

## ELB APPELLATE EXPERIENCE

[major cases only; official citation form indicates published opinion]

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### [ANTI-SLAPP](#)

*Wagenet v. Ford & Daly* (Cal.App. 2008, no. A118765): in the firm's most recent victory, obtained reversal of an order denying an anti-SLAPP motion to strike a malicious prosecution action, with directions to grant the motion in its entirety on remand.

### [APPELLATE LAW](#)

*Vinyl Products Mfg. v. Armstrong Cork Co.* (Cal.App. 1979, no. A018911): scope of new trial on negligent testing claim after it had been limited on prior appeal

*Roland v. Alameda County Superior Court* (Cal.App. 1983, no. A0247940): writ petition obtained continuance of trial to permit discovery essential to defense

*Oneal & Sieve v. Santa Clara County Superior Court* (Cal.App. 1985, no. H000299): emergency writ petition obtained continuance of trial set for 1:30 p.m. same day because of conflicting demands on defense counsel

*Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271 (1988): obtained grant of cert. petition and briefed and argued case testing appealability of a district court order staying parallel litigation in a state court

*Daon v. Place Homeowners Ass'n.* (1989) 207 Cal.App.3d 1449: appeal from order dismissing cross-complaint must be dismissed because of pendency of complaint with overlapping issues, and association remains in litigation in its separate managerial capacity

*Sopcak v. Northern Mountain Helicopter Service*, 52 F.3d 817 (9th Cir. 1995): specially retained for petition for rehearing on appellate procedure issues in case involving "final destination" for personal injury action under Warsaw Convention

*Mulvihill v. Damé Construction Co., Inc.* (Cal.App. 1996, no. A068967): appeal and petition for review involving appellate court's right or duty to consider plaintiffs' post-judgment conduct undermining their damages award

*In re Rosenkrantz* (2002) 29 Cal.4th 616: amicus brief for California Academy of Appellate Lawyers on proper standard of judicial review when governor finds a prisoner unsuitable for parole

*Contempo Marin Homeowners Assoc. v. Manufactured Home Communities, Inc.* (Cal.App. 2008, no. A117394) (petition for review pending): whether federal court's ruling that local ordinance is unconstitutional and void may be brought to attention of appellate court during pendency of appeal challenging relief awarded under the ordinance in question

#### ARBITRATION LAW

*Chaney v. Melin* (Cal.App. 1996, no. A070451): superior courts have power to confirm arbitration award based on dismissal of arbitration for unwarranted delay

*Contempo Marin Homeowners Assoc. v. Manufactured Home Communities, Inc.* (Cal.App. 2004, no. A102593): whether meetings promoted by city between owner and residents of mobilehome park constituted an implied contractual arbitration or a mediation

*Massa v. Ruskin* (Cal.App. 2006, no. A110704): prospective arbitrator's duty to disclose family ties to construction industry in arbitration between homeowner and contractor; adequacy of contract underlying duty to arbitrate

*Porteous v. Porteous* (Cal.App. 2006, no. A111847): arbitrator's power to enter interim awards dividing dental practices; timeliness of challenge to awards; extent of arbitrator's and superior court's respective powers to correct or modify an award

#### BUSINESS DISPUTES

*Ferrara Food & Confections, Inc. v. Al'Hashimi* (Cal.App. 1983, no. A018458): viability of restitution award, the equivalent of repayment of a loan to purchase stock, when jury rejected the actual loan theory

*James Freeman & Assoc. v. Norman Levine & Assoc. Insurance Services, Inc.* (Cal.App. 1984, no. A0762852): petition for hearing to resolve whether intent of Insurance Code § 790.03 was to preempt unfair business practices otherwise prohibited by Unfair Competition Law

*Emde v. Dress* (Cal.App. 1987, no. C000354): adequacy of security interest without agreement signed by debtor; duty of seller's attorney to buyers

*J.R. Simplot Co. v. MacDoel Russet Co.* (Cal.App. 1988, no. C000519): petition for review, in action on a joint partnership obligation, on question whether judgment taken against fewer than

all partners extinguishes underlying obligation against the omitted partner

*Cierra v. Klotz* (Cal.App. 1990, no. A041912): petition for review on question whether business co-owner's independent counsel, inquiry notice of relevant facts, and failure to investigate them prior to buy-out agreement bars action for fraud

*Coronado Construction Co. v. Belle Vista Associates* (Cal.App. 1993, no. A055973): first impression holding that unlicensed contractor statute barred compensation claim against partner who was the project developer`

