INTRODUCTION TO LAW & THE LEGAL SYSTEM

I. The major problem of society is to combine that degree of liberty, without which law is tyranny, with that degree of law without which liberty becomes license." Heraclitus, 535 to 474 B.C.

individual freedom v. rights of society

balancing process/scales

II. Law is that body of rules made by human beings which regulate them in their relationships with each other and with society as a whole.

Its' function is to establish order.

III. 4 basic philosophical concepts of what law is:

A. law as what is right/moral sense of right and wrong.
B. law as custom/accumulated customs and traditions of society.
C. law as a command/body of rules issued by political authority.
D. law as social engineering/means of social control seeking to balance various interests and values within society.

IV. A brief history of Western law/very old & deeply implanted.

A. Jewish law, 1500 B.C.

- Jewish "constitution": first 5 books of the Old Testament/Torah

- 2. 10 commandments

B. Roman or Civil law, 450 B.C.

- Code of 12 Tables: procedural law/how to commence and prosecute actions to enforce legal rights. (CA; Code of Civil Procedure & Evidence Code)

- Corpus Juris Civiles (the body of civil law): comprehensive set of codes setting forth an individual's legal rights. (CA; Civil Code)

- "Civil law", in this sense, means statutory law brought about by the legislative process.

C. English Common Law, 1066 A.D.

- Judges made law by deciding what the law should be in a particular case.

- "rule of stare decisis: courts must stand by previously decided cases or "precedent".

- U.S. law today is patterned upon the English common law.

D. English law merchant

- developed concurrently with common law.

- because, at first, merchants were not allowed access to common law courts.

- The laws of sales and commercial paper are based on the law merchant.

E. equity

- sought when the legal remedy (money damages or restoration of property) is inadequate.

- In England and originally in the U.S. their were separate courts of law and courts of equity. In the U.S., today, they are consolidated.

- Equitable remedies are specific performance of contract, injunction/restraining order, rescission, and reformation.

V. The United States today.

- heavily influenced by the Anglo-Saxon legal tradition.

- B. relies heavily on "common or judge made law as opposed to statutory/codified law.

- the federal system is based on the common law.

- the laws of the various states are based on the common law.

Exceptions:

- a. Louisiana: civil law/Napoleonic.

- b. CA: community property/Spanish.

C. Sources of law:

1. constitutional law


- b. each of the 50 states has a constitution.

2. common law/case law/judge made law

- a. federal courts; U.S. Supreme Court created by Constitution; various federal appellate courts as created by Congress.

- b. state courts; state supreme courts and various courts of appeal.

3. statutory law


- b. CA statutes compiled into 27 different codes. (Civil, Penal, Probate, Civil Procedure, Motor Vehicle, Fish and Game, Education, etc.)

4. administrative law

- a. federal; FTC, EPA, NLRB, OSHA, EPA, etc.

- b. state; PUC, Franchise Tax Board, Dept. of Real Estate, ABC, etc.

- c. even local government, such as school districts, may establish admin. rules.

5. international

- a. doctrines such as the act of state doctrine & the doctrine of sovereign immunity.

- b. treaties such as the Treaty of Rome, GATT

- c. compliance with agreements between countries is generally voluntary.
COURT SYSTEMS & PROCEDURES

I. There are 52 separate court systems in the U.S.: the federal system, Washington D.C., and each of the 50 states. Each system functions independently.

II. Jurisdiction/venue
   A. jurisdiction: power of court to hear a case. concerned with subject matter and person.
   B. venue: geographical jurisdiction.

III. The federal court system
   A. District Courts
      1. trial courts/courts of original jurisdiction
      2. jurisdiction in civil actions:
         a. any lawsuit involving a "federal question": U.S. Constitution, a treaty, or a federal law, or
         b. a lawsuit involving "diversity of citizenship" where the amount exceeds $50,000: citizens of different states or countries.
      3. each state has from 1 to 4 federal district courts.
   B. U.S. Courts of Appeal/Circuit Courts
      1. there are 13 such courts
      2. They are courts of review to which appeals may be taken from the District Courts; appeal is a matter of right; no original jurisdiction.
      3. judges sit in panels of 3.
      4. reviews the case on "record" sent to it from the trial court; they affirm, reverse, modify the judgment, or send back to trial court for retrial.
   C. U.S. Supreme Court
      1. The only federal court established by the U.S. Constitution. Set up to interpret the Constitution.
      2. has both original and appellate jurisdiction.
         a. original jurisdiction in those cases affecting ambassadors, foreign ministers, and consuls; and cases to which a state is a party.
         b. appellate jurisdiction in cases arising in the federal courts and for cases appealed from the highest state courts which involve federal constitutional and statutory interpretation.
      3. appeal is a matter of privilege; not a right.
      4. petition must be made to the court to hear the case, and the courts may grant or deny the petition.

IV. California Courts
   A. Justice and Municipal Courts
      1. trial courts of limited jurisdiction
      2. jurisdiction over misdemeanors
      3. jurisdiction where amount does not exceed $25,000.
      4. small claims court is part of these courts; no attorneys allowed; limited to civil matters not exceeding $5,000.
   B. Superior Court (county courts)
      1. trial courts of unlimited jurisdiction
      2. original jurisdiction over:
         a. felony prosecutions
         b. actions over the limits of inferior courts
         c. equity actions
         d. marriage dissolutions
         e. probate proceedings
         f. juvenile matters.
      3. appellate department of the Superior Court handles appeals from inferior courts.
   C. Courts of Appeal handle appeals from Superior Courts.
   D. Supreme Court of the State of California handles appeals from courts of appeal where necessary for uniformity or to settle important questions of law.
V. steps in civil actions
A. parties
1. plaintiff: person that is suing
2. defendant: person that is being sued.
B. The adversary system: A system of conflict by which we settle disputes.

1. judge's role:
2. jury's role
3. lawyer's role:
4. lawyer's job:
5. Advantage of this system:
C. complaint and summons
1. commences legal action when filed with the clerk of the court.
2. sets forth the cause of action/facts giving rise to the right to sue.
3. upon filing, clerk issues summons to plaintiff's attorney, who hires a process server to serve the defendant.
4. the summons notifies the defendant that a lawsuit has been filed against him and that he has a certain time in which to defend the suit.
D. demurrer/motion to dismiss the complaint
1. "motion": submit to the judge for consideration
2. defendant objects to the complaint on the grounds that it does not state a cause of action.
E. defendant may counterclaim/crosscomplain
F. "pleadings": complaint & answer taken together (What is a motion for a judgment on the pleadings?)
G. pretrial procedure:
1. various motions
2. discovery
   a. interrogatories: written set of questions asked of the opponent.
   b. depositions: taking of the oral testimony of a witness outside the court.
H. determination of facts:
1. in a jury trial, jury determines facts; judge determines law.
2. if there is no jury, the judge determines both the law and the facts.
3. the trier of fact determines facts from:
   a. real evidence: tangible
   b. testimony of witnesses: eye, expert, character.
I. conduct of trial:
1. opening addresses
2. direct examination
3. cross examination
4. redirect examination
5. recross examination
6. summation
J. judgement/verdict
1. judgment: decision of court; does not usually include attorney's fees.
2. verdict: decision of the jury.
K. appeal: any party may appeal if he/she is unhappy.
L. execution: If loser does not comply with the judgment, the winner may obtain a writ of execution directing the sheriff/marshal to take the person's property to satisfy the judgment.
CONSTITUTIONAL CONSIDERATIONS

I. 2 levels of government:
   A. state
   B. federal
II. federal
   A. sovereign body created by a federation of states for the purpose of representing states in international matters and to make laws binding on them with respect to matters of common concern (federalism).
   B. under Article 1, Section 8 of the U.S. Constitution the federal government has power to make laws on certain subjects. In some cases this is an exclusive power.
III. state
   A. 10th Amendment to U.S. Constitution says "The powers not delegated to the United States by the Constitution...are reserved to the States respectively..."
   B. Each state may make its own laws with respect to intrastate matters.
IV. U.S. Constitution
   A. supreme law of the land (Article VI-supremacy clause). Federal preempts state law.
   B. Commerce Clause
      1. Congress can "regulate commerce with foreign nations, and among several states, and with Indian tribes." (Article I, Section 8)
      2. Today, Congress has the power to regulate any activity, interstate or intrastate, that affects interstate commerce.
V. powers of government:
   A. police power
      1. to regulate private activities to protect or promote the public order, health, safety, morals, and general welfare.
      2. generally lies with the state.
      3. federal law may regulate those areas mentioned in the Constitution, such as interstate commerce.
      4. eminent domain: power to take private property for a public purpose, with just compensation.
   B. power to tax
      1. Both state and federal government have power to tax.
      2. uniformity is required by federal government.
      3. some states tax, other states do not.
      4. tax will be upheld if it bears some reasonable relationship to revenue production.
      5. U.S. Supreme Court upheld California's "proposition 13" in 1992. They said California's property tax system was "distasteful and unwise", but does not violate the U.S. Constitution's guarantee of "equal protection of the laws."
      6. The U.S. Supreme Court also ruled that states may not force out-of-state mail-order houses to collect sales taxes from customers in the state.
   C. power to spend (pay debts)
      1. broadly interpreted/any public purpose.
      2. can promote any worthwhile objective.
   D. other powers: war, investigatory, property, bankruptcy, postal, citizenship, admiralty, commerce.
VI. Bill of Rights
   A. applies to "artificial" as well as "natural" persons.
   B. freedom of speech: "Congress shall make no law...abridging the freedom of speech, or of the press."
   C. freedom of religion: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."
   D. search and seizure
      1. exclusionary rule
      2. "probable cause" for a search warrant to be issued.
   E. self incrimination
      1. 5th Amendment rights: "I refuse to answer on the grounds that it may incriminate me."
      2. No person "shall be compelled in any criminal case to be a witness against himself."
I. Introduction.
   A. A tort is a civil wrong not based upon contract. A tort is a private injury or wrong arising from a breach of duty created by law.
   B. A crime arises from a breach of duty to the public. A tort arises from a breach of duty to an individual.
   C. There is an overlap, so that the same act may be a crime, tort or breach of contract. The relation between crime and tort is closer than that between tort and breach of contract.
II. Intentional torts
   A. Battery is an intentional touching of the person of another, without consent and without legal privilege.
   B. Assault consists of an act by the defendant whereby the plaintiff is intentionally placed in reasonable apprehension of an immediate battery, without consent and without legal privilege.
   C. False imprisonment is the intentional confinement of the plaintiff by the defendant, without consent and without legal privilege.
   D. Trespass to land is entry upon land in the possession of another, without consent and without legal privilege.
   E. Trespass to chattel is the intentional taking or damaging of personal property in the possession of another, without consent and without legal privilege. Generally, for a short period of time or for slight damage.
   F. Conversion is an intentional assumption of dominion and control over the personal property of another resulting in a substantial interference with the plaintiff's possessory rights, without consent and without legal privilege. Substantial period of time or damage. Civil equivalent of theft.
   G. Defamation consists of an injury to the person's reputation by reason of false communications by the defendant to 3rd persons which tend to diminish the esteem in which the plaintiff is held.
      1. Slander is a form of defamation of character that is by spoken words or gestures.
      2. Libel refers to defamations reduced to permanent form, such as writings, photos, motion pictures
   H. Intentional infliction of emotional distress results from extreme and outrageous conduct resulting in severe emotional distress to another. There is negligent emotional distress also.
I. Invasion of privacy.
   1. The use of a person's name/picture/likeness for commercial purposes without permission.
   2. Intrusion upon an individual's affairs or seclusion.
   3. Publication of information that places a person in a false light.
   4. Public disclosure of private facts about an individual that an ordinary person would find objectionable.
J. Fraud is an intentional misrepresentation of a material fact made with the intent to deceive and on which a reasonable person would and does rely. There are other types of misrepresentation such as negligent and innocent.
K. Nuisance is an act that interferes unlawfully with a person's possession or ability to use his/her property.
III. Negligence is a careless or reckless act rather than an intentional harm. It is a failure in duty or responsibility.

A. Every negligence action requires:
   1. A duty of care owed by the defendant to the plaintiff.
   2. A breach of that duty by a failure to exercise due care.
   3. The breach of duty must be the actual (in fact) and proximate (legal) cause of an injury to the plaintiff.
   4. The injury/damages must be of a type which is compensable in a negligence action.

B. Duty of care
   1. The general rule of duty is that everyone owes a duty to exercise due care so as not to subject others to unreasonable risks of harm. Reasonable care.
   2. Special rules to establish reasonableness.


D. Superseding intervening forces break the connection between the wrongful act and injury.

E. Res Ipsa Loquitur (the fact speaks for itself). Implies negligence when the event does not usually occur in the absence of negligence.

F. Defenses:
   1. Assumption of risk.
   2. Comparative negligence: Li v. Yellow Cab Co. (1975) 13 C.3d 804, 119 C.R. 858, 532 P.2d 1226. The CA Supreme Court abrogated the complete defense of contributory negligence and substituted a judicially created system of comparative negligence.
   3. Last clear chance defense abolished in CA when comparative negligence replaced contributory negligence.

IV. Strict liability (liability without fault)

A. In strict liability, the defendant is held responsible for the plaintiff's damages despite the fact that he has done nothing intentionally wrong and has not acted negligently or unreasonably under the circumstances.

B. Traditional areas of strict liability:
   1. Ownership of dangerous animals
      a. Wild animals
      b. Domesticated animals with known dangerous propensities
      c. CA dog bite statute: C.C. 3342 says "The owner of any dog is liable for the damages suffered by any person who is bitten by the dog while in a public place or lawfully in a private place, including the property of the owners of the dog, regardless of the former viciousness of the dog or the owner's knowledge of such viciousness."
      "A person is lawfully upon the private property of such owner within the meaning of this section when he is on such property in the performance of any duty imposed on him by the laws of this State or by the laws or postal regulations of the United States, or when he is on such property upon the invitation, express or implied, of the owner."
   2. Abnormally dangerous activity
      a. Blasting with dynamite
      b. Fumigation with deadly poisons
      c. Crop dusting
      d. Testing rocket motor
      e. Use of blowtorch on waste oil tanker.
      f. Not ultrahazardous: impounding water, aviation, excavation & earth moving, fireworks display.


C. Society, through the courts, is saying that the activity is so dangerous to the public that liability must be imposed even though no fault is present.
Tort Reform Test
Overhaul of Civil Law
In Colorado Produces
Quite Mixed Results

Frivolous Suits Are Less Likely to reap Big Awards, but So Are Lawsuits That Nearly Anyone Would Consider Valid. Cases Involving Catastrophic Injury to the Plaintiff and Egregious Wrongdoing by the Defendant Are Highlighting the Flip Side of Reform: The Most Seriously Hurt Are Most Likely to See Their Damages Reduced Most under the New Laws.

 Roxie Lypp's Dilemma

A propylene gas explosion in the mountain resort of Crested Butte in March 1986 illustrates some of the unexpected problems with the legal reform. Investigators found that the gas supplier, Sugas Inc., had violated more than a dozen state safety regulations. Three people were killed, and 14 were injured. One of the injured, Roxie Lypp, a former teacher and part-time bank employee, was buried beneath bricks and debris and had severe burns over 40% of her body. After two years of painful burn therapy and skin grafts, Ms. Lypp is still unable to work full time and faces an increased risk of skin cancer.

