont'd

##### Summary checklists

defendant's attorney, procedural checklist in medical malpractice action, § 32:86

plaintiff's attorney, procedural checklist in medical malpractice action, § 32:85

##### Theories of liability

abandonment, § 32:30

battery, § 32:26

breach of contract, § 32:27

conversion, § 32:31

fraud, § 32:28

negligence, above

strict liability, § 32:29

vicarious liability for acts of others, § 32:25

Third parties. Duty of physician to third parties, above

Trial preferences [Code Civ Code § 36], § 32:47

Wrongful birth, §§ 32:15, 32:24

Wrongful life, §§ 32:16, 32:24

### MEDICAL RECORDS

Automobile Insurance Litigation (this index)

Medical malpractice, authorization for release, §§ 32:44, 32:49

Uninsured Motorist Claims (this index)

### MINORS

Children and Minors (this index)

### MISREPRESENTATIONS

Governmental immunity, affirmative defenses for injuries [Gov Code §§ 818.8, 822.2], § 29:31

### MITIGATION OF DAMAGES

Affirmative defense for failure to mitigate by submitting to physical therapy, form, § 6:7

### MITIGATION OF DAMAGES

#### —Cont'd

Affirmative defense for failure to mitigate damages to crops by utilizing substitute means of conveying water, form, § 6:8

Avoidable consequences doctrine, § 6:1

##### Collateral source rule

generally, § 6:9

evidence of collateral benefits allowed in medical malpractice actions, § 6:12

exception, telling jurors about payments, § 6:14

jurors, informing of collateral source payments, § 6:14

medical malpractice actions, allowance of evidence of collateral benefits, § 6:12

other tortfeasors or their insurers, rule as to payments by, § 6:11

reduction of judgment against public entity for collateral source payments, § 6:13

situations where rule may not apply, § 6:10

Costs recovery, § 6:5

Duty of injured party, § 6:1 et seq.

##### Forms

affirmative defense for failure to mitigate by submitting to physical therapy, § 6:7

affirmative defense for failure to mitigate damages to crops by utilizing substitute means of conveying water, § 6:8

Injured party's duty, § 6:1 et seq.

Jury instruction request, § 6:6

Legal principles, §§ 6:1 to 6:6

Limitation by reasonableness, § 6:2

Medical malpractice actions, allowance of evidence of collateral benefits, § 6:12



**MITIGATION OF DAMAGES  
—Cont'd**

Other tortfeasors or their insurers,  
payments by, collateral source  
rule, § **6:11**  
Personal injury cases, § **6:3**  
Physical therapy, affirmative defense  
for failure to mitigate by submit-  
ting to, form, § **6:7**  
Pleading, § **6:6**  
Public entity, reduction of judgment  
against for collateral source pay-  
ments, § **6:13**  
Reasonableness as limitation, § **6:2**  
Recovery of mitigation costs, § **6:5**  
Request for jury instruction, § **6:6**  
Wrongful birth cases, § **6:4**  
Wrongful life cases, § **6:4**

**MOTIONS IN LIMINE**

Insurance Bad Faith Litigation (this  
index)

**MOTOR VEHICLES**

Generally, § **25:1 et seq.**  
Automobile Insurance Litigation  
(this index)  
Comparative negligence  
affirmative defense of compara-  
tive negligence form, § **25:90**  
failure to use seat belt form,  
§ **25:91**  
nature of doctrine, § **25:82**  
negligence of passenger, § **25:83**  
Defenses  
affirmative defense of imminent  
peril form, § **25:92**  
affirmative defense of sudden  
illness form, § **25:93**  
comparative negligence  
affirmative defense of  
comparative negligence  
form, § **25:90**  
failure to use seat belt form,  
§ **25:91**  
nature of doctrine, § **25:82**

**MOTOR VEHICLES—Cont'd**

Defenses—Cont'd  
comparative negligence—Cont'd  
negligence of passenger,  
§ **25:83**  
seat belt defense, §§ **25:84,**  
**25:91**  
comparative negligence, above  
drunk drivers, limitation on  
recovery of damages for  
injuries, affirmative defense  
form, § **25:96**  
drunk drivers, limitation on  
recovery of damages for  
injuries [Civ Code § 3333.4],  
§ **25:89**  
imminent peril, §§ **25:86, 25:92**  
immunity from liability of emer-  
gency vehicle driver, affirma-  
tive defense form [Veh Code  
§ 17004], § **25:95**  
imputed negligence generally,  
§ **25:85**  
insurance litigation. Automobile  
Insurance Litigation (this  
index)  
intervening cause, §§ **25:88,**  
**25:94**  
intervening theft of motor vehi-  
cle, form, § **25:94**  
limitation on recovery of dam-  
ages for injuries to drunk or  
uninsured driver or uninsured  
motor vehicle owner, affirma-  
tive defense form [Civ Code  
§ 3333.4], § **25:96**  
limitation on recovery of dam-  
ages for injuries to drunk or  
uninsured driver or uninsured  
motor vehicle owner [Civ  
Code § 3333.4], § **25:89**  
sudden illness or disability,  
§§ **25:87, 25:93**  
uninsured drivers, limitation on  
recovery of damages for  
injuries, affirmative defense

## INDEX

### MOTOR VEHICLES—Cont'd

#### Defenses—Cont'd

form [Civ Code § 3333.4],  
§ **25:96**

uninsured drivers, limitation on  
recovery of damages for  
injuries [Civ Code § 3333.4],  
§ **25:89**

uninsured motor vehicle owners,  
limitation on recovery of dam-  
ages for injuries, affirmative  
defense form [Civ Code  
§ 3333.4], § **25:96**

uninsured motor vehicle owners,  
limitation on recovery of dam-  
ages for injuries [Civ Code  
§ 3333.4], § **25:89**

#### Department of Motor Vehicles.

DMV, below

#### DMV

liability of public entities, DMV  
liability to lienholder [Gov  
Code § 818.5], § **31:16**

suspension or revocation of  
driver license

DMV review of hearing deci-  
sion; reopening of case,  
§ **25:10**

judgment denying peremp-  
tory writ ordering DMV to  
set aside form, § **25:20**

judgment granting peremp-  
tory writ ordering DMV to  
set aside order form,  
§ **25:18**

peremptory writ ordering  
DMV to set aside order  
form, § **25:19**

petition for writ of  
administrative mandamus  
to review order of DMV  
form [Code Civ Proc 4  
1094.5; Veh Code  
§§ 14100 subd (a), 13359  
subd (a)], § **25:16**

### MOTOR VEHICLES—Cont'd

#### DMV—Cont'd

suspension or revocation of  
driver license—Cont'd  
power to suspend or revoke  
license, § **25:3**

writ ordering DMV to set  
aside order form, § **25:17**

#### Drivers' licenses

generally, §§ **25:1 to 25:3**  
authority to regulate driving,  
§ **25:1**

DMV's power to suspend or  
revoke license, § **25:3**

necessity for driver's license,  
§ **25:2**

suspension or revocation

checklist of matters to  
consider in responding to  
DMV, § **25:14**

DMV review of hearing deci-  
sion; reopening of case,  
§ **25:10**

hearing, right to, § **25:8**

hearing procedure, findings  
and decision, § **25:9**

hearings for drunk driving or  
refusal to submit to chemi-  
cal blood test, § **25:11**

judgment denying peremp-  
tory writ ordering DMV to  
set aside form, § **25:20**

judgment granting peremp-  
tory writ ordering DMV to  
set aside order form,  
§ **25:18**

judicial review, §§ **25:12,**  
**25:13**

peremptory writ ordering  
DMV to set aside order  
form, § **25:19**

petition for writ of  
administrative mandamus  
to review order of DMV  
form [Code Civ Proc 4  
1094.5; Veh Code

**MOTOR VEHICLES—Cont'd**

Drivers' licenses—Cont'd  
 suspension or revocation  
   —Cont'd  
     §§ 14100 subd (a), 13359  
     subd (a)], § **25:16**  
     request for hearing form [Veh  
     Code § 14100], § **25:15**  
     right to hearing, § **25:8**  
     writ ordering DMV to set  
     aside order form, § **25:17**  
 suspension or revocation of  
 license, grounds for  
   generally, § **25:3**  
   conviction of specified offen-  
   ses, § **25:4**  
   diving under the influence of  
   alcohol or drugs, § **25:5**  
   refusal by person under 21 to  
   submit to preliminary  
   alcohol screening test,  
   § **25:7**  
   refusal to submit to blood-  
   alcohol test, § **25:6**  
 Drunk drivers, limitation on recovery  
 of damages for injuries  
   defenses, § **25:89**  
   defenses, affirmative defense  
   form [Civ Code § 3333.4],  
   § **25:96**  
 Insurance litigation. Automobile  
 Insurance Litigation (this index)  
 Liability of persons other than driver  
 of vehicle  
   bailors and lessors  
     generally, § **25:51**  
     allegation of vicarious  
     liability against bailee for  
     negligence form [Veh  
     Code § 17154], § **25:68**  
   complaint in subrogation, owner  
   of vehicle against operator,  
   negligently operated owner's  
   vehicle to recover amount of  
   judgment obtained by third  
   party form [Veh Code

**MOTOR VEHICLES—Cont'd**

Liability of persons other than driver  
 of vehicle—Cont'd  
   § 17153], § **25:60**  
   emergency vehicle drivers  
     generally, § **25:57**  
     allegation against city for  
     negligence during high-  
     speed police chase form,  
     § **25:69**  
   employers  
     generally, § **25:52**  
     allegation against employer  
     for personal injuries and  
     property damage for  
     negligent operation of  
     vehicle form, § **25:61**  
   limits on liability, § **25:47**  
   negligent entrustment  
     generally, § **25:49**  
     allegation of negligent  
     entrustment form, § **25:62**  
   owner-operator against operator  
   and nonoperator-owner for  
   negligent operation of vehicle  
   form [Veh Code §§ 17150,  
   17152], § **25:59**  
   parents and guardians of minors  
     generally, § **25:54**  
     allegation of vicarious  
     liability, minor operating  
     vehicle with permission  
     form [Veh Code § 17708],  
     § **25:64**  
     allegation of vicarious  
     liability against person  
     who signed minor's license  
     application form [Veh  
     Code § 17707], § **25:65**  
   partnerships and joint ventures  
     generally, § **25:55**  
     allegation of vicarious  
     liability against joint  
     venturers for negligence  
     form, §§ **25:55, 25:67**

## INDEX

### MOTOR VEHICLES—Cont'd

Liability of persons other than driver of vehicle—Cont'd

- partnerships and joint ventures—Cont'd
  - allegation of vicarious liability against partnership and individual partners for negligence form [Corp Code §§ 15013, 15015, subd (a)], § 25:66
- personal representatives, § 25:50
- persons furnishing alcoholic beverages
  - generally, § 25:58
  - allegation of negligence against licensed alcohol beverage provider providing alcohol to minor form [Bus & Prof Code § 25602.1], § 25:71
- public entities
  - generally, § 25:53
  - allegation against city for negligence during high-speed police chase, form, § 25:69
  - Department of Motor Vehicles, liability to lienholder [Gov Code § 818.5], § 31:16
- repairers
  - generally, § 25:56
  - allegation of negligence against dealership-repairer, form, § 25:70
- statutes of limitations, actions for personal injury and property damage, § 25:72
- statutory liability, § 25:46
- stolen vehicles
  - generally, § 25:48
  - allegation of negligence against owner of stolen vehicle involved in accident form, § 25:63

### MOTOR VEHICLES—Cont'd

Licenses. Drivers' licenses, above

Limitation on recovery of damages for injuries to drunk or uninsured driver or uninsured motor vehicle owner

- defenses, § 25:89
- defenses, affirmative defense form [Civ Code § 3333.4], § 25:96

Negligence, §§ 1:52, 1:61

Operation liability

- actions by owners, operators, or passengers
  - applicability of general negligence principles, § 25:21
  - cause of action [Judicial Council Form 982.1(2)], § 25:30
  - driving under the influence of alcohol or drugs, §§ 25:28, 25:32
  - duty and standard of care, § 25:22
  - duty of passengers, § 25:29
  - duty to maintain motor vehicle in safe condition, § 25:23
  - negligent operation of vehicle, complaint for personal injuries and property damage form, § 25:31
- nonoperator-owner against defendant operator-owner, negligent operation vehicle, complaint for property damage form, § 25:33
- operator driving passenger's car, allegation, form, § 25:36
- passenger, against intoxicated owner-operator, complaint for personal injury form, § 25:32

**MOTOR VEHICLES—Cont'd**

Operation liability—Cont'd

- actions by owners, operators, or passengers—Cont'd
  - personal injuries resulting from “road rage” incident, complaint for property damage form, § 25:34
  - persons to whom duty is owed, § 25:24
  - presumption of negligence is inapplicable, circumstances under which, § 25:27
  - property damage resulting from “road rage” incident, complaint for property damage form, § 25:34
  - right to assume that others will obey law, § 25:25
  - “road rage” incident, personal injuries and property damage resulting from, complaint for property damage form, § 25:34
  - speed contest, allegation, form, § 25:35
  - violation of statutory rules of the road creating presumption of negligence, § 25:26
- actions by pedestrians
  - generally, §§ 25:37, 25:38
  - child pedestrian struck by owner-operator, allegation, form, § 25:44
  - driver’s duty of care toward pedestrian, § 25:37
  - pedestrian in marked crosswalk, complaint for personal injuries form, § 25:39
  - pedestrian on curb, complaint for personal injuries form, § 25:41
  - pedestrian’s duty of care, § 25:38

**MOTOR VEHICLES—Cont'd**

Operation liability—Cont'd

- actions by pedestrians—Cont'd
  - pedestrian struck as exiting bus, allegation form, § 25:43
  - pedestrian struck by backing vehicle, allegation form, § 25:45
  - pedestrian struck in unmarked crosswalk, form, § 25:40
  - property owner struck, damaged property, allegation, 0160form, § 25:42

Personal injuries

- liability of persons other than driver of vehicle, §§ 25:50, 25:61, 27:72
- operation liability, above
- premises liability [Judicial Council Form 982.1(1)], § 16:39
- punitive damages, personal injury caused by defectively designed automobile, factors supporting claim [Attachment EX-2 to Judicial Council Form 982.1(13)], § 7:40
- “road rage” incident, personal injuries and property damage resulting from, complaint for property damage form, § 25:34

