

# CALIFORNIA PRACTICE GUIDE

## PERSONAL INJURY

### 2025 UPDATE

**The 2025 softbound Update completely replaces the 2024 Update.**

These Highlights summarize the most significant developments over the past year. The paragraph numbers are keyed to the 2025 edition of the Practice Guide where the topics are discussed in greater detail. Our cut-off date for this Update was July 31, 2025. Some of the new cases cited were not final as of our cut-off date and could be affected by later developments. Please be sure to check the subsequent histories before citing or relying on them.

**CHECK FOR LEGISLATION DEVELOPMENTS:** This 2025 Update went to press before the end of the legislative session. Counsel should check for any relevant new or amended statutes chaptered after our publication date that will go into effect on January 1, 2026, unless otherwise noted, considering their impact on discussions in this Practice Guide.

**Thank you!** A reminder that we welcome your comments and suggestions regarding this Practice Guide. If you see room for improvement, *please let us know!*

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## 2025 UPDATE HIGHLIGHTS

### CHAPTER 1

#### FIRST STEPS IN HANDLING A PERSONAL INJURY CASE

##### Subrogation Rights and Liens

[1:82.2] **Hospital’s statutory lien for emergency treatment and ongoing medical services:** Hospital can assert a lien only for services provided while the patient remains in the emergency room but not for later services provided after discharge. [*Yaffee v. Skeen* (2024) 106 CA5th 1281, 1305, 328 CR3d 80, 100]

##### Medical Claims

[1:204.1] **Statutory time limit for paying medical claims:** *Effective January 1, 2026*, health care service plans and insurers must reimburse claims “as soon as practicable, but no later than 30 calendar days after receipt of the claim.” Claimants must be notified in writing of any contest to the claim or a portion thereof “as soon as practicable, but no later than 30 calendar days after receipt of the claim.” [Amended Health & Saf.C. §1371(a)(1) (emphasis added); amended Ins.C. §10123.13(a)]

### CHAPTER 2 PART I

#### PRELITIGATION INVESTIGATION AND EMPLOYMENT OF EXPERTS

##### Expert Testimony in Medical Malpractice Actions

[2:357] **Qualification to testify to standard of care in medical malpractice cases:** Nurse anesthetist was not qualified to testify as to the standard of care or causation regarding a neurosurgeon’s decision to delay surgery for a brain injury. [*San Antonio Regional Hosp. v. Sup.Ct. (Musharbash)* (2024) 102 CA5th 346, 352-353, 321 CR3d 167, 172 (also discussed at ¶9:407a)]

[2:365] **Limitation on experts eligible to testify in emergency room malpractice:** Expert radiologists’ testimony was inadmissible due to lack of experience providing care under emergency conditions, where defendant radiologist had remotely reviewed the X-ray and ultrasound on an expedited basis at the request of the emergency room physician. [*Charlie L. v. Kangavari* (2025) 107 CA5th 1117, 1126, 1131-1133, 328 CR3d 815, 821, 826-827 (also discussed at ¶9:407.1)]

### CHAPTER 2 PART II

#### THEORIES OF RECOVERY

##### Employer Liability for Acts of Employee (“Respondeat Superior”)

[2:780] **“Lunch break” rule—employer not liability for employee’s torts committed during breaks:** Rideshare driver was not acting in the course and scope of employment when he struck a pedestrian. Driver switched to offline status to get food four minutes before, and a mile from, the accident. [*Kim v. Uber Technologies, Inc.* (2024) 105 CA5th 252, 258-260, 325 CR3d 617, 621-623]