A Denver state court jury awarded Ms. Lypp's $1.5 million last November. Of that amount, $900,000 was for punitive damages intended to punish Sugas and its parent, Empire Gas Co. of Lebanon, Mo., for negligence. The jury awarded $500,000 in compensatory damages. But in December, a judge was forced to reduce the total amount by more than half. One reason: The jury's award of $600,000 for pain and suffering was over the state limit of $250,000.

That reduced Ms. Lypp's compensatory damages to $212,692. Then another Colorado law came into play: Individual defendants in civil suits can't be forced to pay more than their share of the blame when others have no money to pay. In this case, Empire and Sugas blamed the blast on a repair two previous owners had made. The previous owners were out of business and uninsured, but the juries weren't told this because another Colorado law prohibits lawyers from disclosing whether defendants have insurance. When the jury divided blame equally among all four companies, the net effect was to cut Ms. Lypp's remaining compensation to $110,692.

'Vic tims Again'

That, in turn, knocked down the punitive damages because Colorado law prohibits juries from assessing more in damages to punish wrongdoers than they award to compensate victims. Ultimately, Ms. Lypp expects to receive a total of about $160,000 after all her legal fees and other expenses are deducted.

'I'm well beyond concern over the money,' says Ms. Lypp, 47 years old. 'But the court system should allow the jury to award what they feel is fair...' To me it's totally unfair. We end up being the victims again.'

In cases of serious injuries such as hers, what remains not be enough to pay for medical care and rehabilitation. Because defendants and their insurers are now insulated from huge damages, costs are transferred to state and federally funded health programs when victims' insurance limits run out.

In Longmont, Colo., seven-year-old Leah Speaks has been in a permanent coma since last May, when her mother was killed and her sister badly injured by an uninsured drunk driver coming from a bar. The driver had knocked back five beers and six whiskey shots, enough in many states to have the bar hold legally responsible for the impact. But in Colorado, damages against bars that serve customers too much to drink are limited to $150,000 and apply only if the bartender acted willfully. The bar in this case settled out of court for the full amount. But it was hardly enough to pay for a lifetime of medical and nursing care. Federal Medi-Cal disability payments are already footing the bill, says Leah's aunt and guardian, Roberta Gies.

Leah Speaks and Roxie Lypp weren't the kind of victims legal-reform advocates had in mind when they began overhauling the state's civil justice system in 1986. The reformers were aiming at cases such as the one involving Oscar Whitlock, a University of Denver student who became paralyzed in a trampoline accident during a fraternity party.

Mr. Whitlock blamed the university for not supervising the fraternity, and in 1986 it awarded him a jury award of $5.3 million. Though ultimately overturned, decisions like this offended basic beliefs here that individuals must bear responsibility for their own risks.

Such multimillion-dollar jury awards for seemingly meritless lawsuits also were being blamed for Colorado's deepening insurance crisis. Insurers said they could no longer accurately predict risk. Throughout the state, thousands of commercial and municipal liability policies suddenly were canceled in 1985. Rates and deductibles were soaring for other businesses and professions, while coverage declined. Rural physicians stopped delivering babies when rates for doctors who performed obstetric procedures doubled.

Dude ranches accustomed to paying $20 a year per horse for liability coverage were suddenly paying $140. Bar owners saw rate increases of 600%. "A lot of my friends went bare," says John Ziegler, owner of Jackson's Hole Sports Grill in Denver.

Nearly half of Colorado's municipalities had their policies canceled or faced major restrictions. Even cities with excellent risk records felt the blow. "Basically, there's no insurance," says Darrell Barnes, risk manager for Colorado Springs, which had its $5 million liability policy canceled in September 1985. "Our claim never exceeded our premiums."

The problem was national, but Colorado seemed particularly hard hit. Some carriers, blaming lawyers, pulled out of the state altogether. Business groups and insurers banded together to urge reform. If someone breaks into your house," Autumn Life & Casualty Co. warned in a full-page ad in Denver's Rocky Mountain News, "better hope they don't break a leg. Lawsuit abuse is out of control."

By Milo Geyelin
Staff Reporter of The WALL STREET Journal
DENVER—Everyone talks about legal reform, but Colorado has bet the ranch on it.

State laws here protect ski resorts and dude ranches from lawsuits over accidental injuries. Bars are virtually immune from legal blame for the acts of drunk patrons. Jury awards for pain and suffering top out at $250,000. And defendants can't be forced to ante up more in damages just because they have the deepest pockets.

Some of Vice President Dan Quayle's most controversial proposals to overhaul the civil justice system have found a testing ground here. Shocked by soaring commercial and municipal insurance rates, Colorado began reforming its civil system six years ago. Though many states have enacted laws to limit civil suits and damage awards, none has done more than Colorado.

The idea was to make insurance more available, knock down premiums and give businesses a breather from costly litigation. More than that, reformers wanted to address what they perceived as an injustice: the prevalence of unpredictable and often unjustified jury awards spurred on by avocacious lawyers working for contingency fees.

Mixed Bag

So what's the verdict? Insurance companies that fled Colorado in droves in the mid-1980s, blaming lawyers and high jury awards, have come back, bringing with them increased competition. Limits on damages have helped lower insurance companies' payouts, leading to some drops in insurance rates. Lawsuits of dubious merit are filed less frequently now because they are harder to prove. Defendants seem less inclined to settle out of court just to avoid the nuisance and risk of litigating.

But, to the dismay even of some reformers, that's not the entire story. Commercial insurance premiums have gone down much less than the business community anticipated. Auto insurance, the major insurance cost for consumers, is actually more expensive than it was before the legal reforms were passed.
The extent to which lawsuits actually were to blame remains in dispute. Some state officials question whether there really was an insurance crisis. Colorado is among 18 states that filed an antitrust suit in 1988 against more than 20 dozen insurers. The suit alleged an industry conspiracy to pull out of the commercial and municipal liability market to limit exposure after years of risky underwriting.

Insurance companies deny the charges and are vigorously contesting the suit. But former Colorado insurance commissioner John Keating says that at least part of the industry's crisis was self-inflicted. For years, insurers had been underpricing policies with "low-ball" tactics to grab premium dollars and invest at record-high interest rates, he says. When those rates turned high in 1984, the industry's cash surplus shrank. A nationwide contraction in insurance availability ensued, coinciding with a rise in claims.

Unpredictable jury awards exacerbated the problem, increasing pressure on defendants to settle cases, says former University of Denver law school dean Edward A. Dauer, chairman of a task force that investigated the crisis. Colorado was not experiencing a "negligence explosion," he says, but the insurance industry "needed predictability in risk."

Legal reform became the clarion call, and Colorado's conservative, business-oriented legislature swiftly embraced it. Legislators enacted 85 new laws over six years.

Lawyers became more reluctant to bring difficult-to-prove cases. Juries and judges became more skeptical of injury claims and angry about lawsuit abuse. "Juries who sit on auto-accident cases see themselves as more likely the victim of a lawsuit than the victim of an accident," says William Keating, a Denver plaintiffs' lawyer.

Injury cases, as a result, have become more expensive to pursue and difficult to prove, says another plaintiffs' lawyer, Gerald McDermott. "The kind of case that's going to result in some cases that have some merit not being pursued," he argues. For cases involving less than catastrophic injuries, jury verdicts and settlements have dropped.

The laws have most directly helped professionals and businesses that were singled out for special protection. Malpractice rates at physician-owned CUPIC Insurance Co., Colorado's largest medical malpractice insurer, have dropped 17% since 1988, the year Colorado overhauled its malpractice law to limit liability and damages for doctors.

But, in general, the overall impact on the insurance policyholder has not been great. The insurers have benefited more than individual consumers. Industry losses over the past six years have fallen 30%, while general commercial liability premiums have dropped only 9% overall, according to A.M. Best Co., an independent data gatherer.

At Breiter Construction Co., a small contractor in Denver, commercial liability rates dropped 15% in 1990—the first drop after six years of increases. "It has come down," says Breiter's president, Rosemary Breiter, "but not as much as it went up."

State regulators haven't been able to determine the impact that legal reform has had on lowering insurance rates because commercial insurers don't have to reveal this information in public disclosures. Moreover, Colorado has benefited from an upswing nationally in the insurance industry's business cycle. That alone was largely responsible for bringing back insurers to the state, regulators say.

Meanwhile, automobile insurance rates, a major bone of contention with Colorado residents, have continued to rise steadily. Between 1988 and 1990, rates rose 8% on the average, nationwide. But in Colorado, they rose 12% in the same period. "That's what's creating some animosity on the part of myself and some others," grouses Assistant Senate Majority Leader Ray Powers, a conservative Republican who, like some other powerful legislators, is having second thoughts about continued reform efforts.

Highly publicized accidents such as the one at Crested Butte and another at Berthoud Pass, near Denver, are contributing to legislators' caution. In the Berthoud Pass incident, a state road worker clearing fallen rocks from the pass was struck by a 67-ton boulder down the mountain in 1987. Thinking it would roll just a few feet, the rock crashed into a tour bus 725 feet below, killing eight and injuring 25.

One tourist, Marcus Lang, who was blinded and brain-damaged, lingered in Denver General Hospital for almost a year before he went home to West Germany and died. Under Colorado's governmental immunities law, toughened in 1986 and upheld by the Colorado Supreme Court last month, the state's total liability for all the victims combined couldn't exceed $400,000. Mr. Lang's medical bills alone exceeded $325,000. (Mr. Lang's estate hasn't received anything as yet from Colorado because the case is still being litigated.)

Many Colorado residents were appalled. "I think we did need legal reform, but now the pendulum has swung back, so those who need compensation can get it," says Republican House Majority Leader Scott McNees, an early reform supporter who now is backing off.

One bill he is backing this year would increase the potential liability of government entities. Another would create an office of consumer advocate to more aggressively challenge insurance-industry rate requests. Continued legal reform also now faces a more skeptical legislature, says Republican House Speaker Chuck Berry.

Opposition is stiff for a bill the river rafting industry is pushing to protect itself against suits stemming from whitewater accidents, including "getting lost or failing to return." There is also little enthusiasm for a law auto insurers are pushing to reduce the minimum insurance coverage required in Colorado. Auto insurers are also promoting a companion bill to limit accident victims' ability to sue over injuries.

Two years ago, identical auto-insurance proposals were under debate when Dorothy Powers, the wife of the assistant Senate majority leader, showed up in the state capital to lobby in opposition. Encouraged in a body cast to use her own fractured spine from an auto accident, Mrs. Powers, 60 years old, sat before a hearing committee and held up her hospital X-rays. "I never thought this could happen to me," she said. "Now I know it can happen to anyone one of you, to anyone in this room, at any given time."

Not surprisingly, says Mr. McNees, both bills died. "This was closer to home," he says, "Everybody on that committee knew her."
CRIMES

I. A crime is a wrong which affects the public welfare; a wrong for which the state has prescribed a punishment or penalty (death, imprisonment, fine). A crime is prosecuted by a public official, as they are offenses against society. The prosecutor's burden of proof is "beyond a reasonable doubt."

II. Power to define and punish crimes.

A. Individual states have broad powers to prohibit and punish crimes. The state legislature has the power to define and set the range of punishment for crimes.

B. The United States Congress derives limited power to define and punish crimes from the Constitution. Congress may define and punish crimes: in Washington D.C., territories, postal matters, interstate commerce, securities, counterfeiting, federal elections, civil rights violations, spying, unlawful immigration, and other matters referred to in the Constitution.

III. Classification of crimes

A. Felonies are the most serious crimes. Any crime punishable with death or imprisonment in a federal or state prison for more than a year. murder, manslaughter, robbery, burglary, arson, rape, kidnaping, grand theft.

B. Misdemeanors are less serious crimes punishable by fine and/or a term in the county jail of up to a year. public intoxication, vagrancy, prostitution, petit theft, trespass, disturbing the peace, assault, battery.

C. Infractions/petty offenses are punishable by a fine. No possible jail time. most traffic tickets.

D. felony-misdemeanor

E. misdemeanor-infraction

IV. Specific crimes:

A. forgery: CA P.C. 470 provides that a person who (a)"with intent to defraud, signs the name of another person, or of a fictitious person, knowing that he or she has no authority so to do," or (b) "falsely makes, alters, forges, or counterfeits" any of a long list of writings, or (c) "counterfeits or forges the seal or handwriting of another" is guilty of forgery. Felony/misdemeanor.

B. robbery: CA P.C. 211. "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear."

C. Burglary: CA P.C. 459. Committed when a person "enters" any building or other enumerated structure or vehicle "with intent to commit grand or petit larceny or any felony." First degree is burglary of an inhabited dwelling. Second degree is all others & is a felony/misdemeanor.

D. Theft (larceny): The act of taking another person's personal property unlawfully. It is grand theft if the value of personal property taken exceeds $4000; $100 if severance of real property (farm & aquacultural products, etc.) Petty theft is all theft which is not classified as grand theft. Grand theft is a felony/misdemeanor; petty theft is ordinarily a misdemeanor.

E. Receiving stolen goods: CA P.C. 496(1) applies to a person who "buys or receives any property which has been stolen or which has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds or aids in concealing, selling, or withholding any such property from the owner, knowing the property to be so stolen or obtained." Felony/misdemeanor.
F. Embezzlement: In CA the general statutes are P.C. 503 and P.C. 484(a), the theft section, covering a person "who shall fraudulently appropriate property which has been entrusted to him." Embezzlement is within the general definition of "theft", and is ordinarily punishable in the same manner as other thefts; i.e., the crime is grand or petty theft, depending on the value or nature of the property taken. P.C. 514 makes the embezzlement of public funds a felony.

G. Arson: A person who "recklessly sets fire to or burns or causes to be burned, any structure, forest land or property" is guilty of unlawfully causing a fire. P.C. 452.

V. Homicide (see attached chart.)

VI. Business Crimes (white collar crimes)

A. Non-violent crimes committed by individuals or businesses to obtain a personal or business advantage.

B. Bribery: The offering, giving, receiving, or soliciting of anything of value with the aim of influencing official action or business decision.

1. of public officials; P.C. 67, 68, 70, 85, 137, 138; Educ. C. 35230, 60071, 72530; CA Const. Art. IV Sec. 15; Elec. C. 29621, 29420, 29622, 29623, 29305, 29421.

2. commercial: B.&P.C. 18607; P.C. 337, 639, 273, 499; Welf.C. 14107.2.


C. Money laundering: Falsely reporting income that has been obtained through criminal activity as income obtained through a legitimate business enterprise.

D. Insider trading/financial fraud: Purchasing or selling securities on the basis of information that has not been made available to the public. An insider is a corporate director or officer, or other employee or agent, with access to confidential information that has not been made available to the public. Securities Exchange Act of 1934, sections 10(b) & 16(b); Securities & Exchange Commission, Rule 10(b)5.

E. Criminal liability of a corporation: Can't put a corporation in jail. corporate officers and employees can be charged. Corporations today can be held criminally liable and fined.

F. RICO (Racketeer Influenced and Corrupt Organizations Act)

1. both civil and criminal liability
2. part of Organized Crime Control Act
3. It is a crime to:
   a. use racketeering to buy a business
   b. to buy or maintain an interest in any enterprise through racketeering
   c. conduct/participate in an enterprise through racketeering.
   d. conspire to do items in a, b, & c.
4. civil liability includes divestiture and treble damages.
<table>
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<tr>
<th>Murder</th>
<th>Homicide</th>
<th>Malice</th>
<th>Justification</th>
<th>Excuse</th>
<th>Mitigation</th>
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<tr>
<td>The killing of one human being by another.</td>
<td></td>
<td>Wrongful Intent (&quot;mens rea&quot;)</td>
<td>A. Public Authority</td>
<td>A. Genuine, reasonable mistake of fact.</td>
<td>A. Genuine, unreasonable mistake of fact.</td>
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<td>1) Intent to kill</td>
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Complete Defense

Complete Defense

Partial Defense

"Mitigation" means to lessen the severity of the crime. In this case from murder to voluntary manslaughter.

