Summaries of Justice Raymond L. Sullivan's Majority Opinions on the Supreme Court of California

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SUMMARIES OF JUSTICE RAYMOND L. SULLIVAN'S MAJORITY OPINIONS ON THE SUPREME COURT OF CALIFORNIA*

Serrano v. Priest, 20 Cal. 3d 25, 569 P.2d 1303, 141 Cal. Rptr. 315 (1977). Non-profit legal corporation and government-funded public interest law center that successfully challenged state's school financing system are entitled to recovery of attorneys' fees under the “private attorney general” theory.

Anton v. San Antonio Community Hosp., 19 Cal. 3d 802, 567 P.2d 1162, 140 Cal. Rptr. 442 (1977). Adjudicatory decisions of nongovernmental agencies are subject to review under the same rules that apply to decisions by governmental administrative agencies lacking judicial power. Therefore, a doctor whose staff privileges at a private hospital were suspended after a hearing could obtain review by means of administrative mandamus under Code of Civil Procedure § 1094.5. Because the suspension affected fundamental vested rights, the trial court should have exercised its independent judgment in reviewing the evidence at the hearing.

In re Marriage of Skaden, 19 Cal. 3d 679, 566 P.2d 249, 139 Cal. Rptr. 615 (1977). Vested "terminated benefits" contained in an insurance sales agent's agreement with an insurer are a community asset subject to division in a dissolution proceeding.

In re Watson, 19 Cal. 3d 646, 566 P.2d 243, 139 Cal. Rptr. 609 (1977). A defendant convicted of a felony was entitled to credit against his sentence pursuant to Penal Code § 2900.5 for the pre-sentence time spent in jail in another state while resisting extradition to California on the charges of which he was later convicted.

Kulko v. Superior Court, 19 Cal. 3d 514, 564 P.2d 353, 138 Cal. Rptr. 586 (1977). By buying his minor daughter an airplane ticket so that she could live in California with her

* This appendix lists all of the opinions written by Justice Raymond L. Sullivan for the Supreme Court of California and the District Court of Appeal during his career on the bench, spanning the years 1961 to 1977.

Justice Sullivan’s majority opinions for the Supreme Court of California are listed, with summaries, in reverse chronological order. Many of these summaries were prepared by the editors of the University of San Francisco Law Review for publication in their Spring 1976 edition, which in its entirety was a tribute to Justice Sullivan, and are reprinted with permission. 10 U.S.F. L. REV. 759 (1976). The original index was expanded and supplemented for a presentation volume on the occasion of Justice Sullivan’s 85th birthday (February 1992) by former clerks and externs Marsha N. Cohen, Peter M. Folger, Ellen Lake, L.J. Chris Martiniak, Gayle Nin Rosenkrantz, Richard P. Stooker, and Nancy A. Stretch, and by Michael N. Conneran, Lynn Tracy Nerland, Marti Y. Paschal, Debra L. Watanuki, associates at Hanson, Bridgett, Marcus, Vlahos & Rudy.

All of Justice Sullivan's concurring and dissenting opinions for the Supreme Court of California and his opinions (all majority opinions) for the District Court of Appeal, First Appellate District, Division One, are listed in reverse chronological order. A complete alphabetical index of all of Justice Sullivan's opinions follows.

The Editorial Board of the Hastings Law Journal wishes to thank the editors of the University of San Francisco Law Review and Justice Sullivan's former clerks and externs for their assistance and guidance in compiling the index and information encapsulated here.

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mother, a divorced father who resided in New York consented to personal jurisdiction in California in the wife's action for increased child support.

People v. Henderson, 19 Cal. 3d 86, 560 P.2d 1180, 137 Cal. Rptr. 1 (1977). The offense of false imprisonment, as proscribed by Penal Code §§ 236 and 237, is not a felony inherently dangerous to human life and therefore not capable of supporting a second-degree felony murder instruction.

City of Los Angeles v. Decker, 18 Cal. 3d 860, 558 P.2d 545, 135 Cal. Rptr. 647 (1977). Evidence of the city's determination of the need for airport parking and the suitability of condemnee's property for such purpose was admissible to show the highest and best use of the property in condemnee's hands; city attorney's argument to the jury denying the need for airport parking when he knew of a report showing otherwise was misconduct justifying a new trial.

Miller v. State, 18 Cal. 3d 808, 557 P.2d 970, 135 Cal. Rptr. 386 (1977). Plaintiff had no vested contractual right to remain in public employment beyond the age of retirement established by the Legislature and suffered no impairment of vested pension rights since he had no constitutionally protected right to remain in employment until he had earned a larger pension.

Serrano v. Priest, 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976). School financing system primarily based upon property tax revenues is in violation of the equal protection clause of the California Constitution regardless of intervening U.S. Supreme Court decision finding that similar Texas system did not violate the federal equal protection clause.

People v. Berry, 18 Cal. 3d 509, 556 P.2d 777, 134 Cal. Rptr. 415 (1976). It was prejudicial error not to give an instruction on voluntary manslaughter when the evidence sufficiently established "provocation" and "heat of passion" and such theories constituted defendant's entire defense to charge of first-degree murder.

Bright v. Los Angeles Unified Sch. Dist., 18 Cal. 3d 450, 556 P.2d 1090, 134 Cal. Rptr. 639 (1976). Education Code § 10611 does not authorize school districts to establish systems of prior restraint in respect to the distribution of the prohibited categories of expression delineated in the statute. Furthermore, the section does not authorize school districts to ban the sale of printed materials by students that are otherwise entitled to be distributed.


Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters, 17 Cal. 3d 893, 553 P.2d 603, 132 Cal. Rptr. 443 (1976). Federal law confers exclusive jurisdiction on the National Labor Relations Board, preempting both state and federal court jurisdiction, over a controversy between a department store and a union picketing the store for failing to use union workers, even though the controversy involves trespass on private property.

Business Title Corp. v. Division of Labor Law Enforcement, 17 Cal. 3d 878, 553 P.2d 614, 132 Cal. Rptr. 454 (1976). In an interpleader action brought by an escrow holder to resolve conflicting claims with respect to proceeds of sale held in an escrow account under Business and Professions Code § 24074, the federal tax lien prevailed over any priority for wage claims.

In re Marriage of Fonstein, 17 Cal. 3d 738, 552 P.2d 1169, 131 Cal. Rptr. 873 (1976). In a dissolution-of-marriage proceeding in which the trial court valued the husband's interest in a law partnership by his contractual right to withdraw, it was error to take into account tax consequences that might result in the event of his withdrawal and thereby reduce the wife's share of community property.

Tripp v. Swoap, 17 Cal. 3d 671, 552 P.2d 749, 131 Cal. Rptr. 789 (1976). Where the director of the former Department of Social Welfare had, as a matter of law, wrongfully denied an application for aid to a needy, disabled person, the court's powers of mandamus permitted it to direct an award of retroactive benefits and prejudgment interest to the applicant.

Javorek v. Superior Court, 17 Cal. 3d 629, 552 P.2d 728, 131 Cal. Rptr. 768 (1976). An automobile liability insurer's obligation to pay is contingent on a legal determination of the insured's liability and thus is not subject to garnishment and attachment for the
purpose of conferring quasi in rem jurisdiction over Oregon residents in a California court.

_Wodicka v. Wodicka_, 17 Cal. 3d 181, 550 P.2d 1051, 130 Cal. Rptr. 515 (1976). A child support order requiring payments until a child reached 21 years of age was not altered by a subsequent modification order referring to the age of majority, even though Civil Code § 25, reducing the age of majority from 21 to 18 years, had been enacted in the interim.

_Shepherd v. Superior Court_, 17 Cal. 3d 107, 550 P.2d 161, 130 Cal. Rptr. 257 (1976). Where the District Attorney has completed his investigation into the death of a citizen resulting from gunshot wounds inflicted by police and has failed to obtain an indictment, he may not rely on the work product doctrine to bar discovery of the fruits of his investigation by plaintiffs bringing a wrongful death action against the police.

_Clifton v. Ulis_, 17 Cal. 3d 99, 549 P.2d 1251, 130 Cal. Rptr. 155 (1976). In a consolidated wrongful death and personal injury action, it was reversible error to exclude from evidence an alleged telephone call containing statements of defendant's wife, material to the causation of the accident, which she later expressly denied under oath.

_Culligan Water Conditioning v. State Bd. of Equalization_, 17 Cal. 3d 86, 550 P.2d 593, 130 Cal. Rptr. 321 (1976). The State Board of Equalization properly determined that plaintiff's contracts, under which it furnished its customers with "exchange units," constituted leases of tangible personal property rather than service income and were thereby subject to a use tax under Revenue and Taxation Code § 6201.

_Dickey v. Retirement Bd._, 16 Cal. 3d 745, 548 P.2d 689, 129 Cal. Rptr. 289 (1976). The right to full salary payments for disabled policemen vests on the acceptance of employment; thus, the trial court is required to exercise its independent judgment when reviewing the evidence presented at an administrative hearing addressing that right because the Retirement Board's decision affects a fundamental vested right.

_Dawson v. Town of Los Altos Hills_, 16 Cal. 3d 676, 547 P.2d 1377, 129 Cal. Rptr. 97 (1976). A special assessment district established by a local legislative body in accordance with applicable law will not be set aside by the courts unless it clearly appears from the record or judicially noticed facts that the assessment is not proportional to the benefits bestowed on the assessed properties.

_National Geographic Soc'y v. State Bd. of Equalization_, 16 Cal. 3d 637, 547 P.2d 458, 128 Cal. Rptr. 682 (1976). A state may constitutionally impose a use tax on purchasers from an out-of-state seller when the out-of-state seller's contacts with the taxing state are independent ("dissociated") of connection through interstate commerce.

_T. M. Cobb Co. v. County of Los Angeles_, 16 Cal. 3d 606, 547 P.2d 431, 128 Cal. Rptr. 655 (1976). California Revenue and Tax Code § 2914, authorizing summary seizure of personal property belonging to assessees for collection of taxes on unsecured property without affording him an administrative hearing prior to seizure, does not deny the taxpayer due process, but the statute constitutes a denial of due process insofar as it authorizes the subsequent sale of the property without such a hearing.

_Schwalbe v. Jones_, 16 Cal. 3d 514, 546 P.2d 1033, 128 Cal. Rptr. 321 (1976). Provisions of the California guest statute denying recovery to the owner-passenger of an automobile except in cases of intoxication or willful misconduct of the driver were not unconstitutional as denying equal protection of the law.

_Guardianship of Brown_, 16 Cal. 3d 326, 546 P.2d 298, 128 Cal. Rptr. 10 (1976). Where the wife of an incompetent appeals an order appointing his mother guardian of his estate and person, and also submits substantial evidence that she as his wife would be the proper guardian, the trial court must make a finding of fact on who would best serve the incompetent's interest.