### **Liability Where Hirer Has Retained Control and Affirmatively Contributed to Employee’s Injury**

- [2:915.1] **Injury due to breach of statutory or regulatory duty relating to safety of others:** Hirer and general contractor were not liable where subcontractor employee was injured after touching live electrical wire. The decision to forego a permitting process during contract negotiations did not impact how subcontractor could perform work safely pursuant to contract. [*CBRE v. Sup.Ct. (Johnson)* (2024) 102 CA5th 639, 652-658, 321 CR3d 697, 708-713]
- [2:920] **Employee injured by unsafe equipment:** Where independent contractor’s employee was injured by falling from an allegedly improperly secured ladder, employee failed to raise a triable issue of material fact whether the retained-control exception applied. Although subcontractor installed the ladder for its own employees’ use, it did not ask or direct independent contractor’s employee to use the ladder. Thus, neither contractor nor subcontractor exercised any retained control over the workplace that affirmatively contributed to employee’s injuries. [*Bowen v. Burns & McDonnell Engineering Co., Inc.* (2024) 103 CA5th 759, 767-770, 323 CR3d 147, 155-157]

### **Strict Liability—Manufacturer’s Failure to Warn Physician**

[2:1307a] **Establishing Causation:** Plaintiff must establish that the manufacturer’s failure to warn the physician was a substantial factor in causing plaintiff’s injury. Plaintiff may establish causation by showing the physician would have communicated the stronger warning to the patient, and an objectively prudent person in the patient’s position would have then refused treatment despite the physician’s continued recommendation of the product. Plaintiff is not required to prove the stronger warning would have changed the physician’s decision to prescribe the product. [*Himes v. Somatics, LLC* (2024) 16 C5th 209, 222, 235-236, 322 CR3d 1, 9-10, 20]

### **Strict Liability—Ultrahazardous Activities**

[2:1668] **“Gangster rap” concert not ultrahazardous activity:** See *Carmichael v. Café Sevilla of Riverside, Inc.* (2025) 108 CA5th 292, 299-300, 329 CR3d 36, 41-42.

### **Negligence Liability Based on Omission to Act—Legal Duty Arising From “Special Relationship”**

[2:1895.1] **Two-step inquiry to determine whether to impose duty:** See *Al Shikha v. Lyft, Inc.* (2024) 102 CA5th 14, 21-40, 320 CR3d 906, 911-928—although special relationship existed between rideshare company and driver who was stabbed by passenger, *Rowland* factors did not support duty to conduct criminal background check on riders; *A.L. v. Harbor Developmental Disabilities Found.* (2024) 102 CA5th 477, 490-496, 321 CR3d 575, 586-591—although special relationship existed between regional center and consumer, *Rowland* factors supported duty to protect consumer from sexual assault only if center failed to act despite actual knowledge of vendor employee’s propensity for sexual assault, not merely for inadequate vetting and monitoring of vendors (*also discussed at ¶2:1962*)

[2:1957.1] **Common carriers and passengers—when duty commences:** The common carrier’s duty may apply for a *brief* period *immediately before* transit when (a) the person shows they intend to become a passenger, (b) the carrier takes action showing they accept the person as a passenger or invites them to board and (c) the person comes under the carrier’s control. [*Smith v. Magic Mountain LLC* (2024) 106 CA5th 1128, 1138-1140, 327 CR3d 628, 636-638—no common carrier liability to patron who injured her hand on gate while waiting to board amusement park ride where park did not take action to accept patron as passenger and patron did not place herself under park’s control since she could still exit boarding area]

**Exceptions—legal duty without “special relationship”**

- [2:2006.8] **Negligent undertaking doctrine not applied:** Fire department paramedics did not owe a duty under negligent undertaking doctrine to render medical assistance to a motorist involved in an auto accident who later suffered a debilitating stroke. Motorist repeatedly denied any injuries and refused medical assistance, although paramedics urged her to seek medical attention due to the potential of an asymptomatic serious injury. [*Murphy v. City of Petaluma* (2024) 106 CA5th 1263, 1266, 1280, 327 CR3d 759, 761, 773]