**First Degree Murder:**
A. Premeditated and deliberated - thought about calmly ahead of time. Planned out. (Poison, lying in wait, torture, knowing use of explosives, armor piercing ammunition.)
B. Felony-Murder Rule:
(Robbery, burglary, arson, rape, mayhem, kidnapping, child molestation.)

**Second Degree Murder:**
All murders that are not first degree.

**Penalty for Murder:**
1) First Degree
   a) Death
   b) Confinement in a state prison for life without possibility of parole.
2) Confinement in a state prison for a term of 25 years to life (up for parole in 7 years).

3) Second Degree
   a) Confinement in a state prison for a term of 15 years to life.

*Special circumstances must be found. (Financial gain, prior murder conviction, multiple murders, explosive device, avoiding arrest, escape from custody, law enforcement officer,orman, witness, prosecutor, judge, government official, accomplice, harm in wait for crime, poison, means of death, etc.)
Indeed, just as disorders such as severe depression are now considered mainly biological rather than purely mental problems, some experts view chronic impulsive violence as largely resulting from brain malfunction rather than moral flaws. "There's no question neurological factors enter into the vast majority of violent criminal behavior," asserts Jonathan Pincus, a Georgetown University neurologist who testifies for the defense in criminal cases.

Critics' View
But using high-technology brain science to sway juries, contends Richard Restak, a Washington, D.C., neurologist, is "pseudo-scientific retooling of the insanity defense." He adds that defense attorneys are embracing the neurological approach because the traditional "insanity defense has gotten nowhere. Juries don't buy it."

The insanity defense is raised in only about 1% of felony cases and succeeds in only a fourth of those. For decades, the main legal framework was the "McNaughten rule," named after a Scottish woodcutter who in 1843 was found not guilty by reason of insanity after he tried to shoot the British prime minister. It limits the defense to cases in which a mentally diseased person clearly didn't know what he was doing when committing a crime.

Then, beginning in the 1950s, the law was broadened in some jurisdictions to allow insanity pleas in which the accused knew what he was doing but lost emotional control due to mental disease or defect. After John Hinckley's successful insanity defense after his attempt on President Reagan's life, outraged lawmakers in various jurisdictions restricted the defense, generally narrowing it to the McNaghten standard.

Links to Behavior Questioned
Park Dietz, a psychiatrist who often testifies for the prosecution, says current legal thinking about the insanity defense "requires looking at the crime itself and a defendant's behavior at that time." In most cases, he adds, neurological evidence such as a brain scan "isn't accepted by the scientific community as being linked to particular behaviors that occur in the past." In fact, the new technologies for probing the brain are so sensitive that they sometimes show abnormalities that aren't useful in court because their links to violence haven't been established.

Last year, for example, doctors examining Henry Meinholtz, who was accused of raping and killing his neighbor's daughter in Kingston, Mass., discovered with a so-called MRI scanner that part of his brain known to modulate the sex drive was abnormally enlarged. The doctors also tested Mr. Meinholtz with a kind of high-tech lie detector under development by Davicon Inc. of Burlington, Mass. The device indicated abnormal function in parts of his brain while telling emotional truths. Other tests, neither finding was used in court; statistical studies that might link the data to violent sex crimes are lacking. Mr. Meinholtz was convicted and got a life sentence. Nonetheless, the importance of neurological evidence is clearly growing. Brain scans purportedly showing signs of schizophrenia, for example, played a pivotal role in Mr. Hinckley's defense, says Chicago's Dr. Cavanaugh, who was a prosecution consultant. "The whole field of psychiatry is moving more toward organic problems in the brain rather than focusing on psychological factors," he adds.

Batteries of neurological tests have become almost standard procedure for defendants charged with egregiously violent crimes. The latest twist is PET scans, images made with radioactive tracers in which active parts of the brain light up. PET has been used in several murder cases, including that of California mass murderer Barry Wayne McNamara. His attorney credits the technology with a central role in averting a death sentence in 1985 by helping to show Mr. McNamara has schizophrenia, which often causes delusions, paranoia and other derangement.

Even critics of the neurological defense agree that revolutionary advances in brain science promise new insights on why some people are so volatile. Especially bad apples can be identified with some accuracy early in life by indicators such as the number of offenders in a family or the age at which they were first arrested, Dr. Dietz says. But identifying such people before their violent patterns are ingrained is much harder. In the most comprehensive study to date of indicators of future criminal behavior—which 987 people born at a Philadelphia hospital were followed from birth to early adulthood—biological and social factors predicted only 25% of adult criminality, says Deborah Denno, a Fordham University researcher.

But researchers say they now can better expose the neurological roots of violence and may make predictions more accurate. In one 1987 study of four violent offenders in a psychiatric ward, PET scans showed signs of mental malfunction in brain areas associated with judgment and emotion. The abnormalities were undetectable in neurological brain tests.

Research led by Georgetown's Dr. Pincus and Dorothy Otiow Lewis, a New York University psychiatrist, suggests that brain damage often compounds a predisposition to violence stemming from abusive childhood. In a 1988 study of a dozen juvenile murderers, the two doctors found that seven had signs of major neurological impairment, that more than half had histories of abuse and all 1% had psychotic symptoms.

"If you take someone who has impulses to be violent by being abused as a child and add to it the lack of capacity to control impulses" from brain damage, "you can get a very violent person," Dr. Pincus says. "Free will is not operating in an unconstrained way here."

Skeptic questions the validity of such studies, which rely on small samples of felons who stand to gain from being classified as mentally deranged. But the pattern suggested by the studies makes sense to many experts, especially those testifying for the defense in criminal proceedings.
Robert Alton Harris fits it to a T, according to experts who examined him at the behest of his attorneys. His tale, as told by Harris family members at his trial and in affidavits supporting his recent appeal, began Jan. 15, 1953, when his mother got into a drunken flight with her husband, who accused her of being pregnant by another man. He repeatedly kicked her in the stomach with combat boots. Hemorrhaging, she was taken to a hospital, where her son was delivered prematurely.

The boy was later diagnosed as suffering from fetal alcohol syndrome, which is caused by a mother's heavy drinking during pregnancy. Luck and loving care can help offset the resulting short attention span, low IQ and other problems. But Robert Harris got just the opposite: His father, later jailed for sexually abusing his daughters, repeatedly beat his wife and children. He singled out Robert for special abuse because he believed the child wasn't his. The boy's mother vented her rage from the blows she took by also beating her son, according to his sisters' testimony. His brain damage, perhaps worsened by the beatings, made him a clumsy, mentally slow child—further infuriating his parents.

After Mr. Harris's father was imprisoned, his mother roamed up and down California's coast with an alcoholic ex-convict, who also allegedly beat her and abused her children. About that time, Robert Harris, at age nine, was sniffing glue and similar substances. When he was 14, his mother, in a fit of rage, packed up his siblings and drove off, leaving him behind in a tomato field where the family had been working as migrant pickers, his sisters testified. He didn't see her again for years.

Soon after, he was charged with car theft and spent four years in correctional centers. His mental condition deteriorated. By the time he was released, he was showing psychotic, violent tendencies, had repeatedly slashed himself and broken bones, and had been put on mind-numbing drugs such as Thorazine, according to his medical records. Psychiatrists who examined him then diagnosed schizophrenia.

In his mid-20s, he spent three years in prison for manslaughter after killing an acquaintance in a drunken fight. Five months after his release in 1978, he and his brother Daniel decided to rob a bank in San Diego. After unsuccessfully trying to hot-wire and steal a car for their getaway, they pulled a gun on two teen-agers parked at a fast-food restaurant. After driving in the teen-agers' car to an isolated canyon outside town, Robert Harris shot them.

The brothers didn't get far. After the holdup, a bystander followed their car and called the police, who quickly closed in. Daniel Harris later testified against Robert and received a six-year sentence.

Robert Harris's current appeal is probably his last chance to avoid California's gas chamber. It argues that psychiatrists who examined him soon after his arrest and testified at his trial neglected to perform tests that would have led to a diagnosis of brain damage. Michael Laurence, an American Civil Liberties Union attorney representing Mr. Harris, argues that the new evidence shows the murders weren't deliberate and premeditated—"state-of-mind" conditions required for a death sentence in California.

The evidence of Mr. Harris's brain damage is based largely on standard tests, such as recognizing shapes by touch when blindfolded, connecting numbered dots on paper and reciting the alphabet backwards. According to Mark J. Mills, a Rancho Santa Fe, Calif., psychiatrist who examined Mr. Harris, he has "significant organic brain damage," especially to the "frontal lobe," the area most closely associated with judgment. Such damage can make people irrational and impulsive, especially under stress. Dr. Mills concluded that Mr. Harris's actions at the time of the murders weren't premeditated.

California Deputy Attorney General Louis R. Hanoian counters, "We don't accept for a minute that Harris is damaged in any way. Mr. Harris planned the holdup and killed the teen-agers in a premeditated way to eliminate witnesses, says Mr. Hanoian, who also questions the accounts of Mr. Harris's childhood.

The petition that averted Mr. Harris's execution two years ago was later rejected by a federal appeals court; an appeal to the U.S. Supreme Court was denied on Monday. Now, however, Mr. Harris's attorneys have filed another appeal in the California federal circuit court. It is based on recently uncovered evidence, they say, that a 1976 electroencephalogram test of electrical activity in Mr. Harris's brain was faulty. The test, which can indicate brain damage, purportedly showed his brain was normal and was cited by the circuit court when it earlier rejected his appeal.

A central issue before the court is whether Mr. Harris's psychiatric evaluation 13 years ago should be discarded in favor of the new evidence of brain damage—a precedent that would plunge the courts into a "psycho-legal quagmire," in the view of Judge Melvin Brunetti, a member of the circuit court that rejected the earlier petition.

Though the Harris appeal may be a long shot, if it should succeed it could unleash a flood of appeals based on similar evidence of previously unrecognized brain damage. Already, prosecutors are irked by felons' bids for new appeals based on high-tech brain tests. "It's a hell of a waste of taxpayer money for people who deserve it the least," grumbles Steven Zeegen, a California deputy attorney general.

In any case, neither side in the debate about the neurological defense wants to see people such as Mr. Harris set free. "The issue is whether they deserve the death penalty or life in prison," Georgetown's Dr. Pincus says.
I. Computer crime
   A. The ABA defines "computer crime" as any act that is directed
      against computers and computer parts, that uses computers as
      instruments of crime, or that involves computers and constitutes
      abuse.
   II. California
      A. P.C. 502 was rewritten in 1987 as the "Comprehensive Computer
         Data Access and Fraud Act." Intended to protect individuals,
         businesses and governmental agencies from "tampering, interference,
         damage, and unauthorized access to lawfully created computer data and
         computer systems."
      B. Offenses (to knowingly and without permission:
         1. use computer to wrongfully control/obtain money, property or
            data.
         2. take, copy or make use of data from computer
         3. use computer services
         4. add, alter, damage, delete or destroy data, software or
            programs
         5. disrupt or deny computer services to authorized user
         6. provide means of accessing in violation of the statute
         7. access any system or network
         8. introduce any computer contaminant
      C. Punishment includes imprisonment, fine or both and forfeiture of
         computer and related property.
   III. Federal
      A. Counterfeit Access Device and Computer Fraud and Abuse Act of
         1984 prohibits unauthorized access to, or use of, computer systems.
      B. Electronic Fund Transfer Act is concerned with direct payroll,
         social security deposits, and ATM transactions.
      C. Right of privacy is an important issue.
   IV. Civil liability for defective software.
      A. Sue developer for breach of contract.
         1. Developers usually put an "escape clause" in their contracts to limit
            their liability.
         2. May limit or disclaim all warranties.
         3. May accept liability only for repair or replacing the software.
         4. May specifically limit liability for consequential or special damages.
      B. Sue developer for negligence.
         1. Tough to prove.
         2. Prove loss resulted from defect in software and not from hardware malfunction.
         3. Prove when and how negligent conduct occurred.
         4. Economic rule states the courts are bound by terms of contract and can not
            inject legal doctrines or their own views.
      C. Sue developer under malpractice theory.
         1. Argues that software developers are held to a higher standard, like
            professionals.
         2. But developers argue that they are not licensed and should not be
            held accountable.
      D. Sue developer under strict liability.
         1. Whether problem resulted from defective software is only issue. no-fault.
         2. Makes no difference if developer properly tested software.
      E. Courts have yet to determine whether software is a product or a service.
         Confusion as to whether strict liability or malpractice should apply.
         Some courts have begun to rule in favor of strict liability.
I. Literary and artistic property.
   A. CA law found in C.C. 980 et seq.
      1. Fine Arts Resale Royalties Act requires the seller of a work of art to pay the artist 5% of the sales price. C.C.986(d).
      2. The CA Art Preservation Act prohibits alteration or destruction of a work of "fine art" of "recognized quality," but not prepared under contract for commercial use. C.C. 987.
      3. C.C.989 was enacted to aid in preserving the integrity of cultural and artistic creation where there is a reasonable likelihood that it can be removed from real property without substantial physical harm to it.
   B. Federal Statutory Copyright law.
      2. abolishes distinction between common law and statutory copyright.
      3. automatic statutory protection to all works from creation.
      4. life plus 50 years protection/ for corp. 75 from publication or 100 from creation.
      5. Protects rights in books, periodicals, manuscripts, phonorecords, film, tapes, disks, cards, computer database, computer program, musical works, dramatic works, choreographic works, sound recordings, pictures, graphs and sculptures.
      6. Under the Fair Use Doctrine it is not an infringement of copyright to use a copyrighted work "for purposes such as criticism, comment, news reporting, teaching, scholarship, or research."

II. Federal Patent Law
   A. protects inventions.
   B. gives the inventor the exclusive right to make, use and sell the inventions for 17 years, even though he makes no actual use of it. 35U.S.C.,§1 et seq.
   C. Federal courts have exclusive jurisdiction over patent infringement.
   D. damages and injunction against future infringement.
   E. A patent may be transferred by assignment.
   F. Also may license the use of the patent by a licensee, to make the patented article in consideration of royalties.

III. Trademarks and Trade Names
   A. A trademark is "any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others." B.&P.C. 14207.
      1. Trade mark protection
         a. register with CA Secretary of State and U.S. Patent Office(interstate commerce)
         c. injunction against infringement
         d. seizure of counterfeit goods
         e. criminal sanctions for forgery/improper use.
         f. international protection under international convention.
      2. Transfer by:
         a. signed and acknowledged instrument with Secretary of State.
         b. assigned "with the good will of the business."
   B. A trade name may identify not only goods but also services or business.
      1. Filing a fictitious name certificate creates "a rebuttable presumption that the registrant has the exclusive right to use as a trade name the fictitious business name, as well as any confusing similar trade name, in county in which the statement is filed-------." B.&P.C. 14411.
      2. May register a trademark or trade name under the Lanham Act to give federal protection. Better to register rather than rely on common law protection.
Contracts

Binding agreement.

