1000-1

Unless expressly made irrevocable by the instrument creating the trust, every trust shall be revocable by the trustor by a writing filed with the trustee, as long as the trust was created by a California domiciliary, was executed in this state, or is governed by California law. (Probate Code §15400)

1000-2

The existence and terms of an oral trust of personal property may be established only by clear and convincing evidence. The oral declaration of the settlor, standing alone, is not sufficient evidence of the creation of a trust of personal property. (Probate Code §15207)

1000-3

Custodial property is created and a transfer is made when money is paid or delivered or a security held in a nominee's name is transferred to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words "as custodian for _____ (Name of Minor) under the California Uniform Transfers to Minor Act." Such a transfer is irrevocable and the custodial property is indefeasibly vested in the minor but the custodian has all the rights, power, duties, and authority provided in the Probate Code. (Probate Code §§3909(a)(2), 3911(b))

1000-3A

A custodian under the California Uniform Transfers to Minor Act may deliver or pay to the minor or expend for the minor's benefit as much of the custodial property as the custodian considers advisable for the use and benefit of the minor. No court order is required to effect such payments. The payments may be made without regard to (1) the duty or ability of the custodian personally, or of any other person, to support the minor or (2) any other income or property of the minor which may be available for that purpose. (Probate Code §3914(a))

1000-4

A resulting trust arises from a transfer of property under circumstances showing that the transferee was not intended to take the beneficial interest. It has been termed an "intention-enforcing" trust. The resulting trust carries out the inferred intent of the parties, the constructive trust defeats or prevents the wrongful act of one of them. A resulting trust differs from an express trust chiefly in that (1) it arises by operation of law, without an expressed intent, and (2) the resulting trustee ordinarily has no duty other than to transfer the property to the person entitled. The statute of frauds is not a bar to the use of parol evidence to establish a resulting trust. Where the grantee is the wife, child or other natural object of the affections of the claimant, a contrary presumption arises of a gift or advancement. This presumption is rebuttable. (Witkin, Summary of California Law, Eighth Edition, Volume 7, at p. 5481, 5487)

1000-5

In the case of a *Totten* trust, the beneficiary has no rights to the sums on deposit during the lifetime of any party unless there is clear and convincing evidence of a different intent. If there is an irrevocable trust, the account belongs to the beneficiary. (Probate Code §5301(c)) In *Estate*

of Wilson (1986) 183 Cal.App.3d 67, 227 Cal.Rptr. 794, the following is set forth: "The *Totten* trust basically allows a decedent to make a testamentary disposition of cash assets without going through the formalities of drawing up a will. Under a rule established in the New York case of *Matter of Totten*, [179 N.Y. 112, 71 N.E. 748], if a depositor merely opens a bank account in his own name as trustee for another person, intending to reserve the power to withdraw funds during his lifetime, a tentative trust is created, revocable during the trustor's lifetime or by his will, and at his death presumptively an absolute trust. Partial revocation takes place whenever the depositor withdraws money from the account, and the beneficiary is entitled only to the balance on deposit at death. But if the beneficiary dies first, the tentative trust is terminated. (7 Witkin, Summary of Cal.Law (8th ed. 1974) Trusts, S 17, p. 5379, emphasis in original.) California has recognized the legitimacy of *Totten* trusts for a long time (*Kosloskye* v. *Cis* (1945) 70 Cal.App.2d 174, P.2d 565; *Estate of Collins* (1978) 84 Cal.App.3d 928, 932, 149 Cal.Rptr. 65, stating the *Totten* trust doctrine "is accepted law in this state"), and recently the Legislature authorized this form of testamentary disposition by enacting the Multiple-Party Accounts Law. (Prob. Code, S 5100 et seq.)" See *Estate of Wilson*, 227 Cal.Rptr. at 796.