**General duty of care**

- [2:2011.1] **Duty owed:** The owner, general contractor, and excavation contractor for a construction project owed a general duty of care with respect to an accident in which two minor children were struck and killed by a dump truck driven by a trucking subcontractor employee from his home to an unpermitted staging area for construction vehicles. Defendants’ decision to establish this unpermitted staging area without the city assessing the site for safety or implementing safety measures foreseeably created a risk that a truck would strike a pedestrian. [*Lorenzo v. Callex Engineering, Inc.* (2025) 110 CA5th 49, 60-61, 331 CR3d 513, 523-524]
- [2:2011.5] **No duty owed:** No duty was owed to decedents/motorists who collided, veered off the roadway and struck a tree on land owned by a railroad company. Landowner did not cause the alleged hazard, was not on notice of any alleged risk posed by the tree, did not commit an infraction or public offense, and had no responsibility for the design of the highway or recovery zones. Additionally, there was no evidence that landowner made a calculated decision not to remove the tree to obtain any benefit. The lack of any moral blame that could be attributed to landowner weighed in favor of creating a judicial exception to the ordinary duty of care. [*Union Pac. R.R. Co. v. Sup.Ct. (Abrams)* (2024) 105 CA5th 838, 858-861, 326 CR3d 258, 277-279]

**Employer’s Liability to Employee—Avoiding Workers’ Compensation Exclusive Remedy Rule**

[2:2159] **Whether nonemployee plaintiff subject to exclusive remedy bar—transmission of asbestos from employee to household members:** The limitation on the employers’ liability to a worker’s

household member under *Kesner v. Sup.Ct. (Pneumo Abex, LLC)* (2016) 1 C5th 1132, 210 CR3d 283, does not, as a matter of law, preclude a *nonhousehold* member’s claim for *strict liability* against a product supplier for secondary exposure to asbestos on theories of design defect and failure to warn. Unlike *Kesner*, such a strict liability cause of action by a nonhousehold member does not require an element of duty. [*Williams v. J-M Mfg. Co., Inc.* (2024) 102 CA5th 250, 260-264, 321 CR3d 254, 262-266—worker’s brother was exposed to asbestos from close contact with worker although they did not live together]

[2:2215] **Exceptions to “exclusive remedy” rule—fraudulent concealment aggravating injury:** Allegations of employer’s concealment of COVID-19 outbreak resulting in aggravation of employee’s illness and subsequent death were sufficient to survive demurrer. [*Chavez v. Alco Harvesting, LLC* (2024) 102 CA5th 866, 871-873, 322 CR3d 209, 214-215]

### **Causation Issues**

[2:2385.1] **Causation not established as question of law:** Where football game attendee was punched by another attendee and subsequently died, summary judgment in favor of stadium management and security contractor was affirmed where plaintiffs could not establish causation in the negligence or premises liability claims. The assault occurred too quickly for security to intervene, and there were no prior interactions between the attendees to suggest the assault would occur. [*Stokes v. Forty Niners Stadium Mgmt. Co., LLC* (2024) 107 CA5th 1199, 1223-1227, 328 CR3d 726, 745-748]

## **CHAPTER 2 PART III**

### **GOVERNMENT ENTITY LIABILITY AND IMMUNITY**

#### **Immunity From Liability for Government Employee Conduct**

[2:2648] **No immunity for mere “operational” decisions:** School district was not immune from liability where middle school employees failed to protect student from bullying by not following anti-bullying policies that were already in place. Employees’ decision in how to respond to bullying was a lower-level decision that merely implemented a basic policy already formulated. [*E.I. v. El Segundo Unified School Dist.* (2025) 111 CA5th 1267, 1282-1284, 333 CR3d 654, 666-667]

#### **Liability for Failure to Perform Mandatory Duty**

[2:2763] **Mandatory duty rejected:** County ordinance did not impose a mandatory duty on animal control to request a hearing on a potentially dangerous dog or impound an unvaccinated/unlicensed dog. [*Danielson v. County of Humboldt* (2024) 103 CA5th 1, 18-25, 322 CR3d 582, 593-599]

[2:2770] **Mandatory duty found:** A triable issue of fact existed as to whether county welfare department breached a mandatory duty by failing to cross-report alleged child abuse to local law enforcement and the district attorney’s office. [*Holman v. County of Butte* (2025) 111 CA5th 177, 193-197, 332 CR3d 628, 639-642]