_Bernhard v. Harrah's Club_, 16 Cal. 3d 313, 546 P.2d 719, 128 Cal. Rptr. 215 (1976). Nevada tavern owners who actively solicit California business are liable for injuries proximately caused by the sale of alcoholic beverages to intoxicated patrons who inflict injuries upon a California resident in an automobile accident occurring in California, notwithstanding the fact that Nevada law does not permit such recovery.

_Evans v. Galardi_, 16 Cal. 3d 300, 546 P.2d 313, 128 Cal. Rptr. 25 (1976). Under the Uniform Limited Partnership Act, a limited partner has no property interest in specific assets of the limited partnership, and such assets are not available to satisfy a judgment against a limited partner in his individual capacity.
City of Torrance v. Superior Court, 16 Cal. 3d 195, 545 P.2d 1313, 127 Cal. Rptr. 609 (1976). A trial court has the power to set aside an abandonment of condemnation proceeding if it finds that the moving party has substantially changed his position to his detriment in justifiable reliance upon the proceeding and cannot be restored to substantially the same position as if the proceeding had not been commenced.

San Francisco Civil Serv. Ass'n, Local 400 v. Superior Court, 16 Cal. 3d 46, 544 P.2d 1331, 127 Cal. Rptr. 131 (1976). Monies collected for the discharge of pollutants are not punitive damages and therefore a public entity can be held liable for payment of such sums to the State Water Pollution Cleanup and Abatement Account.

People ex rel. Younger v. Superior Court, 16 Cal. 3d 30, 544 P.2d 1322, 127 Cal. Rptr. 122 (1976). Oakland may be held liable for negligently or intentionally allowing oil to be deposited in the Oakland Estuary, but a strict liability theory will not apply.

Bret Harte Inn, Inc. v. City and County of San Francisco, 16 Cal. 3d 14, 544 P.2d 1354, 127 Cal. Rptr. 154 (1976). A county assessor's method of determining depreciation of business property by a fixed formula without regard to the age or condition of the property was in excess of the assessor's authority and in violation of constitutional and legislative requirements.

Community Redevelopment Agency v. Abrams, 15 Cal. 3d 813, 543 P.2d 905, 126 Cal. Rptr. 473 (1975). The constitutional requirement of "just compensation" does not mandate compensation for business goodwill damaged by exercise of the power of eminent domain; persons so injured may seek relief from the legislature.

Hollister Convalescent Hosp. v. Rico, 15 Cal. 3d 660, 542 P.2d 1349, 125 Cal. Rptr. 757 (1975). A notice of appeal filed more than thirty days after an order denying motion for new trial was entered on the permanent minutes of the trial court was not timely.

Cornelison v. Kornbluth, 15 Cal. 3d 590, 542 P.2d 981, 125 Cal. Rptr. 557 (1975). A summary judgment for a defendant who was successor in interest of the trustor was affirmed when plaintiff, a beneficiary of the trust deed, sued alleging waste and breach of covenants contained in the trust deed. The defendant had never assumed the indebtedness secured by the trust deed and the plaintiff had given a full credit bid for the property subject to the trust deed at the trustee's sale.

Newing v. Cheatham, 15 Cal. 3d 351, 540 P.2d 33, 124 Cal. Rptr. 193 (1975). Res ipsa loquitur was established as a matter of law in a wrongful death action against the pilot-owner of an aircraft that crashed, killing the plaintiff's decedent and the pilot-owner, when both the pilot-owner and plaintiff's decedent were found dead in the wreckage.

Goldie v. Bauchet Properties, 15 Cal. 3d 307, 540 P.2d 1, 124 Cal. Rptr. 161 (1975) A lease provision stating that fixtures belong to the landlord on termination of the lease for breach by tenant are valid. A gap in the California Uniform Commercial Code would be closed by interpreting fixtures to mean goods attached to real property.

People v. Superior Court (Carl W.), 15 Cal. 3d 271, 539 P.2d 807, 124 Cal. Rptr. 47 (1975). An advisory jury may be impaneled to assist the court in a jurisdictional hearing on a wardship petition alleging the commission of serious offenses by a minor.

Skelly v. State Personnel Bd., 15 Cal. 3d 194, 539 P.2d 774, 124 Cal. Rptr. 14 (1975). A person who achieves the status of "permanent employee" within the California civil service system has a property interest in continuation of employment protected by federal and state constitutional due process guarantees. The dismissal of a physician by the State Department of Health Care Services was an abuse of discretion when the record failed to show that his absences adversely affected his public service, the procedures followed denied him due process, and the penalty of dismissal was excessive and disproportionate.

Taylor v. Johnston, 15 Cal. 3d 130, 539 P.2d 425, 123 Cal. Rptr. 641 (1975). Plaintiff's recovery on a suit for breach of a horse breeding contract was improper because suit was filed before time for performance had expired and, therefore, no claim for actual breach had arisen, and because no anticipatory breach was shown when, after defendants' initial repudiation of the contract, plaintiff demanded performance and defendants made arrangement for such performance.

Smith v. Westland Life Ins. Co., 15 Cal. 3d 111, 539 P.2d 433, 123 Cal. Rptr. 649 (1975). A claim was allowed on a life insurance policy when the insurer had informed the deceased of its rejection of the application prior to the deceased's death but had not returned the premium.
People v. Antick, 15 Cal. 3d 79, 539 P.2d 43, 123 Cal. Rptr. 475 (1975). When his burglary accomplice is shot by a police officer, defendant is not liable for the crime of murder either under the felony murder doctrine or the theory of vicarious liability.

In re Richard M., 14 Cal. 3d 783, 537 P.2d 363, 122 Cal. Rptr. 531 (1975). The legitimation of a child by his father is not conditional upon his mother’s consent and voluntary relinquishment of custody of the child.

Roseburg Loggers, Inc. v. U.S. Plywood-Champion Papers, Inc., 14 Cal. 3d 742, 537 P.2d 399, 122 Cal. Rptr. 567 (1975). A lien on a judgment that was filed subsequent to the filing of another lien did not have priority when the subsequent lienor had filed a certificate of tax delinquency with the county recorder prior to the granting of the first lien.

In re Marriage of Mix, 14 Cal. 3d 604, 536 P.2d 479, 122 Cal. Rptr. 79 (1975). Wife was able to prove property was her separate property and not community property by her testimony and schedules of payments and receipts that itemized sources of separate funds even though such funds had been commingled with community funds.

Beaudreau v. Superior Court, 14 Cal. 3d 448, 535 P.2d 713, 121 Cal. Rptr. 585 (1975) Statutes requiring students and parents suing school district to file an undertaking for costs before prosecuting were unconstitutional because such statutes made no provision for a hearing on the merits of the claim, on the issue of the necessity of the undertaking for defendants’ protection, or on the reasonableness of the amount.

People v. Ruiz, 14 Cal. 3d 163, 534 P.2d 712, 120 Cal. Rptr. 872 (1975). Trial court’s failure to instruct jury on the specific intent required for conviction of possession of heroin with intent to sell required modification of conviction to one of simple possession; defendant was therefore entitled to a new probation hearing in which his fitness for probation could be fairly determined in light of the new conviction.

Ganschow v. Ganschow, 14 Cal. 3d 150, 534 P.2d 705, 120 Cal. Rptr. 865 (1975). Child support orders filed before the enactment of the statute changing the age of majority remain unaltered.

Holz Rubber Co. v. American Star Ins. Co., 14 Cal. 3d 45, 533 P.2d 1055, 120 Cal. Rptr. 415 (1975). An insurance company was required to pay damages for inventory lost by fire in a new building in which sprinkler systems had not yet been installed because the policy requirement that the insured use “due diligence” in installing sprinkler systems was ambiguous.

People v. Orin, 13 Cal. 3d 937, 533 P.2d 193, 120 Cal. Rptr. 65 (1975). Order dismissing two counts of the information, leaving only count to which defendant was willing to plead guilty, was not “in the furtherance of justice”; trial court’s failure to set forth its reasons in its dismissal order was also sufficient to invalidate the dismissal.

Li v. Yellow Cab Co., 13 Cal. 3d 804, 532 P.2d 1226, 119 Cal. Rptr. 858 (1975). The Court declared the doctrine of contributory negligence no longer applicable in California, holding that the doctrine must give way to a system of “pure” comparative negligence.

People v. Lines, 13 Cal. 3d 500, 531 P.2d 793, 119 Cal. Rptr. 225 (1975). Where a psychotherapist is appointed by the court in a criminal proceeding to examine defendant in order to provide defendant’s attorney with information, all such information is protected from disclosure notwithstanding the fact that defendant has tendered the issue of his mental or emotional condition.

Santa Barbara Sch. Dist. v. Superior Court, 13 Cal. 3d 315, 530 P.2d 605, 118 Cal. Rptr. 637 (1975). The part of Proposition 21 prohibiting the use of race in assigning students to schools was unconstitutional and not a bar to the desegregation plan adopted by the Santa Barbara School District. A finding that the plan’s closure of two schools was not necessary to achieve desegregation was an improper basis for enjoining the plan. Injunction of implementation of the plan due to improper notice of the Board meeting at which it was adopted was proper. There is no constitutional right to a separate elementary school board so the challenge to the Board’s legality was without merit.

People v. Lara, 12 Cal. 3d 903, 528 P.2d 365, 117 Cal. Rptr. 549 (1974). In a prosecution for kidnapping for the purpose of robbery, the defendant, having forced the victim to travel a substantial distance under threat of imminent injury by a deadly weapon, created a situation that substantially increased the potential for serious harm to the victim.
A customer, who had erroneously paid an excessive sales tax reimbursement to his retailer who then paid the money to the State Board of Equalization, could join the Board as party to the suit for recovery against the retailer and require the Board, in response to the retailer's refund application, to pay the refund owed to the retailer into court or provide proof that the retailer had already claimed and received a refund from the Board.

Henderson v. Harrischfeger Corp., 12 Cal. 3d 663, 527 P.2d 353, 117 Cal. Rptr. 1 (1974). An injured plaintiff seeking recovery on a strict liability theory need not prove that the defect made the product unreasonably dangerous or that he was unaware of the defect causing the injury.

People v. Municipal Court (Ahnemann), 12 Cal. 3d 658, 527 P.2d 372, 117 Cal. Rptr. 20 (1974). Superior court properly dismissed the People's petition for writs of mandate and prohibition since neither will lie to resolve an issue as to the admissibility of evidence; the municipal court had excluded all evidence with respect to a breathalyzer test in prosecutions for driving under the influence because the People had failed to produce breathalyzer test ampoules to which defendants were entitled.

