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Evidence

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Evidence

Evidence; admissibility of evidence pertaining to animal experimentation--products liability actions against automakers

Evidence Code § 1159 (new).
AB 3691 (Gotch); 1992 STAT. Ch. 188

Under existing law, all relevant evidence[1] is admissible in any action, except as otherwise provided for by statute.[2] Chapter 188 prohibits the admission[3] of any evidence relating to live animal

1. *See* CAL. EVID. CODE § 210 (West 1966) (defining relevant evidence); *see also* 1 B.E. WITKIN, CALIFORNIA EVIDENCE §§ 309-310 (3d. ed. 1986 & Supp. 1992) (discussing the tests courts utilize in determining relevancy).

2. CAL. EVID. CODE § 351 (West 1966); *see id.* § 352 (West 1966) (leaving the ultimate question of whether to admit or exclude evidence to the discretion of the trial judge); *see also id.* § 1151 (West 1966) (prohibiting the admission of evidence of subsequent remedial measures to prove negligence or culpable conduct); *id.* § 1152(a) (West Supp. 1992) (excluding evidence of compromise offers to prove liability of the person making the offer); *id.* § 1152.5(a) (West Supp. 1992) (prohibiting the introduction of evidence deriving from mediation procedures); *id.* § 1155 (West 1966) (excluding by statute evidence that a person was insured at the time a harm was suffered by another to prove negligence or other wrongdoing of the person). *See generally* 6 CAL. L. REV. COMM'N, *introduction to art. VI*, at 607 (1964) (stating that statutes exclude certain types of evidence for reasons of public policy, even though the evidence is relevant and reliable).

3. *See* CAL. EVID. CODE § 353(a) (West 1966) (requiring that there appear on the record an objection to admission of evidence for a verdict or judgment to be set aside because of an erroneous admission of evidence); *id.* § 353(b) (West 1966) (requiring a court to find that the erroneous admission of evidence resulted in a miscarriage of justice before a verdict or judgment may be set aside for erroneous admission of evidence); *see also* Brokopp v. Ford Motor Co., 71 Cal. App. 3d 841, 853, 139 Cal. Rptr. 888, 895 (1977) (holding that a miscarriage of justice occurs whenever it is reasonably probable that a result more favorable to the appellant would have been reached absent the admission of the evidence).

experimentation[4] in any product liability action involving motor vehicles.[5]

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4. *See generally 19,000 Animals Killed in Animal Crash Tests*, N.Y. TIMES, Sept. 28, 1991, at 26 (reporting that General Motors spokespersons admit that GM is the only automobile manufacturer which utilizes live animals in experiments that include skin-shredding, chest injury and polluting the animals' lungs with auto emissions); Richard Willing, *20,000 Animals Killed in Decade of GM Safety Tests*, THE DETROIT NEWS, Sept. 27, 1991 at A1 (noting that, although other automobile makers have ceased using live animals in safety tests, they do have access to GM's test results); Mark Vaughn, *Animal Rights Group Dogs Automaker Over Safety Tests, But Are Critics of GM Barking Up Wrong Tree*, AUTOWEEK, Oct. 28, 1991, at 14 (presenting both sides of the debate over whether or not GM should discontinue its use of live animals in safety tests).