*Sosnowski v. Bellevue Corporation* (Cal.App.1993, no. A060016): whether individual has standing to pursue lender liability action when he caused his corporation to be the only borrower in the transaction

*Johnson v. Congress Mortgage Co.* (Cal.App. 1996, no. A072959): availability of private right of action against "consumer finance lender" regulated by Department of Corporations under California Finance Lenders Law, and propriety of forfeiture and attorneys' fee orders against passive investors who purchased loans

*Hodge Capital Co. v. ACB, Inc.* (Colo.App. 2002, no. 01 CA 979): homeowner/ contractor dispute involving negligent installation of heating system and proper calculation of prejudgment interest and costs

*Storek & Storek, Inc. v. Citicorp Real Estate, Inc.* (2002) 100 Cal.App.4th 44: nature and scope of implied covenant of good faith and fair dealing in case alleging lender to Oakland restoration project unreasonably and fraudulently manipulated construction loan to obtain release of prior claims and precipitate bankruptcy of architect/developer

*Chevron U.S.A., Inc. v. SSD & Assoc.* (9th Cir. 2006, no. 06-17293) (settled after opening brief drafted): effect of assertion of attorney-client privilege on right to terminate franchise pursuant to Petroleum Marketing Practices Act

*Boitano v. Reinhard* (Cal.App. 2008, no. H031637) (pending): dispute over scope of nonrecourse provision in promissory note secured by stock purchased by defendant; whether nonrecourse provision is unconscionable if, as defendant claims, it bars liability for wrongful impairment of the value of the stock collateral

## CIVIL PROCEDURE

*Guenter Kaussen Properties v. Wells Fargo Bank, N.A.* (Cal.App. 1982, no. 1 Civ. 51813): effect of statute governing service of process on deadline for filing petition to vacate an arbitration award

*Nelson v. International Paint Co.*, 716 F.2d 640 (9th Cir. 1983): relation back doctrine for statute of limitations purposes; deferential standard of appellate review when federal court applies law of forum in diversity action

*Barrington v. A.H. Robins Co.* (1985) 39 Cal.3d 146: construing three-year deadline for serving complaint after amendment asserting new cause of action against a fictitious "Doe" defendant

*Ianacone v. The Cessna Aircraft Company* (Cal.App. 1984, no. 3 Civ. 23391): timeliness of cost memorandum when notice of entry of judgment of dismissal had not been filed in register of actions

*Stiles v. Estate of Ryan* (Cal.App. 1984, no. A017397): proper construction of offer to

compromise under C.C.P. § 998

*Knishinsky v. Standard Conveyor Company* (Cal.App. 1986, no. A014963): need for same 9-juror majority on liability and damages verdicts in product liability action

*Allendale Mutual Ins. Co. v. Kaiser Engineers*, 804 F.2d 592 (10th Cir. 1986): propriety of federal declaratory relief action

*Toyota Motor Corp. v. Superior Court* (Cal.App.1984, no. F004301): writ petition challenging adequacy of notice of purposed service in Japan under Hague Convention

*Shores v. County of Lake* (Cal.App. 1985, no. A026970): discretionary dismissal for delay in prosecution

*Davis v. Pennwalt Corporation* (Cal.App. 1985, no. A020976): propriety of order granting new trial based on evidence rulings within court's discretion

*Buckleman v. Superior Court of San Mateo County* (Cal.App.1985, no. A031802): petition for review challenging local court rule cutting off discovery once case is first assigned a trial date, when state rule of court allows discovery to continue until 30 days prior to trial

*Zipfel v. Halliburton Co.*, 832 F.2d 1477 (9th Cir. 1987): forum non conveniens and Jones Act issues in case where American and foreign seamen were killed and injured in airbrush in Indonesia en route to American oil drilling vessel

*Past v. Morris* (Cal.App. 1987, no. B018997): petition for review involving discretionary power to dismiss a small civil action where plaintiff violates order to arbitrate the claim

*Leventhal & Horwath v. United States District Court* (9th Cir. 1988, no. 88-7067): right to trial court with no actual and apparent bias as suggested by his investment at issue in related case

*Ogle v. San Luis Obispo Superior Court* (Cal.App. 1989, no. B039401): writ of mandate proceeding involving order changing venue

*Cessna Aircraft Co. v. Teledyne Industries, Inc.*, 908 F.2d 976 (Table) (9th Cir. 1990): admissibility at trial on indemnity claim of undisclosed testing of turbocharger during discovery and initial phase of trial