### Liability for “Dangerous Conditions” of Public Property

[2:2815.3; 2:2815.4] **Actual or constructive notice required:** General knowledge that snow could melt and pose hazard to pedestrians did not equate to actual notice of ice patch that caused plaintiff’s fall. Additionally, there was no triable issue as to whether allegedly dangerous conditions (ice patch and abandoned car that could interfere with snow removal) were present long enough for City to discover and remedy them. [*Maksimow v. City of South Lake Tahoe* (2024) 106 CA5th 514, 523-528, 327 CR3d 104, 111-115; see also *Festivo v. City of Petaluma* (2025) 111 CA5th 267, 275-280, 332 CR3d 574, 582-586—no actual or constructive knowledge of dangerous condition causing skateboarder’s injury]

[2:2840.3a] **Immunity for injuries on recreational trails and access roads:** Trail immunity applied where a lake visitor tripped on a wire cable connecting wooden poles; the wire cable and wooden poles were integral parts of the trail. [*Helm v. City of Los Angeles* (2024) 101 CA5th 1219, 1229-1230, 321 CR3d 57, 66-67]

## CHAPTER 2 PART IV

### IMMUNITIES FROM LIABILITY—NONGOVERNMENTAL TORTFEASORS

#### Litigation Privilege

[2:3251] **Good faith contemplation of suit required:** Communications during an attorney’s prelitigation meeting with the client and the client’s unrepresented wife/domestic violence victim, during which the wife was allegedly harassed by the attorney and coerced into signing a custody agreement under threat to remove their daughter from the wife’s custody, were not privileged where the communications were a tactical ploy and threatened litigation was not contemplated in good faith. [*Shenefield v. Kovtun* (2024) 106 CA5th 925, 938, 327 CR 3d 519, 528-530]

[2:3252] **Litigation must be “imminent”:** Litigation privilege protected an employee’s letter to human resources alleging discrimination, where the letter was sent less than 3 months before filing the lawsuit when the employee was contemplating litigation. [*Osborne v. Pleasanton Automotive Co., LP* (2024) 106 CA5th 361, 392-393, 327 CR3d 46, 71-72]

## CHAPTER 3

### DAMAGES

#### Medical Expenses—Collateral Source Rule

[3:406] **Introduction of collateral source evidence for purposes other than reducing damages:** The trial court did not abuse its discretion in permitting limited evidence of future Medicare eligibility, which was relevant to the reasonable value of future medical care. [*Audish v. Macias* (2024) 102 CA5th 740, 749-750, 321 CR3d 635, 642-643]

## Emotional Distress Damages

[3:935, 3:1550] **RICO permits recovery for business or property harms deriving from personal injury, but not emotional distress damages:** See *Medical Marijuana, Inc. v. Horn* (2025) 604 US \_\_\_, \_\_\_, 145 S.Ct. 931, 939.

## Mitigation of Damages—Assumption of Risk

[3:1041] **Primary assumption of risk as complete defense re football injury:** The assumption of risk doctrine applied where a deceased former college football player had Chronic Traumatic Encephalopathy caused by repeated head hits, which are an inherent risk of college football. [*Gee v. National Collegiate Athletic Ass'n* (2025) 107 CA5th 1233, 1245, 328 CR3d 753, 761-762]

[3:1156; 3:1164.1] **Express contractual assumption of risk a complete defense re spectator's injuries:** Plaintiff executed a release for admission to the restricted pit area of a racetrack, where he was punched by another attendee. The release contained broad language releasing the racetrack from liability for acts “arising out of or related to” the events at the racetrack. Under a “but for” causation analysis, Plaintiff’s injury was “related to” the races, given that he would not have been injured in the pit area but for the races. [*Diamond v. Schweitzer* (2025) 110 CA5th 866, 884-889, 332 CR3d 150, 164-168 (affirming summary judgment in favor of racetrack operator)]

[3:1210] **Public policy limitation on contractual assumption of risk for intentional torts:** Contractual limitations on *damages* for tortious willful injury to person or property of another are invalid under Civ.C. §1668. [*New England Country Foods, LLC v. VanLaw Food Products, Inc.* (2025) 17 C5th 703, 712-716, 331 CR3d 890, 895-899]