Unilateral v. bilateral.
Executory v. executed.
express v. implied:
   Implied in fact.
   Implied at law (quasi-contract).
Valid v. void v. voidable.

I. Is there a valid contract?
   A. Genuine mutual assent
      1. offer
      2. acceptance.
      3. absent: bilateral mistake, misrepresentation, undue influence, duress.
   B. Consideration:
      1. bargained for exchange
      2. legal value
      3. substitutes:
         a) voluntary subscription
         b) moral obligation:
            1) debt barred by statute of limitations
            2) debt discharged in bankruptcy
         c) promissory estoppel:
            1) gratuitous promise
            2) detrimental reliance
   C. Capacity:
      1. minors
      2. judicial declaration of insanity
      3. mental deficiency
      4. prisoner
      5. enemy alien
   D. Legal purpose and subject matter
      1. crime/tort
      2. illegal lobbying
      3. obstruction of justice
      4. usury
      5. gambling
      6. sunday closing laws-blue laws
      7. eliminate competition
   E. Proper form
      1. statute of frauds
         a) real property
         b) goods ($500+)
         c) more than one year
         d) pay debt of another
         e) executor pays debt of decedent
         f) part of consideration is marriage
         g) others added by state.
      2. parol evidence rule
         a) exclusionary rule- excludes certain types of evidence from court.
            b) only applies to written contracts
            c) oral evidence that occurred prior to or contemporaneously with the written contract and is being submitted to the court to contradict the written contract.
d) parol evidence is admissible:
1) to clear up an ambiguity
2) to prove fraud, duress, undue influence, mutual (bilateral) mistake.

II. If there is a valid contract, there are duties and rights on both sides.
A. Contractual duties are most commonly discharged by full performance.
B. Non-performance or partial performance is called breach of contract.
C. Contracts may also be discharged by:
   1. the occurrence of a condition subsequent.
   2. Agreement between the parties:
      a) mutual rescission
      b) novation
      c) accord and satisfaction
   3. operation of law:
      a) intentional (fraudulent) alteration of a material term of the contract.
      b) statute of limitations
      c) bankruptcy
      d) objective impossibility of performance
      e) commercial/economic impracticability or frustration of purpose.

III. Alternatives in resolving disputes:
A. settle
B. arbitration
C. mediation
D. litigation/ lawsuit

IV. Remedies available to the non-breaching party:
A. Money damages/remedy at law
   1. compensatory
   2. punitive/exemplary
   3. nominal
   4. consequential/special
   5. liquidated (not a penalty)
   6. duty of non-breaching party to mitigate (minimize) damages.
B. rescission and restitution
   1. cancel the contract
   2. return the parties to their original positions.
C. equitable remedies:
   1. only awarded by the judge if the legal remedy (money damages) is inadequate.
      a) subject of contract is unique.
      2. specific performance of contract. court orders performance of the act promised in the contract. unique goods, land, etc.—but not employment contracts.
      3. injunction/restraining order. court orders a person to stop doing something.
      4. reformation. court rewrites contract to reflect the parties true intent.
      5. quasi-contract. contract implied in law. Judge can create a contract to make things fair/prevent unjust enrichment.
      6. unconscionable. The judge can determine that a contract (or a portion of a contract) is void because it is one-sided or oppressive. An exculpatory clause attempts to contact away liability and may not be enforced if the court determines that it is unconscionable.
V. Third party rights.
A. Third party beneficiary contracts
   Types of 3rd party beneficiary contracts:
   - donee
   - creditor
   - incidental

B. Novation, assignment, and sublease.
   1. Novation—new contract.

   2. Assignment
   Assign rights and delegate duties
   Can assign any contract unless:
   1) too personal
   2) prohibited by law
   3) prohibited by contract ??

3. Sublease

   Landlord
   ▼                     Tenant
                         (Sublessor)
                         ▼
   Sublessee

   A - B - C - O - B
   A - B - C - L - T_1
   A - B - C - T_2
   A - B - C - T_3
   A - B - C - T_4
SALES

Sale-transfer of title to tangible personal property (goods) for a consideration (price). Div. 2 of UCC.

Contract for sale/present sale. Goods must be existing and identified. Contract to sell/title to pass at a future time. To be manufactured-obtained from supplier-segregated from inventory. goods-tangible personal property.

Merchant-A professional in business. Specialized knowledge of the goods and/or business practices involved in the transaction.

The UCC has special provisions for merchants. Examples are:

UCC 2201(2) Statute of Frauds
UCC 2205 firm offers
UCC 2207 confirmatory memoranda
UCC 2209 modification of contract
UCC 2314 warranty of merchantability
UCC 2103(1)(b) reasonable commercial standards of fair dealing.

Under the UCC what will the court do if the following terms of a contract are omitted?

Price

time of delivery

place of delivery

time and place of payment

PASSAGE OF TITLE & RISK OF LOSS

They pass at the same time except when delivery is at the seller's place of business or at the situs of the goods. Risk of loss then passes upon delivery. Passage of title may occur by agreement between the parties anytime after the goods are identified to the contract. If the parties do not express their intention, the rules of law control.

Some of the rules of law:

Seller not required to title passes upon identification-risk of loss passes upon delivery.

shipment contract-both pass at time and place of shipment.

FOB (free on board)-

FOB, Los Angeles-seller has risk of loss and pays cost to named place.

FOB, point of shipment-seller has risk of loss and pays costs until placed in possession of carrier.

FOB vessel-seller bears expense and risk of loss until loaded on carrier.

FOB point of destination-seller bears expense and risk of loss until goods are tendered at destination.

FAS (free along side) vessel (named port)-seller bears expense and risk of loss until delivery alongside the vessel.

Ex-ship- seller bears expense and risk of loss until goods unloaded at named port of destination.

CIF-Price includes cost, insurance and freight to named destination. Risk of loss is with seller until goods are loaded and seller has paid freight and obtained insurance for the buyer.

C & F-Same as CIF, except seller is not required to obtain insurance.
No arrival, no sale—seller bears risk of loss to destination but not liable for nondelivery from transportation hazards. Sale on approval—title and risk pass to buyer when he accepts the goods. Sale or return (on consignment)—risk of loss is on the buyer until the return of the goods.

**Insurable interest**—when goods are identified to the contract.

**Good faith**—one can only transfer title to goods that one has title to unless there is estoppel. Thief. Repairman.

**Rights and Remedies of Seller:**
- Anticipatory repudiation.
- Assurance of performance.
- Insolvency of buyer—cash only.
- Stoppage in transit.
- Cure the nonconforming goods.
- Resell the goods.
- Damages for breach.

**Rights and Remedies of Buyer:**
- Anticipatory repudiation.
- Assurance of performance.
- Insolvency of seller—partial payment.
- Inspection—except COD or CIF.
- Rejection of nonconforming goods/perfect tender rule.
- Cover—purchase substitute goods.
- Damages.
- Specific performance—unique goods.

**Warranties:**

Express or Implied.
Caveat Emptor or Caveat Venditor.

**Express:**
- Promissory warranties—document with words warranty or guarantee, etc.
- Oral/written statements affirming a fact about goods.
- Oral representations concerning written contracts.
- Samples/models.
- Opinions/comments are not warranties. "puffing" or "sales talk".

**Implied:**
- **Title**
- Against infringement of patent/trademark.
- **Merchantability.**
- **Fitness for purpose.**
- **Foods and drugs:** foreign substance doctrine.

**Disclaimer clauses** to limit or eliminate warranty liability. Not looked at favorably by the courts.
PRODUCT LIABILITY

I. All major legal theories can be used in cases involving defective products. 
crimes
  civil wrongs
  contracts (breach of warranty; requires privity)
torts
  intentional torts
  negligence (prove negligence caused defect)
  strict liability

II. Until 1963, product liability cases were based on either breach of warranty or negligence. Beginning in 1963 California adopted the theory of strict liability in product liability cases. California has been the leading state in product liability law.

III. A few California Supreme Court cases:
  A. Escola v. Coca Cola Bottling Co. One justice suggested that a manufacturer's liability should be imposed irrespective of fault.
  B. Greenman v. Yuba Power Products. Same justice wrote opinion for a unanimous court establishing strict liability of manufacturer for physical injury caused by defective product.
  C. Vandermark v. Ford Motor Co. Extends to retailer and others in the distribution chain. Extends to defects in the "design, manufacture, assembly, or adjustment" of the product.
  D. Seely v. White Motor Co. Extends to damages to goods resulting from defective condition of goods. No liability for commercial or economic loss.
  E. Reed v. Safeway Stores. Extends to containers.
  F. Elmore v. American Motors. Extends to bystanders.
  G. Toole v. Richardson-Merrell Inc. Extends to preparation of drugs and failure to give warning of dangerous propensities.
  H. Hanberry v. Hearst Corp. Held publisher liable for defective product advertised in its publication.
  I. Kriegler v. Eichler Homes, Inc. Extends to mass produced tract houses (real property).
  J. Price v. Shell Oil Co. Extends to leased defective product.
  K. Handgun suits against manufacturer's of "Saturday night specials." Has not been extended to cover such situations.
  L. Bernal v. Richard Wolf Med. Instruments Corp. Arthoscopic scissors broke during surgery on plaintiff's knee. Under the risk-benefit test once the plaintiff has proven that the defect has caused injury, the defendant had the burden of showing that the benefits outweighed the danger. Must consider the feasibility of a safer design.

IV. California products liability law has developed on a case by case basis. It is, therefore, primarily judge made law. The statutory law in this field has come later in time and has primarily been passed to restrict the growth of the case law.
COMMERCIAL PAPER/NEGOTIABLE INSTRUMENTS

I. Introduction
A. Special type of contract for the payment of money.
B. Product of "law merchant".
C. Make credit transactions possible and operate as a substitute for money.
D. Covered by U.C.C., division 3.

II. Types of negotiable instruments
A. Promissory notes—written promise to pay money-maker and payee.
B. Drafts (bill of exchange)—order by one person upon another person to pay money to a third person—drawer, drawee, and payee.
   1. Check
   2. Cashier's check
   3. Certified check
   4. Bank draft
   5. Trade acceptance
   6. Commercial draft:
      a) Sight
      b) Time
   7. International bill of exchange
C. Certificate of deposit (CD)

III. Negotiability
A. UCC 3104
   1. Writing
   2. Signed
   3. Unconditional promise or order
   4. Sum certain in money
   5. Payable on demand or at a definite time
   6. Payable to order or to bearer
B. Negotiability is not affected by antedating or postdating

IV. Transfer
A. By negotiation or assignment
B. Negotiation—transfer in manner prescribed by UCC 3202(1)
   1. Bearer paper—delivery alone
   2. Order paper—indorsement and delivery
C. Allonge
D. Types of indorsements:
   1. Blank—mere signature by indorser—converts to bearer paper.
   2. Special—"pay to the order of ***"—order paper
   3. Qualified (nonrecourse)—"without recourse"—limits liability of indorser.
   4. Restrictive:
      a) Conditional
      b) Attempts to prohibit further transfer
      c) Deposit and collection
      d) Trust
E. Transferor's liability
   1. Every negotiator incurs some liability.
   2. UCC 3414(1), general guaranty
   3. UCC 3417(2)(3), warranties
   4. "Makers" and "acceptors" have primary liability.
   5. "Drawers" and "indorsers" have secondary liability.
<table>
<thead>
<tr>
<th>METHOD OF TRANSFER</th>
<th>WARRANTIES</th>
<th>GUARANTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>blank, special,</td>
<td>UCC 3417(2)(3)</td>
<td>If on due presentment, the instrument is not paid, the indorser will pay, if given due notice of dishonor.</td>
</tr>
<tr>
<td>restrictive</td>
<td>1. good title</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. genuine signatures</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. no alteration</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4. no defense to payment</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5. no knowledge of insolvency of obligor.</td>
<td></td>
</tr>
<tr>
<td>QUALIFIED</td>
<td>Same as above, except #4 is &quot;no knowledge of defense to payment.&quot;</td>
<td>NONE</td>
</tr>
<tr>
<td>(nonrecourse)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DELIVERY ALONE</td>
<td>Same as top, but only to the immediate transferee.</td>
<td>NONE</td>
</tr>
<tr>
<td>(bearer paper)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

V. Holder in due course
   A. "bearer"-in possession of a negotiable instrument
   B. "holder"-in possession and payable to him or to his order or to bearer
   C. "holder in due course"-similar to BFP
      1. good faith purchaser
      2. for value
      3. without notice it was overdue/dishonored
      4. without notice of defense/adverse claim
   D. defenses (in California):
      1. Red/universal: good against all holders including a holder in due course.
         a) fraud in the execution-rare
         b) unauthorized signature of maker/includes forgery
         c) material alteration-enforced according to "original tenor"
         d) incapacity
         e) illegality if statute declares instrument is void
         f) duress if threat of great bodily injury or death.
      2. Personal/limited: good against anyone but a holder in due course.
         a) fraud in the inducement
         b) failure of consideration/breach of contract.
         c) nondelivery
         d) illegality if statute does not declare instrument void
         e) duress if less than threat of great bodily injury or death.

VI. Banking
   1. check-sight draft drawn on a bank
   2. most common commercial paper
   3. payable on demand unless postdated
   4. bank has no duty to holder, only to account holder.
   5. stale check
   6. stop payment
   7. overdraft
   8. forged checks
   9. altered checks
   10. death of customer
   11. failure to indorse check for deposit-bank may supply indorsement.

VII. Electronic fund transfer systems (EFTS)
   A. EFTA covers consumer, not commercial transactions
   B. emerging area of law
   C. ATM, automated teller machine
   D. PIN, personal identification number.
I. Prior to the U.C.C.—jumble of devices and laws.

A. conditional sale
   1. installment purchase of consumer goods
   2. seller retained title until paid
   3. but really only had a security interest
   4. no recording for perfection.

B. chattel mortgage
   1. consumer loaned money for purchase
   2. and gave lender a mortgage on chattel purchased
   3. lender got lien until paid
   4. recording required to perfect.

C. bailment lease
   1. buyer rented property
   2. when rental payments equaled purchase price, buyer took title

D. trust receipt
   1. financed inventory
   2. bank took title to goods by taking a bill of lading for the
      goods and paying the accompanying sight draft for the purchase price
   3. the bank gives the merchant the bill of lading in exchange for a
      trust receipt
   4. merchant takes bill of lading to common carrier to pick up the
      goods and puts the goods on the floor of his business
   5. the merchant holds the goods in trust for the bank and pays the
      bank when they are sold.

E. field warehousing
   1. manufacturer wants to borrow money using his existing inventory
      as collateral
   2. segregates inventory in his own plant
   3. leases that portion of plant to warehouseman for a nominal rent
   4. warehouseman issues warehouse receipts
   5. manufacturer uses warehouse receipts as collateral for a loan
   6. as goods are needed, manufacturer buys back warehouse receipts
      and removes goods from the "warehouse".

II. Today, Article 9 of the U.C.C. covers secured transactions.

A. makes rules more uniform and simple.

B. "security agreement" replaces all devices mentioned in item I.
   creates security interest in the collateral in favor of the secured
   party against the debtor.

C. covers:
   1. any transaction intended to create a security interest in
      personal property, and
   2. any sale of accounts (receivable).