*Duggan v. Hasso* (Cal.App. 1990, no. A042843): petition for review on question whether defendant, at new trial ordered solely on punitive damages, had right to contest reprehensibility of the relevant conduct

*Christofferson v. Michelin Tire Corp.* (1990) 272 Cal.Rptr. 356 (*review denied, opinion ordered depublished*): reversing judgment because of court's failure to permit disclosure of "Mary Carter" sliding scale agreement affecting neutrality of expert witnesses hired by settling defendant

*Kroll v. Cessna Aircraft Co.* (Cal.App. 1990, no. G007367): evidence rulings during product liability trial

*Saberi v. Turner* (Cal.App.1991, no. A051474): availability of punitive damages after plaintiff elects recovery based on rescission instead of tort

*Ericsson GE Mobile Communications, Inc. v. C.S.I. Telecommunications Engineers* (Cal.App. 1996, no. A070033): petition for review testing a "contractual speech" exemption from anti-SLAPP remedy

*Vorse v. Sarasy* (1997) 53 Cal.App.4th 998: leading case limiting trial courts' power to exclude

proffered testimony, or instruct jury to disregard testimony already given, on grounds that court finds testimony not credible

*Cigna Property and Cas. Ins. Co. v. Polaris Pictures Corp.*, 159 F.3d 412 (9th Cir. 1998): insurance fraud/rescission judgment based on theory that insurer had disclaimed and, based on the disclaimer, had barred all discovery

*Hayes v. Cordova* (Cal.App. 2006, no. A109674): whether judge at court trial must issue or announce at least a brief tentative decision before soliciting draft statements of decision from parties' counsel

*Rancho Mesa Residents, Inc., et al. v. Manufactured Home Communities, Inc., et al.* (Cal.App. 2008, no. D048379): class certification issues and enforceability of a settlement agreement where certain terms remained to be resolved

### CONSTITUTIONAL LAW

*Goldstein v. Collin, et al. a/k/a National Socialist Party of America* (Ill. Supreme Ct. 1978, no. 50176): pro bono cert. petition on behalf of large class of Holocaust survivors residing in Skokie, Illinois, who sought injunctive relief only against Nazi-style clothing and insignia of planned marchers in their town, on question whether First Amendment absolutely bars courts' traditional equity power to prevent tortious conduct known to be imminent

*Ravella v. Microport Systems, Inc.* (Cal.App. 1990, no. H005392): petition for review testing constitutionality of default judgment as sanction for failure to comply with discovery order

*Insurance Commissioner v. Signal Ins. Co.* (Cal.App. 1985, no. B0089540): constitutionality of statute establishing California Insurance Guarantee Association

*Manufactured Home Communities, Inc. v. City of San Jose*, 420 F.3d 1022 (9th Cir. 2005): whether *Rooker-Feldman* doctrine barred federal district court's review of a state court's final judgment, and other procedural issues related to constitutional challenge to mobilehome rent control ordinance

*MHC Financing Ltd. Partnership Two v. City of Santee*, 234 Fed.Appx. 439 (9th Cir. 2007): ripeness of claims of taking, due process and equal protection respecting mobilehome park rent control ordinance

*Equity Lifestyle Properties Inc. v. County of San Luis Obispo*, 505 F.3d 860 (9th Cir. 2007): due process, equal protection, takings, standing, ripeness and statute of limitations issues respecting mobilehome park rent control ordinance

### CORPORATE LAW

*Attarha v. Mason-McDuffie Real Estate, Inc.* (Cal.App.1992, no. A056926): proper construction of statute barring distinctions for "control group" in shareholder buy-sell agreement

### COPYRIGHT LAW

*Seiler v. Lucasfilm, Ltd.*, 808 F.2d 1316 (9th Cir. 1986): district court's authority to determine status of contested drawings under best evidence rule when statute makes registration certificates admissible and copyright plaintiff was entitled to jury trial on infringement claim

## ELECTION LAW

*Giardina v. McKechnie & Hancock* (Cal.App. 1991, no. A052096): whether Election Code permits remedy when officials' misleading voter instructions and late mailing of absentee ballots disenfranchise large numbers of voters

*Lindelli v. Town of San Anselmo* (2003) 111 Cal.App.4th 1099: Elections Code provision on referenda precludes interim contract for recycling and waste management similar to contract awarded by ordinance challenged by referendum petition

*Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499: attorneys who prevailed in referendum case had standing to pursue private attorney general fee award notwithstanding lack of client agreement or support for their motion