## MICRA Provisions Affecting Damages

[3:1921] **Noneconomic damages cap—third-party emotional distress and loss of consortium claimants:** A widow’s wrongful death claim (CCP §377.60) brought in her individual capacity and a medical malpractice claim brought in her capacity as the decedent’s successor in interest (CCP §377.30) were *separate* claims subject to *separate* MICRA caps. [*Ng v. Sup.Ct. (Los Alamitos Med. Ctr., Inc.)* (2025) 108 CA5th 382, 387-388, 329 CR3d 355, 358-360]

## CHAPTER 4

### PERSONAL INJURY CLAIM SETTLEMENTS

#### CCP §998 Statutory Offer to Compromise

[4:356] **Caution—Calif. Supreme Court review granted re CCP §998 offer with two options:** The California Supreme Court has granted review to determine whether a settlement offer under CCP §998 containing two options is inherently invalid, presumptively invalid, or invalid or partially or entirely valid depending on a separate and independent evaluation of each option (see *Gorobets v. Jaguar Land Rover No. America, LLC* (2024) 105 CA5th 913, 928, 326 CR3d 309, 319-320, rev.grntd. 1/15/25 (Case No. S287946) (cited pursuant to CRC 8.1115(e))—simultaneous offers invalid because they preclude

trial court from determining whether judgment is more favorable than offer; *Zavala v. Hyundai Motor America* (2024) 107 CA5th 458, 475-480, 328 CR3d 147, 161-164, rev.gmt.d. 3/19/25 (Case No. S289000) (cited pursuant to CRC 8.1115(e)) (briefing deferred pending decision in *Gorobets*, supra)—trial court can evaluate two options separately to determine if either option exceeded verdict).

#### **CCP §664.6 Entry of Judgment Pursuant to Stipulation for Settlement**

[4:1599] **Parties' personal assent required:** CCP §664.6 permits counsel to orally stipulate to settlement on behalf of parties. [*Greisman v. FCA US, LLC* (2024) 103 CA5th 1310, 1322-1326, 324 CR3d 182, 191-194 (affirming settlement order where plaintiff and counsel for both parties, but not defendant, orally stipulated to settlement)]

### **CHAPTER 5**

#### **FILING SUIT: TIME BARS AND PLEADING CONCERNS**

##### **Prelawsuit Considerations in Certain Childhood Sexual Assault Actions**

[5:90.3] **CCP §340.1 certificates review not determination on merits for purposes of peremptory challenge of judge:** A court's ruling on whether plaintiff may serve and name defendants based on CCP §340.1 certificates of merit and certificate of corroborative fact is not a "determination of contested fact issues relating to the merits" under CCP §170.6(a)(2). Such a ruling does not preclude a party's subsequent peremptory challenge to disqualify a judge. [*San Diego Unified School Dist. v. Sup.Ct. (John Doe D.Y.)* (2024) 102 CA5th 383, 390, 321 CR3d 514, 518-519]

##### **Statutes of Limitations**

[5:125.2c] **Malicious prosecution—two-year statute of limitations for action against attorney by nonclient:** The one-year statute of limitations for actions against an attorney based on wrongful acts or omissions arising in the performance of professional services (CCP §340.6) does *not* apply to malicious prosecution claims against attorneys brought by parties who were never their clients or intended beneficiaries of their clients. Thus, such claims are subject to CCP §335.1 two-year statute of limitations for malicious prosecution claims. [*Escamilla v. Vannucci* (2025) 17 C5th 571, 575-576, 331 CR3d 1, 2-3]

[5:182.1c] **Childhood sexual assault claims—no revival of lapsed claims litigated to finality:** Child abuse victims' claims for derivative liability against a family services organization could not be revived, where the victims' prior claims against the organization's agent based on the same facts were dismissed with prejudice and thus litigated to finality. [*Doe 3, Family Services Organization v. Sup.Ct. (John Roe DZ 20)* (2025) 110 CA5th 571, 588-589, 331 CR3d 733, 746-747]