   3. California adds subdivision (4) to section 9-102:
      "Notwithstanding anything to the contrary in this division, no
      nonpossessory security interest, other than a purchase money security
      interest, may be given or taken in or to the inventory of a retail
      merchant
      held for sale, except in or to inventory consisting of durable goods
      having a unit retail value of at least $500 or motor vehicles, house
      trailers, semitrailers, farm and construction machinery and repair
      parts thereof, or aircraft."

D. definitions set forth in U.C.C. 9-105:

   - secured party
   - debtor
   - collateral
   - consumer goods v. equipment v. inventory
E. perfection—U.C.C. 9-302, 9-304, and 9-305
1. ordinarily by filing a security agreement with the secretary of state.
2. automatic upon execution of security agreement—consumer goods.
3. taking possession—investment securities—pledges
F. seller's rights are triggered by "default" of debtor.
1. In California, provisions of the U.C.C. give way to the provisions of the Unruh Act (C.C. 1801-1812.20). comprehensive regulation of retail installment sales, except motor vehicles.
2. repossessing seller has 10 days to elect to resell or retain goods in satisfaction of obligation
3. bars deficiency judgments in retail installment sales.
G. inventory financing
1. basic lien is security agreement
2. filing is usually required to perfect
   a) effective for 5 years from filing
   b) will lapse unless continuation statement is filed prior to lapse
   c) can be continued indefinitely
H. Pledges
1. pawnshop transactions
2. deposit of securities with bank as security for loan
I. suretyship and guaranty
1. suretyship—agreement to answer for debt, default, or misconduct of another—surety pays if debtor does not pay
2. guaranty—agreement to answer for debt of another—guarantor pays if debtor can not pay
3. California Civil Code expressly abolished the distinction
J. exoneration
K. indemnity
L. subrogation
M. contribution
III. Rights of Debtors and Creditors
A. mechanics lien on real property
B. artisan's lien on personal property
C. innkeeper's lien on personal property
D. writ of execution—post judgment remedy directed to sheriff/marshal
E. writ of attachment—obtained after filing complaint but prior to judgment—to freeze an asset
F. garnishment (of wages)—usually directed to employer
G. repossess v. foreclosure—personal v. real property
H. bulk sales (transfers)—notice giving requirements in sale of substantial portion of business assets
I. Part of the U. S. Constitution
   A. Congress has power to establish "uniform laws on the subject of
      Bankruptcies throughout the United States." (U.S. Const., Art.I, sec. 8)
   B. Federal courts administer bankruptcy law
   C. In some peculiarities state law is applicable, where Congress
      expressly permits.
   D. insolvency v. bankruptcy
   E. object: discharge debts—protect creditors
II. Bankruptcy chapters to remember
   A. chapter 7—liquidation—applies to individuals and business
   B. chapter 11—reorganization—until recently only applied to
      business—now applies to individuals who exceed the limits of chapter 13
   C. chapter 13—plan of rehabilitation for individuals who do not
      exceed limits
   D. chapter 12—plan of rehabilitation for farmers
III. Voluntary v. Involuntary
   A. applies to chapters 7 and 11.
   B. voluntary bankruptcy is brought by debtor himself to discharge his
      debts.
   C. involuntary bankruptcy is brought by 3 or more creditors whose
      unsecured claims total at least $5,000.
IV. Trustee in bankruptcy
   A. takes possession of all debtors property
   B. "steps into the shoes of debtor"—has all rights
V. Exemptions (items debtor keeps):
   A. State and federal law provide distinctly different exemptions for
      a debtor in bankruptcy. Generally, California exemptions are more
      favorable to homeowners, while federal exemptions are more favorable to
      renters.
   B. The federal Bankruptcy Code permits each state to preclude use of
      the federal exemptions and to require a debtor in bankruptcy to be
      subject to state exemptions. 11 U.S.C., Sec. 522(b)(1).
   C. Federal exemptions are not authorized in California. C.C.P.
      703.130(a). Formerly, the C.C.P. provided for an election between
      federal and state exemptions. repealed, 1984.
   D. Now, 2 sets of state exemptions are available:
      1. The regular exemptions provided by C.C.P. 703.010 et. seq., and
      2. special exemptions provided by C.C.P. 703.140(b)
VI. Debts discharged
   A. The object of bankruptcy is to discharge debts.
   B. Not all debts are discharged:
      1. taxes (federal, state, and local)
      2. spousal support (alimony)
      3. child support
      4. fraud damages
      5. intentional tort damages
      6. debts not listed in the bankruptcy petition
AGENCY

I. Every relation in which one person (agent) acts for or represents another (principal) by the latter's authority.
   A. principal-agent
   B. employer-employee, or principal-independent contractor
      1. main issue is the degree of control
      2. reasons for classifying:
         a. tort liability
         b. worker's compensation
         c. unemployment
         d. state & federal withholding, FICA, SDI, etc.
   C. classifying by degree of power:
      1. special-limited powers
      2. general-broad powers
      3. universal-broadest powers-not recognized in California.
   D. capacity:
      1. principal-must have
      2. agent-immaterial

II. Formation of Agency
   A. Appointment/intentional
      1. usual method
      2. may be written or oral
      3. must be in writing if:
         a. power of attorney-special or general
         b. equal dignity rule-agent's authority must be in writing if
            agent is authorized to enter into a contract that must be in writing
            under the statute of frauds.
   B. estoppel
      1. conduct of principal prior to contract
      2. leads 3rd parties to believe authority exists.
   C. ratification
      1. approval by principal after contract entered into by agent and
         3rd party.
   D. operation of law
      1. emergency situations-agent must act quickly to protect
         principal's interest and no time to contact.

III. Termination of Agency
   A. lapse (expiration) of time
   B. purpose achieved
   C. mutual agreement
   D. at will-either party
   E. death/insanity-either
   F. bankruptcy-either
   G. impossibility-destruction of subject matter
   H. wrongful termination (discharge/firing)
      1. agent is terminated
      2. may be entitled to damages
      3. duty to mitigate damages
   I. notice of termination:
      1. not fired until agent receives notice
      2. notice to 3rd persons-personal and public notice
      3. death/insanity-termination immediate even though no notice to
         agent

IV. Powers of Agent
   A. express-told by words/conduct
   B. implied:
      1. incidental to express authority
      2. customary in community/industry
   C. apparent authority-3rd party reasonably believes.
V. Duties of Agent
   A. fiduciary duty-trust, confidence, good faith, honesty
      1. high degree of loyalty and good faith (loyalty)
         a. refrain from competing
         b. no secret profits
      2. obey instructions exactly (obedience)
      3. use reasonable skill, care, & diligence (performance)
      4. account to principal (accounting)
      5. keep principal informed (notification)

VI. Duties of Principal
   A. to compensate agent for services
   B. to reimburse/indemnify for expenditures and losses
   C. to allow agent to act
   D. to provide safe working conditions

VII. Disclosure of Agency
   A. If agent has authority and fully discloses agency and principal, agent has no personal liability. Principal is liable.
      1. principal by/per agent,
      2. name of company and position
   B. partially disclosed agency
      1. discloses agency, but not principal
      2. California cases indicate that the agent is personally liable (Otis Elevator v. Berry, 28 C.A. 430)
   C. undisclosed agency
      1. principal may enforce contract against 3rd party
      2. 3rd party may enforce contract against either agent or undisclosed principal upon discovery.

VIII. Liability of Principal for Agent's Actions
   A. contracts
      1. principal liable if within scope of authority
   B. torts
      1. respondeat superior—principal liable for torts of agent if "within course and scope of agency"
      2. principal not liable if agent "on a frolic of his own"
      3. agent is always liable for his own torts
   C. crimes
      1. principal not liable unless he participated (conspiracy, solicitation)
      2. agent is always liable for his own crimes
   D. the knowledge of the agent is imputed to the principal. "What the agent knows, the principal also knows."
I. Three basic types of business organizations.
   A. sole proprietorship
   B. partnership
      1. general
      2. limited
   C. corporation
II. sole proprietorship
   A. one owner who is the business/absolute control
   B. simplest/easiest to form
   C. receives all profit/risk
   D. limits capital/management expertise
   E. unlimited liability of owner
   F. no special body of rules to govern
III. partnership
   A. association of 2 or more persons to carry on a business for profit
      as co-owners
   B. The general law is set forth in:
      1. Uniform Partnership Act, and
   C. Partnership law is based on agency law.
   D. Partnerships are not regulated the way other businesses are:
      1. partnership doesn't pay income tax. files information return
         only, individual partners pay tax in their own brackets.
      2. "professional" (lawyers, doctors, etc.) partnerships are not
         licensed. Each partner is.
      3. legal entity for some purposes, but not for others: ie. for
         ownership of real property, but not for income tax.
IV. general partnership (partnership)
   A. all partners are general partners and have unlimited personal
      liability for partnership debts.
   B. 3 tests of a partnership:
      1. sharing capital contribution (ownership)
      2. sharing profits and losses
      3. sharing of management decisions
   C. partnership by estoppel—see "agency by estoppel"
   D. written partnership agreement is not required, but is highly
      desired. agreement may be oral or implied by conduct. but, written
      agreements can anticipate certain problems.
      1. taking on new partners. without an agreement, any partner can
         prevent entry of a new partner. written agreement could provide for
         voting requirements, capital contribution, etc.
      2. partner becomes unable to contribute (insanity, prolonged
         illness, drafted, etc.). without partnership agreement, he continues to
         receive his share of profits. suit for dissolution is costly and time
         consuming. written agreement could provide for voting out and paying
         off a partner.
      3. management decisions. without agreement, by majority vote. "one
         partner, one vote" unless otherwise agreed upon. even number can result
         in deadlock and dissolution. agreement can weight votes or provide for
         arbitration.
      4. profits and losses: without agreement, shared equally. written
         agreement can provide differently.
      5. no compensation to a partner unless agreed upon in partnership
         agreement. only entitled to a share of the profits.
      6. partners are fiduciary of the partnership and the other
         partners. highest good faith, honesty, undivided loyalty. devote full
         time to business. no secret profit. account for all money & property.
         can't use assets for personal gain
      7. fictitious business name statement. must be filed with county
         clerk or secretary of state within 40 days of commencement of business.
         publication within 30 days of filing. expires in 5 years. BPC sections
E. partners as agents
1. every partner is an agent of the partnership and of the other partners. rules of agency apply.
2. each partner can sign contracts and checks within the scope of the business and the other partners are liable. apparent authority. secret limitations don't apply to 3rd parties.
3. all partners are liable if one partner commits a tort within the scope of the business. if it is a "personal" tort, only the partner who commits it is liable.
4. to sue a partnership one should sue the partnership and the individual partners. any judgment could be satisfied from partnership assets and individual partners' assets. minors as partners are liable only for their share of partnership assets.

F. termination of partnership
1. if no time limit set, any partner can resign at any time and automatically dissolve partnership. can be arbitrary. agreement can require a vote of majority, 2/3, unanimous, etc.
2. death/bankruptcy of partner.
3. partner is expelled.
4. court dissolution. must be grounds:
   a. insanity
   b. incapacity
   c. can only be carried on at a loss
   d. impropropriety or improper conduct—personal dissension, fraud, habitual intoxication.

G. dissolution/winding up
1. sell all assets, pay business debts and expenses, and divides proceeds amongst partners.
2. partnership agreement could anticipate some problems:
   a. was an donated or loaned to partnership? partnership agreement could state intent. absent a partnership agreement, the sole partner is determined on facts presented to a court.
   b. what is to happen to intangibles like a lease, telephone number, copyright, patent, trademark, etc.
   c. instead of selling property and dividing proceeds, partnership agreement could allow partner to take property instead.
3. deficit—assets not enough to pay debts.
   a. each partner contributes his share—equal absent a partnership agreement.
   b. if one pays more than his share, he can sue the others for a contribution.
4. partnership continues until winding up is complete and assets distributed.
   a. fiduciary duty
   b. apparent authority after dissolution. notice to creditors and public.
5. financial disaster—avoid selling and going out of business
   a. "buy and sell" arrangement to buy out the partner (or his estate) at a specified price. keeps business going. gets more money for withdrawing partner than forced sale.
   b. "key person" life insurance on each partner to provide cash to buy out the estate of the deceased partner.
6. liability of withdrawing partner for debts of partnership
   a. debts incurred after he withdraws. not liable if notice (individual & public) to creditors of withdrawal.
   b. debts incurred prior to withdrawal. liable if partnership assets are insufficient.
V. limited partnership

A. one or more general partners and one or more limited partners.

B. general partner

1. unlimited liability—all assets
2. exclusive right to control business

C. limited partner

1. limited liability—contribution to partnership only.
2. no voice in management. If limited partner participates, he has unlimited liability. Corp. C. 15632(b) lists things a limited partner may do.

D. must comply with state statutes. Very formal organization.

1. file "certificate of limited partnership" with secretary of state/similar to corporations.
2. name must contain words "a California limited partnership."

E. major use is in real estate development.
I. Introduction
A. an organization of many persons providing capital to operate a business operated by a representative group known as a board of directors.
B. one of three forms of doing business in California.
C. formal statutory requirements must be followed.
D. separate legal entity generally taxable.
E. perpetual existence since 1931 in CA. previously 50 years maximum.
G. Corp. C. since 1947; revised 1977.

II. Classification of Corporations
A. domestic, foreign, alien
   1. domestic-formed under laws of CA
   2. foreign-formed under laws of another state
   3. alien-incorporated in another country
B. public, private
   1. public-formed by government
   2. private-for private benefit-most.
C. nonprofit-charitable, educational, religious
D. close-small number of owners-not sold to public
E. S corporation-small domestic corporation (35 or fewer US citizens)-special treatment under Internal Revenue Code, taxed as partnership.
F. professional-doctors, lawyers, etc.-tax benefits.

III. Differences between corporations and partnerships
A. corporation is formal and complies with state statutes, partnership can be formal or informal.
B. corporation may have perpetual existence. partnership terminates on death, bankruptcy, withdrawal, etc. of any partner.
C. corporation's management and control is in a board of directors; not in the shareholders. each partner has an equal voice in management.
D. corporate shareholders have limited liability. each partner is fully liable for all business debts.
E. ownership interest in a corporation is easily transferred, can not become a partner without consent of existing partners.
F. corporations have double taxation (corporation & individual stockholders). partnerships are not taxed; partners are.
G. corporations may have more variety in raising capital; equity (stock), debt (bonds, loans). partnerships are more limited in fund raising.
H. corporations have "professional" managers. partnerships are managed by partners.
I. generally, employee benefits are greater for corporations than for partnerships.