People v. Hitch, 12 Cal. 3d 641, 527 P.2d 361, 117 Cal. Rptr. 9 (1974). Test and reference ampoules and their contents used in breathalyzer tests are material to defendants' guilt or innocence and must be produced in prosecutions for driving under the influence. When such evidence cannot be produced because of its intentional but nonmalicious destruction by investigative officials, sanctions shall be imposed in the future unless the prosecution can show that the investigating agencies have established, enforced, and attempted in good faith to adhere to rigorous and systematic procedures designed to preserve such evidence. The court gave the rule only prospective effect and thus reversed the order suppressing the results of the breathalyzer test and dismissing the action in this case.

Tucker v. Lassen Sav. & Loan Ass'n, 12 Cal. 3d 629, 526 P.2d 1169, 116 Cal. Rptr. 633 (1974). The exercise by a lender-bank of a due-on-sale clause was an unreasonable restraint on alienation when lender sought to collect the entire amount due upon the vendee's sale of property under an installment agreement wherein vendee retained title.

Nathanson v. Superior Court, 12 Cal. 3d 355, 525 P.2d 687, 115 Cal. Rptr. 783 (1974). The probate court has no jurisdiction to permit the filing of a claim after expiration of the statutory period, and the filing within that period by petitioner of a notice of an anticipated claim did not constitute the filing of a claim.

Knoll v. Davidson, 12 Cal. 3d 335, 525 P.2d 1273, 116 Cal. Rptr. 97 (1974). Election Code § 6403 authorizes relief in the nature of mandate and specifically permits courts to compel primary election officials to perform their duties correctly; the proceeding should move through the courts according to the normal procedure for prerogative writs.

Grimes v. Hoschler, 12 Cal. 3d 305, 525 P.2d 65, 115 Cal. Rptr. 625 (1974). A state statute that allows the revocation of a license of a contractor who attains an adjudication in bankruptcy under the federal Bankruptcy Act is invalid on the ground that a state's interest in regulating financial affairs of its licensed contractors may not operate to frustrate achievement of an objective under federal law.

People v. Conklin, 12 Cal. 3d 259, 522 P.2d 1049, 114 Cal. Rptr. 241 (1974). In upholding the state statute proscribing the interception of telephone conversations, the Court found that Congress, by enacting Title III of the Omnibus Crime Control and Safe Streets Act of 1968, did not express an intent to occupy the entire field or any conflict between federal and state legislation requiring the state statute to yield under the Supremacy Clause.

Blank v. Borden, 11 Cal. 3d 963, 524 P.2d 127, 115 Cal. Rptr. 31 (1974). A provision in an exclusive-right-to-sell contract requiring the owner to pay a fee to the agent if the owner chooses to withdraw from the contract prior to the end of its term is an enforceable provision for an option provided to the owner and not liquidated damages specified for a breach, and therefore is not subject to scrutiny as to whether it was an unlawful penalty clause.

Bravo v. Cabell, 11 Cal. 3d 834, 523 P.2d 658, 114 Cal. Rptr. 618 (1974). A proceeding for an extraordinary writ brought in superior court that arises out of a criminal proceeding in municipal court is exempt from filing fee requirements under a statute exempting such fees in any criminal action.

People v. Brown, 11 Cal. 3d 784, 523 P.2d 226, 114 Cal. Rptr. 426 (1974). Where defendant dragged the victim into various rooms of her house and outside for a distance no greater than 75 feet, asportation was insubstantial and did not constitute a forcible taking "into another part of the same county"; conviction for kidnapping was therefore reversed.

People v. Thornton, 11 Cal. 3d 738, 523 P.2d 267, 114 Cal. Rptr. 467 (1974). The penalty of death was modified to life imprisonment without possibility of parole for multiple convictions of kidnapping for purpose of robbery, robbery, sodomy, and sexual perversion. Evidence of other crimes was admissible for the inference of identity based on the degree of distinctiveness of individual shared marks and the number of minimally distinctive shared marks. Asportation of the victims substantially increased the risk of harm over and above that necessarily present in the crime of robbery.

People v. Stanworth, 11 Cal. 3d 588, 522 P.2d 1058, 114 Cal. Rptr. 250 (1974). Relatively brief movement of a victim that does not substantially increase the risk of physical harm beyond that inherent in the underlying crimes does not constitute aggravated kidnapping. Where the facts establish that counsel was ignorant of the facts or the law and it appears that such ignorance caused the withdrawal of a crucial defense, the client is entitled to relief. However, where it appears that counsel decided to withhold a defense as a tactical matter, the decision will not be questioned except where the decision is made in the absence of a proper factual inquiry.

Hurtado v. Superior Court, 11 Cal. 3d 574, 522 P.2d 666, 114 Cal. Rptr. 106 (1974). Where a Mexican citizen sued California residents in a California court for wrongful death of a Mexican citizen in a California automobile accident and Mexico had no interest in application of its limitation of damages rule, it was held that California, as the forum state, should apply its own measure of damages.

People v. Borunda, 11 Cal. 3d 523, 522 P.2d 1, 113 Cal. Rptr. 825 (1974). There is a general principle calling for the disclosure of an informant's identity if the defendant demonstrates reasonable possibility that the informant might be a material witness on the issue of guilt or innocence.

Palo Alto Town & Country Village, Inc. v. BBTC Co., 11 Cal. 3d 494, 521 P.2d 1097, 113 Cal. Rptr. 705 (1974). Absent any provisions to the contrary in the option contract, an option becomes effective when a written acceptance is timely deposited in the mail.

Lamb v. Workmen’s Comp. App. Bd., 11 Cal. 3d 274, 520 P.2d 978, 113 Cal. Rptr. 162 (1974). The Workmen’s Compensation Appeals Board could not ignore evidence on which the referee's decision was based, nor could it submit a decision that was not substantially supported by all of the evidence.

People v. Belcher, 11 Cal. 3d 91, 520 P.2d 385, 113 Cal. Rptr. 1 (1974). Section 656 of the Penal Code bars a state criminal proceeding after a conviction or acquittal in another jurisdiction of a charge involving the same act or omission. Where counsel fails to adequately assert the defense of a former acquittal, defendant is denied the constitutional right to effective assistance of counsel.

Dulaney v. Municipal Court, 11 Cal. 3d 77, 520 P.2d 1, 112 Cal. Rptr. 777 (1974). A city ordinance making it unlawful to post a notice on a utility pole without permission from the person owning or controlling it and also from the city's department of public works is unconstitutional on its face because it constitutes an invalid prior restraint on the exercise of free speech.

Strumsky v. San Diego County Employees Retirement Ass'n, 11 Cal. 3d 28, 520 P.2d 29, 112 Cal. Rptr. 805 (1974). If either a local agency decision or a decision of a state agency of local jurisdiction substantially affects fundamental vested rights, the reviewing court must exercise its independent judgment in determining whether there has been an abuse of discretion because findings are not supported by the evidence.
D'Amico v. Board of Medical Examiners, 11 Cal. 3d 1, 520 P.2d 10, 112 Cal. Rptr. 786 (1974). Provisions of the Osteopathic Act of 1962 and Business and Professions Code § 2310 that forbid licensure of graduates of osteopathic colleges are not rationally related to the state interest of protecting the public and therefore violate equal protection principles and are void.

Whitfield v. Roth, 10 Cal. 3d 874, 519 P.2d 588, 112 Cal. Rptr. 540 (1974). Application for leave to present late claim, made by a claimant who had been a minor throughout the entire statutory one hundred day period for presenting the claim against a public entity for damages for personal injuries, must be granted by the governing body.

Walker v. Community Bank, 10 Cal. 3d 729, 518 P.2d 329, 111 Cal. Rptr. 897 (1974). Where a bank loan was secured by both a deed of trust on real property and a chattel mortgage, the bank lost its security interest in the real property when it judicially foreclosed on the personal property.

Voss v. Workmen's Comp. App. Bd., 10 Cal. 3d 583, 516 P.2d 1377, 111 Cal. Rptr. 241 (1974). An insurer lost its right to control medical treatment and was liable for services rendered by a private physician when the insurer insisted that the plaintiff see a physician who advocated no further treatment of the injury.

People v. Kelly, 10 Cal. 3d 565, 516 P.2d 875, 111 Cal. Rptr. 171 (1973). Requiring proof that a defendant's insanity is permanent as well as settled constitutes prejudicial error that is inconsistent with the recognition of temporary insanity as a defense to crime.

Swoap v. Superior Court, 10 Cal. 3d 490, 516 P.2d 840, 111 Cal. Rptr. 136 (1973). The general duty of children to support their needy parents created by Civil Code § 206 provides a rational basis for the classification of those who are required by law to reimburse the state for aid granted to their aged parents and are thereby compelled to pay a larger portion of the cost of welfare assistance.

In re Buckley, 10 Cal. 3d 237, 514 P.2d 1201, 110 Cal. Rptr. 121 (1973). Where an attorney was cited for contempt for stating "[t]his court obviously does not want to apply the law," his statement was contemptuous on its face, the trial judge was not required to refer the adjudication of the alleged contempt to another judge, and the petitioner was entitled to review by certiorari or habeas corpus only and not by the usual appellate process.

Moyer v. Workmen's Comp. App. Bd., 10 Cal. 3d 222, 514 P.2d 1224, 110 Cal. Rptr. 144 (1973). "Voluntary," as used in Labor Code § 139.5 requiring that acceptance by an injured workman of a program of rehabilitation be "voluntary," means that the acceptance must be with the workman's knowledge of the consequences of such acceptance, one of which may be a reduction in his disability rating.

In re Benoit, 10 Cal. 3d 72, 514 P.2d 97, 109 Cal. Rptr. 785 (1973). Where attorneys agreed to file notices of appeal but had failed to do so timely, and the prisoners on whose behalf the appeals were to be filed had been diligent in their efforts to make sure the appeals were timely filed, the appeals could be declared pending by virtue of the doctrine of constructive filing.

California State Auto. Ass'n Inter-Ins. Bureau v. Jackson, 9 Cal. 3d 859, 512 P.2d 1201, 109 Cal. Rptr. 297 (1973). In an interpleader action where plaintiff-insurer deposited the amount of its liability under an uninsured motorist clause, the amount apportioned to the defendant was subject to a lien for Medi-Cal payments he had received in conjunction with injuries he sustained in the accident.

Gruenberg v. Ae'tna Ins. Co., 9 Cal. 3d 566, 510 P.2d 1032, 108 Cal. Rptr. 480 (1973). The insured's performance of contractual obligations is independent of the insurer's duty of good faith and fair dealing; thus any breach of this duty alleged by the insured may be a sufficient pleading despite the insured's conduct.