Premises liability, personal injury [Judicial Council Form 982.1(1)], § 16:39

Public entities, liability of Department of Motor Vehicles to lienholder [Gov Code § 818.5], § 31:16

Punitive damages, personal injury caused by defectively designed automobile, factors supporting claim [Attachment EX-2 to

## INDEX

### **MOTOR VEHICLES—Cont'd**

- Judicial Council Form 982.1(13)],  
§ **7:40**
- “Road rage” incident, personal  
injuries and property damage  
resulting from, complaint for  
property damage form, § **25:34**
- Service of process on nonresident  
motorists
  - generally, §§ **25:73 to 25:75**
  - affidavit of service on nonresi-  
dent defendant by plaintiff’s  
attorney form [Veh Code  
§ 17456], § **25:81**
  - allegations in complaints
    - nonresident driver’s posses-  
sion of California certifi-  
cate of ownership or  
registration form [Veh  
Code § 17459], § **25:78**
    - nonresident driver’s posses-  
sion or retention of Cali-  
fornia driver’s license form  
[Veh Code § 17460],  
§ **25:79**
    - residence of nonresident  
motorist in complaint for  
personal injury and prop-  
erty damage form [Veh  
Code § 17451], § **25:77**
  - checklist, § **25:76**
  - governing law, § **25:73**
  - notice to nonresident driver or  
owner of service of summons  
and complaint on Director of  
DMV form [Veh Code  
§ 17455], § **25:80**
  - service of process, § **25:74**
  - service on absent or former Cali-  
fornia residents inside or  
outside of state, § **25:75**
- Uninsured drivers, limitation on  
recovery of damages for injuries  
defenses, § **25:89**

### **MOTOR VEHICLES—Cont'd**

- Uninsured drivers, limitation on  
recovery of damages for injuries  
—Cont’d
  - defenses, affirmative defense  
form [Civ Code § 3333.4],  
§ **25:96**
- Uninsured motor vehicle owners,  
limitation on recovery of damages  
for injuries
  - defenses, § **25:89**
  - defenses, affirmative defense  
form [Civ Code § 3333.4],  
§ **25:96**

### **MUNICIPAL CORPORATIONS**

- Defamation, § **21:6**

## N

### **NAME OR LIKENESS, APPROPRIATION OR EXPLOITATION**

- Invasion of Privacy (this index)

### **NECESSARY ENTRY**

- Trespass, § **18:12**

### **NEGLIGENCE**

- Actual cause
  - shifting burden of proof, §§ **1:32  
to 1:34**
  - test for determining, §§ **1:30,  
1:31**
- Alcoholic beverage providers, duty  
owed by, § **1:9**
- Answer and affirmative defenses  
claims
  - assumption of the risk, allegation  
of express, § **1:65**
  - assumption of the risk, allegation  
of primary, § **1:66**
  - comparative negligence, allega-  
tion of, § **1:63**
  - fireman’s rule, allegation that  
plaintiff’s action is barred by,  
§ **1:64**

**NEGLIGENCE—Cont'd**

Answer and affirmative defenses  
claims—Cont'd  
    personal injury, damages, § 1:61  
    property damage, damages,  
        § 1:61  
    statute of limitations as bar to  
        action, allegation, § 1:62  
    workers' compensation, allega-  
        tion as exclusive remedy,  
        § 1:67  
    wrongful death, damages, § 1:61  
Assumption of the risk, allegation of  
express, § 1:65  
Assumption of the risk, allegation of  
primary, § 1:66  
8220Avoidable consequences8221  
    doctrine, requirement plaintiff  
        mitigate damages, § 1:51  
Bailees, breach of duty of care,  
    § 1:24  
Beneficiaries of contract, duty owed  
to, § 1:6  
Breach of duty  
    bailees, § 1:24  
    capacity of person, § 1:26  
    children, § 1:25  
    common carriers, § 1:22  
    custom and usage in business or  
        community, § 1:20  
    doctrine of res ipsa loquitur,  
        § 1:29  
    general standard of care, §§ 1:19,  
        1:20  
    imminent peril, § 1:21  
    persons with impaired facilities,  
        § 1:26  
    pleading breach of duty, § 1:27  
    presumption of breach, §§ 1:28,  
        1:29  
    professionals, § 1:23  
    reasonable person standard,  
        § 1:19  
    violation of statute, presumption  
        of breach, § 1:28  
"But for" test, causation, § 1:30

**NEGLIGENCE—Cont'd**

Capacity of person, breach of duty of  
care, § 1:26  
Causation  
    actual cause, §§ 1:30 to 1:34  
    "but for" test, § 1:30  
    Cause-in-fact/substantial factor  
        test, § 1:32  
    concurrent proximate cause,  
        § 1:31  
    proximate cause, §§ 1:36 to 1:41  
    shifting burden of proof, §§ 1:32  
        to 1:34  
Children  
    breach of duty of care, § 1:25  
    duty owed to, § 1:7  
Colleges and universities, duty owed  
by, § 1:12  
Common carriers, breach of duty of  
care, § 1:22  
Comparative negligence, allegation  
of, § 1:63  
Complaint forms  
    cause of action for general  
        negligence, § 1:53  
    claims, order approving compro-  
        mise of claim of minor, § 1:60  
    compromise  
        order approving compromise  
            of claim of minor, § 1:60  
        petition for order approving  
            compromise of claim of  
            minor, § 1:59  
    establishment serving alcoholic  
        beverages to obviously  
        intoxicated minor, § 1:55  
    false information involving risk  
        of harm, complaint against  
        party voluntarily communicat-  
        ing, § 1:57  
    interests of another, complaint  
        against party voluntarily tak-  
        ing affirmative course of  
        conduct affecting, § 1:56



## INDEX

### NEGLIGENCE—Cont'd

#### Complaint forms—Cont'd

##### minors

establishment serving  
alcoholic beverages to  
obviously intoxicated  
minor, § **1:55**

order approving compromise  
of claim of minor, § **1:60**  
petition for order approving  
compromise of claim of  
minor, § **1:59**

negligent infliction of emotional  
distress, complaint by one  
observing negligently inflicted  
injury of third person, § **1:58**

##### orders

order approving compromise  
of claim of minor, § **1:60**  
petition for order approving  
compromise of claim of  
minor, § **1:59**

personal injury, complaint for  
damages, § **1:52**

petition for order approving com-  
promise of claim of minor,  
§ **1:59**

property damage, complaint for  
damages, § **1:52**

third party injured by patient who  
had expressed threats against  
third party to psychotherapist,  
§ **1:54**

wrongful death, complaint for  
damages, § **1:52**

#### Complaints

pleading breach of duty, § **1:27**

pleading duty, § **1:17**

Compromise. Complaint forms,  
above

Concurrent proximate cause, § **1:31**

Contract parties and beneficiaries,  
duty owed to, § **1:6**

Custom and usage in business or  
community as general standard of  
care, § **1:20**

### NEGLIGENCE—Cont'd

Definition, § **1:1**

Doctrine of res ipsa loquitur, § **1:29**

Dog bite liability based on  
negligence per se, allegation in  
complaint, form, § **2:23**

#### Duty

analysis, § **1:3**

beneficiaries of contract, § **1:6**

breach of duty, above

children, § **1:7**

colleges and universities, § **1:12**  
contract parties and beneficiaries,  
§ **1:6**

existence, §§ **1:2, 1:3**

firefighters, § **1:5**

highway contractors, § **1:11**

mental health practitioners,  
§ **1:10**

misrepresentations involving risk  
of physical harm, persons who  
make, § **1:14**

nature, § **1:2**

owners of land, § **1:8**

particular defendants, §§ **1:8 to**  
**1:18**

particular plaintiffs, §§ **1:4 to 1:7**

parties to contract, § **1:6**

persons who create peril, § **1:15**

persons who make  
misrepresentations involving  
risk of physical harm, § **1:14**

physicians, § **1:10**

pleading duty, § **1:17**

police officers, § **1:5**

possessors of land, § **1:8**

providers of alcoholic beverages,  
§ **1:9**

question of law or fact, § **1:18**

rescuers, § **1:4**

school districts, § **1:12**

special circumstances, §§ **1:4 to**  
**1:18**

special circumstances creating  
affirmative duty, § **1:16**

**NEGLIGENCE—Cont'd**

**Duty—Cont'd**

special relationships, § 1:16  
 universities. Colleges and  
 universities, above  
 voluntarily undertake duty,  
 persons who, § 1:13  
 Elements of prima facie case, § 1:1  
 Firefighters, duty owed to, § 1:5  
 Fireman's rule, allegation that  
 plaintiff's action is barred by,  
 § 1:64  
 "Good Samaritan," voluntarily  
 undertake duty, § 1:13  
 Highway contractors, duty owed by,  
 § 1:11  
 Imminent peril. breach of duty of  
 care, § 1:21  
 Legal cause of injury, § 1:30  
 Legal principles, shifting burden of  
 proof, §§ 1:1 to 1:51  
 Limitation on damages for plaintiff  
 under the influence or without  
 insurance, § 1:50  
 Mental health practitioners, duty  
 owed by, § 1:10  
 Minors. Complaint forms, above  
 Orders. Complaint forms, above  
 Parties  
   breach of duty, particular circum-  
   stances or parties, §§ 1:21 to  
   1:26  
   duty owed parties to contract,  
   § 1:6  
 Personal injury  
   answer to complaint for dam-  
   ages, form, § 1:61  
   complaint for damages, § 1:52  
 Persons who create peril, duty owed  
 by, § 1:15  
 Persons who make misrepresenta-  
 tions involving risk of physical  
 harm, duty owed by, § 1:14  
 Persons with impaired facilities,  
 breach of duty of care, § 1:26

**NEGLIGENCE—Cont'd**

Petition for order approving compro-  
 mise of claim of minor, form,  
 § 1:59  
 Physicians, duty owed by, § 1:10  
 Pleading breach of duty, § 1:27  
 Pleading duty, § 1:17  
 Police officers, duty owed to, § 1:5  
 Pre se, § 1:28  
 Presumption of breach  
   doctrine of res ipsa loquitur,  
   § 1:29  
   violation of statute, § 1:28  
 Prima facie case, § 1:1  
 Professionals, breach of duty of care,  
 § 1:23  
 Property damage  
   complaint for damages, § 1:52  
 Property damage, answer to com-  
 plaint for damages, form, § 1:61  
 Providers of alcoholic beverages,  
 duty owed by, § 1:9  
 Proximate cause  
   acts by others subsequent to  
   defendant's act, §§ 1:38 to  
   1:42  
   acts of God, § 1:41  
   foreseeability, § 1:38  
   intentionally tortious or criminal  
   intervening acts, § 1:40  
   intervening acts, §§ 1:39, 1:40,  
   1:41  
   nature of element, § 1:36  
   negligent acts, intervening,  
   § 1:39  
   relationship to duty, § 1:36  
   single, direct act causing harm,  
   § 1:37  
 Proximate cause of injury, § 1:30  
 Punitive damages, proving-up,  
 malice, § 7:30  
 Question of law or fact, duty as,  
 § 1:18  
 Reasonable person standard of care,  
 § 1:19

## INDEX

### NEGLIGENCE—Cont'd

Requirement plaintiff mitigate damages, 8220avoidable consequences8221 doctrine, § **1:51**  
School districts, duty owed by, § **1:12**  
Shifting burden of proof  
    alternative liability, § **1:33**  
        based on market share, § **1:34**  
    cause-in-fact/substantial factor test, §§ **1:32, 1:33**  
    unknown cause, § **1:35**  
Special circumstances affecting duty  
    particular defendants, §§ **1:8 to 1:18**  
    particular plaintiffs, §§ **1:4 to 1:7**  
Special circumstances creating affirmative duty, § **1:16**  
Special relationships, § **1:16**  
Statute of limitations as bar to action, allegation, § **1:62**  
Universities. Colleges and universities, duty owed by, above, § **1:12**  
Unknown cause, Shifting burden of proof, § **1:35**  
Voluntarily undertake duty, § **1:13**  
Workers' compensation, allegation as exclusive remedy, § **1:67**  
Wrongful death  
    answer to complaint for damages, form, § **1:61**  
    complaint for damages, § **1:52**

### NONSUIT

Insurance Bad Faith Litigation (this index)

### NUISANCE

Abatement of public nuisance, action by state, § **17:25**  
Actions against government entities, § **17:8**  
Affirmative defenses, §§ **17:33 to 17:36**  
Attorney's fees, § **17:26**  
Bathhouses, §§ **17:14, 17:32**

### NUISANCE—Cont'd

Commercial agricultural activities not constituting nuisances, § **17:16**  
Comparative negligence  
    defense considerations, § **17:22**  
    defenses, § **17:36**  
Complaints  
    damages and injunction to abate nuisance, general form of complaint for [Civ Code § 3479; Code Civ Proc §§ 526, 731], § **17:29**  
    damages and injunction to abate nuisance based on illegal mining of stream [Civ Code § 3479; Code Civ Proc §§ 526, 731], § **17:30**  
    partnership, complaint for damages and to enjoin nuisance [Civ Code § 3479, 3493; Code Civ Proc §§ 526, 731], § **17:31**  
Consent, § **17:22**  
Continuing and permanent distinguished, § **17:5**  
Controlled substances, distribution places, § **17:15**  
Costs and attorney's fees, § **17:26**  
Damages and remedies  
    abatement of public nuisance, action by state, § **17:25**  
    complaint for damages and injunction to abate nuisance based on illegal mining of stream [Civ Code § 3479; Code Civ Proc §§ 526, 731], § **17:30**  
    costs and attorney's fees, § **17:26**  
    general form of complaint for damages and injunction to abate nuisance [Civ Code § 3479; Code Civ Proc §§ 526, 731], § **17:29**  
    private nuisance, § **17:23**  
    public nuisance, § **17:24**  
    self-help, § **17:27**  
    summary abatement, § **17:27**