## ERISA PLANS

*Silvera v. Mutual Life Ins. Co. of New York*, 884 F.2d 423 (9th Cir. 1989): whether benefits plan for city employees was "established and maintained" by a private insurer and therefore not exempt from ERISA as a "government plan"

*Zavora v. Paul Revere Life Ins. Co.*, 145 F.3d 1118 (9th Cir. 1998): leading case, pursued pro bono for disabled employee, reversing summary judgment for disability insurance carrier acting as ERISA administrator, holding that carrier had abused its discretion as a matter of law in denying benefits for an eye injury

*Abraham v. Norcal Waste Systems, Inc.*, 265 F.3d 811 (9th Cir. 2001): specially retained by Bank of America, N.A., for petition for rehearing on ERISA preemption and removal issues arising from leveraged buy-out of stock by employee stock ownership plan

*Williams v. Retirement Bd. of the Bell-Rozelle NFL Player Retirement Plan*, 61 Fed.Appx. 362 (9th Cir. 2003): proper construction of retroactivity provisions in the ERISA plan and whether medical evidence was sufficient to support denial of benefits

## ESTATES AND TRUSTS

*Conservatorship of Giulii* (Cal.App. 1986, no. A027355): petition for review challenging affirmance of appointment of professional conservator for adult in the face of Probate Code's preference for a close family member

*Thelen, Marrin, Johnson & Bridges v. Superior Court* (Cal.App. 1986, no. A036370): petition for review challenging malpractice action by beneficiaries under will against attorneys for trustee and executor under will

*In re: Estate of Buck; Mental Health Ass'n. of Marin v. Marin Community Foundation* (1994) 29 Cal.App.4th 1846 (*review denied*): availability of collateral attack against order assigning assets of community trust to "major projects" pursuant to a settlement agreement when plaintiff charities alleged probate court exceeded jurisdiction by disregarding its finding that original purpose of trust had not failed

## FAMILY LAW

*In re Marriage of Hasso* (1991) 229 Cal.App.3d 1174 (*review denied*): approval of parties'

respective attorneys was not condition precedent for enforcement of marital settlement agreement

*Grinberg v. Phillips* (Cal.App. 2007, no. A112560): propriety of child support award below the Family Code formula where father had “extraordinarily high income and the amount determined under the formula would exceed the needs of the children”

#### FEDERAL DEPOSIT INSURANCE CORPORATION

*Federal Deposit Ins. Corp. v. Air Florida System, Inc.*, 822 F.2d 833 (9th Cir.1987): construction of tender offer clause in FDIC’s contract, as receiver of United States National Bank, with purchaser of airline

*Federal Deposit Ins. Corp. v. Los Angeles County Superior Court* (Cal.App. 1991, no. B058966): petition for writ of prohibition or mandate to protect FDIC’s right to jury trial in fraudulent conveyance action as receiver of Mineral Bank of Nevada

#### INSURANCE

*National Boulevard Bank v. Brokerage Resources, Inc.* (Ill. Supreme Ct. 1976, no. 49079): petition to appeal on case testing extent of liability for negligent procurement of coverage

*Cassidy v. Luburich*, 49 Ill.App.3d 596 (1977): where insurer of defendant driver led plaintiff to delay suit for damages, defendant estopped to raise statute of limitations defense

*Atlantic Mutual Ins. Co. v. Capucci* (Cal.App. 1982, no. A014524): implied covenant of policyholder to cooperate with a settlement

*East Bay Municipal Utility Dist. v. East Bay Regl. Park Dist. and Illinois Employers Ins. of Wausau* (Cal.App. 1983, no. A021837): claims for indemnity and insurance coverage where district failed to fence in a hazardous transformer

*Endo Laboratories, Inc. v. The Hartford Ins. Group*, 747 F.2d 1264 (9th Cir. 1984): fetus deemed a “person” under California law for purposes of bodily injury coverage

*National Casualty Co. v. Argonaut Ins. Co.* (Cal.App. 1984, no. A024348): propriety of dismissal on demurrer of action alleging vast reinsurance fraud scheme

*Atlanta Intl. Ins. Co. v. City of Richmond* (9th Cir. 1984, no. 84-1668): availability of insurance coverage for attorneys’ fee award against city after its entry into a civil rights consent decree without notice to its insurers

*Fireman’s Fund v. City of Turlock* (1985) 170 Cal.App.3d 988: declaratory relief action to determine coverage by several insurers for city, and city attorney individually, for termination of a police officer; affirm contention of intervenor California Union Insurance Company that it did not cover city attorney under her error and omissions policy