IV. Forming a corporation
A. promotion-preliminary steps in organizing
   1. Promoters line up contracts for corporation personally liable if corporation doesn't adopt them, unless expressly stipulated the other party will only look to corporation for performance.
   2. decide what stock will be issued.
   3. issue prospectus.
   4. pre-incorporation subscriptions-pledge to buy stock when corporation is formed-treated as revocable offers-not usual.
   5. promoters are paid by promotion stock (as much as 1 out of every 9 shares) and by salaries as officers of corporation.
   6. promoters have a fiduciary duty to corporation.
B. incorporation
   1. prepare and file articles of incorporation with Secretary of State.
   2. articles of incorporation contain:
      a. name of corporation
      b. broad statement of purpose
      c. name/address of initial agent
      d. total number of shares authorized
      e. designation of classes of stock
      f. rights, preferences & restrictions for each class
      g. power to levy assessments
      h. pre-emptive rights must express
      i. qualifications of shareholders
      j. limitation of duration of corporation
   3. upon notification by Secretary of State of authorization, file copy with county clerk where principal office is maintained. not in CA.
   4. directors adopt bylaws-rules for internal government of corporation.
   5. directors appoint officers
   6. resolution to reimburse promoters for expenditures
   7. resolution to apply to Corporations Commissioner for permit to issue stock.
   8. stock issued and sold in accordance with a plan of capitalization.
V. Close corporation (Corp. C. 158) allows certain California corporations to have the separate entity status of a corporation while maintaining the informal structure of a partnership.
   A. management and control may be by a written shareholders agreement.
   B. limited liability and right to participate in management & control.
   C. articles must state:
      1. stockholders can't exceed a specified number not in excess of 35.
      2. "This corporation is a close corporation."
   D. single shareholder can file for involuntary dissolution. protect by:
      1. buy out or option provision in shareholders' agreement.
      2. arbitration provision in shareholders' agreement.
VI. Corporate status:
   A. de jure corporation-more perfectly formed
   B. de facto corporation-substantial compliance with statutory requirements.
   C. corporation by estoppel-no attempt to comply-hold out to be corporation-estopped to deny that it is a corporation.
   D. disregard of corporate entity-piercing the corporate veil-alter ego doctrine.
      1. closely held-identity of interest test.
      2. recognizing corporate entity will promote fraud/injustice.
VII. Directors
   A. initially, self appointed.
   B. elected by stockholders annually thereafter.
   C. need not be stockholders or residents in CA.
   D. not entitled to compensation in absence of bylaws.
   E. majority vote may remove director without cause-10% vote to remove for cause.
   F. supreme authority of corporation-set major policies-fix and direct business and operational program of corporation.
   G. select, supervise and fix compensation of officers.
   H. determine dividend payments, financing and capital changes.
I. formal and informal action

1. formal notice of meeting requires a quorum (majority) to vote.
2. informal under CA Corp. C. dispenses with notice under some circumstances, telephone conferences, no meeting if all members consent in writing.

J. directors may not delegate duties, may appoint committees and delegate authority to them.

K. exercise reasonable skill, care and diligence.
   1. "an ordinarily prudent man would exercise in the management of his personal business affairs."
   2. "a normally prudent director would exercise in like circumstances."
   3. excludes "honest errors of judgment."

L. personally liable for improper payment of dividends.

M. personally liable for "ultra vires" acts—beyond the authorized powers of the corporation.

N. fiduciary duty to corporation
   1. conflict of interest
   2. interlocking directorates
   3. approval by independent majority of directors—Corp. C. 310(a)(3) and (b)(2) says "justice and reasonableness" are key.

4. corporate opportunity rule—directors and officers have duty to advise and give corporation opportunity to take advantage of profitable business deals in corporation's field.

O. fiduciary duty to stockholders (insider trading)
   1. federal statutes
      a. Securities Exchange Act of 1934, section 10(b)
      b. SEC rule 10b-5; unlawful to use inside information in connection with the purchase and sale of stock.
      c. Securities Exchange Act of 1934, section 16(b); directors & officers of corporation with more than 500 shareholders and $1,000,000 in assets, and own more than 10% of stock, may be required to disgorge "short swing profits" (purchases & sales within 6 months).

   2. state statutes:
      a. CA Corp. C. 25402 makes it unlawful to take advantage of inside trading.
      b. CA Corp. C. 25502 prescribes damages of victim of such unlawful conduct.

P. special facts doctrine—directors and officers can not deal at arm's length with stockholders. must inform stockholder of special facts of which officer/director has knowledge.

VIII. Officers

A. chosen by board of directors

B. CA Corp. C. 312(a) requires corporation to "have a chairman of the board or a president or both, a secretary, a chief financial officer and such other officers with such titles and duties as shall be stated in the bylaws." and

C. also provides, "Any number of offices may be held by the same person unless the articles or bylaws provide otherwise."

D. chairman of the board is chief executive officer. chairman and president frequently combined. if not, president is second in importance. the president may be the real controlling power or a mere figurehead, depending on internal structure.

VIII. Corporate powers

A. corporation can generally do the same things that a natural person can do. Corp. C. 207.

B. corporation can purchase its own stock from earned surplus (profits). shares of stock re-acquired are called treasury shares. CA eliminates concept of treasury shares. Corp. C. section 510(a) provides "when a corporation purchases or redeems or otherwise acquires its own shares, such shares are restored to the status of authorized but
unnissued shares, unless the articles prohibit the reissueance thereof." earned surplus also has no application in CA.

C. in CA a corporation may "participate with others in any partnership, joint venture or other association, transaction or arrangement of any kind, whether or not such participation involves sharing or delegation of control with or to others." Corp. C. 207(h)

D. in CA, corporations may "make donations, regardless of specific corporate benefit, for the public welfare or for community fund, hospital, charitable, educational, scientific, civic or similar purposes." Corp. C. 207(e)

E. "ultra vires" acts are beyond the authorized powers of the corporation. CA abolished this concept in Corp. C. 208(b). Ultra vires transactions are now binding on both parties.

X. Stocks & bonds
A. means of raising capital
B. stock represents equity.
C. common stock has no special rights/privileges. voting stock. must have.
D. par value--specific dollar value on face. face value and real value (book value) seldom coincide. par value has no real meaning. CA Corp. C. eliminates concept of par value.
E. preferred stock has preference as to dividends and/or liquidation.
1. cumulative v. noncumulative
2. participating
3. redeemable/convertible
F. bonds are long term notes given for loans of money

XI. Stock issuance
A. corporation must qualify its stock with the Commissioner of Corporations prior to soliciting sales or issuing stock. to protect public from stock frauds. state "blue sky laws", Corporate Law.

B. federal laws protecting the investor are:
1. Securities Act of 1933 (Truth-in Securities Act)
2. Securities Exchange Act of 1934

C. Division 8 of UCC is a "negotiable instruments law dealing with securities." Rules same as commercial paper.

XII. Dividends (distributions)
A. normally paid from earned surplus (profit). CA abandoned terms "earned surplus" and "paid in surplus"
B. Corp. C. 500 provides that dividends (distributions) cannot be paid unless the retained earnings exceed the amount of the dividend or unless after the dividend "the sum of the assets of the corporation—would be at least equal to 1½ times its liabilities—and—the current assets of the corporation would be at least equal to its current liabilities—.

C. insolvency test, dividends may not be paid if, as a result, the corporation would not be able to meet its liabilities as they mature. Corp. C. 501

D. dividends may be paid in cash, property or stock of corporation. usually cash. stock dividends. stock splits.
E. discretionary with directors.
F. dates: declaration date, record date, payment date.

XIII. Stockholders
A. one share, one vote unless articles provide otherwise.
B. proxy—appoint representative to cast vote.
C. cumulative voting—required in CA—minority shareholders have better chance of representation.
D. preemptive rights—right of existing stockholders to purchase new issues of stock proportionate to existing holdings.
E. can inspect books and records at reasonable times for purposes reasonably related to interest as stockholder.

F. corporation must send annual report to stockholders if 100 or more shareholders.

G. representative or derivative suits may occur where corporation has cause of action and does not prosecute. stockholders sue on behalf of corporation.

H. stockholders generally have limited liability except:
   1. "pierce the corporate veil"
   2. contract to purchase stock-partial payment.
   3. watered stock (overvalued).

XIII. Reorganization/dissolution

A. merger-purchase of one corporation by another

B. consolidation-combination of 2 corporations to form a new and distinct corporation.

C. CA Corp. C. 181-types of reorganization
   1. merger
   2. exchange (stock for stock)
   3. sale of assets (stock for assets)
   4. does not refer to "consolidation"

D. dissolution
   1. voluntary-Corp. C. 1900 requires approval of 50% of voting shares.

   2. involuntary-initiated by creditors of insolvent corporation or petition by 1/3 of stockholders. Corp. C. 1800(a)(2)(3).

E. winding up-after certificate of election to dissolve is filed with Secretary of State, corporation immediately ceases to do business. directors must liquidate assets necessary to effect winding up. pay debts. distribute assets.
I. Administrative agencies are created to carry out governmental programs at all levels of government. They are quasi-judicial bodies outside the regular court system.
A. have broad judicial type powers.
B. have investigative, prosecutorial, and adjudicating functions in their statutorily designated areas of operation.
C. theoretically, they have specialized expertise and are capable of dealing rapidly and flexibly with problems in their area of expertise.

II. Federal administrative agencies
A. examples:
   1. Federal Trade Commission (FTC)
   2. Interstate Commerce Commission (ICC)
   4. Federal Power Commission
   5. National Labor Relations Board
   6. Federal Communications Commission
B. designed to carry out the general policies specified by Congress.
C. Some members of administrative agencies are politically appointed.

III. CA administrative agencies include:
A. agriculture and services agency
   1. dept. of food and agriculture
   2. dept. of consumer affairs
   3. franchise tax board
   4. dept. of veterans affairs
B. business and transportation agency
   1. state banking dept.
   2. dept. of corporations
   3. dept. of real estate
C. health and welfare agency
D. resources agency
E. public utilities commission
F. fair political practices commission

IV. Powers of an administrative agency
A. power to make laws (legislative power)
   1. Traditional, under the Constitution, only our elected officials had the power to make laws.
   2. Today, Congress and the administrative agencies share the legislative power.
B. investigatory power (executive power) to research, gather, observe and examine the facts in order to police the subject area under the agency's control.
C. power to sit as a court (judicial power)
   1. to determine if there is any violation of the law.
   2. The "judge" is not impartial because the accused party is charged with violating the "judge's" law, not "the law".
   3. No right to trial by jury in an administrative hearing.
D. Combines powers from all 3 branches of the government. Is considered to be part of the executive branch.

V. Appeal of an agency's ruling.
A. No one is above the law, not even a branch of the government.
System of checks and balances. Theoretically, the administrative agency could not go too far because of judicial review.
B. A ruling of an administrative agency may be appealed to the courts. However, since such decisions are highly discretionary, courts rarely overturn such rulings.
C. A matter involving discretion will not be reversed unless there is:
   1. error of law, or
   2. a clear abuse of discretion, or
   3. arbitrary or capricious exercise of discretion.

VI. Administrative agencies are, obviously very powerful. But their power is limited.
A. effective with small and medium size companies, but not large.
B. political pressure-members are sometimes politically appointed.
C. A large corporation can field a larger number of attorneys than government agency can afford to put on one case. Each document filed with the court must be answered with another document.
D. Most effective tool against large corporations is the "ear of the public."
ANTITRUST

I. The major part of antitrust law is covered by federal statutes applicable to activities within the power of Congress over commerce. The interpretation and enforcement of these statutes have created a vast accumulation of complex and constantly changing case law.

II. The main purpose of antitrust law is to discourage monopolies and to encourage competition.

III. Sherman Act
   A. prohibits agreements to restrain trade.
   B. prohibits some monopolies
   C. Exempt: labor unions, public utilities, banking, insurance, cooperatives, baseball, government bodies, exporters, cooperative research ventures.
   D. Who can sue? dept. of justice, state government, and any individual with standing (antitrust violation was a direct cause of injury to plaintiff's business activity)

   Remedies:
   1. treble damages—deterrent
   2. also, possible criminal prosecution
   3. divestiture

F. illegal per se
   1. price-fixing
   2. group boycotts
   3. competitors agree to divide market
   4. resale price maintenance—formerly legal under fair trade laws.

IV. Clayton Act
   A. more specific than Sherman Act
   B. Dept. of Justice, F.T.C., and individuals with standing may sue.
   C. prohibits:
      1. price discrimination
      2. exclusionary practices, ie. tying arrangements, exclusive dealing contracts, requirements contracts.
      3. certain mergers:
         a. horizontal—most objectionable
         b. vertical
         c. conglomerate
CONSUMER PROTECTION
I. "caveat emptor" v. "caveat venditor"
II. federal law
A. advertising
   a. prohibits unfair or deceptive acts or practices.
   b. cease and desist orders
   c. counter advertising
   d. puffing
   e. bait and switch
B. labeling and packaging
C. sales and warranties
1. door to door sales (3 day cooling off)
2. funeral homes
3. used cars
4. real estate
D. credit
1. Truth In Lending Act-disclosure of loan terms required by regulation Z.
2. credit cards-TILA applies
3. Fair Credit Reporting-protects from inaccurate/unfair credit reports
4. Equal Credit Opportunity Act
5. Fair Debt Collection Practices Act
E. health and safety
1. Federal Food, Drug, and Cosmetics Act
2. Flammable Fabrics Act
3. Consumer Product Safety Act
III. CA Laws
A. Unruh Act (C.C. 1801-1812.20)
1. Jan. 1, 1960-1st major consumer protection law in CA
2. comprehensive regulation of retail installment sales, including conditional sales, and installment charge accounts. Except sales of motor vehicles.
3. must be in writing and contain regulation Z disclosures.
4. labeled "security agreement"
5. contained in a single document.
6. buyer may pay in full at any time/refund on finance charge
B. Automobile Sales and Leasing Acts
1. Rees-vaerring Motor Vehicle Sales and Financing Act (C.C. 2981-2984.4) cost of credit disclosure requirements in sales of motor vehicles.
2. Moscone Automobile Leasing Act (C.C. 2985.7-2990) disclosure in leases of motor vehicles. includes lessee's liability at end of lease period.
C. Consumer Affairs Act (B.P.C. 300-336) creates Dept. of Consumer Affairs
D. Song-Beverly Credit Card Act of 1971 (C.C. 1747-1748.5)
1. exempts cardholder from liability for unauthorized use if issuer notified within reasonable time after loss or theft.
2. cardholder's liability limited to $50 in all events.
3. cardholder has same defenses against card issuer that he has against the retailer.
E. Consumer Credit Reporting Agencies Act (C.C. 1785.1-1785.35) protects consumer against harmful erroneous information regarding his credit. disclose credit reporting agency. reinvestigate. if not changed, indicate that it is disputed.
F. Consumer Legal Remedies Act (C.C. 1750-1784) allows class action suit by consumer harmed by unfair/deceptive act in sale/lease of goods/services.
G. Home Solicitation Contract Law (C.C. 1689.5-1689.13) if sale in home of $25 or more; 3 day cooling off; seller may retain 5% of cash price, not to exceed $15.
H. many other laws.
ENVIRONMENTAL PROTECTION

I. Regulated by both federal and state law.

II. Water quality
   A. Primary CA statute is the Porter-Cologne Water Quality Control Act
      (Water C. 13000 et seq.)
   B. CA oil spills (Govt. C. 8574.1)
   C. Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C.,
      sec. 1251 et seq.)

III. Air quality
   A. Various sections of the Health and Safety Code in CA.
   B. Federal Clean Air Act (42 U.S.C., sec. 7401 et seq.) requires state
      plan.

IV. Exhaust and smoke
   A. Engine exhaust, CA Health & Safety Code 43000 et seq.
   B. Tobacco smoke, CA Indoor Clean Air Act of 1976 (Health & Safety
      Code 25940 et seq.)

V. Sewage and solid waste
   A. Water Quality Control Act
   B. Govt. C. 66700, waste reclamation

VI. Pesticides
   A. EPA
   B. Federal Environmental Pesticide Control Act of 1972
   C. CA, in Food & Ag. C. and Health & Saf. C.

VII. Hazardous waste (HAZMAT)
    B. CA, Health & Saf. C.

VIII. Noise
    A. CA Noise Control Act of 1973 (Health & Saf. C. 46000 et seq.)
    C. Federal Aviation Safety and Noise Abatement Act of 1979 (49
       U.S.C., sec. 2101 et seq.)