People v. Jones, 9 Cal. 3d 546, 510 P.2d 705, 108 Cal. Rptr. 345, (1973). A jury panel that excludes residents of the judicial district in which the charged crime was committed violates the juror-residence requirement of the Sixth Amendment as applied to the states through the Fourteenth Amendment. When the prosecution's evidence points to the offense occurring at a particular time and defendant presents an alibi for that time, it is prejudicial error for the court to instruct the jury that it is not necessary that the proof show that the crime was committed on a precise date.

Crownover v. Musick, 9 Cal. 3d 405, 509 P.2d 497, 107 Cal. Rptr. 681 (1973). County and city ordinances prohibiting service of food or drink or entertainment by topless wo-
men and bottomless persons are constitutional. California Penal Code §§ 318.5 and 318.6 permit adoption of such laws if counties so desire. Substantial interest in morals and public welfare justifies such regulation.

**Thompson v. Mellon, 9 Cal. 3d 96, 507 P.2d 628, 107 Cal. Rptr. 20 (1973).** A two-year durational residence requirement for candidates for the office of city councilman violates the equal protection clause of the Fourteenth Amendment as it is not necessary to further a compelling governmental interest and is not the least restrictive method of achieving the desired purpose of having knowledgeable candidates. Durational residence requirements also impinge upon other fundamental rights, namely the right to vote and the right to travel.

**Stevens v. Parke, Davis & Co., 9 Cal. 3d 51, 507 P.2d 653, 107 Cal. Rptr. 45 (1973).** In a wrongful death action against a drug manufacturer and the prescribing physician, the jury could properly decide that a physician’s negligent prescription was a foreseeable consequence of the manufacturer’s over-promoting of the drug, minimizing its hazards, with the result that a physician’s negligence would not insulate the manufacturer from liability. After plaintiffs refused to consent to a remittitur, the trial court ordered a new trial on the issue of damages. The order was reversed on appeal because it did not contain a written specification of the reasons for granting a new trial; judgment for the plaintiffs was therefore automatically reinstated and final.

**City of Los Angeles v. Superior Court, 8 Cal. 3d 723, 505 P.2d 207, 106 Cal. Rptr. 15 (1973).** Where there has been no prior administrative review of an involuntary resignation, a demand for reinstatement by a civil service employee is a condition precedent to a judicial action for reinstatement. Such a demand is not a condition precedent to an action for reinstatement where the job loss is a result of suspension or removal.

**Miller v. Los Angeles County Flood Control Dist., 8 Cal. 3d 689, 505 P.2d 193, 106 Cal. Rptr. 1 (1973).** Code of Civil Procedure § 657 requires the statement of reasons for a new trial order to specify the respects in which the judge finds the evidence to be legally inadequate and to briefly identify the portion of the record which convinces the judge that the court or jury should have reached a different verdict or decision. Where expert testimony is required to establish the standard of care as to the theory of negligence or the presence of a defect in a strict liability in tort action, plaintiff’s failure to introduce admissible expert testimony justifies the judgment of nonsuit in favor of defendant.

**Brooks v. Small Claims Court, 8 Cal. 3d 661, 504 P.2d 1249, 105 Cal. Rptr. 785 (1973).** The requirement of an undertaking or deposit as a prerequisite to an appeal from small claims court is a denial of due process because the taking of the property occurs prior to the appellant’s first opportunity to be represented by counsel.

**Coffee v. McDonnell-Douglas Corp., 8 Cal. 3d 551, 503 P.2d 1366, 105 Cal. Rptr. 358 (1972).** Where a corporation hired physicians to conduct physical examinations of prospective employees but failed to have such physicians examine blood test reports sent to the corporation by independent laboratories, the corporation could be found negligent for failure to discover a preexisting terminal disease in an employee, and the physicians could be exonerated.

**Crown Coach Corp. v. Superior Court, 8 Cal. 3d 540, 503 P.2d 1347, 105 Cal. Rptr. 339 (1972).** Where plaintiff took no steps to bring action to trial before expiration of a three-year period following filing of remittitur in trial court after judgment of reversal had been reversed on appeal, alleged trial court congestion did not bring case within implied exception of impossibility, impracticability, and futility, so as to extend the three-year period.

**McDonough Power Equip. Co. v. Superior Court, 8 Cal. 3d 527, 503 P.2d 1338, 105 Cal. Rptr. 330 (1972).** The sustaining of a demurrer, followed by a judgment of dismissal, constituted a trial within the meaning of the statute providing for dismissal when judgment has been reversed and remanded for a new trial and action has not been brought to trial within three years from the date the remittitur was filed.

**Buchwald v. Katz, 8 Cal. 3d 493, 503 P.2d 1376, 105 Cal. Rptr. 368 (1972).** Labor Code § 1700.44, providing for appeals from determinations by the Labor Commissioner, requires posting of a bond only to stay enforcement of a money award and not as a condition to the right of appeal; furthermore, such a dispute will be heard de novo and not by way of review of a prior proceeding.
Luque v. McLean, 8 Cal. 3d 136, 501 P.2d 1163, 104 Cal. Rptr. 443 (1972). Although a plaintiff must prove that a product contained a defect which proximately caused his injuries in order to recover under a strict liability theory, the plaintiff is not required to prove that he was unaware of the defect at the time of the accident.

Cronin v. J.B.E. Olson Corp., 8 Cal. 3d 121, 501 P.2d 1153, 104 Cal. Rptr. 433 (1972). An injured plaintiff seeking recovery on a strict liability theory need not prove that the defect made the product unreasonably dangerous to the consumer; this rule applies to defects both in manufacture and in design.

Busick v. Workmen's Comp. App. Bd., 7 Cal. 3d 967, 500 P.2d 1386, 104 Cal. Rptr. 42 (1972). A plaintiff who was shot by her employer and recovered a money judgment against his estate in a civil suit was not entitled to workmen's compensation because the principle of res judicata precludes a plaintiff who has already successfully brought an action to enforce one of two alternative remedies from thereafter maintaining an action to enforce the other remedy.

Southern California Edison Co. v. Superior Court, 7 Cal. 3d 832, 500 P.2d 621, 103 Cal. Rptr. 709 (1972). Unnamed plaintiffs in a class action could be compelled to attend a deposition only by subpoena and not by written notice to counsel for named plaintiffs, especially in light of defendant's intention to exclude from the class those who failed to attend.

Unruh v. Truck Ins. Exch., 7 Cal. 3d 616, 498 P.2d 1063, 102 Cal. Rptr. 815 (1972). As long as an insurer stays within its proper role in investigating compensation claims, its conduct, even if negligent, comes within the exclusive jurisdiction of the Workmen's Compensation Appeals Board; but it leaves its proper role as insurer when, in the course of investigating the claim of a workmen's compensation claimant, it commits intentional torts on the claimant.

Spangler v. Memel, 7 Cal. 3d 603, 498 P.2d 1055, 102 Cal. Rptr. 807 (1972). When, in the sale of real property for commercial development, the vendor pursuant to the agreement of sale subordinates her purchase money lien to the lien securing the purchaser-developer's construction loan and thereafter, on default of the purchaser-developer, loses her security interest on sale or foreclosure under the senior lien, the statutory proscription against deficiency judgments would not apply to preclude her recovery.

Gyerman v. United States Lines Co., 7 Cal. 3d 488, 498 P.2d 1043, 102 Cal. Rptr. 795 (1972). Plaintiff longshoreman had the duty to report a hazardous condition on the docks and his failure to so report indicated a lack of ordinary care for his own protection, but since there was no evidence that the danger would have been alleviated if the plaintiff had made a report, the plaintiff's contributory negligence was not the proximate cause of his injuries.

Cameron v. State, 7 Cal. 3d 318, 497 P.2d 777, 102 Cal. Rptr. 305 (1972). When the posting of signs indicating a dangerous condition of the highway would act as an effective warning, the state's failure to do so was a concurrent cause of injuries sustained by the plaintiff.

Stanford v. City of Ontario, 6 Cal. 3d 870, 495 P.2d 425, 101 Cal. Rptr. 97 (1972). Where an employee who was injured in a construction project on a city sewer line brought an action against the city for damages, questions of fact were presented as to whether reasonable inspection by the city would have disclosed an excavation in violation of safety orders, whether there would have been adequate time to take preventative measures, and whether the city had constructive notice of a dangerous condition that rendered it error to nonsuit plaintiff since California Government Code § 835 provides that a public entity is responsible for the dangerous condition of its property.

People v. Superior Court, 6 Cal. 3d 757, 493 P.2d 1145, 100 Cal. Rptr. 281 (1972). The taking of a blood sample in a medically approved manner, but without the consent of the subject and not pursuant to a search warrant or incident to an arrest, is violative of the subject's right to be secure against unreasonable searches and seizures under the Fourth and Fourteenth Amendments even if there is probable cause to arrest at the time the sample is taken.

Wenke v. Hitchcock, 6 Cal. 3d 746, 493 P.2d 1154, 100 Cal. Rptr. 290 (1972). A person desiring to become a candidate for the board of supervisors who has been an elector within a given supervisorial district, but will be made a nonresident thereof by redistricting, may apply his previous period of residence to either his new supervisorial
district or to his former supervisory district. If he chooses the latter, he must relocate his residence to a location within his former district prior to the effective date of the boundary change.

**Mathews v. Workmen’s Comp. App. Bd.**, 6 Cal. 3d 719, 493 P.2d 1165, 100 Cal. Rptr. 301 (1972). Where the decedent-employee was the initial aggressor in an altercation with a co-employee resulting in the aggressor’s death, decedent’s widow was barred from receiving workmen’s compensation benefits.

**Bekiaris v. Board of Educ.**, 6 Cal. 3d 575, 493 P.2d 480, 100 Cal. Rptr. 16 (1972). A teacher who demanded a hearing relative to his impending dismissal was entitled to have the Board, and the trial court upon judicial review, resolve his contention that the dismissal was based not on the reasons stated in the accusation but rather upon disapproval of his exercise of his First Amendment right to engage in “out of school” political activities.

**Baldwin v. State**, 6 Cal. 3d 424, 491 P.2d 1121, 99 Cal. Rptr. 145 (1972). While California Government Code § 830.6 immunizes public entities from liability under certain conditions, for injuries caused by a plan or design that has been properly approved, that immunity is not perpetual and may be lost if changed conditions render the construction built according to the approved plan or design dangerous.

**People v. Burton**, 6 Cal. 3d 375, 491 P.2d 793, 99 Cal. Rptr. 1 (1971). A minor’s request to see his parents prior to or during custodial interrogation invoked his Fifth Amendment privilege. The admission of a confession obtained subsequent to the denial of that request was prejudicial per se and required reversal of the judgment on all counts. Armed robbery is not an offense included in fact within the offense of murder. The trial judge’s determination of the voluntariness of a confession does not violate the defendant’s right to trial by jury.