*Fidelity Natl. Title Ins. Co. v. Wood* (Cal.App. 1986, no. A037193): dispute whether title insurance clause providing defense to third party claim extended to defense of insurer’s own declaratory relief action

*Pankow Building Systems, Inc. v. Fred S. James & Co. of California* (Cal.App. 1988, no. A041023): negligent advice when changing liability carriers led to failure to report potential claim

*Doctors' Co. v. Superior Court* (1989) 49 Cal.3d 39: Supreme Court orders demurrer sustained to conspiracy action against insurer and its attorneys expert witness when insurer alone was subject to liability for unfair claims settlement practices under Insurance Code

*Volta Aluminum Company v. Johnson & Higgins of California* (Cal.App. 1989, no. A044977): brokerage company's liability for failure of customized package of insurance and reinsurance coverage for aluminum smelter in Ghana

*West American Ins. Co. v. Freeman* (1995) 44 Cal.Rptr.2d 555 (published at 37 Cal.App.4th 1469) (*review granted* [1995], *review dismissed* [1996]): after adverse appellate decision, obtained grant of review on question whether insurer filing declaratory relief action on coverage issues may be subjected to a cross-complaint and simultaneous trial on policyholder's tort action alleging bad faith denial of coverage and malicious filing of the declaratory relief action itself — resulting in \$13 million verdict including \$12 million in punitive damages

### LABOR AND EMPLOYMENT

*Swanson v. Guy F. Atkinson Co.* (Cal.App. 1986, no. A034286): related writ petitions concerning validity of age discrimination claim presented to California Department of Fair Employment and Housing

*Ching Fong Investment USA v. Santa Clara Superior Court* (Cal.App. 1986, no. H001898): mandate petition concerning applicability of statute of frauds to alleged oral agreement for at least three years of employment

*Pan American World Airways, Inc. v. United States District Court* (9th Cir. 1986, N.D. Cal. C-86-2408): mandamus petition testing removal jurisdiction over claims covered by Railway Labor Act

*The Industrial Company of Steamboat Springs, Inc. v. Lake County Superior Court* (Cal.App. 1987, Lake County no. 21773): in action alleging sexual harassment, question was whether public or private sector was responsible employer under Federal Job Training and Partnership Act

*Panopulos v. Westinghouse Electric Corp.* (Cal.App.1988, no. H003253): whether wrongful constructive discharge and related claims were barred by exclusive remedy provisions of Workers Compensation Act

*Maxfield v. Southern Pacific Transportation Co.* (Cal.App. 1988, no. A037867): whether railroad was judicially estopped to affirm plaintiff's employment status under Nevada statute and contest it under Federal Employers Liability Act

*Veterans Taxicab Company v. San Francisco County Superior Court* (Cal.App. 1988, no. A043834): summary judgment procedure in action asserting wrongful discharge by dispatcher

*Monzon v. Schaefer Ambulance Service, Inc.* (1990) 224 Cal.App.3d 16: overtime pay due to ambulance drivers and attendants must take into account their agreement excluding certain time from calculation

*Mangold v. California Public Utilities Com'n.*, 67 F.3d 1470 (9th Cir. 1995): choice of federal or state law as to attorneys' fee claim in age discrimination case

*Passantino v. Johnson & Johnson Consumer Products, Inc.*, 212 F.3d 493 (9th Cir. 2000): amicus brief for United States Chamber of Commerce on intent of Civil Rights Act of 1964 as to back and front pay awards for retaliation

*Harris v. Los Angeles County Superior Court* (Cal. Supreme Ct. 2008, no. S156555): amicus

brief for American Insurance Association on question whether entire class of insurance adjustors are outside the “administrative exemption” from overtime rules

### **LAND USE AND ZONING**

*Lurie v. Village of Skokie*, 64 Ill.App.3d 217 (1978): open meetings act; home rule power to develop low-income housing; constitutionality of private sale of municipal property for that purpose

*Tiburon Hills Estates Ass’n. v. Marin County Superior Court* (Cal.App. 1987, no. A038648): mandate petition testing whether applicable Uniform Building Code was at time of original construction or conversion to condominiums

*Budnick v. Town of Carefree, AZ*, 518 F.3d 1109 (9th Cir. 2008): challenge under Fair Housing Amendments Act of 1988 to denial of special use permit for continuing care retirement community

*Sequoia Park Assoc. v. County of Sonoma* (Cal.App. 2008, no. A120049) (pending): whether Subdivision Map Act provisions governing map approval for conversion of mobilehome park from rental to resident-owned sites preempt local ordinance imposing additional map approval requirements