**NUISANCE—Cont'd**

Defense considerations  
     comparative negligence, § 17:22  
     consent, § 17:22  
     laches, § 17:18  
     necessity, § 17:21  
     statute of limitations, § 17:18  
     statutory authority exception,  
     § 17:19  
     zoning regulations, § 17:20  
 Defenses  
     activity expressly authorized by  
     statute [Civ Code § 3482],  
     § 17:33  
     affirmative defenses, §§ 17:33 to  
     17:36  
     comparative negligence, § 17:36  
     necessity, § 17:35  
     zoning regulations expressly  
     permitting defendant's com-  
     mercial use [Code Civ Proc  
     § 731a], § 17:34  
 Definition, § 17:1  
 Distribution points for controlled  
 substances, § 17:15  
 Dust, § 17:11  
 Encroachments, § 17:12  
 Fire hazards, § 17:9  
 Flooding, § 17:11  
 Gambling, § 17:14  
 Gambling establishment, allegations  
     for use in complaint [Pen Code  
     §§ 11225, 11227], § 17:32  
 Government entity liability, § 17:8  
 Intentional cruelty or killing in  
     motion picture, § 17:13  
 Isolated event nuisance, § 17:6  
 Laches, § 17:18  
 Legal principles, §§ 17:1 to 17:28  
 Lewdness, § 17:14  
 Motion picture, intentional cruelty or  
     killing in, § 17:13  
 Mudslides, § 17:11  
 Necessity  
     defense considerations, § 17:21

**NUISANCE—Cont'd**

Necessity—Cont'd  
     defenses, § 17:35  
 Noise and odor, offense, § 17:10  
 Nuisance per se, § 17:7  
 Obscenity, § 17:13  
 Obstructing light and air not  
     constituting nuisances, § 17:17  
 Odor, offense, § 17:10  
 Offensive noise and odor, § 17:10  
 Partnership, complaint for damages  
     and to enjoin nuisance [Civ Code  
     § 3479, 3493; Code Civ Proc  
     §§ 526, 731], § 17:31  
 Permanent and continuing nuisance  
     distinguished, § 17:5  
 Potential liability, § 17:1  
 Private nuisance  
     damages and remedies, § 17:23  
     legal principles, § 17:4  
 Prostitution  
     generally, § 17:14  
     allegations for use in complaint  
     [Pen Code §§ 11225, 11227],  
     § 17:32  
 Public entities, liability [Gov Code  
     § 820], § 31:18  
 Public nuisance  
     damages and remedies, § 17:24  
     legal principles, § 17:3  
 Red Light Abatement Law, § 17:14  
 Relationship to other torts, § 17:2  
 Self-help, § 17:27  
 Smoke, § 17:11  
 Statute of limitations, § 17:18  
 Summary abatement, § 17:27  
 Trespass distinguished, § 18:3  
 Types of nuisances, §§ 17:3 to 17:7  
 Zoning regulations, § 17:20

**P**

**PARTIES**

Aviation (this index)  
 Bad Faith Actions (this index)

## INDEX

### **PARTIES—Cont'd**

- Declaratory relief, initiating action, §§ **39:11 to 39:14**
- Defamation, parties responsible for publication, liability, § **21:10**
- Intentional Infliction of Emotional Distress (this index)
- Joinder of Parties (this index)
- Negligence (this index)
- Products liability, cumulative effect of warranties; intention of parties as to dominant warranty [UCC § 2317], § **24:56**
- Third Parties (this index)
- Uninsured motorist claims, role of parties, counsel, and arbitrator, § **38:18**

### **PARTNERSHIPS**

- Defamation, § **21:5**

### **PEACE OFFICERS**

- Defamation, § **21:8**

### **PERSONAL INJURY ACTIONS**

- Architect malpractice, negligent preparation of plans and specification and negligent supervision of construction site, complaint for damages by third party, form, § **34:30**
- Common Carriers (this index)
- Compensatory Damages (this index)
- Loss of consortium, personal injury to spouse, pleading requirements, § **10:6**
- Medical Injury Compensation Reform Act (MICRA) (this index)
- Mitigation of damages, § **6:3**
- Motor Vehicles (this index)
- Negligence (this index)
- Premises liability [Judicial Council Form 982.1(1)], § **16:39**
- Products Liability (this index)
- Punitive Damages (this index)

### **PERSONAL INJURY ACTIONS**

#### **—Cont'd**

- “Road rage” incident, personal injuries resulting from, complaint form, § **25:34**
- Strict Liability (this index)
- Uninsured motorist claims, § **38:2**

### **PESTICIDE USE**

- Public entities, liability for injuries caused by [Gov Code § 862], § **31:17**

### **PHYSICIANS**

- Negligence, § **1:10**

### **PREJUDGMENT INTEREST**

- Compensatory damages, § **5:28**
- Wrongful death, § **23:10**

### **PREMISES LIABILITY**

- Answers and defenses
  - defense considerations, below
  - felony commission on premises, allegation of injury to plaintiff during [Civ Code § 847], § **16:52**
  - felony commission or immediate flight therefrom, defense of injury to plaintiff during [Civ Code § 3333.3], § **16:53**
  - unverified complaint, answer to, § **16:51**
- Assumption of risk, § **16:31**
- Bank customer injured in robbery while using automated teller machine, complaint for damages, form, § **16:41**
- Checklist of matters to consider, § **16:38**
- Comparative negligence, § **16:31**
- Complaints
  - bank customer injured in robbery while using automated teller machine, complaint for damages, § **16:41**

**PREMISES LIABILITY—Cont'd**

Complaints—Cont'd

criminal acts of third party, complaint for damages by tenant against landlord for failure to take reasonable steps to protect tenant, § **16:46**

negligent repair of garage door, complaint for damages by tenant against landlord, § **16:45**

personal injury [Judicial Council Form 982.1(1)], § **16:39**

property damage [Judicial Council Form 982.1(1)], § **16:39**

retail store customer injured in fall caused by shoplifter fleeing store security guard, complaint for damages, § **16:42**

retail store patron injured walking into clear glass panel door, complaint for damages, § **16:43**

slip and fall injury in employer's house, housekeeper's complaint for damages, § **16:44**

slip on substance on floor of store, complaint for damages by store customer for, § **16:40**

wrongful death [Judicial Council Form 982.1(1)], § **16:39**

Control of premises, duty

landlord's control over dangerous conditions, § **16:15**

owner or possessor, § **16:2**

Criminal acts of third parties

complaint for damages by tenant against landlord for failure to take reasonable steps to protect tenant, form, § **16:46**

landlord, duties, §§ **16:18 to 16:21**

owner or possessor, duties, §§ **16:5, 16:7**

Defense considerations

assumption of risk, § **16:31**

**PREMISES LIABILITY—Cont'd**

Defense considerations—Cont'd

comparative negligence, § **16:31**

felony commission on premises, injury or death arising from [Civ Code § 847], § **16:32**

felony commission or flight therefrom, injury arising from [Civ Code § 3333.3], § **16:33**

"firefighter's rule," § **16:37**

gleaning, use of premises for [Civ Code § 846.2], § **16:34**

locomotive, unauthorized riding while moving [Civ Code § 1714.7], § **16:36**

overview, § **16:29**

railroad car, unauthorized riding while moving [Civ Code § 1714.7], § **16:36**

recreational use statute [Civ Code § 846], § **16:35**

statutes of limitation, § **16:30**

Discovery

declaration in support of motion for protective order [Code Civ Proc § 2031.050], § **16:50**

demand for inspection of premises, § **16:27**

demand for inspection of premises [Code Civ Proc § 2031.010(d)], form, § **16:47**

inspection of premises, § **16:26**

notice of motion for protective order to limit scope of inspection [Code Civ Proc § 2031.050], form, § **16:49**

response to demand for inspection of premises, § **16:28**

response to demand for inspection of premises [Code Civ Proc § 2031.060, 2031.250], form, § **16:48**

Felony commission on premises, allegation of injury to plaintiff during [Civ Code § 847], § **16:52**

## INDEX

### PREMISES LIABILITY—Cont'd

Felony commission on premises,  
injury or death arising from [Civ  
Code § 847], § **16:32**

Felony commission or flight there-  
from, injury arising from [Civ  
Code § 3333.3], § **16:33**

Felony commission or immediate  
flight therefrom, defense of injury  
to plaintiff during [Civ Code  
§ 3333.3], § **16:53**

“Firefighter’s rule,” § **16:37**

Forms

- answers and defenses, above
- complaints, above
- discovery, above

General duty owed by owner or pos-  
sessor, § **16:3**

Gleaning, use of premises for [Civ  
Code § 846.2], § **16:34**

Inspection of premises

- discovery, §§ **16:26 to 16:28**
- discovery, demand for inspection  
[Code Civ Proc  
§ 2031.010(d)], § **16:47**
- exterior elevated elements,  
§ **16:21**
- landlord’s duties, §§ **16:14,**  
**16:21**

Landlord, duties

- absence of duty to safeguard  
commercial tenant’s property  
from criminal acts of third  
party, § **16:20**
- breach of warranty of habit-  
ability, § **16:17**
- condominium owners’ associa-  
tion duty to protect owner  
from criminal acts of third  
party, § **16:19**
- control over dangerous condi-  
tions, § **16:15**
- criminal acts of third parties,  
§§ **16:18 to 16:20**
- dangerous conditions, §§ **16:14,**  
**16:15**

### PREMISES LIABILITY—Cont'd

Landlord, duties—Cont'd

- exterior elevated elements,  
inspection of, § **16:21**
- general duty owed to tenant,  
§ **16:13**
- inspection for dangerous condi-  
tions, § **16:14**
- negligent repair, § **16:16**
- repair duty, § **16:16**
- safeguard commercial tenant’s  
property from criminal acts of  
third party, § **16:20**
- third parties, general duty owed,  
§ **16:13**
- warranty of habitability, breach,  
§ **16:17**

Legal principles, §§ **16:1 to 16:37**

Locomotive, unauthorized riding  
while moving [Civ Code  
§ 1714.7], § **16:36**

Nature of premises liability, § **16:1**

Negligent repair of garage door,  
complaint for damages by tenant  
against landlord, form, § **16:45**

Notice of motion for protective order  
to limit scope of inspection [Code  
Civ Proc § 2031.050], § **16:49**

Owner or possessor, duties

- activity conducted on premises,  
duty owed by owner or pos-  
sessor as to, § **16:4**
- adjacent premises, criminal acts  
by third parties on, § **16:7**
- adjacent premises, duty owed as  
to injuries occurring on, § **16:6**
- condition of premises, duty owed  
by owner or possessor as to,  
§ **16:4**
- control of premises, § **16:2**
- criminal acts by third parties  
coming onto premises,  
liability, § **16:5**
- criminal acts by third parties on  
adjacent premises, § **16:7**



**PREMISES LIABILITY—Cont'd**

Owner or possessor, duties—Cont'd  
     former landowner's liability, § 16:9  
     general duty owed by owner or possessor, § 16:3  
     liability of former landowner, § 16:9  
     limits of duty owed, §§ 16:10, 16:12  
     nature of premises liability, § 16:1  
     off-premises personal injury by natural or artificial condition, duty owed, § 16:8  
     social host liability, § 16:11  
     tavern keeper, limits of duty owed, § 16:12  
     third persons coming onto premises, duty as to conduct of, § 16:5  
 Personal injury [Judicial Council Form 982.1(1)], § 16:39  
 Procedural checklist of matters to consider, § 16:38  
 Property damage [Judicial Council Form 982.1(1)], § 16:39  
 Railroad car, unauthorized riding while moving [Civ Code § 1714.7], § 16:36  
 Recreational use statute [Civ Code § 846], § 16:35  
 Retail store customer injured in fall caused by shoplifter fleeing store security guard, complaint for damages, form, § 16:42  
 Retail store patron injured walking into clear glass panel door, complaint for damages, form, § 16:43  
 Slip and fall injury in employer's house, housekeeper's complaint for damages, form, § 16:44  
 Slip on substance on floor of store, complaint for damages by store customer for, form, § 16:40  
 Social host liability, § 16:11

**PREMISES LIABILITY—Cont'd**

Status of injured person  
     business visitors, § 16:25  
     effect of status, § 16:22  
     invitees, § 16:25  
     licensees, § 16:24  
     trespassers, § 16:23  
 Statutes of limitation, § 16:30  
 Tavern keeper, limits of duty owed, § 16:12  
 Third parties  
     Criminal acts of third parties, above  
     Landlords, duty owed to third parties, § 16:13  
 Wrongful death [Judicial Council Form 982.1(1)], § 16:39

**PRIVILEGE**

Fraud, § 22:12

**PRODUCT SAFETY**

Fraud and deceit, § 22:29

**PRODUCTS LIABILITY**

Accrual of cause of action, § 24:68  
 Accrual of personal injury cause of action as affected by discovery rule, § 24:69  
 Admissibility of evidence of subsequent remedial measures, § 24:137  
 Admissibility of evidence of subsequent remedial measures [Evid Code § 1151], § 24:78  
 AIDS Vaccine Victims Compensation Fund, § 24:8  
 Aircraft  
     defective engine, complaint, § 24:83  
     defense, action barred by General Aviation Revitalization Act, form [PL 103-298 §§ 1 to 4; 108 Stat 1552], § 24:111  
     defense, action barred by statute of limitations, form, § 24:110

## INDEX

### PRODUCTS LIABILITY

#### —Cont'd

##### Aircraft—Cont'd

- defense, component part  
manufacturer, form, § **24:112**
  - defense, injured person was not  
aboard general aviation  
aircraft at time of accident,  
allegation, form, § **24:86**
  - injured person was passenger in  
general aviation aircraft for  
purpose of receiving treatment  
for medical or other emer-  
gency, allegation, form,  
§ **24:85**
  - limitation period for civil actions  
arising from accidents involv-  
ing general aviation aircraft,  
§ **24:75**
  - manufacturer knowingly  
misrepresented, concealed, or  
withheld certain required  
information concerning gen-  
eral aviation aircraft, allega-  
tion, form, § **24:84**
  - warranty enforceable under law  
except for operation of Gen-  
eral Aviation Revitalization  
Act, allegation, form, § **24:87**
- ##### Blood transfusions
- breach of warranty, no liability  
arising from, § **24:49**
  - strict products liability, no  
liability for rendition of ser-  
vices or supplying blood or  
blood products, § **24:19**
- ##### Breach of warranty
- blood transfusion, no liability  
arising from, § **24:49**
  - cumulative effect of warranties;  
intention of parties as to  
dominant warranty [UCC  
§ 2317], § **24:56**
  - damages recoverable, § **24:61**
  - defenses, §§ **24:64, 24:104 to  
24:124**