**In re Banks**, 6 Cal. 3d 91, 490 P.2d 826, 98 Cal. Rptr. 314 (1971). A petitioner for a writ of habeas corpus seeking relief under *People v. Tenorio*, 3 Cal. 3d 89 (1970), is entitled to a hearing before the sentencing court at which he shall be present and represented by counsel. *Tenorio* held unconstitutional Health & Safety Code § 11718 (which prevented sentencing courts from striking prior narcotics convictions without the previous approval of the prosecutor) and gave this determination retroactive effect.

**In re Cortez**, 6 Cal. 3d 78, 490 P.2d 819, 98 Cal. Rptr. 307 (1971). A petitioner for a writ of habeas corpus seeking relief under *People v. Tenorio*, 3 Cal. 3d 89 (1970), is entitled to a hearing before the sentencing court at which he shall be present and represented by counsel. If the writ is granted, the court must issue an order directing the Attorney General to show cause why the prior convictions should not be stricken for purposes of sentencing.

**People v. Lopez**, 6 Cal. 3d 45, 489 P.2d 1372, 98 Cal. Rptr. 44 (1971). As the escape from a penal facility is not an offense inherently dangerous to human life, it cannot properly support a second-degree felony murder instruction. Malice may not be implied; it is to be determined according to basic murder principles.

**People v. Satchell**, 6 Cal. 3d 28, 489 P.2d 1361, 98 Cal. Rptr. 33 (1971). The carrying of a concealed weapon by an ex-felon is not a felony inherently dangerous to human life; thus it cannot be used as a basis for the application of the felony murder doctrine. Possession of a sawed-off shotgun, viewed in the abstract, is not inherently dangerous to human life. Malice may not be imputed to killers engaged in either felony; malice must be shown in accordance with normal murder principles.

**Bogacki v. Board of Supervisors**, 5 Cal. 3d 771, 489 P.2d 537, 97 Cal. Rptr. 657 (1971). A probationary public employee may not be dismissed from his employment for the exercise of constitutional rights absent a showing that there is a compelling state interest. When no exercise of constitutional rights is involved, judicially cognizable good cause is not constitutionally required for the removal of such an employee.


**Serrano v. Priest**, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971). The California public school financing system, which substantially depended upon local property taxes and resulted in a wide disparity in school revenues, was in violation of the equal protection clause. The right to education in the public schools is a fundamental inter-
est that cannot be conditioned on wealth, and no compelling state interest exists that
requires reliance on the challenged system of school finance.

**People ex rel. Younger v. County of El Dorado**, 5 Cal. 3d 480, 487 P.2d 1193, 96 Cal. Rptr. 553 (1971). The Tahoe Regional Planning Agency, an interstate compact between California and Nevada, is not an unconstitutional entity and surrounding counties can be compelled to make support payments to it.


**Blair v. Pitchess**, 5 Cal. 3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971). The claim and delivery law violates the due process clause of the Fifth and Fourteenth Amendments of the United States Constitution and Section 13 of Article One of the California Constitution. County officers could not enter private property under auspices of the law without first establishing probable cause for entry.

**General Motors Corp. v. City of Los Angeles**, 5 Cal. 3d 229, 486 P.2d 163, 95 Cal. Rptr. 635 (1971). In an attack on a city’s business tax that included a specified percentage of an auto manufacturer’s gross receipts from wholesale sales of automobiles assembled at out-of-city plants, the manufacturer failed to sustain its burden of proving that an application of the ordinance’s formula resulted in the taxation of significant extraterritorial values.

**Weathers v. Kaiser Found. Hosp.**, 5 Cal. 3d 98, 485 P.2d 1132, 95 Cal. Rptr. 516 (1971). The failure of plaintiffs to file individual supporting affidavits indicating their pre-verdict lack of misconduct, in a motion for a new trial on the grounds of jury irregularities and misconduct, was not fatal to the motion when such lack of knowledge on the part of all the plaintiffs was unequivocally stated in a single affidavit filed by the plaintiffs’ co-counsel.

**Estate of Gilliland**, 5 Cal. 3d 56, 485 P.2d 543, 95 Cal. Rptr. 343 (1971). Where trustees were also executors of the estate, the evidence nevertheless adequately warranted the award made for trustees’ services.

**Dillon v. Municipal Court**, 4 Cal. 3d 860, 484 P.2d 945, 94 Cal. Rptr. 777 (1971). A municipal ordinance, devoid of standards, that allowed city officials uncontrolled discretion in granting or denying permits for parades or demonstrations was unconstitutional because city officials could base their determination on the content of the speech. The invalid part of the statute could not be severed from the remainder of the statute without destroying the statutory scheme or utility of remaining provisions by banning all parades and demonstrations.

**Corwin v. Los Angeles Newspaper Serv. Bureau, Inc.**, 4 Cal. 3d 842, 484 P.2d 953, 94 Cal. Rptr. 785 (1971). Summary judgment may not be granted if triable issues of fact are presented as to the reasonableness of trade restraints contained in a trade agreement between the parties.

**People v. Shells**, 4 Cal. 3d 626, 483 P.2d 1227, 94 Cal. Rptr. 275 (1971). Defense counsel’s failure to ascertain the truth of an alleged prior felony conviction operated to deny defendant his constitutional right to effective assistance of counsel. Advising the defendant to admit to an alleged prior felony conviction and not to testify in his own behalf at trial when the prior conviction was a misdemeanor required a reversal of the lower court’s judgment.

**Young’s Market Co. v. American Home Assurance Co.**, 4 Cal. 3d 309, 481 P.2d 817, 93 Cal. Rptr. 449 (1971). Where loss to insured caused by governmental seizure or confiscation is not covered under an “all risk” clause in a multiple perils policy, a “sue and labor” clause in the policy will not cover attorneys’ fees incurred in conjunction with the seizure.

**Calderon v. City of Los Angeles**, 4 Cal. 3d 251, 481 P.2d 489, 93 Cal. Rptr. 361 (1971). An apportionment plan based on registered voters will satisfy the equal protection clause only if it produces districts containing roughly equal numbers of people. A “registered voter” standard that deviates sharply from population equality is constitutionally defective.

**Heglin v. Workmen’s Comp. App. Board**, 4 Cal. 3d 162, 480 P.2d 967, 93 Cal. Rptr. 15 (1971). In a workmen’s compensation case, back injuries and hepatitis arising from
the same industrial accident were considered separate injuries and hence separate factors of disability.

City of Los Angeles v. Shell Oil Co., 4 Cal. 3d 108, 480 P.2d 953, 93 Cal. Rptr. 1 (1971). A company wanting to dispute a local business license tax must prove that the tax is unconstitutional by showing a lack of relationship between the tax and the amount of actual business done within the municipality.

People v. Luros, 4 Cal. 3d 84, 480 P.2d 633, 92 Cal. Rptr. 833 (1971). A determination of obscenity may be made by a grand jury on the issue of probable cause without the necessity of receiving evidence of contemporary community standards. Distribution to a child or unwilling audience is not required for an indictment charging public distribution of obscenity.

County of San Mateo v. Boss, 3 Cal. 3d 962, 479 P.2d 654, 92 Cal. Rptr. 294 (1971). If an adult child does not owe his parent a duty of support under Civil Code § 206, the imposition of liability under Welfare and Institutions Code §§ 12100 and 12101 constitutes denial of equal protection.


Foreman & Clark Corp. v. Fallon, 3 Cal. 3d 875, 479 P.2d 362, 92 Cal. Rptr. 162 (1971). A lower court’s award of general and special damages as well as attorney’s fees to a corporate lessee was upheld where the lessor failed to deliver possession. The lower court’s finding against lessors in their cross-action for damages for misrepresentation was upheld since there was a substantial conflict in the evidence as to whether the representation had been made and, if made, whether it was material or relied upon by lessors.

Babb v. Superior Court, 3 Cal. 3d 841, 479 P.2d 379, 92 Cal. Rptr. 179 (1971). A defendant cannot cross-complain for malicious prosecution in an action since termination of the judicial proceeding as to the action is one of the elements of malicious prosecution.

Mannheim v. Superior Court, 3 Cal. 3d 678, 478 P.2d 17, 91 Cal. Rptr. 585 (1970). The 1969 amendment to Probate Code § 228, preventing escheat of community property of spouses who die at different times if either leaves any heirs, applies retroactively to any estate that has not vested absolutely in the state or has not permanently escheated to the state on the amendment’s effective date.

City of Long Beach v. Mansell, 3 Cal. 3d 462, 476 P.2d 423, 91 Cal. Rptr. 23 (1970). The constitutional prohibition against alienation of public trust tidelands and submerged lands does not apply to an agreement resolving a boundary dispute or to lands properly freed from the public trust by the Legislature. Furthermore, equitable estoppel prevented the city from claiming that the lands could not be alienated.

Gold v. Superior Court, 3 Cal. 3d 275, 475 P.2d 193, 90 Cal. Rptr. 161 (1970). An appeal from a order of the probate court for the payment of attorney’s fees made in the conservatorship proceeding automatically stayed the operation and effect of the order absent a showing that the stay would result in injury to person or property.

In re Antazo, 3 Cal. 3d 100, 473 P.2d 999, 89 Cal. Rptr. 255 (1970). An indigent defendant’s imprisonment because of his inability to pay a fine imposed as a condition of his probation was discrimination on the basis of wealth and violated the equal protection clause of the Fourteenth Amendment.

In re Saunders, 2 Cal. 3d 1033, 472 P.2d 921, 88 Cal. Rptr. 633 (1970). Petitioner was denied his Sixth Amendment right to effective assistance of counsel when his counsel failed to consider, investigate and present available evidence tending to establish his diminished capacity to commit the charged crimes.

People v. Martin, 2 Cal. 3d 822, 471 P.2d 29, 87 Cal. Rptr. 709 (1970). When the trial court failed to resolve at trial the issue of whether the in-court identification of the defendant had an independent source other than an illegal pre-trial identification without counsel, the People were entitled to show by clear and convincing evidence in a new trial that the identification was not tainted by the illegal pre-trial identification.

Foytik v. Aronson, 2 Cal. 3d 818, 471 P.2d 521, 87 Cal. Rptr. 873 (1970). The constitutional provision and statutes requiring a two-thirds vote to approve general obligation bond proposals of counties, cities and school districts violate the equal protection clause of
the Fourteenth Amendment. The rule of unconstitutionality applied only to those elections held after the dispositive case of *Westbrook v. Mihaly*.

*Larez v. Shannon*, 2 Cal. 3d 813, 471 P.2d 519, 87 Cal. Rptr. 871 (1970). The constitutional provision and statutes requiring a two-thirds vote to approve general obligation bond proposals of counties, cities, and school districts violate the equal protection clause of the Fourteenth Amendment. The rule of unconstitutionality applied only to those elections held after the dispositive case of *Westbrook v. Mihaly*.