1000-6

One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner. (Civil Code §2223) One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, unless he or she has some other and better right thereto, is an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it. (Civil Code §2224)

1001-1

The earnings and accumulations of a spouse and the minor children living with, or in the custody of, the spouse, while living separate and apart from the other spouse, are the separate property of the spouse. (Family Code §771)

1001-2

In the division of the community estate under this division, unless a party has made a written waiver of the right to reimbursement or signed a writing that has the effect of a waiver, the party shall be reimbursed for the party's contributions to the acquisition of the property to the extent the party traces the contributions to a separate property source. The amount reimbursed shall be without interest or adjustment for change in monetary values and shall not exceed the net value of the property at the time of the division. As used in this section, "contributions to the acquisition of the property" include down payments, payments for improvements, and payments that reduce the principal of a loan used to finance the purchase or improvement of the property but do not include payments of interest on the loan or payments made for maintenance, insurance, or taxation of the property. (Family Code §2640)

1001-3

All property of a married person, owned by the person before marriage, and that acquired afterwards by gift, bequest, devise or descent, with the rents, issues, and profits of the property described in this section, is separate property. (Family Code §770)

1001-4

"An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing." (Civil Code §1091)

Witkin, Summary of California Law, Ninth Edition, Volume 4, discusses real property. At page 354, §140 states that the requisites of a deed are: 1. A grantor 2. A grantee 3. A writing and subscription 4. Delivery 5. Acceptance. A recordation is not necessary; its effect is to give constructive notice and to determine priorities. Witkin, at p. 379, §170 adds: "A deed takes effect only when delivered.... Delivery depends upon the intention that title shall pass irrevocably.... It is a question of fact and evidence of the circumstances and of the acts and declarations of the grantor may be offered on the issue." Witkin continues. "If the grant is beneficial and the grantee has knowledge of it, acceptance will be presumed." (Witkin, p. 400, §194)

1001-4A

An estate in real property (other than an estate at will, or for a term not exceeding one year) can be transferred only by operation of law, or by an instrument in writing, signed by the grantor or the grantor's duly authorized agent. (Civil Code §§1091 and 1624(a)(3) and (4))

1001-5

A transfer of property may be made without writing, unless there is a statute which requires a writing. (Civil Code (Civ. C.) §1052)

A transfer in writing is called a grant, or conveyance or bill of sale. (Civ. C. §1053) A grant takes effect only when it is delivered to the grantee. (Civ. C. §1054) A grant duly executed is presumed to have been delivered as of the date on the grant. (Civ. C. §1055)

1001-7

Under California Law, the ownership of property is the right of one or more persons to possess and use that property to the exclusion of others. (Civil Code (Civ. C.) §654)

The person's ownership of property is absolute when that person has absolute dominion over the property, and may use it or dispose of it as he or she wishes. (Civ. C. §679)

1001-8

Under California law, a gift is a voluntary transfer of personal property, for which the donor receives no "consideration". (Civil Code (Civ. C.) §1146)

"Consideration" is a benefit given directly, or agreed to be given, to one person by another when there is no legal obligation to do so. Consideration may also exist when one person agrees not to pursue an action, or claim, or a right, against another person against whom that course of action could otherwise be pursued. (Civ. C. §1605)

1100-1

A letter correctly addressed and properly mailed is presumed received in the normal course of

the mail. (Evidence Code §641)

1100-2

If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust. (Evidence Code §412)

1100-2A ADDED 7/15
A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption. (Evidence Code §602)

1100-3

The genuineness of handwriting, or lack thereof, may be proved by a comparison made by the trier of fact with handwriting (a) which the court finds was admitted or treated as genuine by the party against whom the evidence is offered or (b) otherwise proved to be genuine to the satisfaction of the court. (Evidence Code §1417)

1100-4

An inference is a deduction of fact that may logically and reasonably be drawn from another fact or, group of facts found or otherwise established in the action. (Evidence Code §600(b)) An inference does not follow from the nonexistence of a fact. It cannot be based on speculation, supposition, conjecture or guesswork. (See, e.g., *Traxler* v. *Thompson* (1970), 4 Cal. App. 3d 278, 84 Cal.Rptr. 211)

1100-5A

In 1999, the "Best Evidence" rule was replaced by the "Secondary Evidence of Writings" Rule. Portions of that rule are set forth below:

The content of a writing may be proved by an otherwise admissible original. (Evidence Code (Ev. C.) §1520) The content of a writing may be proved by otherwise admissible secondary evidence. The court shall exclude secondary evidence of the content of writing if the court determines either of the following:

(1) A genuine dispute exists concerning material terms of the writing and justice requires the exclusion.