### PRODUCTS LIABILITY

#### —Cont'd

##### Breach of warranty—Cont'd

- effect of proof-of-purchase  
requirement [UCC § 2801],  
§ **24:57**
  - exclusion or modification of  
express warranties, § **24:51**
  - exclusion or modification of  
implied warranties [UCC  
§ 2316], § **24:55**
  - express warranties [UCC  
§ 2313], § **24:50**
  - implied warranty of fitness for  
particular purpose [UCC  
§ 2315], § **24:53**
  - implied warranty of merchant-  
ability [UCC § 2314], § **24:52**
  - liquidation and limitation of  
damages, § **24:62**
  - modification or limitation of rem-  
edies [UCC § 2719], § **24:63**
  - notice of breach as prerequisite  
to suit, § **24:59**
  - notice to prior seller to defend  
action for breach of warranty,  
§ **24:60**
  - other implied warranties arising  
from course of dealing or trade  
usage [UCC § 2314(3)],  
§ **24:54**
  - overview, § **24:48**
  - persons entitled to sue, § **24:58**
- ##### Checklist of prelitigation notice requirements and time periods, § **24:80**
- ##### Complaints
- boat, defective, § **24:90**
  - cosmetic, defective face cream,  
§ **24:91**
  - drugs, medical equipment and  
supplies, §§ **24:92, 24:93,  
24:95**
  - escalator, defective, § **24:102**
  - firearms and ammunition,  
§§ **24:96, 24:97**

## PRODUCTS LIABILITY

### —Cont'd

#### Complaints—Cont'd

food, §§ **24:98, 24:99**

household appliance, defective oven, complaint, § **24:100**

industrial equipment, §§ **24:101, 24:102**

manufacturer knowingly misrepresented, concealed, or withheld certain required information concerning general aviation aircraft, allegation, form, § **24:84**

recreational equipment, defective exercise machine, § **24:103**

Consumer expectation test, design defects based on, § **24:26**

Cosmetic, defective face cream, complaint form, § **24:91**

#### Cross-complaints

manufacturer for indemnification for component part, form, § **24:127**

retail seller for indemnification by wholesaler and manufacturer, form, § **24:125**

wholesale distributor for indemnification by manufacturer, form, § **24:126**

Dalkon Shield Liability Claimant's Trust, limitation period [Code Civ Proc § 340.7], § **24:74**

#### Defense alleging design defect

product designed in accordance with existing state of art, form, § **24:113**

#### Defense alleging warning defect

adequate warnings provided to downstream suppliers who resold product, form, § **24:119**

danger neither known nor scientifically known, form, § **24:117**

## PRODUCTS LIABILITY

### —Cont'd

#### Defense alleging warning defect

##### —Cont'd

danger obvious or known to injured person at time of use of product, form, § **24:116**

failure to follow warning supplied with product, form, § **24:115**

warning ineffective in lessening risk of harm, form, § **24:118**

#### Defenses alleging breach of warranty

exclusion or modification of implied warranty of merchantability or fitness, form [UCC § 2316(2) and (3)], § **24:120**

failure to complete and return warranty form following purchase of goods for personal, family, or household purposes, form [UCC § 2801], § **24:121**

failure to notify defendant of breach of warranty, form [UCC § 2607(3)(a)], § **24:122**

liquidation or limitation of damages, form [UCC §§ 2316(4), 2718], § **24:123**

modification or limitation of remedies, form [UCC §§ 2316(4), 2719], § **24:124**

#### Defenses applicable without regard to type of defect

aviation, action barred by General Aviation Revitalization Act, form [PL 103-298 §§ 1 to 4; 108 Stat 1552], § **24:111**

cause of action barred by statute of limitations, § **24:110**

comparative negligence of plaintiff, form, § **24:104**

component part manufacturer, form, § **24:112**

## INDEX

### PRODUCTS LIABILITY

#### —Cont'd

- Defenses applicable without regard to type of defect—Cont'd
  - danger neither known nor scientifically known, form, § 24:117
  - government contractor's defense, form, § 24:114
  - immunity as to inherently unsafe common consumer products intended for personal consumption, form [Civ Code § 1714.45], § 24:107
  - misuse of product, form, § 24:105
  - modification of product, form, § 24:106
  - product designed in accordance with existing state of art, form, § 24:113
  - reasonable implied assumption of risk, form, § 24:108
  - workers' compensation as exclusive remedy, form [Lab Code § 3602], § 24:109
- Demand for inspection of documents related to defective product, form [Code Civ Proc § 2031.010, subd (b)], § 24:128
- Demand for inspection of production facilities and processes used in manufacture of defective product, form [Code Civ Proc § 2031.010, subd (d)], § 24:129
- response to inspection of production facilities used in manufacture of defective product, form [Code Civ Proc § 2031.060, subds (a)-(d) and 2031.250, subds (a)-(c)], § 24:130
- Discovery, §§ 24:69, 24:77

### PRODUCTS LIABILITY

#### —Cont'd

- Discovery rule, accrual of personal injury cause of action as affected by, § 24:69
- Forms
  - agricultural supplies
    - crop seeds, breach of express warranty as to type of seed, complaint, § 24:82
    - defective cattle feed, complaint, § 24:81
  - automobiles
    - brake pads containing asbestos, complaint, § 24:89
    - defective, complaint, § 24:88
  - boat, defective, complaint, § 24:90
  - cosmetic, defective face cream, complaint, § 24:91
  - cross-complaints
    - manufacturer for indemnification by manufacturer of component part, § 24:127
    - retail seller for indemnification by wholesaler and manufacturer, § 24:125
    - wholesale distributor for indemnification by manufacturer, § 24:126
  - defense, injured person was not aboard general aviation aircraft at time of accident, allegation, form, § 24:86
  - defense alleging design defect
    - government contractor's defense, § 24:114
    - product designed in accordance with existing state of art, § 24:113

**PRODUCTS LIABILITY**

**—Cont'd**

Forms—Cont'd

- defense alleging warning defect adequate warnings provided to downstream suppliers who resold product, **§ 24:119**
- danger neither known nor scientifically known, **§ 24:117**
- danger obvious or known to injured person at time of use of product, **§ 24:116**
- failure to follow warning supplied with product, **§ 24:115**
- warning ineffective in lessening risk of harm, **§ 24:118**
- defense applicable to strict liability and negligence cause of action barred by statute of limitations, **§ 24:110**
- comparative negligence of plaintiff, **§ 24:104**
- immunity as to inherently unsafe common consumer products, form [Civ Code § 1714.45], **§ 24:107**
- misuse of product, **§ 24:105**
- modification of product, **§ 24:106**
- reasonable implied assumption of risk, **§ 24:108**
- statute of limitations, **§ 24:110**
- workers' compensation as exclusive remedy [Lab Code § 3602], **§ 24:109**
- defenses alleging breach of warranty
  - exclusion or modification of implied warranty of merchantability or fitness

**PRODUCTS LIABILITY**

**—Cont'd**

Forms—Cont'd

- defenses alleging breach of warranty—Cont'd
  - [UCC § 2316(2) and (3)], **§ 24:120**
  - failure to complete and return warranty form following purchase of goods for personal, family, or household purposes [UCC § 2801], **§ 24:121**
  - failure to notify defendant of breach of warranty [UCC § 2607(3)(a)], **§ 24:122**
  - liquidation or limitation of damages [UCC §§ 2316(4), 2718], **§ 24:123**
  - modification or limitation of remedies [UCC §§ 2316(4), 2719], **§ 24:124**
- demand for inspection of documents related to defective product [Code Civ Proc § 2031.010, subd (b)], **§ 24:128**
- demand for inspection of production
  - facilities and processes used in manufacture of defective product [Code Civ Proc § 2031.010, subd (d)], **§ 24:129**
  - response to inspection of production facilities used in manufacture of defective product [Code Civ Proc § 2031.060, subds (a)-(d) and 2031.250, subds (a)-(c)], **§ 24:130**

## INDEX

### PRODUCTS LIABILITY

#### —Cont'd

#### Forms—Cont'd

drugs and medical equipment  
manufacturing defect and  
failure to warn, complaint,  
§ 24:92

market share liability allegation  
against manufacturers,  
complaint, § 24:94

strict liability, negligence,  
breach of implied and  
express warranty, fraud,  
negligent misrepresentation,  
fraud by concealment,  
and loss of consortium  
causes of action, complaint, § 24:93

wheeled shower chair, complaint, § 24:95

escalator, defective, complaint, § 24:102

#### firearms and ammunition

defective ammunition, complaint, § 24:97

defective handgun, complaint, § 24:96

#### food

negligent preparation, complaint, § 24:99

unwholesome, complaint, § 24:98

household appliance, defective  
oven, complaint, § 24:100

industrial equipment, defective  
machine, complaint, § 24:101

#### motion in limine

declaration in opposition to  
motion for order excluding  
evidence of subsequent  
conduct [Evid Code  
§ 1151], § 24:136

declaration in support of  
motion for order excluding  
evidence of subsequent  
conduct [Evid Code

### PRODUCTS LIABILITY

#### —Cont'd

#### Forms—Cont'd

motion in limine—Cont'd  
§ 1151], § 24:135

exclude evidence of  
subsequent remedial  
conduct [Evid Code  
§ 1151], § 24:134

order allowing admission of  
evidence of subsequent  
conduct subject instructions, § 24:137

#### protective order

declaration in support of  
limiting scope of demand  
for inspection [Code Civ  
Proc § 2031.050, subds  
(a)-(c)], § 24:132

limiting scope of demand for  
inspection [Code Civ Proc  
§ 2031.050, subds (a)-(c)],  
§ 24:133

notice of motion to limiting  
scope of demand for  
inspection [Code Civ Proc  
§ 2031.050, subds (a)-(c)],  
§ 24:131

recreational equipment, defective  
exercise machine, complaint,  
§ 24:103

warranty enforceable under law  
except for operation of General Aviation Revitalization  
Act, allegation, form, § 24:87

#### Fraud

affirmative misrepresentation,  
§ 24:67

concealment, § 24:66

overview, § 24:65

Judicial Council forms applicable to  
products liability actions, § 24:76

#### Legal principles

AIDS Vaccine Victims  
Compensation Fund, § 24:8

## PRODUCTS LIABILITY

### —Cont'd

#### Legal principles—Cont'd

equitable indemnity based on comparative fault, § **24:6**

federal statutes, § **24:7**

immunity of manufacturers and sellers of inherently unsafe common consumer products, § **24:5**

limitations on application of market share liability, § **24:4**

market share liability, §§ **24:3, 24:4**

nature and purpose, § **24:1**

right to indemnification, § **24:6**

theories of liability, § **24:2**

#### Limitation period

actions alleging personal injury, death, property damage, or breach of contract, § **24:70**

asbestos cases [Code Civ Proc § 340.2], § **24:71**

civil actions against Dalkon Shield Claimants' Trust [Code Civ Proc § 340.7], § **24:74**

civil actions arising from accidents involving general aviation aircraft [PL 103-298 §§ 1 to 4, 108 Stat 1552], § **24:75**

improvements to real property, injuries caused by latent defects in [Code Civ Proc § 337.15], § **24:73**

improvements to real property, injuries caused by patent defects in [Code Civ Proc § 337.1], § **24:72**

latent defects in improvements to real property, injuries caused by [Code Civ Proc § 337.15], § **24:73**

patent defects in improvements to real property, injuries caused by [Code Civ Proc

## PRODUCTS LIABILITY

### —Cont'd

#### Limitation period—Cont'd

§ 337.1], § **24:72**

#### Motions in limine

generally, § **24:79**

declaration in opposition to motion for order excluding evidence subsequent conduct, form [Evid Code § 1151], § **24:136**

declaration in support of motion for order excluding evidence, form [Evid Code § 1151], § **24:135**

exclude evidence of subsequent remedial conduct, form, § **24:137**

exclude evidence of subsequent remedial conduct, form [Evid Code § 1151], § **24:134**

#### Negligence

damages recoverable, § **24:46**

dangerous condition of product, manufacturer's and seller's duty to warn, §§ **24:40 to 24:42**

defenses, § **24:47**

elements, § **24:36**

inspection and testing, manufacturer's duty to conduct reasonable inspection and testing, § **24:39**

manufacturer's and seller's duty to warn of dangerous condition of product, §§ **24:40 to 24:42**

manufacturer's duty to conduct reasonable inspection and testing, § **24:39**

manufacturer's duty to design products to be safe for use, § **24:37**

manufacturer's duty with respect to manufacturing process, § **24:38**



## INDEX

### PRODUCTS LIABILITY

#### —Cont'd

#### Negligence—Cont'd

- manufacturing process,  
manufacturer's duty with  
respect to, § **24:38**
- negligence per se, § **24:44**
- obvious danger rule, duty of  
manufacturer and seller to  
warn, § **24:42**
- overview, § **24:36**
- persons to whom duty of care is  
owed, § **24:43**
- res ipsa loquitur, § **24:45**
- safe for use, manufacturer's duty  
to design products to be,  
§ **24:37**
- sophisticated user defense, duty  
of manufacturer and seller to  
warn, § **24:41**
- warning of dangerous condition,  
duty of manufacturer and  
seller, §§ **24:40 to 24:42**

#### Parties, cumulative effect of warran- ties; intention of parties as to dominant warranty [UCC § 2317], § **24:56**

#### Personal injuries

- accrual of personal injury cause  
of action as affected by  
discovery rule, § **24:69**
- limitation period, actions alleging  
personal injury, death, prop-  
erty damage, or breach of  
contract, § **24:70**

#### Protective order

- declaration in support of limiting  
scope of demand for inspec-  
tion, form [Code Civ Proc  
§ 2031.050, subds (a)-(c)],  
§ **24:132**
- limiting scope of demand for  
inspection, form [Code Civ  
Proc § 2031.050, subds (a)-  
(c)], § **24:133**