*Alhambra City Sch. Dist. v. Mize*, 2 Cal. 3d 806, 471 P.2d 515, 87 Cal. Rptr. 867 (1970). The constitutional provision and statutes requiring a two-thirds vote to approve general obligation bond proposals of counties, cities, and school districts violate the equal protection clause of the Fourteenth Amendment. The rule of unconstitutionality applied only to those elections held after the dispositive case of *Westbrook v. Mihaly*.

*Westbrook v. Mihaly*, 2 Cal. 3d 765, 471 P.2d 487, 87 Cal. Rptr. 839 (1970). Provision of the California Constitution that required a two-thirds vote to approve local general obligation bond issues infringes upon the right to vote, in violation of the equal protection clause of the Fourteenth Amendment to the U.S. Constitution, based upon contemporary society’s views favoring greater protection of the right to vote. State was unable to demonstrate that the voting provision was necessary to attain a compelling state interest.

*Martin v. Martin*, 2 Cal. 3d 752, 470 P.2d 662, 87 Cal. Rptr. 526 (1970). A federal court order excluding spousal support payments from bankruptcy proceedings voluntarily initiated by the paying spouse is res judicata and may not be challenged collaterally by the debtor in a state court.

*Dailey v. Los Angeles Unified Sch. Dist.*, 2 Cal. 3d 741, 470 P.2d 360, 87 Cal. Rptr. 376 (1970). In a wrongful death action, evidence of a public school teacher’s negligence in failing to supervise students during lunch periods was sufficient to support a verdict for the plaintiffs. Accordingly, the trial court erred in granting the defendant school district’s motion for a directed verdict.

*In re Harrell*, 2 Cal. 3d 675, 470 P.2d 640, 87 Cal. Rptr. 504 (1970). Petitions for writ for habeas corpus were denied; however, prison officials may not enforce overbroad regulations that unconstitutionally limit prisoners’ rights to give or receive mutual legal assistance, to have personal access to the courts, or to receive and retain printed matter. Furthermore, prison authorities must communicate to inmates the specific reasons for denying access to properly requested publications.

*West Pico Furniture Co. v. Pacific Fin. Loans*, 2 Cal. 3d 594, 469 P.2d 665, 86 Cal. Rptr. 793 (1970). In an action to recover statutory penalties and to obtain an accounting for usury, loans secured by the plaintiff’s sale contracts were exempt from the Personal Property Brokers Law and the defendant, as a licensed personal property broker, was exempt from the usury provisions of the California Constitution. The defendant broker was entitled to relief on its cross-complaint seeking indemnity for losses incurred on the sale contracts used as security.

*Majewsky v. Empire Construction Co.*, 2 Cal. 3d 478, 467 P.2d 547, 85 Cal. Rptr. 819 (1970). The use of a single escrow for two consecutive sale transactions of real property effectuated by two separate conveyances recorded in due order creates neither a resulting nor constructive trust in the second buyers’ favor despite their complete ignorance of the existence of intervening buyers. Thus, judgments recorded against intervening buyers attached upon delivery of the deed in the first sale transaction and created liens against the same property acquired by the buyers in the second sale transaction.

*Runyan v. Pacific Air Indus., Inc.*, 2 Cal. 3d 304, 466 P.2d 682, 85 Cal. Rptr. 138 (1970). In an action to rescind a franchise contract, the plaintiff was entitled to recover the original franchise fee paid and consequential damages including loss of income resulting from reliance on the contract.

*Price v. Shell Oil Co.*, 2 Cal. 3d 245, 466 P.2d 722, 85 Cal. Rptr. 178 (1970). The doctrine of strict liability in tort is applicable to commercial bailors and lessors of personal property in order to protect defenseless victims and to spread throughout society the cost of their compensation.

*Castro v. State*, 2 Cal. 3d 223, 466 P.2d 244, 85 Cal. Rptr. 20 (1970). Provision of the California Constitution that conditioned the right to vote upon the ability to read the...
English language violates the equal protection clause of the Fourteenth Amendment to the U. S. Constitution.

**Huggins v. Yoshiwara,** 2 Cal. 3d 200, 465 P.2d 845, 84 Cal. Rptr. 709 (1970). In a wrongful death action, homeowner's liability insurance policy providing coverage for automobile-related accidents on either the insured's home premises or the "ways immediately adjoining" was a valid territorial limitation to coverage; such a limiting clause, although ambiguous, does not convert the homeowner's policy into an automobile liability insurance policy incorporating statutory provisions that would extend coverage to anywhere within the continental United States.

**Herzog v. National Am. Ins. Co.,** 2 Cal. 3d 192, 465 P.2d 841, 84 Cal. Rptr. 705 (1970). In a wrongful death action, homeowner's liability insurance policy providing coverage for automobile-related accidents in and around the home including "ways immediately adjoining" does not include coverage for an accident that occurred on a freeway several miles from the insured's home.

**People v. Banks,** 2 Cal. 3d 127, 465 P.2d 263, 84 Cal. Rptr. 367 (1970). Police failure to advise suspect of his right to have appointed counsel present at a lineup was reversible error; *Miranda* admonition at time of arrest was insufficient to find valid waiver of Fifth Amendment rights at time of police lineup.

**Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control,** 2 Cal. 3d 85, 465 P.2d 1, 84 Cal. Rptr. 113 (1970). The employment of topless waitresses was not illegal or violative of any duty issued rule or regulation of the Department of Alcoholic Beverage Control, and the Department did not present evidence to support its conclusions that topless waitresses were contrary to the public welfare and morals.

**People v. Randall,** 1 Cal. 3d 948, 464 P.2d 114, 83 Cal. Rptr. 658 (1970). Absent compelling evidence to the contrary, suspects in police custody who telephone an attorney invoke their Fifth Amendment privilege and all police-initiated interrogation must stop until a representing attorney is present. Evidence of the defendant's confession obtained in violation of this rule and introduced at trial constituted reversible error.

**In re Mosley,** 1 Cal. 3d 913, 464 P.2d 473, 83 Cal. Rptr. 809 (1970). Where criminal defendant submits case on a transcript of the preliminary hearing that offers no hope of acquittal, such submission is tantamount to a plea of guilty and must be accompanied by an affirmative showing in the record that the defendant waives Sixth Amendment rights to effective assistance of counsel, to plead not guilty, and to confront witnesses.

**In re Whitehorn,** 1 Cal. 3d 504, 462 P.2d 361, 82 Cal. Rptr. 609 (1969). While admission of codefendant's extrajudicial, incriminatory statement was error, the error was harmless beyond a reasonable doubt because defendant's own similar extrajudicial statements established that he knowingly committed rape and felony murder; writ of habeas corpus was denied.

**People v. Fowler,** 1 Cal. 3d 335, 461 P.2d 643, 82 Cal. Rptr. 363 (1969). Where police did not tell defendant, a minor, that an attorney would be appointed to represent him at a pretrial lineup if he so desired, they violated his Sixth Amendment right to counsel; admitting evidence of the lineup itself was unconstitutional and reversible error because the prosecution could not show "beyond a reasonable doubt" that the error did not contribute to the guilty verdict.

**Skelton v. Superior Court,** 1 Cal. 3d 144, 460 P.2d 485, 81 Cal. Rptr. 613 (1969). A search of defendant's home pursuant to a warrant issued on the basis of affidavits of a police officer and a juvenile was based on probable cause. The juvenile, who was being held on burglary charges, swore that he had committed numerous burglaries and had delivered most of the stolen property to the defendant, and that certain items were likely to be present in the defendant's home. Although the warrant had listed certain items, other property seized in the search was admissible in evidence against the defendant.

**Williams v. Superior Court,** 71 Cal. 2d 1144, 458 P.2d 987, 80 Cal. Rptr. 747 (1969). Evidence that a defendant is in possession of practically all accessories of a stolen automobile eight weeks after its theft gives sufficient cause to hold defendant on charges of grand theft.

**People v. Washington,** 71 Cal. 2d 1061, 458 P.2d 479, 80 Cal. Rptr. 567 (1969). In a murder trial, the defendant's Sixth Amendment right to confront adverse witnesses was violated when the trial court admitted into evidence extrajudicial statements of two prosecution witnesses for rehabilitation purposes without jury instructions to make no sub-
stantive use of the statements. The statements in question were substantially identical with the defendant’s own testimony at trial; thus the error, while unconstitutional, was harmless because there was no reasonable possibility that it contributed to the defendant’s conviction.

**In re Hill,** 71 Cal. 2d 997, 458 P.2d 449, 80 Cal. Rptr. 537 (1969). Subjecting defendants to an identification procedure while they are in a jail cell violates due process, but the identifying witness’s subsequent courtroom identification remains admissible where there is clear and convincing evidence that the in-court identification arises from a source independent from the improper procedure. There was no reversible error in admitting inculpatory statements of codefendants where confessions were properly admitted into evidence against each confessing defendant and evidence of guilt of each defendant was overwhelming.

**People v. Spencer,** 71 Cal. 2d 933, 458 P.2d 43, 80 Cal. Rptr. 99 (1969). Where the evidence in a homicide case sustains the conviction, the fact that the evidence would also support an acquittal based on the theory of self-defense does not constitute grounds for reversal. However, error in giving a witness’s extrajudicial statement substantive use requires reversal of the conviction where the issue of self-defense was raised, identification of the aggressor was extremely relevant on that issue, and there was a reasonable possibility that the court found defendant to be the aggressor based on the extrajudicial statement.

**Merrill v. Department of Motor Vehicles,** 71 Cal. 2d 907, 458 P.2d 33, 80 Cal. Rptr. 89 (1969). The fact that possession of a motor vehicle dealer’s license by a “membership discount house” without an inventory might give the licensee an economic advantage over licensed motor vehicle salesmen whose activities are confined to one licensed dealership is not a reasonable cause for denying the license application of such a business.

**People v. Stanworth,** 71 Cal. 2d 820, 457 P.2d 889, 80 Cal. Rptr. 49 (1969). A defendant sentenced to death for murder could not dismiss his automatic appeal because the Supreme Court has a duty to hear such appeals and the Court may not abdicate its duty merely because the defendant desires to waive his statutorily-provided right. The defendant also was not entitled to dismiss his appointed counsel on the automatic appeal when the defendant’s only apparent complaint related to his counsel’s insistence upon seeking and asserting error in the trial proceedings rather than sitting idly by and doing nothing.

**Daluiso v. Boone,** 71 Cal. 2d 484, 455 P.2d 811, 78 Cal. Rptr. 707 (1969). One in peaceable possession of real property may recover damages in a tort action for injury to his person or goods caused by one who claims to be the lawful owner; title to the property is no defense.