### **LEGAL ETHICS AND MALPRACTICE**

*Vartanian v. Superior Court (Fireman’s Fund Ins. Co.)* (Cal.App. 1982, no. A018379): insurer’s right to disqualify opposing counsel who previously served as insurer’s bond counsel and claims supervisor

*Marine Military Academy v. Styron* (Cal.App. 1986, no. A034665): sufficiency of inquiry notice and actual injury triggering statute of limitations for legal malpractice claim

*Villeggiante v. Aaronson, Dickerson, Cohn, Lanzone & Caprol* (1988) 253 Cal.Rptr. 647 (previously published at 206 Cal.App.3d 502): discovery of relevant facts and irremediability of harm did not occur soon enough to invoke one-year statute of limitations for legal malpractice action

*Lynch, Gilardi & Grummer v. Hodge Food Services, Inc.* (Cal.App. 2002, no. A092478): adequacy of jury instructions and conclusory testimony by retired judge on standard of care

*Steefel, Levitt & Weiss v. Astor Holdings, Inc.*, 275 Fed.Appx. 718 (9th Cir. 2008): scope of duty of care and damages issues arising out of bankruptcy representation; individual client not liable for prevailing-party fee award absent appropriate agreement

### **LOCAL GOVERNMENT**

*Whalen v. Wilds* (Cal.App. 1983, no. A049244): county supervisors’ individual liability for erroneous salary increases and publicly funded defense

*Zack v. Marin Emergency Radio Authority* (2004) 118 Cal.App.4th 617: specially retained to prepare petition for rehearing and Supreme Court review on question whether Joint Exercise of Powers Act confers immunity from local land use regulations if the designated “lead agency,” here Marin County, enjoys such an immunity on its own

*Manufactured Home Communities, Inc. v. County of San Diego*, 544 F.3d 959 (9th Cir. 2008):

liability of county and individual county supervisor for defamation and related acts; whether hostile inspections were pursuant to a county policy

### MOBILEHOME PARK REGULATION

*De Anza Santa Cruz Mobile Estates Homeowners Ass'n. v. De Anza Santa Cruz Mobile Estates* (2001) 94 Cal.App.4th 890: reversal of \$6 million punitive damages award on primary ground that civil penalty provision in Mobilehome Residency Law was exclusive penal remedy

*De Anza Santa Cruz Mobile Estates Homeowners Ass'n. v. De Anza Santa Cruz Mobile Estates* (Cal.App. 2004, no. H026153): propriety of attorneys' fee award after plaintiff association accepted offer to compromise at \$201,000

*Manufactured Home Communities, Inc. v. City of Santa Cruz* (Cal.App. 2002, no. H024134) (settled after full briefing): whether assertion of jurisdiction over park utilities by California Public Utilities Commission preempted city's power to adopt conflicting regulations

*MHC Acquisition One, LLC v. City of Santa Cruz* (Cal.App. 2003, no. H025478) (settled after full briefing): special res judicata argument related to previous case, arising from city's direct complaint with the California Public Utilities Commission

*Cacho v. Boudreau* (2007) 40 Cal.4th 341: Mobilehome Residency Law did not preempt local government regulation of pass-throughs of a mobilehome park's property tax increase as a separate component of site rent

### PRIVATE CRIMINAL INVESTIGATIONS

*Redd v. Santa Clara Superior Court* (Cal.App. 1987, no. H003405): whether time when only private criminal investigation was pending counts toward delay in prosecution for due process purposes

### PUBLIC CONTRACTS

*California State Bd. of Education v. Doubleday & Co., Inc.* (Cal.App. 1984, no. 3 Civ. 22970): proper construction of Education Code section requiring publishers to offer free materials to same extent offered in other states

### REAL PROPERTY DISPUTES

*American Nat. Bank & Trust Co. of Chicago v. Olympic Sav. & Loan Ass'n.*, 60 Ill.App.3d 722 (1978): proper construction of cancellation clause in a shopping center lease

*Mason v. Meyer* (Cal.App. 1982, no. A014861): specific performance of contract of sale; opponent's appellate contention deemed moot for failure to tender contract form said to be essential to transaction

*Eichar v. Gershunoff* (Cal.App.1984, no. 2d Civ. 69162): premises liability of former owner that retained only bare title securing new owner's payments

*Rose v. Pope* (Cal.App. 1984, no. A020547): quiet title action after neighbor cut down and destroyed pear orchard based on deed description rather than a surveyed boundary line