### PRODUCTS LIABILITY

#### —Cont'd

#### Protective order—Cont'd

- notice of motion to limiting  
scope of demand for inspec-  
tion, form [Code Civ Proc  
§ 2031.050, subds (a)-(c)],  
§ **24:131**

#### Strict products liability

- generally, § **24:9**
- adequate warnings as to prod-  
uct's proper use, defects based  
on failure to provide, § **24:28**
- blood or blood products for  
transfusion, no liability for  
rendition of services or supply-  
ing, § **24:19**
- consumer expectation test, design  
defects based on, § **24:26**
- damages recoverable, § **24:32**
- defenses applicable to action  
alleging defect based on fail-  
ure to warn, § **24:35**
- defenses applicable to action  
alleging design defect, § **24:34**
- defenses applicable without  
regard to type of defect  
alleged, § **24:33**
- design defects, §§ **24:25 to 24:27**
- entitlement to recovery,  
§§ **24:11, 24:12**
- existence of defect as prerequi-  
site, § **24:21**
- failure to warn, defects based on  
failure to provide adequate  
warnings as to product's  
proper use, § **24:28**
- failure to warn, defenses  
applicable to action alleging  
defect based on, § **24:35**
- limited liability for injuries  
caused by prescription drugs  
and medical devices, § **24:31**
- manufacturing defects, § **24:24**
- medical devices, limited liability  
for injuries caused by, § **24:31**

## PRODUCTS LIABILITY

### —Cont'd

Strict products liability—Cont'd  
     persons entitled to recover, § 24:11  
     persons liable; nature of liability, § 24:13  
     persons not liable, § 24:14  
     persons who may not recover, § 24:12  
     predecessor's defective products, liability for injuries caused by, § 24:15  
     prescription drugs and medical devices, limited liability for injuries caused by, § 24:31  
     privity not required, § 24:10  
     proving existence of defect, § 24:22  
     requirement that injury-causing instrumentality be "product," § 24:16  
     risk/benefit test, design defects based on, § 24:27  
     status of product, determination, § 24:17  
     stream of commerce, requirement that product be placed into, § 24:20  
     types of defects as to which liability may be imposed, § 24:23 et seq.  
     types of products as to which liability may be imposed, § 24:18  
     types of warnings that may be required, § 24:29  
     ultimate consumer, warnings not needed to be given to, § 24:30  
 Theories of liability, §§ 24:9 to 24:67  
 Warranty, breach of  
     blood transfusion, no liability arising from, § 24:49  
     cumulative effect of warranties; intention of parties as to

## PRODUCTS LIABILITY

### —Cont'd

Warranty, breach of—Cont'd  
     dominant warranty [UCC § 2317], § 24:56  
     damages recoverable, § 24:61  
     defenses, §§ 24:64, 24:104 to 24:124  
     effect of proof-of-purchase requirement [UCC § 2801], § 24:57  
     exclusion or modification of express warranties, § 24:51  
     exclusion or modification of implied warranties [UCC § 2316], § 24:55  
     express warranties [UCC § 2313], § 24:50  
     implied warranty of fitness for particular purpose [UCC § 2315], § 24:53  
     implied warranty of merchantability [UCC § 2314], § 24:52  
     liquidation and limitation of damages, § 24:62  
     modification or limitation of remedies [UCC § 2719], § 24:63  
     notice of breach as prerequisite to suit, § 24:59  
     notice to prior seller to defend action for breach of warranty, § 24:60  
     other implied warranties arising from course of dealing or trade usage [UCC § 2314(3)], § 24:54  
     overview, § 24:48  
     persons entitled to sue, § 24:58  
 Workers' compensation as exclusive remedy, form [Lab Code § 3602], § 24:109

## PROFESSIONAL LIABILITY

Judgment on pleadings, memorandum of points and authorities supporting insurance company's

## INDEX

### PROFESSIONAL LIABILITY

#### —Cont'd

motion for, § 44:67

### PROFESSIONAL MALPRACTICE

Accountant Malpractice (this index)

Architect Malpractice (this index)

Certificate of merit

checklist, § 34:13

form [Code Civ Proc § 411.35],  
§ 34:14

requirement, § 34:11

Forms

certificate of merit [Code Civ  
Proc § 411.35], § 34:14

declaration in support of motion  
to verify compliance with cer-  
tificate of merit requirement  
and for payment of reasonable  
expenses [Code Civ Proc  
§ 411.35, subd (h)], § 34:16

notice of motion to verify  
compliance with certificate of  
merit requirement and for pay-  
ment of reasonable expenses  
[Code Civ Proc § 411.35, subd  
(h)], § 34:15

order granting motion to verify  
compliance with Code Civ  
Proc § 411.35 and for payment  
of reasonable expenses [Code  
Civ Proc § 411.35, subd (h)],  
§ 34:17

Medical Malpractice (this index)

Negligence

arbitration of professional mal-  
practice claims, § 34:12

certificate of merit requirement,  
§ 34:11

damages in professional malprac-  
tice actions, § 34:9

duty of care to client, § 34:5

duty of care to third parties,  
§ 34:6

### PROFESSIONAL

#### MALPRACTICE—Cont'd

Negligence—Cont'd

elements of tort cause of action,  
§ 34:3

legal principles, §§ 34:1 to 34:12

nature of liability, § 34:1

other bases of professional  
liability, § 34:4

professional defined, § 34:2

proof of breach of duty, § 34:8

standard of care, § 34:7

statute of limitations, § 34:10

Real Estate Broker Malpractice (this  
index)

Third parties, negligence, duty of  
care to third parties, § 34:6

### PROSTITUTION

Nuisance, allegations for use in com-  
plaint [Pen Code §§ 11225,  
11227], § 17:32

### PUBLIC EMPLOYEE

Governmental Immunity (this index)

Malicious acts, governmental  
immunity, § 29:24

### PUBLIC ENTITIES

Generally, § 31:1 et seq.

Accrual of cause of action, § 31:2

Actions by or against [Gov Code  
§§ 945. 945.2], § 31:1

Actual notice of dangerous condition  
of public property, what consti-  
tutes [Gov Code §§ 835.2, 840.4],  
§ 31:21

Checklists

actions against public entities and  
public employees, procedural  
matters to consider, § 31:52

enforcement of judgment against  
public entities, procedural mat-  
ters to consider, § 31:53

**PUBLIC ENTITIES—Cont'd**

Complaints

dangerous conditions of public property

allegation of public employee liability based on actual or constructive notice of dangerous condition of public property [Gov Code §§ 840.2, subd (b), 840.4], **§ 31:59**

allegation of public entity liability based on actual or constructive notice of dangerous condition of public property [Gov Code §§ 835. subd (b), 835.2], **§ 31:58**

employee's creation of dangerous condition, complaint against city and city employee [Gov Code §§ 835. subd (a), 840.2, subd (a)], **§ 31:57**

fire protection services and facilities

negligent performance of firefighting services outside fire protection area, complaint against fire district and firefighter [Gov Code § 850.6], **§ 31:64**

transporting person injured in fire, complaint against public employee for willful misconduct [Gov Code § 850.8], **§ 31:65**

mandatory duty, complaint against state for failure to discharge, **§ 31:56**

medical, hospital, and public health activities

confinement determination, complaint against public employee based on negligence [Gov Code

**PUBLIC ENTITIES—Cont'd**

Complaints—Cont'd

medical, hospital, and public health activities—Cont'd

§ 856, subd (c)], **§ 31:70**

equipment, personnel, or facilities, complaint against county for failure to provide adequate [Gov Code § 855, subd (a)], **§ 31:67**

escaped mental patient, complaint against public employee based on conduct in connection with [Gov Code § 856.2, subd (b)], **§ 31:71**

judicial determination of confinement, complaint against county and county employee for employee's intentional and unjustifiable interference with [Gov Code § 855.2], **§ 31:68**

patient of mental hospital, complaint against public employee for injury to [Gov Code § 854, subd (d)], **§ 31:66**

treatment for mental illness or addiction, complaint against public employee based on negligence [Gov Code § 855.8, subds (c), (d)], **§ 31:69**

motor vehicle operation by employee, complaint against city and city employee based on [Gov Code §§ 815.2; Veh Code §§ 17001, 17002], **§ 31:54**

police and correctional activities injury to prisoner, complaint against county employee based on [Gov Code

## INDEX

### **PUBLIC ENTITIES—Cont'd**

#### **Complaints—Cont'd**

##### **police and correctional activities —Cont'd**

§ 844.6 subd (d)], **§ 31:61**

judicial determination of  
confinement, complaint  
against county and county  
employee for intentional  
and unjustifiable interfer-  
ence [Gov Code § 845.4],  
**§ 31:62**

medical care for prisoner,  
complaint against state and  
state employee based on  
failure to summon [Gov  
Code § 845.6], **§ 31:63**

use of excessive force in  
making arrest, complaint  
against city and city police  
officer for [Gov Code  
§ 815.2], **§ 31:60**

risk of harm, complaint against  
city by employee of indepen-  
dent contractor based on tort  
of contractor hired to perform  
work which created peculiar  
risk of harm [Gov Code  
§ 815.4], **§ 31:55**

Constructive notice of dangerous  
condition of public property, what  
constitutes [Gov Code §§ 835.2,  
840.4], **§ 31:21**

Correctional facilities, liability as to  
condition [Gov Code §§ 844.6  
subd (c), 845.2], **§ 31:28**

#### **Dangerous conditions of public prop- erty**

accident occurrence not evidence  
of dangerous condition [Gov  
Code § 830.5], **§ 31:23**

actual notice of dangerous condi-  
tion, what constitutes [Gov  
Code §§ 835.2, 840.4],  
**§ 31:21**

### **PUBLIC ENTITIES—Cont'd**

#### **Dangerous conditions of public prop- erty—Cont'd** **complaints**

allegation of public employee  
liability based on actual or  
constructive notice of  
dangerous condition of  
public property [Gov Code  
§§ 840.2, subd (b), 840.4],  
**§ 31:59**

allegation of public entity  
liability based on actual or  
constructive notice of  
dangerous condition of  
public property [Gov Code  
§§ 835. subd (b), 835.2],  
**§ 31:58**

employee's creation of  
dangerous condition, com-  
plaint against city and city  
employee [Gov Code  
§§ 835. subd (a), 840.2,  
subd (a)], **§ 31:57**

constructive notice of dangerous  
condition, what constitutes  
[Gov Code §§ 835.2, 840.4],  
**§ 31:21**

#### **defenses**

medical facility, reasonable  
diligence by public entity  
to comply with statute or  
regulation prescribing min-  
imum standards [Gov  
Code § 855], **§ 31:79**

protection of condition of  
property, reasonable action  
taken of not taken [Gov  
Code §§ 835.4, subd (b),  
840.6, subd (b)], **§ 31:78**

reasonable diligence by pub-  
lic entity to comply with  
statute or regulation  
prescribing minimum stan-  
dards for medical facility  
[Gov Code § 855], **§ 31:79**

**PUBLIC ENTITIES—Cont'd**

Dangerous conditions of public property—Cont'd

defenses—Cont'd

reasonableness of act or omission creating dangerous condition of public property [Gov Code §§ 835.4, subd (a), 840.6, subd (a)], **§ 31:77**

risk created by condition of public property was of minor, trivial, or insignificant nature [Gov Code § 830.2], **§ 31:76**

injuries caused by dangerous conditions, **§ 31:20**

nondangerous condition [Gov Code § 830.2], **§ 31:22**

notice of dangerous condition, actual or constructive, what constitutes [Gov Code §§ 835.2, 840.4], **§ 31:21**

reasonable conduct as to condition, absence of liability [Gov Code §§ 835.4, 840.6], **§ 31:23**

recreational use immunity absent under Civ Code § 846, **§ 31:25**

remedial measures following accident not evidence of dangerous condition [Gov Code § 830.5], **§ 31:23**

subsequent remedial measures not evidence of dangerous condition [Gov Code § 830.5], **§ 31:23**

Defense of public employees, **§ 31:9**

Defenses

acceptance of amount allowed on claim by plaintiff, bar to suit [Gov Code § 946], **§ 31:74**

action against public employee barred [Gov Code § 950.2], **§ 31:73**

**PUBLIC ENTITIES—Cont'd**

Defenses—Cont'd

bar to action against public employee [Gov Code § 950.2], **§ 31:73**

confidential cover sheet in false claims actions [Judicial Council Form MC-060], **§ 31:80**

failure to file claim [Gov Code § 945.4], **§ 31:72**

protection of condition of property, reasonable action taken of not taken [Gov Code §§ 835.4, subd (b), 840.6, subd (b)], **§ 31:78**

reasonableness of act or omission creating dangerous condition of public property [Gov Code §§ 835.4, subd (a), 840.6, subd (a)], **§ 31:77**

risk created by condition of public property was of minor, trivial, or insignificant nature [Gov Code § 830.2], **§ 31:76**

statute of limitations, **§ 31:75**

Duty of care regarding emergency medical services, **§ 31:10**

Emergency medical services, duty of care regarding, **§ 31:10**

Enforcement of judgments

checklist of procedural matters to consider, enforcement against public entities, **§ 31:53**

collateral source payments in actions against public entities [Gov Code § 985], **§ 31:49**

local public entities, judgments against [Gov Code § 970.1], **§ 31:46**

mandatory postjudgment settlement conference, request for [Gov Code § 962], **§ 31:47**

periodic payments on judgments against public entities [Gov Code § 984], **§ 31:48**

## INDEX

### **PUBLIC ENTITIES—Cont'd**

Enforcement of judgments—Cont'd  
public entities, enforcement  
against, checklist of procedural  
matters to consider, § **31:53**  
state, judgments against, § **31:45**

Extent of liability  
absence of liability except as  
provided by statute, § **31:11**  
Department of Motor Vehicles,  
liability to lienholder [Gov  
Code § 818.5], § **31:16**  
discharge of statutory duty, pub-  
lic entity liability for failure  
[Gov Code § 815.6], § **31:15**  
failure to discharge statutory  
duty, public entity liability for  
[Gov Code § 815.6], § **31:15**  
independent contractors, public  
entity liability for conduct  
[Gov Code § 815.4], § **31:14**  
nuisance, liability of public entity  
[Gov Code § 820], § **31:18**  
pesticide use, liability of public  
entity for injuries caused by  
[Gov Code § 862], § **31:17**  
public employees [Gov Code  
§ 820], § **31:19**  
statutory provision for liability,  
§ **31:11**  
vicarious liability of public entity  
conduct of employees [Gov  
Code § 815.2], § **31:12**  
intentional torts of elected  
officials [Gov Code  
§ 815.3], § **31:13**