**People v. Scoma,** 71 Cal. 2d 332, 455 P.2d 419, 78 Cal. Rptr. 491 (1969). An information charging an accused with illegal possession of narcotics was properly set aside where the supporting evidence was obtained from a search pursuant to a warrant based on hearsay information in a narcotics officer’s affidavit. Although the affidavit included facts indicating the informant’s personal knowledge of illegal possession, it contained no facts on the informant’s identity, past police experience with him, or independent police action from which a magistrate could reasonably conclude that such information was reliable.

**People v. Benjamin,** 71 Cal. 2d 296, 455 P.2d 438, 78 Cal. Rptr. 510 (1969). While an informant’s hearsay statements were not sufficient in themselves to justify issuance of a search warrant, the affidavit’s additional detailed and precise allegations grounded in his own personal observation produced a statement of facts sufficient to lead the magistrate to reasonably conclude that probable cause existed for the warrant issued. The defendant’s conviction for bookmaking required reversal where the police officer improperly executed the search warrant by giving notice simultaneous with his forced entry into the apartment where the defendant and supporting evidence were seized.

**Greven v. Superior Court,** 71 Cal. 2d 287, 455 P.2d 432, 78 Cal. Rptr. 504 (1969). Police do not comply with the statutory rule of announcement unless they give notice of their authority prior to entry of a house. Failure to comply with the rule renders any following search and seizure unreasonable within the meaning of the Fourth Amendment.
People v. Superior Court, 71 Cal. 2d 265, 455 P.2d 146, 78 Cal. Rptr. 210 (1969). Where a defendant witnessed the police conduct an unlawful search and arrest of another, and where the prosecution introduced no evidence tending to show that the defendant’s consent to a search was not induced by the initial lawless conduct of the officer, the “fruit of the poisonous tree” doctrine applies and any evidence obtained by exploiting the initial arrest is inadmissible.

People v. Hamilton, 71 Cal. 2d 176, 454 P.2d 681, 77 Cal. Rptr. 785 (1969). Peace officers’ entry of defendants’ residence and subsequent seizure of evidence was illegal despite a search warrant because they failed to explain and demand admittance before their entry, and the record provided no basis to conclude that exigent circumstances existed. The admission of such evidence, crucial to defendants’ narcotics convictions, required reversal.

Ferdig v. State Personnel Bd., 71 Cal. 2d 96, 453 P.2d 728, 77 Cal. Rptr. 224 (1969). Where a state civil service employee mistakenly claimed to be a veteran and was given veterans’ preference credits in the process of selection for a higher position, the Board could revoke the appointment on discovery of the mistake.

People v. Berutko, 71 Cal. 2d 84, 453 P.2d 721, 77 Cal. Rptr. 217 (1969). Police officer observing criminal activity through defendant’s apartment window constituted neither an unreasonable search nor an unreasonable invasion of privacy when officer watched from a place where he had a lawful right to be and defendant created the window view by not completely closing the drapes. When the record is silent as to what specific facts gave rise to the arresting officers’ noncompliance with the “knock-and-notice” requirement before entering a home, and the seized evidence was crucial to defendant’s conviction, the reversal of conviction is compelled.

People v. De Santiago, 71 Cal. 2d 18, 453 P.2d 353, 76 Cal. Rptr. 809 (1969). A defendant was not precluded from raising for the first time on appeal an objection based upon a change in the “knock-and-notice” statute. Police officer’s noncompliance with the statute is not excused when based solely on the officer’s general experience relative to the disposable nature of the kind of evidence sought—narcotics—and the propensity of offenders to effect disposal.

Decker v. Occidental Life Ins. Co., 70 Cal. 2d 842, 452 P.2d 686, 76 Cal. Rptr. 470 (1969). Under a life insurance policy covering the unpaid balance on a veteran’s contract of purchase and sale of a residence with the Department of Veteran’s Affairs, the insured veteran’s interest in the subject property terminated, and the insurance also terminated, where the dispositive provision of an interlocutory decree of divorce, cast in the present tense, awarded the subject residence to the veteran’s wife and had become final without appeal; no liability under the insurance policy accrued upon death of the veteran during the interlocutory period.

People v. Morse, 70 Cal. 2d 711, 452 P.2d 607, 76 Cal. Rptr. 391 (1969). In a capital murder case involving a host of contentions—including the admissibility of defendant’s confessions and admissions, prosecutorial comment on the failure to testify, diminished capacity to form requisite mental states, and a variety of penalty issues—there was no error requiring reversal of the judgment as to guilt, but reference during the penalty phase to an erroneously admitted confession in a previous murder case involving defendant was error requiring reversal of the judgment as to penalty.

In re Morse, 70 Cal. 2d 702, 452 P.2d 601, 76 Cal. Rptr. 385 (1969). Contentions concerning the admissibility of confessions obtained in violation of the constitutional right to counsel may be raised for the first time on collateral attack when the principles governing such admissibility were not announced until after trial and the time for appeal but prior to finality of the judgment. Writ of habeas corpus granted, remittitur recalled, and judgment of conviction reversed.

People v. Sanchez, 70 Cal. 2d 562, 451 P.2d 74, 75 Cal. Rptr. 642 (1969). Upon an independent review of the uncontradicted facts relating to the voluntariness of a confession, it appearing that the confession was in fact coerced and the trial court improperly determined the contrary, reversal was required.

People v. Ireland, 70 Cal. 2d 522, 450 P.2d 580, 75 Cal. Rptr. 188 (1969). In a prosecution for murder of the defendant’s wife, evidence of the victim’s telephonic statement, “I know he’s going to kill me,” is not admissible to prove acts or conduct of the victim immediately preceding her death where victim’s conduct was not at issue.
People v. Teale, 70 Cal. 2d 497, 450 P.2d 564, 75 Cal. Rptr. 172 (1969). The search of an automobile seized in New Orleans incident to an arrest and subsequently shipped to California for scientific tests did not constitute an unreasonable search and seizure since the auto was seized as evidence connecting the defendant with the crimes charged.

People v. Varnum, 70 Cal. 2d 480, 450 P.2d 553, 75 Cal. Rptr. 161 (1969). In a capital murder case involving numerous penalty issues, including the admissibility of evidence of other crimes, alleged misconduct of the prosecutor during argument, instructions to the jury, and challenges to potential jurors on the ground of conscientious objection to the death penalty, there was no error requiring reversal of the judgments.

People v. Durham, 70 Cal. 2d 171, 449 P.2d 198, 74 Cal. Rptr. 262 (1969). In a capital murder case involving numerous contentions, including liability of aiders and abettors, proof of other crimes to show motive or intent, adequacy of trial counsel, and various issues regarding the determination of penalty, there was no error requiring reversal of the judgment.

Honore v. Superior Court, 70 Cal. 2d 162, 449 P.2d 169, 74 Cal. Rptr. 233 (1969). Writ of mandate lies to enforce disclosure of the identity of a confidential informer when there is shown to be a reasonable possibility that the informant could give evidence on the issue of guilt resulting in exoneration of the accused.

Estate of Callnon, 70 Cal. 2d 150, 449 P.2d 186, 74 Cal. Rptr. 250 (1969). If a decree of distribution erroneously interprets the intention of a testator, it must be attacked by appeal and not collaterally. If it is not corrected by appeal, such an erroneous decree is as conclusive as a decree that contains no error.

People v. Superior Court, 70 Cal. 2d 123, 449 P.2d 230, 74 Cal. Rptr. 294 (1969). The trial court cannot suppress as evidence tape recordings that have been obtained not by law enforcement officers but by a private detective hired by the defendant.

Sawyer v. State Farm Fire & Cas. Co., 69 Cal. 2d 801, 447 P.2d 344, 73 Cal. Rptr. 232 (1968). The acknowledgement of the receipt of the premium in an automobile liability policy that has been delivered is conclusive evidence of its payment, precluding the insurer from canceling the policy for nonpayment of the premium.

Consolidated Theatres, Inc. v. Theatrical Stage Employees Union, Local 16, 69 Cal. 2d 713, 447 P.2d 325, 73 Cal. Rptr. 213 (1968). The National Labor Relations Board has jurisdiction over disputes between a theatre owner and stage hands.

Musicians Union, Local No. 6 v. Superior Court, 69 Cal. 2d 695, 447 P.2d 313, 73 Cal. Rptr. 201 (1968). The National Labor Relations Board has jurisdiction over disputes between musicians and a major league baseball team owner.

Chicago Title Ins. Co. v. Great Western Fin. Corp., 69 Cal. 2d 305, 444 P.2d 481, 70 Cal. Rptr. 849 (1968). To state a cause of action for civil conspiracy, a complaint may generally allege the information and operation of the conspiracy, but must sufficiently allege the wrongful acts done pursuant thereto, and the damage resulting from such acts.

United States Leasing Corp. v. duPont, 69 Cal. 2d 275, 444 P.2d 65, 70 Cal. Rptr. 393 (1968). The guarantors on a written guarantee of performance by the lessees under a lease of personal property did not guarantee the lessor against all economic loss in the transaction but only against defaults on the part of the lessees resulting in liability under the lease. Because there was no such liability on the part of the lessees in this case, the guarantors incurred no liability to the lessor.

People v. Haston, 69 Cal. 2d 233, 444 P.2d 91, 70 Cal. Rptr. 419 (1968). Evidence of other offenses offered to prove identity has probative value only to the extent that marks common to the charged and uncharged offenses, considered singly or in combination, logically operate to set the charged and uncharged offenses apart from other crimes of the same general variety and, in so doing, suggest that the perpetrator of the uncharged offenses was also the perpetrator of the charged offenses.

De Cruz v. Reid, 69 Cal. 2d 217, 444 P.2d 342, 70 Cal. Rptr. 550 (1968). Absent an attempt to prove the concurrent negligence of a decedent's employer, evidence of a workman's compensation award obtained by decedent's plaintiffs was properly excluded by the trial court when proffered by the tortfeasors in an attempt to reduce their liability.
Estate of Russell, 69 Cal. 2d 200, 444 P.2d 353, 70 Cal. Rptr. 561 (1968). If extrinsic evidence introduced to prove a latent ambiguity in seemingly clear language of a will shows that no such ambiguity exists, then such extrinsic evidence is inadmissible to prove that the testator had different intentions from those appearing on the face of the will.

People v. Russell, 69 Cal. 2d 187, 443 P.2d 794, 70 Cal. Rptr. 561 (1968). In a prosecution for incest, it was reversible error under the facts presented for the trial court to refuse admission of psychiatric evidence relating to the mental and emotional condition of the complaining witness.

Trafton v. Youngblood, 69 Cal. 2d 17, 442 P.2d 648, 69 Cal. Rptr. 568 (1968). When a client would have been prejudiced if his attorney could have amended his complaint to allow an offset for the reasonable value of his services, rejection of the amendment was not an abuse of the trial court’s discretion.