*Berenguer v. Stewart Title Guaranty* (Cal.App. 1985, no. A018035): action for failure to provide fire and liability insurance as required by escrow instructions

*Reiner v. California Real Estate Loans, Inc.* (Cal.App. 1986, no. A029995): fraud and breach of statutory duties to home purchaser by real estate and loan brokers

*Zanker Development Co. v. Cogito Systems Corp.* (Cal.App. 1988, no. H003684): landlord's duty to act reasonably and in good faith to avoid consequences of breach of lease

*Sandy v. Superior Court* (1988) 201 Cal.App.3d 1277: architect entitled to summary judgment against contractor's cross-complaint for indemnity based on 10-year statute of repose for original construction of apartment project

*Ackerman v. Savings Bank of Mendocino County* (Cal.App. 1989, No. A041183): wrongful acceleration and foreclosure on secured note under due-on-sale clause; wrongful discrimination in denying loan application

*Overton v. Walsh & Delaney* (Cal.App. 1992, no. A056523): propriety of finding of implied easement for driveway when recorded documents actually inspected by prospective buyers reflected limitation of easement to their predecessor in title

*Golden Horse Trading Co. v. National General Contracting Co.* (S.F. County App. Div. 2000, no. SAV 5233): whether commercial tenant refusing to pay ten months of back rent may seek relief from unlawful detainer judgment by citing generic increase in rental rates in San Francisco as a "hardship"

*San Francisco Shopping Centre Associates, LP v. San Francisco Unified School Dist.* (Cal.App. 2002, nos. A091913 & A092806) (settled after full briefing and setting of oral argument): whether school district violated settlement agreement establishing an arbitral appraisal process for setting plaintiff's rental obligations under its ground lease

*People v. Beaumont Investments, Ltd.* (2003) 111 Cal.App.4th 102: petition for review on question whether Petris Act bars civil penalties against mobilehome park owner, and related issues

*MHC-De Anza Financing Limited Partnership v. Van Hoosan* (Santa Cruz App. Div. 2003, no. CV 149704): whether negotiated mobilehome site lease in settlement of rent control dispute permitted subleasing at rate higher than negotiated rental

*Cervený v. Gotovac* (Cal.App. 2006, no. A110208): quiet title action where plaintiff entrusted deed to joint owner with intent to convey full title but only if and when he completed his last repayment for purchase money

*Emanuele v. Bisno* (Cal.App. 2008, no. A117913): affirms judgment for investors in limited partnership real estate venture for fraud in inducement by general partners; main issue is propriety of out-of-pocket measure of damages based on market or resale value of investment units rather than asset value of underlying real property

## TORT LAW

*Burlington Northern RR. Co. v. Superior Court* (1982) 137 Cal.App.3d 942 (*hearing denied*): petition for hearing following opinion prohibiting equitable indemnity claim against settling defendant in "Mary Carter" sliding scale agreement despite claim it lacked any fair relationship to an equitable apportionment; holding later disapproved in *Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.* (1985) 38 Cal.3d 488

*Hartman v. Ye Old Inn, Inc.* (Cal.App. 1983, no. A017897): tenability of jury award for lost future income when claim was not asserted in pleadings, notice of damages or opening statement and was not supported by any expert testimony

*Galleon Properties v. Mack* (Cal.App. 1983, no. A010217): petition for hearing challenging award of punitive damages based solely on fraud defense to a contract claim

*Fairmont Hydraulics v. Superior Court* (Cal.App. 1983, no. A023365): petition for writ of mandate, and petition for Supreme Court hearing, challenging order refusing relief when, pursuant to newly approved "Mary Carter" or sliding scale agreement, expert witnesses long relied on by petitioner were suddenly hostile

*Williams & Burrows, Inc. v. Marin County Superior Court* (Cal.App. 1983, no. A036492): writ of mandate proceeding concerning right to maintain cross-complaint for equitable indemnity when direct action is time-barred

*Wiedeman v. Crocker Natl. Bank* (Cal.App. 1985, no. A017874): liability for compensatory and punitive damages for erroneous report of robbery

*Corales v. Graco, Inc.* (Cal.App. 1984, no. 3 Civ. 23432): appeal involving interplay of federal maritime law, Longshoremen and Harborworkers' Compensation Act, and California workers' compensation law

*Vaughn v. City and County of San Francisco* (Cal.App. 1984, no. A023081): respondeat superior theory for accident involving city employee driving to work in his personal vehicle