False claims actions  
actions [Gov Code §§ 12652,  
12654], § **31:51**  
confidential cover sheet in false  
claims actions [Judicial  
Council Form MC-060],  
§ **31:80**  
excluded claims, § **31:50**  
liability for false claims, § **31:50**

### **PUBLIC ENTITIES—Cont'd**

Fire protection services and facilities  
complaints  
negligent performance of  
firefighting services  
outside fire protection area,  
complaint against fire  
district and firefighter [Gov  
Code § 850.6], § **31:64**  
transporting person injured in  
fire, complaint against pub-  
lic employee for willful  
misconduct [Gov Code  
§ 850.8], § **31:65**  
injury caused in fighting fires,  
liability [Gov Code § 850.4],  
§ **31:33**  
performance of firefighting ser-  
vices outside fire protection  
area, liability as to [Gov Code  
§ 850.6], § **31:34**  
transporting person injured in  
fire, liability for willful  
misconduct [Gov Code  
§ 850.8], § **31:35**

Forms  
complaints, above  
defenses, above

Indemnification of public employees,  
§ **31:9**

Independent contractors, public  
entity liability for conduct [Gov  
Code § 815.4], § **31:14**

Legal principles  
enforcement of judgments,  
§§ **31:45 to 31:49**  
extent of liability, §§ **31:11 to**  
**31:44**  
false claims actions, §§ **31:50,**  
**31:51**  
procedural matters, §§ **31:1 to**  
**31:10**



**PUBLIC ENTITIES—Cont'd**

Limitation periods applicable in actions against public entities and public employees

claim not required [Gov Code § 945.8], § **31:6**

claim required, § **31:5**

Medical, hospital, and public health activities

adequate equipment, personnel, or medical facilities, liability for injuries cause by failure to provide [Gov Code § 855], § **31:39**

admission to medical facility, liability for failure as to [Gov Code § 856.4], § **31:41**

complaints

confinement determination, complaint against public employee based on negligence [Gov Code § 856, subd (c)], § **31:70**

equipment, personnel, or facilities, complaint against county for failure to provide adequate [Gov Code § 855, subd (a)], § **31:67**

escaped mental patient, complaint against public employee based on conduct in connection with [Gov Code § 856.2, subd (b)], § **31:71**

judicial determination of confinement, complaint against county and county employee for employee's intentional and unjustifiable interference with [Gov Code § 855.2], § **31:68**

patient of mental hospital, complaint against public employee for injury to

**PUBLIC ENTITIES—Cont'd**

Medical, hospital, and public health activities—Cont'd

complaints—Cont'd

[Gov Code § 854, subd (d)], § **31:66**

treatment for mental illness or addiction, complaint against public employee based on negligence [Gov Code § 855.8, subds (c), (d)], § **31:69**

condition of medical facilities, liability [Gov Code § 854.8, subd (c)], § **31:37**

confinement determinations, liability in connection with [Gov Code § 856, subd (c)], § **31:42**

defense of reasonable diligence by public entity to comply with statute or regulation prescribing minimum standards for medical facility [Gov Code § 855], § **31:79**

escaped mental patient, liability in connection with [Gov Code § 856.2, subd (b)], § **31:44**

judicial determination of confinement, liability for interference with [Gov Code § 855.2], § **31:43**

motor vehicle torts, liability [Gov Code § 854.8, subd (b)], § **31:36**

patient of mental institution, liability for injury to [Gov Code § 854.8, subd (d)], § **31:38**

treatment, liability in connection with prescribing or administering [Gov Code § 855.8, subds (c), (d)], § **31:40**

Mitigation of damages, reduction of judgment against for collateral

## INDEX

### **PUBLIC ENTITIES—Cont'd**

source payments [Gov Code § 985], § **6:13**

Nuisance, liability of public entity [Gov Code § 820], § **31:18**

Personal injuries

correctional activities, liability for injury to prisoner [Gov Code § 844.6 subd (d)], § **31:29**

fire protection services and facilities, §§ **31:33, 31:35**

injury to prisoner, complaint against county employee based on [Gov Code § 844.6 subd (d)], § **31:61**

medical care for prisoner, complaint against state and state employee based on failure to summon [Gov Code § 845.6], § **31:63**

pesticide use, liability of public entity for injuries caused by [Gov Code § 862], § **31:17**

Pesticide use, liability of public entity for injuries caused by [Gov Code § 862], § **31:17**

Police and correctional activities complaints

injury to prisoner, complaint against county employee based on [Gov Code § 844.6 subd (d)], § **31:61**

judicial determination of confinement, complaint against county and county employee for intentional and unjustifiable interference [Gov Code § 845.4], § **31:62**

medical care for prisoner, complaint against state and state employee based on failure to summon [Gov Code § 845.6], § **31:63**

### **PUBLIC ENTITIES—Cont'd**

Police and correctional activities

—Cont'd

complaints—Cont'd

use of excessive force in making arrest, complaint against city and city police officer for [Gov Code § 815.2], § **31:60**

correctional facilities, liability as to condition [Gov Code §§ 844.6 subd (c), 845.2], § **31:28**

criminal charges, no action allowed while pending [Gov Code § 945.3], § **31:32**

injury to prisoner, liability [Gov Code § 844.6 subd (d)], § **31:29**

interference with judicial determination of confinement, liability [Gov Code § 845.4], § **31:30**

law enforcement personnel, liability for conduct, § **31:26**

medical care for prisoner, liability for failure to summon [Gov Code § 845.6], § **31:31**

motor vehicle torts, liability [Gov Code § 844.6 subd (b)], § **31:27**

Presentation of claim as prerequisite to action against public entity or public employee, and waiver, § **31:3**

Punitive damages, restriction on liability, § **7:9**

Recreational use immunity absent under Civ Code § 846, § **31:25**

Right to maintain suit as affected by acceptance of amount allowed on claim [Gov Code § 946], § **31:4**

Service of process, § **31:8**

Statute of limitations, § **31:75**

Venue of actions against, § **31:7**

## **PUNITIVE DAMAGES**

Actions for breach of contract, § 7:3

Actual damages

alleging as predicate to seeking punitive damages, § 7:22

proving-up punitive damages, § 7:31

reasonable relationship to amount of actual damage, injury or harm, award determination, § 7:35

Allegations

actual damages, alleging as predicate to seeking punitive damages, § 7:22

complaint, separate allegation, § 7:17

form, § 7:41

fraud, § 7:23

insufficient allegations, challenging, § 7:25

malice, § 7:23

oppression, § 7:23

supporting facts requirement, § 7:24

Amount of award

determination, §§ 7:33 to 7:37

deterrence in proportion to financial condition, § 7:36

discretion of trier of fact, § 7:37

financial condition, deterrence in proportion to, § 7:36

prohibition against stating in complaint, § 7:18

reasonable relationship to amount of actual damage, injury or harm, § 7:35

reprehensibility of conduct, § 7:34

three factors, § 7:33

Attachment

exemplary damages attachment [Judicial Council Form 982.1(13)], form, § 7:39

personal injury caused by defectively designed

## **PUNITIVE DAMAGES—Cont'd**

Attachment—Cont'd

automobile, factors supporting claim [Attachment EX-2 to Judicial Council Form 982.1(13)], § 7:40

Availability, §§ 7:1 to 7:7

Bankruptcy, punitive damages generally not dischargeable, § 7:38

Bifurcated trial, defendant's right to, § 7:27

Breach of contract, § 7:3

Challenging insufficient allegations, § 7:25

Complaint and notice

defaulting defendant, notice to, § 7:21

health care provider, actions against, § 7:19

prohibition against stating amount, § 7:18

religious corporation, actions against, § 7:20

separate allegation, § 7:17

Constitutional considerations, § 7:4

Contract breach, § 7:3

Corporate defendants, restriction on liability, § 7:8

Criminal liability, § 7:6

Death and Survival (this index)

Definition, § 7:1

Dischargeable in bankruptcy, punitive damages generally not dischargeable, § 7:38

Discretion of trier of fact

amount of award, determination, § 7:37

proving-up damages, § 7:32

Employers, restriction on liability, § 7:8

Evidence rules, financial condition of defendant, §§ 7:26, 7:27

Financial condition of defendant

amount of award, deterrence in proportion to financial condition, § 7:36

## INDEX

### **PUNITIVE DAMAGES—Cont’d**

Financial condition of defendant

—Cont’d

bifurcated trial, defendant’s right to, § 7:27

evidence rules, §§ 7:26, 7:27

notice of motion for order to discover evidence of defendant’s financial condition under Civ Code § 3295 subd (c), form, § 7:42

procedure for plaintiff’s discovery, § 7:26

Forms

demand for punitive damages in personal injury action brought in superior court, § 7:43

exemplary damages attachment [Judicial Council Form 982.1(13)], § 7:39

notice of motion for order to discover evidence of defendant’s financial condition under Civ Code § 3295 subd (c), § 7:42

personal injury caused by defectively designed automobile, factors supporting claim [Attachment EX-2 to Judicial Council Form 982.1(13)], § 7:40

punitive damage allegation, § 7:41

statement preserving right to seek punitive damages [Code Civ Proc § 425.115], § 7:44

Fraud, allegation, § 7:23

Governmental immunity [Gov Code § 818], §§ 29:11, 29:40

Health care provider, actions against, § 7:19

Insurers on behalf of insured, restriction on liability, § 7:10

Legal malpractice actions, “lost” punitive damages, § 7:16

### **PUNITIVE DAMAGES—Cont’d**

Legal principles

amount of award, determination, §§ 7:33 to 7:37

financial condition of defendant, evidence rules, §§ 7:26, 7:27

overview, §§ 7:1 to 7:16

proving-up punitive damages, §§ 7:28 to 7:32

stating claim, §§ 7:17 to 7:25

Malice

allegations, § 7:23

negligence actions, § 7:30

Negligence actions, malice as proving-up damages, § 7:30

Oppression, allegations, § 7:23

Personal injury

defectively designed automobile, factors supporting claim [Attachment EX-2 to Judicial Council Form 982.1(13)], form, § 7:40

demand for punitive damages in personal injury action brought in superior court, form, § 7:43

Proving-up punitive damages

actual damage finding requirement, § 7:31

conduct supporting claim, § 7:29

discretion of trier of fact, § 7:32

malice in negligence actions, § 7:30

standard of proof, § 7:28

Public entities, restriction on liability, § 7:9

Purpose, § 7:1

Reasonable relationship to amount of actual damage, injury or harm, § 7:35

Recovery, availability of damages, § 7:7

Religious corporation, actions against, § 7:20

Reprehensibility of conduct, determination of award, § 7:34

**PUNITIVE DAMAGES—Cont'd**

Restrictions on liability  
     corporate defendants, § 7:8  
     double punishment prohibited  
         when statutory penalties  
         awarded, § 7:14  
     employers, § 7:8  
     identified and particular  
         defendants, § 7:13  
     insurers on behalf of insured,  
         § 7:10  
     legal malpractice actions, “lost”  
         punitive damages, § 7:16  
     particular and identified  
         defendants, § 7:13  
     personal representative of  
         decedent in survival actions,  
         § 7:11  
     public entities, § 7:9  
     statutory penalties, prohibition of  
         double punishment, § 7:14  
     statutory prohibitions, § 7:15  
     survival action, personal repre-  
         sentative of decedent, § 7:11  
     wrongful death claimants, § 7:12  
 Statement preserving right to seek  
     punitive damages [Code Civ Proc  
     § 425.115], § 7:44  
 Stating claim  
     allegations, above  
     complaint and notice, above  
 Statutory penalties, § 7:5  
 Survival action, personal representa-  
     tive of decedent, § 7:11  
 Types of cases, § 7:2  
 Wrongful death claimants, restriction  
     on liability, § 7:12

**R**

**REAL ESTATE BROKER  
MALPRACTICE**

Generally, §§ 34:35 to 34:40  
 Duty of care to client, § 34:35  
 Duty of care to third parties, § 34:36

**REAL ESTATE BROKER  
MALPRACTICE—Cont'd**

Forms

allegation of purchaser’s  
     negligence as defense to  
     purchaser’s allegation of  
     negligent inspection by seller’s  
     broker, § 34:38  
 breach of fiduciary duty, com-  
     plaint by client arising out of  
     purchase of apartment build-  
     ing, § 34:39  
 fraud and misrepresentation aris-  
     ing out of purchase of apart-  
     ment building, complaint by  
     client, § 34:39  
 interrogatories propounded to  
     plaintiffs in action alleging  
     negligent misrepresentation,  
     breach of fiduciary duty, and  
     negligent inspection, § 34:40  
 negligence in inspecting property  
     offered for sale, complaint for  
     damages by purchaser of real  
     estate against seller’s broker,  
     § 34:37  
 Legal principles, §§ 34:35, 34:36  
 Third parties, duty of care to,  
     § 34:36

**RECREATIONAL VEHICLES**

Generally, § 27:1 *et seq.*  
 Additional defendants and theories  
     of recovery, § 27:4  
 Boats and Vessels (this index)  
 Defense theories, § 27:5  
 Inference of negligence from *res ipsa*  
     loquitur, § 27:3  
 Negligence of operator [Civ Code  
     § 1714, subd (a)], § 27:1  
 Operator’s negligence [Civ Code  
     § 1714, subd (a)], § 27:1  
 Ordinance, presumption of  
     negligence from violation of [Evid  
     Code § 669], § 27:2

## INDEX

### **RECREATIONAL VEHICLES —Cont’d**

Presumption of negligence from violation of statute, ordinance, or regulation [Evid Code § 669], § 27:2

Principles of liability, §§ 27:1 to 27:5

Regulation, presumption of negligence from violation of [Evid Code § 669], § 27:2