Reichert v. General Ins. Co. of America, 68 Cal. 2d 822, 442 P.2d 377, 69 Cal. Rptr. 321 (1968). Claims against fire insurers constituted rights of action arising upon contract and as such passed to plaintiff’s trustee in bankruptcy and could not be asserted by the bankrupt.

People v. Carter, 68 Cal. 2d 810, 442 P.2d 353, 69 Cal. Rptr. 210 (1968). In a prosecution for receiving stolen property, the trial court’s action in urging agreement by a lone dissenting juror amounted to coercion of the jury and required reversal.

Batson v. Strehlow, 68 Cal. 2d 662, 441 P.2d 101, 68 Cal. Rptr. 589 (1968). A real estate broker violates a fiduciary duty by not disclosing to the vendor that the broker is the actual purchaser.

Fazzi v. Peters, 68 Cal. 2d 590, 440 P.2d 242, 68 Cal. Rptr. 170 (1968). A judgment as to the individual property of an alleged partner who was not made a party to an action against the partnership is not binding.

Continental Baking Co. v. Katz, 68 Cal. 2d 512, 439 P.2d 889, 67 Cal. Rptr. 761 (1968). In an action involving the scope of a retained easement, although certain extrinsic evidence was erroneously admitted, its admission was not prejudicial in light of the whole record and did not justify reversal of the order granting a preliminary injunction.

Whittaker v. Superior Court, 68 Cal. 2d 357, 438 P.2d 358, 66 Cal. Rptr. 710 (1968). No denial of equal protection of the law results from the fact that appeals from convictions in the justice court of a county having no municipal court are heard by a single superior court judge sitting as a court of appeal, rather than by a three-judge appellate department as would be the case in a county warranting a municipal court.

People v. Collins, 68 Cal. 2d 319, 438 P.2d 33, 66 Cal. Rptr. 497 (1968). The introduction of evidence of mathematical probability on the issue of identity, although not inherently incompatible with the jury’s traditional role of determining guilt, was error under the facts of this case and required reversal.

Estate of Westerman, 68 Cal. 2d 267, 437 P.2d 517, 66 Cal. Rptr. 29 (1968). If an interest in separate property previously owned by a deceased spouse is conveyed by the surviving spouse to a grantee who then re-conveys it to the survivor, the property loses its status as “separate property” and will not pass by intestate succession on the survivor’s death to the family of the previously deceased spouse pursuant to California Probate Code § 228.

In re Mitchell, 68 Cal. 2d 258, 437 P.2d 289, 65 Cal. Rptr. 897 (1968). Defendant, having received no advice with respect to his right to counsel on appeal, was entitled to reinstatement of his appeal and the appointment of such counsel; his request for counsel, although made on the day preceding oral argument, was not untimely and should have been granted.

Granco Steel, Inc. v. Workmen’s Comp. App. Bd., 68 Cal. 2d 191, 436 P.2d 287, 65 Cal. Rptr. 287 (1968). An employer could assume that previously cancelled insurance coverage would recommence on due notice of need to the insurer through the insurer’s agent who was authorized to orally bind the company by contracts of insurance.

In re Berry, 68 Cal. 2d 137, 436 P.2d 273, 65 Cal. Rptr. 273 (1968). One actually or constructively restrained pending a contempt prosecution for violation of an unconstitutional order or injunction is entitled to relief by way of habeas corpus; the labor in-
junction here in question was unconstitutionally vague and overbroad, and therefore such relief must be granted.

*People v. Garcia*, 67 Cal. 2d 830, 434 P.2d 366, 64 Cal. Rptr. 110 (1967). Defendant, having demonstrated a reasonable possibility that a confidential informer could give evidence which might result in his exoneration, was entitled to disclosure of the identity of that informer, and the failure to order such disclosure required reversal.

*Morris v. Williams*, 67 Cal. 2d 733, 433 P.2d 697, 63 Cal. Rptr. 689 (1967). In an action for declaratory relief to determine the validity of amendments made by the Health and Welfare Agency that reduced benefits under the Medi-Cal program, the regulations were held invalid as contrary to legislative intent.

*Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 433 P.2d 732, 63 Cal. Rptr. 724 (1967). An action may properly be brought as a class action when each count of the complaint shows the existence of an ascertainable class as well as a defined community interest in questions of law and fact.

*Estate of Callahan*, 67 Cal. 2d 609, 432 P.2d 965, 63 Cal. Rptr. 277 (1967). Evidence that one page of a holographic will had been executed during a period when the testatrix suffered from senile dementia raises a jury question on testamentary capacity and must be given the credit and benefit of its full probative strength upon a motion for nonsuit by the will's proponents.

*Colberg, Inc. v. State ex rel. Dept' of Pub. Works*, 67 Cal. 2d 408, 432 P.2d 3, 62 Cal. Rptr. 401 (1967). Owners of property riparian to a navigable waterway are not entitled to compensation under the law of eminent domain when the state, in the proper exercise of its power to control, regulate, and utilize public navigable waters, impedes the right of access to such property by means not amounting to a physical invasion thereof.

*Driscoll v. City of Los Angeles*, 67 Cal. 2d 297, 431 P.2d 245, 61 Cal. Rptr. 661 (1967). Where a city in good faith, but erroneously, advised widows of retired members of police and fire departments that they were not entitled to pension benefits, the city was estopped from using the statute of limitations as a defense where widows failed to file timely claims.

*People v. Laudermilk*, 67 Cal. 2d 272, 431 P.2d 228, 61 Cal. Rptr. 644 (1967). In a prosecution for murder, there was no substantial evidence sufficient to raise a doubt as to defendant's present mental sanity and therefore no basis for granting a hearing concerning the suspension of proceedings.

*Lynch v. Spilman*, 67 Cal. 2d 251, 431 P.2d 636, 62 Cal. Rptr. 12 (1967). In an action to impress a charitable trust upon real property in which the defendants' attorney was unable to appear to contest the plaintiff's motion for summary judgment and the plaintiff's attorney agreed to a substitute attorney's appearance, the substitute attorney's message that he could not get to court precisely on time failed to reach the clerk. The plaintiff's motion for summary judgment was granted without the plaintiff's attorney informing the court of the agreed-upon substitute arrangements. The trial court properly concluded that the summary judgment entered against the defendants was due to inadvertence and excusable neglect of their attorneys and should be vacated.

*People v. Williams*, 67 Cal. 2d 226, 430 P.2d 30, 60 Cal. Rptr. 472 (1967). In a prosecution for burglary, the search of defendant's automobile was incident to arrest even though the arrest occurred later at a nearby location to which defendant had fled after abandoning the car, and the subsequent inventory of contents at the police impound was a proper continuation of the search.

*People v. Coffey*, 67 Cal. 2d 204, 430 P.2d 15, 60 Cal. Rptr. 457 (1967). If evidence of a prior conviction that is later determined to be constitutionally invalid is introduced to impeach the defendant's testimony, the conviction must be reversed on appeal where it is not possible from the record to make a meaningful assessment of prejudice.

*Joslin v. Marin Mun. Water Dist.*, 67 Cal. 2d 132, 429 P.2d 889, 60 Cal. Rptr. 377 (1967). When dam construction caused a cessation of a flow of water, riparian owners taking rock, gravel, and sand from the stream could not insist upon an undiminished flow of water across their property because such use is not a "reasonable use" protected by the Constitution.

*In re Black*, 66 Cal. 2d 881, 428 P.2d 293, 59 Cal. Rptr. 429 (1967). Although a trial court, when it retains custody and therefore jurisdiction over a defendant by suspending pronouncement or execution of judgment, has the power to entertain an application for
probation at any time prior to execution of sentence, when it is clear under the facts that there was no intention to retain such custody and jurisdiction, the court has no power to entertain such an application.

Alber v. Owens, 66 Cal. 2d 790, 427 P.2d 781, 59 Cal. Rptr. 117 (1967). Where a general contractor’s negligent failure to provide guard rails on the second-story platform of a building under construction resulted in plaintiff’s injury, but where plaintiff-employee was himself an employer vis-a-vis other employees, plaintiff was nonetheless not held to the rigorous safety obligations imposed on employers in evaluating his care for his own safety and was not contributorily negligent as a matter of law because of failure to so comply.

People v. Rolon, 66 Cal. 2d 690, 427 P.2d 196, 58 Cal. Rptr. 596 (1967). Prosecutorial reference to admitted prior convictions of defendant was prejudicial in light of the whole record and required reversal.

People v. King, 66 Cal. 2d 633, 427 P.2d 171, 58 Cal. Rptr. 571 (1967). When the Insurance Commissioner, purporting to act under a provision not providing for the compulsion of incriminating testimony and attendant immunity, nevertheless compelled incriminating testimony, his action was in essence under a different provision requiring a grant of immunity, and an indictment resting wholly on such testimony was properly set aside.

People v. United Nat’l Life Ins. Co., 66 Cal. 2d 577, 427 P.2d 199, 58 Cal. Rptr. 599 (1967). California can constitutionally regulate the insurance transactions of foreign insurance companies that, although they have no agents in this state, solicit and negotiate such transactions with California residents by mail.

People v. Hill, 66 Cal. 2d 535, 426 P.2d 908, 58 Cal. Rptr. 340 (1967). In a capital murder case involving numerous contentions—including the voluntariness of defendant’s confession, its admissibility under rules requiring advice as to constitutional rights, the adequacy of accomplice instructions, the admission of other-crimes evidence, the use of extrajudicial statements by a codefendant, and prosecutorial arguments during the penalty phase—there was no error requiring reversal of the judgment.

People v. Gonzales, 66 Cal. 2d 482, 426 P.2d 929, 58 Cal. Rptr. 361 (1967). In a capital murder case, introduction and use of extrajudicial statements by a codefendant was error requiring reversal.

People v. Merriam, 66 Cal. 2d 390, 426 P.2d 161, 58 Cal. Rptr. 1 (1967). Alleged constitutional defects in a prior conviction asserted for enhancement may not be raised for the first time on direct appeal from a subsequent conviction.

People v. Stout, 66 Cal. 2d 184, 424 P.2d 704, 57 Cal. Rptr. 152 (1967). In a prosecution for various drug and weapons offenses, contentions concerning an alleged illegal search and admissions to investigating officers were without merit, but improper comment by the prosecutor on defendant’s failure to take the stand required reversal of the weapons counts.

People v. Sanchez, 65 Cal. 2d 814, 423 P.2d 800, 56 Cal. Rptr. 648 (1967). In a prosecution for armed assault by a life prisoner (Penal Code § 4500), various contentions regarding defendant’s mental condition, his admissions and confessions to investigating officers, and the prosecutor’s argument to the jury were without merit.