(2) Admission of the secondary evidence would be unfair.

(Ev. C. §1521(a))

Nothing in this section makes admissible oral testimony to prove the content of a writing if the testimony is inadmissible under §1523 (oral testimony of the content of a writing). (Ev. C. §1521(b))

Nothing in this section excuses compliance with §1401 (authentication). (Ev. C. §1521(c))

This section shall be known as the "Secondary Evidence Rule." (Ev. C. §1524(d))

Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing. (Ev. C. §1523(a))

A purported copy of a writing in the custody of a public entity, or of an entry in such a writing, is prima facie evidence of the existence and content of such writing or entry if:

(1) The copy purports to be published by the authority of the nation or state, or public entity in which the writing is kept.

(2) The office in which the writing is kept is within the United States or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, and the copy is attested or certified as a correct copy of the writing or entry by a public employee, or a deputy of a public employee, having the legal custody of the writing.

(Ev. C. §1530(a); §1530(a)(3) deals with writings kept outside the United States)

A nonerasable optical image reproduction provided that additions, deletions, or changes to the original document are not permitted by the technology, a photostatic, microfilm, microcard, miniature photographic, or other photographic copy or reproduction, or an enlargement thereof, of a writing is as admissible as the writing itself if the copy or reproduction was made and preserved as a part of the records of a business (as defined by Ev. C. §1270) in the regular course of that business. (Ev. C. §1550)

(The Secondary Evidence Rule is discussed in more detail in Witkin, California Evidence, 4th Edition, 2000, Vol. 2, §27 et seq.)

1100-6

Direct evidence is evidence that directly proves a fact, without an inference or presumption, and which in itself, if true, conclusively establishes the fact. (Evidence Code (Ev. C.) §410) Except where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact. (Ev. C. §411)

1100-7

The Evidence Code (Evid. Code) deals with general rules as to the determination of credibility of witnesses. The rule provides as follows: "Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following:

"(a) His demeanor while testifying and the manner in which he testifies.

"(b) The character of his testimony.

"(c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies.

"(d) The extent of his opportunity to perceive any matter about which he testifies.

"(e) His character for honesty or veracity or their opposites.

"(f) The existence or nonexistence of a bias, interest, or other motive.

"(g) A statement previously made by him that is consistent with his testimony at the hearing.

"(h) A statement made by him that is inconsistent with any part of his testimony at the hearing.

"(i) The existence or nonexistence of any fact testified to by him.

"(j) His attitude toward the action in which he testifies or toward the giving of testimony.

"(k) His admission of untruthfulness."

(Evid. Code §780)

1100-8

In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating to those facts. (Evidence Code §413)

1100-9

"Hearsay evidence" is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. (Evidence Code §1200(a))

1100-10

Evidence of a statement is not made inadmissible by the hearsay rule when offered against the declarant in an action to which he is a party in either his individual or representative capacity, regardless of whether the statement was made in his individual or representative capacity. (Evidence Code §1220)

1100-11

Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if the statement is one of which the party, with knowledge of the content thereof, has by words of other conduct manifested his adoption or his belief in its truth. (Evidence Code §1221)

1100-12

Evidence of a statement by a declarant having sufficient knowledge of the subject is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made, was so far contrary to the declarant's pecuniary or proprietary interest, or so far

subjected him to the risk of civil or criminal liability, or so far tended to render invalid a claim by him against another, or created such a risk of making him an object of hatred, ridicule, or social disgrace in the community, that a reasonable man in his position would not have made the statement unless he believed it to be true. (Evidence Code §1230)

1100-13

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:

(a) The writing was made in the regular course of a business;

(b) The writing was made at or near the time of the act, condition, or event;

(c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and

(d) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

(Evidence Code §1271)

1100-14

Evidence of the absence from the records of a business of a record of an asserted act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the nonoccurrence of the act or event, or the nonexistence of the condition, if:

(a) It was the regular course of that business to make records of all such acts, conditions, or events at or near the time of the act, condition, or event and to preserve them; and

(b) The sources of information and method and time of preparation of the records of that business were such that the absence of a record of an act, condition, or event is a trustworthy indication that the act or event did not occur or the condition did not exist.

(Evidence Code §1272)

1100-15

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered in any civil proceeding to prove the act, condition, or event if all of the following applies:

(a) The writing was made by and within the scope of duty of a public employee.