Res ipsa loquitur, inference of negligence from, § 27:3

Statute, presumption of negligence from violation of [Evid Code § 669], § 27:2

Theories of defense, § 27:5

### **REPRESSION OF CHILDHOOD SEXUAL ABUSE**

Allegations in defense

action not commenced within eight years after majority, form, § 12:47

action not commenced within three years, form, § 12:48

failure to file certificate, allegation, form, § 12:49

subconscious defense mechanisms prevented realizing causal connection between abuse and subsequent psychological injuries, § 12:42

Complaint for damages caused by abuse by parent and alleging subconscious repression and denial of memory of abuse, § 12:41

Psychological injuries, allegation, form, § 12:48

### **RES IPSA LOQUITUR**

Aviation, § 26:35

Common freight carriers, actions against, § 28:29

Medical malpractice, § 32:19

Negligence, § 1:29

### **RES IPSA LOQUITUR—Cont’d**

Products liability, negligence, § 24:45

Recreational vehicles, inference of negligence, § 27:3

### **“ROAD RAGE”**

Personal injuries and property damage resulting from “road rage” incident, complaint form, § 25:34

## **S**

### **SELF-DEFENSE**

Affirmative defense, allegation of self-defense, § 12:45

Privilege, § 12:20

### **SETOFF**

Indemnity, Contribution, and Setoff (this index)

### **SEXUAL ABUSE**

AIDS Vaccine Victims Compensation Fund, § 24:8

### **“SHOPKEEPER’S PRIVILEGE”**

False imprisonment and false arrest, statutory defense, § 13:11

### **STALKING**

Allegation of liability based on violation of restraining order [Civ Code § 1708.7 subd (a)(3)(B)], form, § 12:54

Available remedies, § 12:52

Basis of liability, § 12:50

Complaint for injunctive relief to prevent future stalking [Civ Code § 1708.7], form, § 12:53

Complaint to recover damage for past stalking [Civ Code § 1708.7], form, § 12:53

Constitutionally protected activities, § 12:51

Cumulative nature of remedies, § 12:52

### STALKING—Cont'd

Defense that alleged stalking is constitutionally protected activity [Civ Code § 1708.7 subd (f)], form, § **12:55**

#### Forms

allegation of liability based on violation of restraining order [Civ Code § 1708.7 subd (a)(3)(B)], § **12:54**

complaint for injunctive relief to prevent future stalking [Civ Code § 1708.7], § **12:53**

complaint to recover damage for past stalking [Civ Code § 1708.7], § **12:53**

defense that alleged stalking is constitutionally protected activity [Civ Code § 1708.7 subd (f)], § **12:55**

order after hearing on petition for injunction prohibiting harassment (CLETS) [Judicial Council Form CH-140], § **12:59**

order to show cause (harassment) and temporary restraining order (CLETS) (harassment) [Judicial Council Form CH-120], § **12:56**

proof of personal service (harassment) [Judicial Council Form CH-130], § **12:57**

proof of service by mail (harassment) [Judicial Council Form CH-131], § **12:58**

Legal principles, §§ **12:50 to 12:52**

Order after hearing on petition for injunction prohibiting harassment (CLETS) [Judicial Council Form CH-140], form, § **12:59**

Order to show cause (harassment) and temporary restraining order (CLETS) (harassment) [Judicial Council Form CH-120], § **12:56**

### STALKING—Cont'd

#### Proof of

mail service (harassment) [Judicial Council Form CH-131], form, § **12:58**

personal service (harassment) [Judicial Council Form CH-130], form, § **12:57**

Remedies, § **12:52**

#### Service

proof of personal service (harassment) [Judicial Council Form CH-130], form, § **12:57**

proof of service by mail (harassment) [Judicial Council Form CH-131], § **12:58**

### STATUTE OF REPOSE

General Aviation Revitalization Act of 1994, § **26:32**

### STATUTES OF LIMITATIONS

Allegation of bar to action, form, § **1:62**

Architect malpractice, §§ **34:26, 34:31**

Assault and battery, § **12:24**

Common freight carriers, § **28:28**

Conversion, § **15:17**

Defamation, § **21:60**

Duties of insurer, § **35:10**

Fraud, § **22:11**

Intentional infliction of emotional distress [Civ Code Proc § 340(3)], § **14:27**

Invasion of privacy, § **20:27**

Loss of consortium, §§ **10:9, 10:20**

Malicious prosecution, § **19:21**

Medical Injury Compensation Reform Act (MICRA), § **8:4**

Negligence, defenses, § **1:47**

Nuisance, § **17:18**

Premises liability, § **16:30**

Public entities, § **31:75**

Survival action, § **9:7**

Trespass, § **18:10**



## INDEX

### STATUTES OF LIMITATIONS —Cont'd

Wrongful death, § 23:7

### STRICT LIABILITY

#### Affirmative defense

assumption of risk, allegation in  
statutory dog bite case, § 2:27  
defendant not owner, allegation  
in statutory dog bite case,  
§ 2:29

denying knowledge of vicious  
nature of domestic animal,  
§ 2:30

plaintiff's assumption of risk,  
allegation, form, § 2:14

trespass by plaintiff, allegation in  
statutory dog bite case, § 2:28

#### Animals

common law liability, §§ 2:18 to  
2:21

dangerous animals, § 2:20

defenses, §§ 2:17, 2:21

dog bites, § 2:16

farm animals, below

farm animals, injury to, § 2:15

overview, § 2:18

statutory liability, §§ 2:15 to  
2:17

trespassing livestock, § 2:19

#### Assumption of risk in statutory dog bite case

affirmative defense alleging,  
§ 2:27

plaintiff's assumption of risk,  
allegation, form, § 2:14

#### Common law, § 2:3

#### Dangerous animals, § 2:20

#### Defenses

animals, common law liability,  
§ 2:21

statutory liability, animals,  
§ 2:17

#### Definition, § 2:1

Dog bite liability based on  
negligence per se, allegation in

### STRICT LIABILITY—Cont'd

complaint, form, § 2:23

#### Farm animals

injury to, statutory liability,  
§ 2:15

trespassing livestock, common  
law liability, § 2:19

trespassing pigs harming crops  
and poultry, complaint for,  
§ 2:24

Farm animals, injury to, § 2:15

#### Forms

affirmative defense alleging  
plaintiff's assumption of risk,  
§ 2:14

allegation that defendant not  
owner in statutory dog bite  
case, affirmative defense of,  
§ 2:29

assumption of risk in statutory  
dog bite case, affirmative  
defense alleging, § 2:27

denial of knowledge of vicious  
nature of domestic animal,  
affirmative defense, § 2:30

dog bite liability based on  
negligence per se, allegation in  
complaint, form, § 2:23

Mail carrier, complaint under  
dog bite statute, § 2:22

personal injury caused by explo-  
sion independent of fire, com-  
plaint by firefighter, § 2:12

personal injury caused by flying  
debris during demolition of  
building, complaint by pedes-  
trian, § 2:13

property damage caused by blast-  
ing on adjacent parcel, com-  
plaint by landowner, § 2:11

trespass by plaintiff in statutory  
dog bite case, affirmative  
defense alleging, § 2:28

trespassing pigs harming crops  
and poultry, complaint for,  
§ 2:24

**STRICT LIABILITY—Cont'd**

Forms—Cont'd

ultrahazardous activities, §§ **2:11 to 2:14**

vicious domestic animal, complaint for personal injury caused by, § **2:25**

wild animal kept as pet, complaint for personal injury caused by, § **2:26**

Mail carrier, complaint under dog bite statute, § **2:22**

Personal injury

explosion independent of fire, complaint by firefighter, § **2:12**

flying debris during demolition of building, complaint by pedestrian, § **2:13**

vicious domestic animal, complaint for, § **2:25**

wild animal kept as pet, complaint for personal injury caused by, § **2:26**

Statutory, § **2:2**

Trespass by plaintiff in statutory dog bite case, affirmative defense alleging, § **2:28**

Trespassing pigs harming crops and poultry, complaint for, § **2:24**

Ultrahazardous activities

assumption of risk, § **2:9**

characterizing activity, § **2:7**

comparative negligence, § **2:9**

defenses, §§ **2:9, 2:10**

determination, §§ **2:6 to 2:8**

forms, §§ **2:11 to 2:14**

judicial classification of certain activities, § **2:8**

legal standard for determination, § **2:6**

overview, §§ **2:4, 2:5**

scope of duty, § **2:5**

statute of limitations, § **2:10**

theoretical background, § **2:4**

**STRICT LIABILITY—Cont'd**

Vicious domestic animal, complaint for personal injury caused by, § **2:25**

Wild animal kept as pet, complaint for personal injury caused by, § **2:26**

**SUMMARY JUDGMENT**

Defamation, § **21:61**

**SURVIVAL OF ACTIONS**

Death and Survival (this index)

**T**

**THIRD PARTIES**

Accountant malpractice, duty of care to third parties, § **34:20**

Aviation, § **26:16**

Medical Malpractice (this index)

Premises Liability (this index)

Professional negligence, duty of care to third parties, § **34:6**

Real estate broker malpractice, duty of care, § **34:36**

**TRESPASS**

Annoyance, § **18:16**

Attorney's fees, § **18:18**

Below surface trespass, § **18:8**

Chattel, trespass to, § **18:9**

Compensatory damages, § **18:13**

Complaints

consent by plaintiff to defendant's entry unto plaintiff's property, § **18:22**

damages, complaint for, generally, § **18:20**

easement, complaint for injunction and damages, § **18:21**

injunction, complaint for, §§ **18:20, 18:21**

jury instructions, § **18:24**

prevention of serious harm to land, necessity for defendant

## INDEX

### **TRESPASS—Cont'd**

#### Complaints—Cont'd

to enter plaintiff's property,  
§ 18:23

real property, general form of  
complaint for damages arising  
from trespass against, § 18:19

#### Consent to entry

complaint, consent by plaintiff to  
defendant's entry unto  
plaintiff's property, § 18:22  
defense consideration, § 18:11

#### Criminal trespass, § 18:2

#### Damages. Remedies, below

#### Defendant's liability

extra hazardous activity, § 18:5  
intentional, reckless, or  
negligent activity, § 18:4  
negligent activity, § 18:4  
reckless or negligent activity,  
§ 18:4  
strict liability, § 18:6

#### Defense considerations

consent to entry, § 18:11  
necessary entry, § 18:12  
privileged entry, § 18:12  
statutes of limitation, § 18:10

#### Definition, § 18:1

#### Discomfort, § 18:16

#### Emotional distress, § 18:16

Entry on property by defendant nec-  
essary to prevent serious harm to  
plaintiff's land, § 18:23

Extra hazardous activity, liability of  
defendant, § 18:5

#### Forms. Complaints, above

Injunctive relief, §§ 18:15, 18:20,  
18:21

Intrusion on or above surface level,  
§ 18:7

Jury instructions, complaints,  
§ 18:24

Legal principles, §§ 18:1 to 18:24

#### Methods of trespass

chattel, trespass to, § 18:9

### **TRESPASS—Cont'd**

#### Methods of trespass—Cont'd

intrusion on or above surface  
level, § 18:7

trespass below surface, § 18:8

Necessary entry, § 18:12

Nominal damages, § 18:17

Nuisance distinguished, § 18:3

Premises liability, status of injured  
person as trespasser, § 16:23

Privileged entry, § 18:12

Punitive damages, § 18:14

#### Remedies

attorney's fees, § 18:18  
compensatory damages, § 18:13  
emotional distress/discomfort  
and annoyance, § 18:16  
injunctive relief, § 18:15  
nominal damages, § 18:17  
punitive damages, § 18:14

Statutes of limitation, § 18:10

#### Strict liability

affirmative defense alleging  
trespass by plaintiff in statu-  
tory dog bite case, § 2:28  
animals, trespassing livestock,  
§§ 2:19, 2:24  
defendant's liability, § 18:6

#### Surface, trespass in relation to

below surface, § 18:8  
intrusion on or above surface  
level, § 18:7

## U

### **UNDERINSURED MOTORIST CLAIM**

Accident coverage, §§ 37:6, 37:8

### **UNIFORM SINGLE PUBLICATION ACT**

Defamation, § 21:16

### **UNINSURED DRIVERS**

Claims. Uninsured Motorist Claims  
(this index)

**UNINSURED DRIVERS—Cont'd**  
Motor Vehicles (this index)

**UNINSURED MOTORIST CLAIMS**

Generally, § 38:1 et seq.