IX. Nuclear Power and Radiation
    A. CA Health & Saf. C.
    B. CA Pub. Res. C.
    C. Federal Atomic Energy Act (42 U.S.C., sec. 2011 et seq.) does not
      preempt CA law.

X. Environmental Impact Reports (EIR)
   A. Pub. Res. C. 21151 local govt. can require
   B. National Environmental Policy Act federal actions affecting the
      environment.

XI. Earthquake fault—Pub. Res. C.; geological reports if ½ mile from
    fault.

XII. The "big question" is, who will pay for environmental cleanup.
I. "at will" employment contract
A. either party can terminate at any time for any reason
B. most attorneys say that there is no such thing as an "at will" employee today from the standpoint of the employer.
C. CA Labor Code 2922 states "An employment, having no specific term, may be terminated at the will of either party on notice to the other. Employment for a specified term means an employment for a period greater than one month."
D. There is no requirement of 2 weeks notice. Although, a union contract may modify that.
E. An employer may terminate an employee "for cause", i.e., because of misconduct or incapacity.

II. wrongful termination (discharge)
A. employer should only terminate "for cause" which can be documented in the ordinary course of business.
B. If terminated wrongfully, an employee may sue for reinstatement and back pay.
C. The employee may not sue for emotional distress and punitive damages unless he were discharged in violation of "substantial public policy"-i.e., someone who is fired for whistle blowing on an employer who sells adulterated food or engages in illegal price fixing. (Foley v. Interactive Data Corp., 254 Cal. Rptr. 211(1988).

III. Unions
A. labor law
1. Wagner Act-created NLRB to prevent unfair labor practices-right to form unions
2. Taft-Hartley Act: made collective bargaining mandatory-state may pass a "right to work" law.
3. Landrum-Griffin Act: attempts to prevent corruption of union leadership.
B. types of shops:
1. closed: employee must be a union member-outlawed by Taft-Hartley but still exists in union hiring halls.
2. union: employee must join union after hired.
3. agency: employee does not have to join, but must pay fees equal to dues. recent case states that union must refund that portion of fees that are not used for collective bargaining.
4. open: each employee is free to join a union or not.
C. right to work issue:
1. compulsory unionism, v.
2. right to choose whether to join a union or not.
3. 20 states have adopted right to work laws; 29 states forbid forced unionism in government.

IV. discrimination
A. Title VII, Civil Rights Act of 1964 establishes protected classes: race, sex, color, religion, national origin, and pregnancy.
1. prima facie case
2. business necessity-good business reason.
3. bona fide occupational qualification-essential to job.
4. affirmative action-remedy imbalances.
5. sexual harassment: quid pro quo and harassing environment
C. others: handicap, marital status,

IV. workers compensation (Lab. C. 3201-6002)
A. require employer to procure, maintain and pay for insurance which will pay compensation to an injured or disabled employee for any on the job injury, however caused; except self inflicted injuries and those occurring while an employee is intoxicated.
B. employer need not carry workers compensation insurance for independent contractors and those employed by occupants of residential dwellings under some circumstances.
SEXUAL HARASSMENT

DEFINITION: Any repeated or unwarranted verbal or physical sexual advance, sexually explicit derogatory statement, or sexually discriminatory remark made by someone in the workplace, which is offensive or objectionable to the recipient or which causes the recipient discomfort or humiliation, or which interferes with the recipient's job performance.

THE LAW: Sexual Harassment is a violation of Section 703 of Title VII, of the Civil Rights Act of 1964, as amended.


COVERS: Sexual Harassment


SECTION: 1604.11

(a) Provides that harassment on the basis of sex is a violation of Title VII and states that such unwelcomed behavior may be either physical or verbal in nature.

Criteria for determining if action constitutes unlawful behavior:

1) Submission to the conduct is either an explicit or implicit term or condition of employment;

2) Submission to or rejection of the conduct is used as the basis for employment decisions affecting the person who did the submitting or rejecting; or,

3) The conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

THE EMPLOYER HAS AN AFFIRMATIVE DUTY TO MAINTAIN A WORKPLACE THAT IS FREE OF SEXUAL HARASSMENT AND INTIMIDATION.

1604.11 (b) Recognizes that the question of whether a particular action or incident establishes a purely personal, social relationship without a discriminatory employment effect requires a factual determination.
In each case the entire record will be reviewed in its totality looking at the circumstances, emphasizing the nature of the sexual advances and the context in which the alleged incidents occurred.

Determination of the legality of a particular action will be made from the facts, on a case by case basis.

1604.11

(c) An employer is responsible for the acts of its supervisory employees or agents, regardless of whether the acts were authorized or forbidden by the employer and regardless of whether the employer knew or should have known of the acts.

The determination of whether an individual acts in either an agency or supervisory capacity will be determined on a case by case basis by examining the circumstances of the particular employment relationship and the job functions performed by the individual.

An individual's title is not the controlling factor.

1604.11

(d) Distinguishes the employer's responsibility for the acts of those other than agents or supervisor's. Liability exists only when the employer, or its agents or supervisory employees, know or should have known of the conduct as being harassment, on the basis of sex.

If employer takes immediate and appropriate corrective action, then the liability may be rebutted.

1604.11

(e) Recognition that the best way to achieve an environment free of sexual harassment is to prevent the occurrence. Therefore, an employer is required to:

1) take all steps necessary for the prevention of sexual harassment by:

a) affirmatively raising the subject;

b) expressing strong disapproval;

c) developing appropriate sanctions;

d) informing employees of their right to raise the issue of sexual harassment under Title VII;

e) developing methods to sensitize all concerned.

NOTE: Under this law there are no regulatory burdens or recordkeeping requirements necessary for compliance with this amendment. (4/11/80, EEOC)
SEXUAL HARASSMENT POLICY

I. Policy
It is the policy of the Los Angeles Community College District to provide an educational, employment and business environment free of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting sexual harassment, as defined and otherwise prohibited by state and federal statutes.

It shall be a violation of this policy for anyone who is authorized to recommend or take personnel or academic actions affecting an employee or student, or who is otherwise authorized to transact business or perform other acts or services on behalf of the Los Angeles Community College District to engage in sexual harassment as defined below.

Education Environment
Within the education environment, sexual harassment is prohibited between students, between employees and students, and between nonstudents and students.

Work Environment
Within the work environment, sexual harassment is prohibited between supervisors and employees, between employees, and between nonemployees and employees.

II. Definition of Sexual Harassment:
A. General Definitions
Sexual harassment occurs when unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature:

(1) is made either explicitly or implicitly a term or condition of an individual’s educational or employment;

(2) is used as a basis for educational or employment decisions affecting such individual; or

(3) has the purpose or effect of unreasonably interfering with an individual’s educational or work performance or creating an intimidating, hostile, or offensive educational or working environment.

B. Specific Examples
For the purpose of further clarification, sexual harassment includes but is not limited to:

(1) Making unsolicited written, verbal, physical and/or visual contact with sexual overtones. (Written examples include but are not limited to: suggestive or obscene letters, notes, invitations. Verbal examples include but are not limited to: derogatory comments, slurs, jokes, epithets. Physical examples include but are not limited to: assault, touching, impeding, or blocking movement. Visual examples include but are not limited to: leering, gestures, display of sexually suggestive objects or pictures, cartoons, or posters.)

(2) Continuing to express sexual interest after being informed that the interest is unwelcome. (Reciprocal attraction is not considered sexual harassment.)

(3) Making reprisals, threats or reprisal, or implied threats of reprisal following a negative response. For example, within the work environment either implying or actually withholding support for an appointment, promotion, or change of assignment; suggesting a poor performance report will be prepared, or suggesting probation will be failed. For example, within the educational environment either implying or actually withholding grades earned or deserved; suggesting a poor performance evaluation will be prepared; or suggesting a scholarship recommendation or college application will be denied.

(4) Within the work environment, engaging in implicit or explicit coercive sexual behavior which is used to control, influence, or affect the career, salary, and/or work environment of another employee. Within the educational environment, engaging in implicit or explicit coercive sexual behavior which is used to control, influence, or affect the educational opportunities, grades, and/or learning environment of a student.

(5) Offering favors or educational or employment benefits, such as grades or promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations, reclassifications, etc. in exchange for sexual favors.

(Reference Section 703 of Title VII of the United States Civil Rights Act, as interpreted by the United States Equal Employment Opportunity Commission, 29 CFR 1604.11; and Section 7287.6 of Title 2 of the California Administrative Code.)
PERSONAL PROPERTY

I. The nature of property
   A. "property" is anything which is subject to ownership.
   B. "ownership" is a bundle of rights: possess, use, sell, rent/lease, give away, destroy, etc.
   C. "real property" means:
      1. land,
      2. things permanently attached to land, and
      3. interests in land (appurtenances): easements, profits, life estates, etc.
   D. "personal property" is all property which is not real property.
      1. tangible personal property—goods—chattels.
      2. intangible personal property: copyrights, patents, trademarks, goodwill, insurance policies, stocks, bonds, etc.
   E. some property changes from one type to another:
      1. trees
      2. bricks
      3. minerals in place
      4. oil, gas & water
      5. air
      6. agricultural crops
      7. fixtures
      8. leases; chattel real

F. limits on absolute ownership of property:
   1. rights of government
      a. power to tax
      b. to regulate; police power
      c. to take; eminent domain; police power
   2. rights of creditors: can't dispose of property to defeat creditors.
   3. rights of others: entitled to reasonable use of your property as long as it does not unreasonably interfere with others.

II. methods of acquiring personal property
   A. sale/conditional sale (purchase)
   B. gift:
      1. requirements: intent to make gift, delivery/symbolic (constructive) delivery of gift, and acceptance.
      2. inter vivos gift: not in view of death; not revocable.
      3. causa mortis gift: made in fear of death from some existing cause or peril; can be revoked at any time prior to death; automatically revoked upon survival.
   C. intestate succession
      1. intestate means that the person has no will.
      2. upon death, property goes to that persons heirs/next of kin/closest relative(s).
   D. will
      1. any competent person over 18 can have a will.
      2. person who writes will is a testator.
      3. can will property to any legal entity.
   E. escheat
      1. person has no valid will, and
      2. person has no known relatives.
      3. title vests in the state for want of ownership.
F. possession or occupation
   1. abandoned property
   2. wild animals

G. estray statutes
   1. finding lost property
   2. C.C. 2080-2080.3- if owner is not known and property value is
      $50 or more, finder deposits with police. If owner doesn't claim
      within 90 days, police advertise in local newspaper and wait 7 days.
      Title vests in finder if he pays cost of ad. if between $10-$50, no
      ad required.

H. accession
   1. adding to the property of another by labor or materials
   2. C.C. 1025-1029 & 1031-1033
   3. C.C. 1031 gives property to innocent party with no obligation
      to reimburse the converter for the increase in value, if there was a
      willful or intentional taking.

I. confusion
   1. intermingling/commingling of goods of 2 or more persons in a
      common mass so separate identities are lost.
   2. if by consent, accident or mistake; tenants in common in the
      fused mass.
   3. if by wrongful and intentional conduct, wrongdoer loses
      everything. C.C. 1031.

J. production
   1. fruits of one's labor
   2. copyrights, patents, trademarks.

III. ownership
   A. sole ownership
   B. concurrent ownership
      1. joint tenancy
         a. right of survivorship
         b. 4 unities: time, title, interest, possession
         c. can't will away
         d. can sell, give away
      2. community property
         a. property of a marriage
         b. acquired by labors of either spouse during marriage
         c. can will away share.
         d. if no will, to surviving spouse
      3. tenancy in common
         a. undivided interest
         b. can will away share
         c. if no will, to heirs
I. A "bailment" is simply a situation in which one person is rightfully in possession of personal property belonging to another. "Bailor" is the owner. "Bailee" has possession.

A. In California, bailments are dealt with in C.C. 1813 et seq.

B. distinguish bailment from sale

1. sale is a transfer of title. bailment is a transfer of possession.

2. sale requires consideration. bailment may be for consideration or gratuitous.

3. sale contemplates permanent change of possession. bailment a temporary change only.

II. extraordinary v. ordinary

A. Exceptional liability may be imposed upon certain types of "quasi-public" bailees: common carriers, warehousemen, & hotel/inn keepers.

B. Ordinary bailments include all others. The ordinary bailee is not an insurer or absolute guarantor of the safety of the bailed property. It is only when the bailed property is damaged by reason of negligence on the part of the bailee that he is liable to the bailor.

III. ordinary bailments

A. liability of the bailee is based on negligence.

B. for the sole benefit of the bailee

1. bailee has a duty of greater than ordinary care

2. any degree of negligence will make bailee liable

C. for the sole benefit of the bailor

1. bailee has a duty of slight care

2. gross negligence will make bailee liable

D. mutual benefit bailment

1. bailee has a duty of ordinary/reasonable care

2. ordinary or greater negligence will make bailee liable

E. liability for unauthorized use

1. A majority of courts (including CA) make the bailee an "insurer" of the goods. Therefore, the bailee is liable for any damage to the property during the period of unauthorized use, though it was without fault of the bailee.

2. CA law is not clear. difference between C.C. 1930 & C.C. 1836 (inevitable).

IV. Extraordinary/special bailments: strict liability with some exceptions.

A. common carriers of freight

1. "Everyone who offers to the public to carry persons, property, or messages, excepting only telegraphic messages is a common carrier of whatever he thus offers to carry." C.C. 2-168

2. must afford their services to all members of the general public who wish to avail themselves of them. must not discriminate among shippers.

3. rate regulation by:

   a. interstate transportation: Interstate Commerce Commission

   b. intrastate transportation: Public Utilities Commission

4. exceptional or strict liability with some exceptions. carrier is liable for any loss of or damage to goods in transit.

5. exceptions:

   a. act of god

   b. act of public enemy

   c. act of state or public authority

   d. act of shipper

   e. inherent nature of the goods
6. Rights of common carriers
   a. to make reasonable rules for the conduct of its business
   b. to charge for its service, including demurrage.
   c. specific lien on goods as security for charges.
7. Can not contract away its liability for negligence. Can place a limitation on the amount by a "declared damages clause".
8. Only property may be bailed. A carrier of passengers is not a bailee of them & is not an insurer of their safety. The carrier's liability for passengers is by their negligence.

B. Warehousemen
1. A warehouseman is a bailee who receives goods to be stored in his warehouse for compensation.
2. Warehousemen are subject to extensive regulation by state and federal authorities.
3. Specific lien against goods for reasonable charges.
4. Limit liability by declared value clause.

