

# Cal Law Trends and Developments

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## Foreward

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It is a pleasure, once more, to write the foreword to *Cal Law—Trends and Developments*. This volume continues the project launched last year; we again extend our thanks to the Bancroft-Whitney Company for its co-operation.

We are most grateful to all who have contributed to this issue, to our authors from the first volume who have continued to assist us, and to those who are new to the project this year.

In the opening issue, our purpose was stated as follows: “to provide an annual review of the significant developments in California law as revealed through the workings of the judicial, the legislative, and the administrative processes . . . a synthesis of legal activity, an analysis of trends, a critique of results and, at times, a tentative prognostication of things to come.” We believe this volume fulfills that purpose.

Recently adopted statutes receive detailed and critical analysis. Particularly to be noted are: the new Corporate Securities Law, the amendment of section 657 of the Code of Civil Procedure, dealing with the power to grant a new trial for insufficiency of the evidence, and the 1968 changes in the Civil Code relating to the community-separate property aspects of damage recoveries. The Evidence Code has now been in effect long enough to have produced a number of significant cases; these decisions are analyzed by one who participated in the preparation of the Code as a member of the California Law Revision Commission staff.

In the “common-law” field, decisions of major importance in the choice-of-law process and in the scope of liability for negligent infliction of emotional distress are discussed and their potential impact on the future course of the law analyzed. The problems of the insurer who fails to settle within policy limits, extensively discussed in the last issue, enter a new phase, that of potential liability for consequential damages for failure to pay under a policy of fire insurance.

The author of the Workmen’s Compensation article finds a significant new trend in the scope of appellate court review of decisions of the Workmen’s Compensation Appeals Board. The Remedies article continues the discussion of the problems, noted in the last issue, arising from the remedial consequences which follow the choice of the substantive cause of action. Sociological problems are considered in several aspects. The

Procedure article considers the potential inhibitory effect of a counterclaim or cross complaint in an action in small claims court which opens the door to the possibility of appeal and trial *de novo* by the plaintiff if he loses in the lower court. An entirely new approach is taken in one article which presents the Bench's view of the problems faced by society in the enforcement of the drug abuse laws and which proposes a remedy for those problems. To list the above articles is not to disparage those not mentioned. Each article has its contribution to make to the total scene of the past year.

And finally, in every year there is the sad problem, posed in the lighter vein. Last year, it was the topless waitress and state preemption; this year it is the motorist, who by driving on the highway, impliedly consents to a sobriety test. One decision considers the plight of a person who claims that some unknown or unspecified malady prevents his submission to a blood test; the author suggests that a breathalyzer test is available and "it is hard to imagine a viable driver who could not breathe." But the prize goes to the case of the motorist who relied on the portion of the statute which provides that one "otherwise in a condition rendering him incapable of refusal, shall not be deemed to have withdrawn his consent" and asserted that he was too drunk to be capable of refusing to consent to a sobriety test.

Finally, some very personal words of thanks and commendation. I would like to acknowledge the participation of every member of the student board. Space does not permit listing them all, but without their cheerful devotion to the task, often menial, of reviewing decisions, checking citations, and reading proof, as well as the high quality of their work in helping in the writing, this volume would not have appeared. And finally, my very sincere and heartfelt thanks and commendation to two persons, Professor Judith McKelvey, who joined our faculty this year and did a superb job as the faculty supervisor of this project, and Joseph Russell, the student editor-in-chief; without them this volume would not exist.

DEAN JOHN A. GORFINKEL

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