5. CAL. EVID. CODE § 1159(a) (enacted by Chapter 188). Chapter 188 applies only to actions commenced after January 1, 1993. *Id.* § 1159(b) (enacted by Chapter 188). *See generally* Ralph Frammolino, *Wilson Signs Law Barring Animal Test Evidence*, L.A. TIMES, July 15, 1992, at B2 (reporting on the passage of Chapter 188). Whether Chapter 188 will operate to prohibit the introduction of such evidence in federal diversity actions depends on whether Chapter 188 is interpreted as a pure rule of evidence or as a substantive rule. *See* Barron v. Ford Motor Co., 965 F.2d 195, 203 (7th Cir. 1992) (distinguishing a pure rule of evidence, like a rule of procedure, from a substantive rule); Conway v. Chemical Leaman Tank Lines, Inc. 540 F.2d 837, 838 (5th Cir. 1976) (stating in dictum that a state rule that allowed the introduction of a spouse's remarriage in a wrongful death action was an evidentiary rule so bound up with substantive law that federal courts were required to follow the state rule); John Ely, *The Irrepressible Myth of Erie*, 87 HARV. L. REV. 693, 721, 724-5 (1974) (defining a procedural rule as one which makes the process of litigation a fair and efficient mechanism for the resolution of disputes, and defining a substantive rule as that which is designed to fulfill some purpose not having to do with fairness or efficiency of the litigation process); *see also* County of San Diego v. Department of Health Servs., 1 Cal. App. 4th 656, 661, 2 Cal. Rptr. 2d 256, 259 (1991) (stating the general rule that a court may look to committee analyses to determine legislative intent); SENATE COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 3691 (June 16, 1992) (stating that the purpose of Chapter 188 is to remove incentives for car manufacturers to utilize live animals in crash testing of vehicles). *But see* FED. R. EVID. 402 (providing that all relevant evidence is admissible in federal district courts, except as otherwise provided in the Federal Rules of Evidence); Fasanaro v. Mooney Aircraft Corp., 687 F. Supp. 482, 484, 486 (N.D. Cal. 1988) (holding in a products liability action that Rule 407 of the Federal Rules of Evidence, which excludes evidence of subsequent remedial measures to prove culpable conduct, is rationally capable of classification as procedural, and that it applies in diversity actions over contrary California law); Gibbs v. State Farm Mut. Ins. Co., 544 F.2d 423, 428 (9th Cir. 1976) (restating a well-supported rule that the Federal Rules of Evidence govern the admissability of evidence in diversity cases). *See generally* Olin Wellborn, *The Federal Rules of Evidence and the Application of State Law in Federal Courts*, 55 TEX. L. REV. 371, 401-02 (1977) (suggesting that the history of the passage of the Federal Rules of Evidence indicates a Congressional intent to subject the Rules of Evidence to the strictures of the Rules Enabling Act, namely that they cannot enlarge, abridge or modify any substantive right); Brian Redmond, *Federal Rules of Evidence or State Evidentiary Rules as Applicable in Diversity Cases*, 84 A.L.R. 283, 297, 301 (1987 & Supp. 1992) (reviewing the divergent views reached by the Circuit Courts of Appeal on the application of the Federal Rules of Evidence in diversity actions when conflicting state evidence rules are arguably substantive).

Evidence; psychotherapist-patient privilege

Evidence Code § 1010 (amended).
AB 3035 (Polanco); 1992 STAT. Ch. 308

Under existing law, confidential communications[1] between a patient[2] and a psychotherapist[3] are privileged.[4] Chapter 308 expands the definition of psychotherapist to include registered nurses who possess a master's degree in psychiatric mental health nursing.[5]

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1. *See* CAL. EVID. CODE § 1012 (West Supp. 1992) (defining confidential communication between patient and psychotherapist); People v. Clark, 50 Cal. 3d 583, 618, 789 P. 2d 127, 151, 268 Cal. Rptr. 399, 423 (1990) (providing that previous communications to psychotherapist are not amenable to the patient-psychotherapist privilege if later communications are made to third person in a nonprivileged situation) *cert. denied*, 111 S. Ct. 442 (1990); Lovett v. Superior Court, 203 Cal. App. 3d 521, 527, 250 Cal. Rptr. 25, 29 (1988) (holding that statements made during group therapy comes within patient-psychotherapist privilege); *cf.* Luhdorff v. Superior Court, 166 Cal. App. 3d 485, 490, 212 Cal. Rptr. 516, 518 (1985) (holding that communications made by patients to persons necessary to assist psychiatrists or psychologists in treatment of patient's psychiatric problems fall within the penumbra of psychotherapist-patient privilege).

2. *See* CAL. EVID. CODE § 1011 (West 1966) (defining patient); *see also In re* Daniel C.H., 220 Cal. App. 3d 814, 829, 269 Cal. Rptr. 624, 632 (1990) (upholding application of psychotherapist-patient privilege to an attorney of an alleged child molestation victim); Grosslight v. Superior Court, 72 Cal. App. 3d 502, 507, 140 Cal. Rptr. 278, 281 (1977) (stating that communications between the parents of a child defendant and a psychiatrist were covered by the psychotherapist-patient privilege).