C. Hotel and Inn Keepers
1. A "guest" is a transient. Length of stay is not sole determinant as to status as guest or boarder/tenant.
2. Same common law liability for luggage as common carrier.
3. CA has changed this by statute C.C. 1859-1860
I. Real property is:
   A. land, and
   B. things affixed to land (buildings, trees), and
   C. interests in land (easements, profits, life estates)
II. Ownership interests
   A. fee simple absolute
      1. most complete form of ownership
      2. no time, disposition, or descendibility limits
   B. fee simple defeasible: may terminate (be taken away) upon the occurrence of a specified event.
   C. life estate
      1. right to use the land for the duration of your life.
      2. pur autre vie/ for the life of another
   D. future interests
      1. possibility of reverter: retained by grantor in conveying property subject to a condition subsequent. created by a fee simple defeasible.
      2. reversion: grantor retains present right to property. created by life estate.
      3. remainder: held by person other than grantor, occurs immediately at natural termination of preceding estate.
      4. executory interest: held by person other than grantor, occurs either before or after the natural termination of a preceding estate.
   E. nonpossessory interests
      1. easement: right to make limited use of another's real property without taking.
      2. profit: right to go onto another's land and take something.
      3. license: revocable right to come onto another's land.
      4. appurtenant v. in gross
   F. leaseholds
      1. tenancy by years: for a specified period of time—such as 6 months, lease.
      2. periodic tenancy: month to month or week to week rental. rent due at the end of the month unless otherwise specified.
      3. tenancy at will: terminable by either party without notice.
      4. tenancy at sufference: tenant wrongfully retains possession without owner's permission.
III. Transfer of ownership
   A. either by deed during one's lifetime, or by will/intestate succession upon one's death.
   B. deed: written instrument by which an ownership interest in real property is transferred by one to another during lifetime. parties are called grantor and grantee.
   C. 3 general types of deeds
      1. warranty: grantor absolutely guarantees title to grantee. title is free from defects and there are no liens or encumbrances. lost importance with advent of title insurance companies.
      2. grant: grantor warrants only that he knows of no defects in his title. most commonly used in CA today.
      3. quitclaim: grantor makes no warranties at all; grantee buys at his own risk. used to clear up clouds on title or where public official sells property*
D. Recording statutes
   1. race: 1st to record
   2. notice: 1st bona fide purcheaser
   3. race-notice: 1st b.f.p. to record; CA
   4. in CA by grantor-grantee index
   5. to give notice to public
E. sale of real estate
   1. sales contract (between buyer & seller)
      a. deposit receipt
      b. escrow instructions, later.
   2. listing agreement (between seller & broker)
      a. employment contract
      b. open, exclusive agency, exclusive right to sell, net
   3. real estate broker/salesperson
      a. 2 categories of licensees in CA
      b. "broker" owns real estate office and acts as agent for buyer, seller, or both.
      c. salesperson works for a broker. must have salespersons or brokers license from CA.
   4. escrow agents
      a. neutral 3rd party
      b. holds documents and funds until terms of contract have been met.
   5. title insurance companies
      a. title search points out defects of title and liens.
      b. issue title insurance policy which will protect buyer from defects, liens, encroachments, etc. that they did not report to the buyer.
   6. lender
      a. savings and loans, banks, credit unions, insurance companies, private lenders, mortgage bankers
      b. standard loan is 80% of sale price or appraised value, whichever is lower.
      clause in deposit receipt stating offer is contingent upon obtaining an 80% loan at X% interest rate or lower.
      c. deeds of trust are used to secure real property in CA, rather than a mortgage.
F. adverse possession: means of acquiring title to land by taking possession of it.
   1. openly & notoriously
   2. continuously
   3. adversely (non-permissively)
   4. for 5 years in CA
   5. pay the taxes for those 5 years
   6. perfect title by bringing a quiet title action.
IV. limitations on ownership
   A. eminent domain: power of government (& railroads & public utilities) to take private property for a public purpose, with just compensation. part of police power.
      C.C.P. 1230.010-1273.050
   B. zoning ordinances: divides a city into certain zones; property falling within a particular zone may generally not be used for purposes beyond those allowed.
   C. city ordinances/building codes
   D. CC&R's-conditions, covenants, and restrictions
      1. set backs, lot size, height, materials, colors, landscaping, signs, pets, etc.
      2. private agreements, usually put in deeds by subdividerds and CC&R's run with the land.
      3. generally keep up property value.
LANDLORD-TENANT LAW

I. Leases include:
   A. tenancy for years/lease
   B. periodic tenancy/month to month rental
   C. tenancy at will/do not use in CA
   D. tenancy at sufferance/trespasser in CA

II. Leases
   A. personal property/chattel real
   B. written if more than 1 year
      1. lessee must sign to be bound
      2. lessee bound by signing, moving in, or paying rent after receiving copy of lease.
   3. automatic renewal provisions must be in at least 8 point type, just above lessee’s signature.
   C. lessee improvements normally will be personal property because the law does not favor forfeitures, a fixture may be removed by a tenant if:
      1. removed during tenancy, and
      2. removal does no structural damage.

III. Tenant’s duties
   A. pay rent and other charges as agreed
   B. keep premises clean & sanitary.
   C. exercise reasonable care in use.
   D. do not permit others to damage or deface premises.
   E. use premises for intended purpose.

IV. Landlord
   A. liable for negligence; condition of premises; escrowed money clause does not protect.
   B. deposits can not exceed 3 months rent for furnished rental and 2 months rent if unfurnished.
   C. implied warranty of quiet enjoyment & habitability in a residential lease.

V. Termination of Lease
   A. reasons for:
      1. destruction of premises
      2. eminent domain
      3. commercial frustration
      4. merger
      5. bankruptcy of tenant
      6. expiration of term
      7. notice
      8. foreclosure of prior encumbrance
      9. failure to pay rent
      10. failure to give possession
      11. violation of material lease provision
      12. illegal use of premises
      13. abandonment
      14. surrender/agreement
      15. violation of implied warranty
16. failure to make needed or agreed on repairs

B. procedure
   1. 3 day notice to quit
   2. unlawful
   3. retaliatory eviction if within 180 days of complaint about habitability. prohibited.

VI. transfer of interest
A. novation
   1. new contract
   2. only C is liable

B. assignment
   1. assigns 100% of interest
   2. assignee (C) primarily liable
   3. assignee (B) secondarily liable

C. sublease
   1. sublessee (B) retains something
   2. B liable to A
   3. C liable to B

VII. rent control
A. form of price control
B. CA allows individual cities to pass rent control ordinances if they wish.
C. Santa Monica has one of the more stringent rent control ordinances; Palos Verdes does not have any rent control.
INSURANCE

I. California Insurance Code, Section 22, states "Insurance is a contract whereby one undertakes to indemnify another against loss, damage or liability arising from a contingent or unknown event." The industry is regulated by a state Insurance Commissioner.

II. modern history of insurance (risk pooling) began with
   A. Edward Lloyd's coffee house in London maritime district; 17th century.
   B. clearing house of information on shipping activity.
   C. owner of ship prepared a paper with ship, cargo, value, captain, crew, itinerary, etc. on the top half.
   D. insurers would write % of risk they would assume on lower half; so they became known as underwriters.

III. types of insurance
   A. life
       1. whole life
       2. term
       3. key person
   B. fire and homeowners
   C. automobile/boat/airplane
       1. liability; required by CA law
       2. collision
       3. comprehensive (fire & theft)
       4. uninsured/underinsured
       5. medical
   D. business liability
       1. public liability
       2. product liability
       3. workers' compensation
       4. malpractice
       5. crime
   E. disability
   F. medical/dental/eye care/psychiatric
   G. legal

IV. agent v. broker
   A. agent represents insurance company
   B. broker represents buyer
   C. both are paid on a commission.

V. insurance contract
   A. policy is contract
   B. consideration is premium
   C. insurable interest/ not wagering
   D. misstatements/misrepresentations can void a policy
   E. coinsurance clause: owner insures property up to a specified % of its value. Normally 80% of the replacement value of a house is used on a homeowners policy.
I. Wills
A. Oral/noncuptative will: Applied to soldier, sailor, person suffering life threatening injury; 2 witnesses; value not in excess of $1,000. Repealed in CA, 1982.
B. Holographic will: Handwritten will. Prob. C. 53 requires it to have a "signature" and "material provisions" in the handwriting of the testator. No longer requires a date, although dating is still very important. No witnesses required, but permitted.
C. Formal or witnessed wills: Usually prepared by lawyer in typewritten form. Signed by testator at end. Signed by 2 witnesses; 3 better because some states require. Testator declares to witnesses that it is his will. Witnesses need not know contents of will or read it. Signed freely and voluntarily, without fraud, duress or undue influence, and testator must have been of sound mind at the time signed. Distributees should not be witnesses; may only receive intestate share. Major purpose is to reduce taxes.
D. Codicils: An instrument that alters or amends a will. Make minor changes to will without rewriting. Holographic codicil to a formal will is O.K.
E. CA statutory wills: Relatively simple will and will with trust forms have been available since 1982. Prob. C. 56.7 & 56.8. Good for simple estate plans. Obtain forms from the State Bar of California or stationary stores.
F. Terminology
   1. testator: person who wrote a will.
   2. decedent: dead person.
   3. executor: appointed in will to administer the estate of the deceased and to carry out the will.
   4. administrator: appointed by the court to perform the same functions as the executor.
   5. devisee: person receiving a gift of real property in a will.
   6. legatee: person who inherits personal property under a will.
   7. probate: proceeding in a court that validates a will and settles all matters pertaining to administration of the estate of a decedent.
   8. intestate: without a valid will.

II. Intestate Succession
A. The acquisition of title to property of a person who dies without disposing of it by will. Prob. C. 6400.
   B. The "heirs" of a person are those whom the law appoints to succeed at his death if there is no valid will. It is not "next of kin" or blood relatives. Surviving spouse, children, parents, siblings, grandparents or issue, issue of predeceased spouse, next of kin, parents of predeceased spouse.
III. Escheat (title vests in state)
   A. If there is no valid will, and B. there are no known heirs, then C. title to the deceased's property escheats to the state for want of ownership.

IV. Probate
   A. The entire proceeding by which a decedent's estate is administered and distributed.
   B. The Independent Administration of Estates Act, Prob. C. 591-591.7, allows the personal representative to do many things without court approval. Simplifies probate procedures.
   C. Avoid probate by:
      1. holding all property in joint tenancy,
      2. inter vivos trust,
      3. convert assets to life insurance.
V. Trusts
   A. An arrangement in which title to property is held by one person (a trustee) for the benefit of another (a beneficiary).
   B. Inter vivos (living) v. testamentary
      1. An inter vivos trust goes into operation during the lifetime of the trustor. Has become popular as a way to avoid probate.
      2. A testamentary trust is one which is to go into effect upon the death of the trustor. Most trusts are testamentary.
   C. transfers in trust v. declarations of trust
      1. The usual method is to create a trust by a transfer of property in trust to a third person. Usual method.
      2. In the inter vivos trust a person transfers property to himself as trustee for designated beneficiaries (other than himself). Created by declaration of trust.
   D. private v. charitable
      1. A private trust is any trust which is not a charitable trust.
      2. A charitable trust:
         a. has a charitable purpose, and
         b. no specially named beneficiaries; must be for a class of persons.
LIABILITY OF ACCOUNTANTS

I. Like other professionals, accountants "have a duty to exercise the ordinary skill and competence of members of their profession, and failure to discharge that duty will subject them to liability for negligence."

A. Ultramares v. Touche: Certified public accountants were shielded from liability for negligence to those not in privity with the accountant.

B. The protectionist rule of privity in Ultramares "is no longer viable" in view of the change in the role of the accountant; and the Restatement of Torts limitation of liability to those to whom the information is intended to be supplied "does not meet California's concept of tort liability for negligence." 177 C.A. 3rd 820 & C.C. 1714. The opinion concludes: "An innocent plaintiff who foreseeably relies on an independent auditor's unqualified financial statement should not be made to bear the burden of the professional's malpractice. The risk of such loss is more appropriately placed on the accounting profession which is better able to pass such risk to its customers and the ultimate consuming public. By doing so, society is better served; for such a rule provides a financial disincentive for negligent conduct and will heighten the profession's cautionary techniques." 177 C.A. 3d 820.

C. In Bily v. Arthur Young & Co. 222 Cal. App.3d 289, 271 Cal. Rptr. 470 (1990), the court held that an auditor had a duty to all those persons and entities who reasonably relied on negligently prepared reports and whose reliance was reasonably foreseeable by a professionally sophisticated auditor.

II. In determining negligence, the court will look to:

A. Generally Accepted Accounting Principles (GAAP), and

B. Generally Accepted Auditing Standards (GAAS)

III. There is also a possibility of criminal liability under federal and state law.
I. National law pertains to the law of a particular nation. Legal systems fall into 3 categories:

A. common law: based on tradition, precedent, and custom and usage. Courts interpret the law based on those characteristics. English speaking countries.

B. civil law/codified law: based on a very detailed set of laws that are organized into a code. Over 70 countries; including Germany, France, Japan, Russia.

C. theocratic law: based on religious precepts. Muslim law based on Islam. 27 countries.

II. International law: a body of principles and practices that have been generally accepted by countries in their relations with other countries and with citizens of other countries. Provides some predictability in the international environment, although no enforceable body of international law exists.

A. sources of international law

1. international customs: "evidence of a general practice accepted as law." Statute of the International Court of Justice, Art. 38(1)

2. treaty: agreement/contract between 2 or more nations that must be authorized and ratified by the supreme power of each nation. U.S. Const., Art. II, Sec. 2 gives the president the power to make treaties with 2/3 senate vote.
   a. General Agreement on Tariffs and Trade (GATT)
   b. Paris Convention for the Protection of Industrial Property
   c. bilateral agreement: 2 nations form an agreement that will govern their commercial exchanges, etc.
   d. multilateral agreements: formed by several nations.
   e. international organizations and conferences: organizations composed mainly of nations and usually established by treaty.

B. legal principles/doctrines

1. based on courtesy and respect
2. comity: one nation will defer and give effect to the laws and judicial decrees of another country.
3. act of state doctrine: the judicial branch of one country will not examine the validity of public acts by a recognized foreign government within its own territory.
4. expropriation: a government seizes a privately owned business/goods for a proper public purpose and awards just compensation.
5. confiscation: a government seizes private property for an illegal purpose and without just compensation.
6. domestication: government demands transfer of ownership and management responsibility.

III. specific international business activity

A. exporting

1. Congress can not impose export tax. U.S. Const., Art. I, Sec. 9

2. Congress may set export quotas,
3. restrict flow of technical data and technologically advanced products,
4. inhibit development of military potential in other countries,
5. provide for export subsidies and incentives.
B. importing
1. restrictions on imports (trade barriers) include
   a. strict prohibitions
   b. quotas
   c. tariffs
2. dumping: the sale of imported goods at "less than fair value." U.S. considers it to be an unfair trade practice. Extra tariff is usually assessed.
C. investing
1. risky: expropriation; confiscation, few remedies.
   1. Prohibits bribery of most officials of foreign governments if the purpose is to get the official to act in his/her official capacity to provide business opportunities. Applies to U.S. companies and its directors, officers, shareholders, employees and agents.
   2. All companies must keep detailed records that "accurately and fairly" reflect the company's financial activities. Must have an accounting system that provides "reasonable insurance" that all transactions entered into by the company are accounted for and legal. This part is directed toward accountants.
   3. Some U.S. firms complain that it hinders ability to compete internationally. Applies U.S. moralities to other societies and cultures.
IV. extraterritorial effect
A. antitrust laws
   1. Section 1 of Sherman Act provides for extraterritorial effect of U.S. antitrust laws.
   2. Any conspiracy that has a substantial effect on U.S. commerce is within reach of the Sherman Act.
   3. subjects persons and foreign governments to their provisions.
   4. foreign consumers and competitors can be protected from antitrust violations committed by U.S. citizens.
   5. Steps to loosen U.S. antitrust laws to international business are under consideration.
B. patent laws
   1. no direct protection in another country
   2. patent under laws of the other country
C. civil rights
   1. Title VII, 1964 Civil Rights Act