*West v. Johnson & Johnson Products, Inc.* (1985) 174 Cal.App.3d 831: product liability action for toxic shock syndrome while using tampon; affirm principal verdict over claims of instructional error on defective design, and also affirm trial court's reduction of punitive damages award from \$10 million to \$1 million

*Frei v. County of Colusa* (Cal.App. 1985, no. 3 Civ. 24592): governmental immunity for sheriff's negligent operation of squad car

*Sagadin v. Ripper* (1985) 175 Cal.App.3d 1141: statute eliminating social host liability for actions of intoxicated guest applies prospectively; liability requires affirmative act of furnishing alcohol; comparative negligence doctrine permits assessment of plaintiff's contributory fault

*Neptune Society Coordination Proceeding* (Cal.App. 1987, no. C002477): petition for review testing "good faith" standard in determining equitable indemnity claims

*Neptune Society Coordination Proceeding* (Cal.App. 1987, no. C002477): petition for review on standing of distant relatives or friends to bring tort action complaining of disposition of human remains when Health & Safety Code limits control of remains to next of kin

*Ramariz v. County of Merced & Irrigation District* (Cal.App. 1987, no. F006805): petition for review testing prejudice requirement for dismissal of tort action for late filing of administrative claim

*IMACC Corp v. San Francisco County Superior Court* (Cal.App. 1989, no. A045363): petition for review testing fraudulent concealment exception to exclusivity provisions of Workers' Compensation Act

*Doe v. Roe* (1990) 218 Cal.App.3d 1538 (*review denied*): case of first impression, whether liability could be imposed for sexually transmitting long-dormant and asymptomatic herpes virus

when defendant's own doctors and published medical authorities did not believe such transmittal was possible

*Provident Central Credit Union v. O'Rourke & Clark Accountancy Corp.* (Cal.App. 1989, no. A042362): right to seek equitable indemnity for claim of negligent auditing

*Dukes v. Konoske* (Cal.App. 1990, no. A045385): application of Government Tort Claims Act and exclusive remedies provisions of Workers' Compensation Act to action alleging infliction of emotional distress by warning not to testify against police officers

*Sagin v. Leland, Parachini, et al.* (Cal.App. 1990, no. A050398): propriety of summary judgment dismissing legal malpractice action alleging conflict of interest and attorney's own adverse pecuniary interest

*Estate of Brunner v. Dubin* (Cal.App. 1990, no. F012488): propriety of pain and suffering award when accident instantaneously and permanently rendered plaintiff vegetative; effect of court's refusal to instruct on the seatbelt statute

*Nunez v. Eskanos & Adler* (Cal.App. 1991, no. A052131): no respondeat superior or punitive damages liability by law firm for sexual assault by employee unrelated to employment

*Veatch v. Kubota Tractor Corp.* (Cal.App. 1992, no. A051524): foreseeability of harm from negligent abandonment of a 33-foot boom in equipment yard

*Olfacto-Labs & Weiss Assoc. v. Stemple & Boyajian* (Cal.App. 1993, no. A055789): fraud and contract action by retained experts and trial lawyer against retaining attorneys

*Carver v. Uniroyal, Inc.* (Cal.App. 1998, no. D028496): reversal of \$8.4 million verdict in product liability case for court's refusal to instruct on comparative negligence for riding on freeway in back of truck where no seatbelts were available

*Aetna Cas. & Sur. Co. v. Farmers Bros. Co.* (1998) 65 Cal.App.4th 574: sufficiency of evidence to support verdict that defective heating element in coffee maker caused restaurant fire

*Colangelo v. Morgan* (Cal.App. 1999, no. A086441): reversal of judgment notwithstanding verdict after \$42 million compensatory damages verdict for tortious interference with prospective advantage and finder's contract after locating Japanese investors for a sand and gold reclamation project on Sacramento River

*Logwood & Mondala v. Garlock* (Cal.App. 2002, no. A098649) (settled after opening brief filed): whether plaintiff's willing investment in a business venture or defendant's breach of promise to pay return constitutes tortious conversion; whether asserted fiduciary relationship support punitive damages award

*Woroch v. Regents of University of California* (Cal.App. 2005, no. A106854): issues of fact/opinion dichotomy and malice in professor's claims of defamation and interference with contract for corporate seminars

*Castaneda v. Olsher* (2007) 41 Cal.4th 1205: amicus brief for Western Manufactured Housing Communities Association on question whether evidence about potential gang violence was sufficient to compel, or permit, owner of mobilehome park to evict family or individuals said to be associated with a gang