3. *See* CAL. EVID. CODE § 1010 (amended by Chapter 308) (defining therapist to include psychologists, clinical social workers, school psychologists, marriage, family, and child counselors, psychological assistants, associate clinical social workers, psychological interns, and supervised trainees).

4. *Id.* § 1014(a) (West Supp. 1992); *cf. id.* § 954 (West Supp. 1992) (providing privilege for communications between attorney and client); *id.* § 970 (West 1966) (providing privilege not to testify against spouse); *id.* § 994 (West Supp. 1992) (providing attorney-client privilege); *id.* § 1032 (West 1966) (providing that communications between clergyman and penitent are privileged); *cf.* KY. REV. STAT. ANN. § 422A.0507 (Michie 1980) (creating a psychotherapist-patient privilege). *But see* CAL. EVID. CODE §§ 1016-1026 (West 1966 & Supp. 1992) (setting forth exceptions to the psychotherapist-patient privilege); *id.* § 1024 (West 1966) (providing that psychotherapist-patient privilege does not exist if the psychotherapist has reason to believe that the patient poses a threat to himself or another, and if disclosure of that information is necessary to prevent possible future violence); Tarasoff v. Regents of Univ. of California, 17 Cal. 3d 425, 442, 551 P. 2d 334, 347, 131 Cal. Rptr. 14, 27 (1976) (concluding that the policy in favor of protecting confidential communications between patient and psychotherapist must yield when necessary to prevent harm from occurring to others); *In re* Lifschutz, 2 Cal. 3d 415, 439, 467 P. 2d 557, 573, 85 Cal. Rptr. 829, 845 (1970) (holding that a person who admitted in a deposition that he had previously received psychological treatment had partially waived right to keep past psychological data confidential).

5. CAL. EVID. CODE § 1010(k) (amended by Chapter 308).

Evidence; speedtraps

Vehicle Code § 40808 (new); § 40803 (amended).
AB 3659 (Horcher); 1992 STAT. Ch. 538

Under prior law, evidence gained from a speed trap[1] could not be used in trial for a person charged with violating the Vehicle Code.[2] Chapter 538 provides that evidence from speed traps can be excluded only for prosecutions of speeding violations.[3]

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1. *See* CAL. VEH. CODE § 40802(a)(b) (West Supp. 1992) (defining speed trap). *See generally* People v. Beamer, 130 Cal. App. 2d Supp. 874, 279 P.2d 205 (1955); *In re* Beamer, 133 Cal. App. 2d 63, 283 P.2d 356 (1955) (discussing whether the original definition of a speed trap included the use of an electromagnetic radar speed meter); James H. Knecht Jr., Note, *Evidence - Automobiles - Radar Speedmeters*, 29 S. CAL. L. REV. 240 (1956) (discussing the holding of *Beamer*, and the use of radar and speed traps).

2. CAL. VEH. CODE § 40803(a) (amended by Chapter 538); *see* People v. Miller, 90 Cal. App. 3d Supp. 35, 36, 153 Cal. Rptr. 192, 193 (1979) (holding that evidence from radar was admissible because the section of the highway on which the defendant was caught was not a speed trap). *See generally* Fleming v. Superior Court, 196 Cal. 344, 349, 238 P. 88, 89-90 (1925) (upholding the constitutionality of California's first laws prohibiting speed traps in order to eliminate clandestine methods of law enforcement); William P. Clancy Jr., Note, *Criminal Law: Admissibility of Evidence Obtained by Radar Speed Meter*, 43 CAL. L. REV. 710, 711-19 (1955) (discussing the history and reasoning behind speed trap laws in California and other states, and problems with the use of radar and defining speed traps); Recent Decision, *Motor Vehicles: Validity of the Speed Trap Law*, 14 CAL. L. REV. 142, 142-43 (1925) (discussing the *Fleming* decision).

3. CAL. VEH. CODE § 40803(a) (amended by Chapter 538); *see* People v. Sullivan, 234 Cal. App. 3d 56, 57-58, 285 Cal. Rptr. 553, 554 (1991) (finding that evidence from a speed trap could be admitted into court in any prosecution that was consistent with Proposition 8).