Accidents, insurance coverage, §§ 37:6, 37:8

**Arbitration**

appointment of arbitrator, § 38:17

arbitrator, role in hearing, § 38:18

attendance of witnesses at hearing, § 38:19

award, §§ 38:20 to 38:22

correction of award, § 38:22

counsel, role in hearing, § 38:18

court order to compel, § 38:14

declaration in support of motion for order compelling arbitration and appointing neutral arbitrator, form, § 38:33

demand, § 38:13

disclosure of workers' compensation claim, § 38:15

discovery, § 38:16

effect of award, § 38:21

employment, petition to compel arbitration and appoint neutral arbitrator in claims arising during, § 38:30

governing law, §§ 38:9 to 38:11

hearing, §§ 38:18, 38:19

insured's demand for arbitration, form, § 38:28

insurer's response to petition to compel arbitration alleging agreement to delete coverage, form, § 38:31

judicial confirmation of award, § 38:22

notice of motion and motion for order compelling arbitration and appointing neutral arbitrator, form, § 38:32

**UNINSURED MOTORIST CLAIMS—Cont'd**

**Arbitration—Cont'd**

order compelling uninsured motorist arbitration, form, § 38:34

order consolidating and joining uninsured motorist and third party claims for purposes of uninsured motorist arbitration, form, § 38:38

petition to compel arbitration and appoint neutral arbitrator, form, §§ 38:29, 38:30

petition to correct evident miscalculation in award and confirm corrected award, form, § 38:39

pre-hearing procedures, §§ 38:12 to 38:17

production of evidence at hearing, § 38:19

requirement for arbitration, §§ 38:9, 38:10

requisites of award, § 38:20

response to petition to confirm award and request to vacate award, form, § 38:40

role of parties, counsel, and arbitrator, § 38:18

scope of arbitration, § 38:11

two-year limitation, § 38:12

vacation of award, § 38:22

workers' compensation claim, disclosure of, § 38:15

Checklist of matters to be considered, § 38:23

**Coverage of uninsured motorists**

deletion of coverage, § 38:4

governing law, §§ 38:1 to 38:5

offset for insured's receipt of benefits, § 38:5

personal injury protection, § 38:2

property damage protection, § 38:3

reduction of coverage, § 38:4

## INDEX

### UNINSURED MOTORIST CLAIMS—Cont'd

Coverage of uninsured motorists  
—Cont'd

required coverage, § 38:1

Forms

declaration in support of motion  
for order compelling arbitration  
and appointing neutral  
arbitrator, § 38:33

declaration in support of motion  
for order joining uninsured  
motorist and third party  
claims, § 38:37

employment, petition to compel  
arbitration and appoint neutral  
arbitrator in claims arising  
during, § 38:30

examining doctor for insurer,  
letter to insurer requesting  
records, § 38:27

insured's demand for arbitration,  
§ 38:28

insurer's response to petition to  
compel arbitration alleging  
agreement to delete coverage,  
§ 38:31

letter to insurer regarding claim  
and requesting coverage information,  
§ 38:24

letter to insurer requesting  
records of insurer's examining  
doctor, § 38:27

letter to insurer responding to  
request for medical record  
releases, § 38:26

medical treatment record release,  
§ 38:25

notice of motion and motion for  
order compelling arbitration  
and appointing neutral arbitrator,  
§ 38:32

notice of motion and motion for  
order joining uninsured motorist  
and third party claims,  
§ 38:36

### UNINSURED MOTORIST CLAIMS—Cont'd

Forms—Cont'd

order compelling uninsured  
motorist arbitration, § 38:34

order consolidating and joining  
uninsured motorist and third  
party claims for purposes of  
uninsured motorist arbitration,  
§ 38:38

petition for order joining uninsured  
motorist and third party  
claims, § 38:35

petition to compel arbitration and  
appoint neutral arbitrator,  
§§ 38:29, 38:30

petition to correct evident  
miscalculation in award and  
confirm corrected award,  
§ 38:39

response to petition to confirm  
award and request to vacate  
award, § 38:40

response to request for medical  
record releases, letter to  
insurer, § 38:26

Governing law

arbitration, §§ 38:9 to 38:11

requirement for arbitration,  
§§ 38:9, 38:10

scope of arbitration, § 38:11

uninsured motorist coverage

deletion of coverage, § 38:4

offset for insured's receipt of  
benefits, § 38:5

personal injury protection,  
§ 38:2

property damage protection,  
§ 38:3

reduction of coverage, § 38:4

required coverage, § 38:1

Hearing

attendance of witnesses, § 38:19

production of evidence, § 38:19

role of parties, counsel, and  
arbitrator, § 38:18

## UNINSURED MOTORIST CLAIMS—Cont'd

Identification of “insured”  
     named insured, § 38:6  
     other persons, § 38:8  
     resident relatives of named insured, § 38:6  
     vehicle occupants, § 38:7

Joinder of claims  
     declaration in support of motion for order joining uninsured motorist and third party claims, form, § 38:37  
     notice of motion and motion for order joining uninsured motorist and third party claims, form, § 38:36  
     order consolidating and joining uninsured motorist and third party claims for purposes of uninsured motorist arbitration, form, § 38:38  
     petition for order joining uninsured motorist and third party claims, form, § 38:35

Legal principles, §§ 38:1 to 38:22

Limitations on recovery  
     damages for injuries to uninsured driver or uninsured motor vehicle owner, § 25:96  
     damages for injuries to uninsured driver or uninsured motor vehicle owner [Civ Code § 3333.4], § 25:89

Medical record releases  
     letter to insurer responding to request, form, § 38:26  
     response to request for medical record releases, letter to insurer, § 38:26

Pre-hearing procedures  
     appointment of arbitrator, § 38:17  
     arbitration, §§ 38:12 to 38:17  
     court order to compel arbitration, § 38:14

## UNINSURED MOTORIST CLAIMS—Cont'd

Pre-hearing procedures—Cont'd  
     demand for arbitration, § 38:13  
     disclosure of workers' compensation claim, § 38:15  
     discovery, § 38:16  
     two-year limitation, § 38:12

Preparation of plaintiff's case, § 37:13

Procedural checklist, § 37:31

Procedural checklist of matters to be considered, § 38:23

## UNINSURED MOTOR VEHICLE OWNERS

Motor Vehicles (this index)

## UNMARKED CROSSWALKS

Allegation by pedestrian against owner-operator of motor vehicle that struck pedestrian in unmarked crosswalk, form, § 25:40

## V

## VEHICLES

Motor Vehicles (this index)  
 Recreational Vehicles (this index)

## VENUE

Public entities, actions against, § 31:7

## VESSELS

Boats and Vessels (this index)

## W

## WATERCRAFT

Boats and Vessels (this index)

## WORKERS' COMPENSATION CASES

Defenses, exclusive remedy, negligence, § 1:48  
 Employer liability for acts of employee, applicability to scope

## INDEX

### WORKERS' COMPENSATION CASES—Cont'd

- of employment analysis, § 3:9
- Intentional infliction of emotional distress, exclusive remedy provisions, § 14:29
- Loss of consortium, damages, § 10:14
- Medical malpractice, exclusive remedy, §§ 32:75, 32:84
- Negligence, allegation of exclusive remedy, form, § 1:67
- Products liability, exclusive remedy, form [Lab Code § 3602], § 24:109
- Uninsured motorist claims, arbitration, disclosure of workers' compensation claim, § 38:15
- Wrongful death, workers' compensation insurance as alternative source of relief, § 23:24

### WRONGFUL DEATH

- Generally, § 23:1 et seq.
- Actuarial or annuity tables, § 23:35
- Answers
  - generally, §§ 23:55, 23:56
  - Judicial Council answer [Cal. Rules of Court, rule 982.1(15)], § 23:55
- Appeal, § 23:39
- Automobile accident as cause form, § 23:47
- Aviation, unexplained crash, complaint for wrongful death, § 26:37
- Award, § 23:38
- Burden of proof
  - generally, § 23:33
  - damages, § 23:34
- Cause of action
  - generally, §§ 23:1 to 23:14
  - alleging, § 23:27
  - damages recoverable, § 23:8
  - elements, § 23:3
  - nature [Civ Proc Code § 377.60], § 23:1

### WRONGFUL DEATH—Cont'd

- Cause of action—Cont'd
  - survival action compared [Civ Proc Code §§ 377.30 et seq.], § 23:2
- Checklist, statement of damages, § 23:41
- Children and minors
  - dependent minor heir form, § 23:46
  - order approving minor's compromise, § 23:52
  - petition of guardian ad litem for order approving compromise of minor's wrongful death action form, § 23:51
  - stepchild, heir as, allegation, § 23:45
- Collateral source rule, effect of, § 23:9
- Compensatory damages
  - statement of compensatory damages, below
- Consolidation with related actions
  - defense strategy, § 23:40
- Damages
  - alleging, § 23:28
  - appeal, § 23:39
  - cause of action, § 23:8
  - jury instructions, § 23:37
  - limitations on damages, § 23:12
  - noneconomic damages, § 23:13
  - not recoverable, § 23:14
  - products liability, § 23:43
  - proof, § 23:34
  - punitive damages, § 23:11
  - reduction of damages, §§ 23:12, 23:13
  - statement of damages, § 23:29
- Death certificate as evidence, § 23:33
- Defense investigation, § 23:30
- Defenses
  - generally, §§ 23:15 to 23:19
  - answers, above



**WRONGFUL DEATH—Cont'd**

Defenses—Cont'd

- assumption of risk, § 23:16
- comparative negligence, § 23:16
- criminal proceeding finding justifiable homicide, § 23:17
- demurrer form, § 23:54
- homicide, justifiable, § 23:17
- interrogatories to plaintiff form, § 23:58
- justifiable homicide, § 23:17
- other action pending, § 23:19
- pending action, § 23:19
- prior action, § 23:19
- prior or pending action, § 23:19
- prior settlement and release before death, § 23:18
- request for statement of damages form, § 23:57

Depositions, § 23:30

Discovery, § 23:30

Dismissal motion

- defensive strategy, § 23:40

Evidence

- generally, § 23:33
- defendant's evidence and limits on evidence, § 23:36

Forms

- defenses, above
- plaintiff forms, below

Heirs

- child of putative spouse, allegation, form, § 23:45
- complaint, generally form
  - dependent minor, allegation, form, § 23:46
- complaint for wrongful death based on product liability [Code Civ Proc § 377.60], § 23:43
- parent of decedent, allegation, form, § 23:45
- putative spouse, allegation, form, § 23:45

**WRONGFUL DEATH—Cont'd**

Heirs—Cont'd

- stepchild, allegation, form, § 23:45

Homicide, justifiable, § 23:17

Hunting accident as cause of death form, § 23:48

Interest, prejudgment, § 23:10

Interrogatories

- generally, § 23:30
- defendant to plaintiff form, § 23:58

Joinder of parties, § 23:6

Judicial Council forms

- answer [Cal. Rules of Court, rule 982.1(15)], § 23:55
- complaint [Judicial Council Form 982.1(1)], § 23:42
- statement of damages (personal injury or wrongful death) [Judicial Council Form 982(a)(24)], § 23:50

Jury instructions, § 23:37

Justifiable homicide, § 23:17

Life expectancy tables, § 23:35

Minors, see Children and minors, above

Mortality tables, § 23:35

Motor Vehicles (this index)

New trial motion as defensive strategy, § 23:40

Noneconomic damages, reduction, § 23:11

Nonsuit motion as defensive strategy, § 23:40

Order approving minor's compromise, § 23:52

Personal injury, complaint form [Judicial Council Form 982.1(1)], § 23:42

Persons entitled to sue, § 23:4

Persons liable, § 23:5

Petition of guardian ad litem for order approving compromise of minor's wrongful death action, § 23:51

## INDEX

### WRONGFUL DEATH—Cont'd

#### Plaintiff forms

- generally, §§ **23:42 to 23:58**
- allegation of wrongful death resulting from intentional tort [Civ Code § 3294, subd (d)], § **23:49**
- allegation that plaintiff was dependent child [Code Civ Proc § 377.60, subd (c)], § **23:46**
- allegation that plaintiff was putative spouse, child of putative spouse, stepchild or parent of decedent [Code Civ Proc § 377.60, subd (b)], § **23:45**
- automobile accident as cause form, § **23:47**
- child of putative spouse, heir as form, § **23:45**
- damages statement, form, § **23:50**
- dependent minor, heir as form, § **23:46**
- heirs, complaint for wrongful death, based on product liability [Code Civ Proc § 377.60], § **23:43**
- hunting accident as cause form, § **23:48**
- intentional tort as cause form, § **23:49**
- motion in limine for order excluding evidence of surviving spouse's remarriage, § **23:53**
- motion in limine to exclude evidence of remarriage form, § **23:53**
- order approving minor's compromise form, § **23:51**
- order approving minor's compromise of wrongful death action, § **23:52**
- parent of decedent, heir as form, § **23:45**

### WRONGFUL DEATH—Cont'd

#### Plaintiff forms—Cont'd

- personal injury, complaint form [Judicial Council Form 982.1(1)], § **23:42**
- personal representative, complaint including wrongful death [Code Civ Proc § 377.60] and survival causes of action [Code Civ Proc § 377.30], § **23:44**
- petition of guardian ad litem for order approving compromise of minor's wrongful death action form, § **23:51**
- petition of guardian ad litem for order approving minor's compromise of wrongful death action [Code Civ Proc § 372], § **23:51**
- product liability form, § **23:43**
- property damage, complaint form [Judicial Council Form 982.1(1)], § **23:42**
- putative spouse, heir as form, § **23:45**
- statement of damages (personal injury or wrongful death) [Judicial Council Form 982(a)(24)], § **23:50**
- stepchild, heir as form, § **23:45**
- survival cause of action included, § **23:44**
- wrongful death, complaint form [Judicial Council Form 982.1(1)], § **23:42**
- Potential liability, § **23:5**
- Prejudgment interest, § **23:10**
- Preparation of case
  - generally, §§ **23:20 to 23:30**
  - alternative sources of relief, discussion with client, § **23:24**
  - client interview, §§ **23:20, 23:21**
  - defense investigation, § **23:30**
  - depositions, § **23:30**
  - discovery, § **23:30**

**WRONGFUL DEATH—Cont'd**

Preparation of case—Cont'd

drafting complaint, § 23:26

experts, use of, § 23:23

forum selection, § 23:25

interrogatories, § 23:30

life insurance as alternative

source of relief, § 23:24

preparation of plaintiff's case,

§ 23:22

public entities, venue in actions

against, § 23:25

request for inspection of docu-

ments, § 23:30

Social Security survivor benefits

as alternative source of relief,

§ 23:24

state of California as defendant,

venue, § 23:25

survival action as alternative

source of relief, § 23:24

use as experts, § 23:23

venue, § 23:25

workers' compensation insurance

as alternative source of relief,

§ 23:24

Procedural checklist, statement of

damages, § 23:41

Punitive damages, § 23:11

Request as defensive strategy,

§ 23:40

Request for inspection of documents,

§ 23:30

Request for statement of damages,

form, § 23:57

Settlement

generally, § 23:31

defensive strategy, § 23:40

order approving minor's compro-

mise form, § 23:52

**WRONGFUL DEATH—Cont'd**

Settlement—Cont'd

petition for minor's compromise,

§ 23:32

prior settlement as defense,

§ 23:18

Special theories alleged, § 23:27

Statement of compensatory damages

request for statement of

compensatory damages, above

Statement of damages

generally, § 23:29

procedural checklist, § 23:41

State of California as defendant,

venue, § 23:25

Statute of limitations, § 23:7

Survival of action, personal repre-

sentative, complaint including

wrongful death [Code Civ Proc

§ 377.60] and survival causes of

action [Code Civ Proc § 377.30],

§ 23:44

Trial

generally, §§ 23:31 to 23:40

actuarial and mortality tables,

§ 23:35

appeal, § 23:39

award, § 23:38

defendant's evidence and limits

on evidence, § 23:36

defensive strategies, § 23:40

evidence, § 23:33

instructions, § 23:37

petition for minor's compromise,

§ 23:32

proof of damages, § 23:34

review, § 23:39

Venue, § 23:25