### **CHAPTER 6**

#### **DISCOVERY**

##### **Privilege for Official Records and Information—Police Personnel Files**

[6:100.1b] **Exceptions to privilege for certain police personnel**

**records:** Records about police officers modifying their badges after each killing in line of duty were subject to disclosure. [*Vallejo v. Sup.Ct. (American Civil Liberties Union of No. Calif.)* (2025) 112 CA5th 565, —, 334 CR3d 528, 547-549]

#### **Requests for Admission**

[6:265b] **“Deemed admitted” motion defeated by responses in substantial compliance:** The assertion of waived objections does not necessarily prevent a finding of substantial compliance. [*Katayama v. Continental Investment Group* (2024) 105 CA5th 898, 909-910, 326 CR3d 297, 307]

#### **Physical and Mental Examinations**

[6:325] **Trial court’s authority to impose sanctions:** The trial court has independent authority to impose sanctions for egregious behavior, such as a pattern of discovery abuses for persisting in meritless objections and misrepresentations in discovery responses. [*City of Los Angeles v. PricewaterhouseCooper* (2024) 17 C5th 46, 50-51, 324 CR3d 410, 412-413; *Agnone v. Agnone* (2025) 111 CA5th 758, 767, 333 CR3d 119, 125-127]

### **CHAPTER 7**

#### **JUDICIAL ARBITRATION; UNINSURED MOTORIST ARBITRATION**

##### **Arbitration of Uninsured Motorist Claims**

[7:306.5] **Statutory time limit to conclude arbitration not extended by COVID-19 emergency rule:** See *Prahl v. Allstate Northbrook Indemnity Co.* (2025) 110 CA5th 118, 126-127, 331 CR3d 312, 317-318.

### **CHAPTER 8**

#### **PREPARING FOR TRIAL**

##### **Summary Judgment as Final Discovery Tool**

[8:186.2] **Drawback—limited to single summary judgment motion:** Parties have the right to bring only one summary judgment motion against an adverse party, although the court may allow a second motion for good cause. The restriction does not apply to summary adjudication motions. [New CCP §437c(a)(4) & (5)]

[8:250] **Timing of summary judgment motion papers:** The period in which to serve the notice of the motion and supporting papers on all other parties has been extended to at least *81* days before the hearing. [CCP §437c(a)(2) & (3)] The opposition is due *20* days before the hearing; and the reply brief is due *11* days before the hearing. [Amended CCP §437c(b)(2) & (4)]

**Form 8:E:** A new pretrial checklist has been added.

## CHAPTER 9

### TRIAL OF A PERSONAL INJURY CASE

#### Specific Conduct Evidence Generally Inadmissible in “Sexual Misconduct” Cases

[9:389.1] **Sexual assault, battery or harassment actions:** Opinion evidence, reputation evidence or evidence of specific instances of plaintiff’s sexual conduct with third persons is not admissible to prove plaintiff’s consent, or absence of injury (except loss of consortium), or to attack the credibility of plaintiff’s testimony on consent or absence of injury. [Amended Ev.C. §1106(a)]

[9:389.1a] **Limited admissibility to attack credibility:** In a civil action for sexual harassment, sexual assault, or sexual battery, evidence of plaintiff’s sexual conduct may be admissible to attack credibility as to something other than consent or absence of injury pursuant to the procedures specified in Ev.C. §783. [Amended Ev.C. §1106(e)]

#### Basis for Expert Testimony

[9:416] **Opinion without adequate basis can be rejected:** An expert declaration containing ultimate facts and conclusions was insufficient to meet the moving party’s burden for summary judgment. [*Zaragoza v. Adam* (2025) 109 CA5th 113, 119, 330 CR3d 333, 33]

#### Statement of Decision

[9:688.1a] **Doctrine of implied findings:** Plaintiff waived appellate review of contention that final statement of decision was deficient, thus precluding application of the doctrine of implied findings, where the argument was conclusory and failed to cite to specific omissions from, or ambiguities in, the statement of decision’s findings. [*Stone v. El Centro Regional Med. Ctr.* (2024) 106 CA5th 1160, 1171-1172, 327 CR3d 541, 553-554]