(b) The writing was made at or near the time of the act, condition, or event.

(c) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

(Evidence Code §1280)

1100-16 ADDED 2/14
A “preponderance of the evidence” means “more likely than not.” (Tellabs, Inc. v. Makor Issues & Rights, Ltd. (2007) 551 U.S. 308, 127 S.Ct. 2499, 2513, 168 L.E.2d 179, 196)

1100-17 ADDED
5/16The Administrative Law Judge shall be permitted to exclude evidence which is irrelevant, cumulative or unduly repetitious. (22-050.22)

1101-1

In administrative tribunals, the party asserting the affirmative of the issue generally has the burden of proof. (*Cornell* v. *Reilly* (1954) 127 Cal.App.2d 178, 273 P.2d 572; and California Administrative Agency Practice, California Continuing Education of the Bar (1970) p.183)

1101-2

The burden of producing evidence is the obligation of a party to produce evidence sufficient to avoid a ruling against him on the issue. (Evidence Code (Evid. Code) §110) The burden of producing evidence as to a particular fact is initially on the party with the burden of proof as to that fact. (Evid. Code §550)

1101-3

The burden of proof is the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evidence Code §115)

1101-4

The county has the burden of going forward in the state hearing to support its determination. (§22-073.36)

1101-5 ADDED 4/14
A preponderance of evidence requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence. Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V.* v. *Superior Court* (2005) 130 Cal.App.4th 586, 594.)

1102-1

A person entirely without understanding has no power to make a contract of any kind, but the person is liable for the reasonable value of things furnished to the person necessary for the support of the person or the person's family. (Civil Code §38)

1102-2

A "contract" is an agreement to do or not do a certain thing. (Civil Code (Civ. C.) §1549)

In order for a valid contract to exist, there must be:

(1) Parties who are capable of entering into a contract.

(2) The consent of the parties.

(3) A lawful object about which the parties can contract.

(4) A sufficient consideration or cause for the contractual agreement.

(Civ. C. §1550)

1102-3 ADDED 10/15
In cases of uncertainty not removed by the preceding rules [Interpretation of Contracts, Civil Code §§1635 - 1653], the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. (Civil Code §1654)

1102-4 ADDED 10/15
“Quasi contractual obligations are imposed by the law for the purpose of bringing about justice without reference to the intention of the parties. . . . On the other hand, a true contract cannot exist, however desirable it might be to have one, unless there is a manifestation of assent to the making of a promise. . . ." (See also *Desny* v. *Wilder*, 46 Cal.2d 715, 734 [299 P.2d 257]; *Ward* v. *Taggart,* 51 Cal.2d 736, 743 [336 P.2d 534].)” *County of Santa Clara* v. *Robbiano*, 180 Cal. App. 2d 845, 848-849 (1960))

1103-1

In construing a statute, it will be presumed that every word, phrase and provision was intended to have a meaning and perform some useful office, and a construction implying that words were used in vain, or that they are surplusage, will be avoided. (See *Woodmansee* v. *Lowery* (1959) 167 Cal. App. 2d 645)

1103-1A ADDED
9/13The statutory language is the best indicator of legislative intent. The most powerful safeguard for the courts' adherence to their constitutional role of construing, rather than writing, statutes is to rely on the statute's plain language. (Medical Bd. of California v. Superior Court (2001) 88 Cal.App.4th 1001, 1014; Garcia v. McCutchen, (1997) 16 Cal.4th 469, 478; People v. Wheeler (1992) 4 Cal.4th 284, 293.)

1103-1B ADDED 9/13
The fundamental task of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. In order to determine this intent, we begin by examining the language of the statute. (Medical Bd. of California v. Superior Court (2001) 88 Cal.App.4th 1001, 1013; People v. Cruz (1996) 13 Cal.4th 764, 774-775.)

1103-1C ADDED 9/13
The canons of statutory construction include the duty to harmonize statutes on the same subject if possible, the presumption against implied repeals, and the rule that a specific statute prevails

over a general one. (Medical Bd. of California v. Superior Court (2001) 88 Cal.App.4th 1001, 1013; Droeger v. Friedman, Sloan & Ross (1991) 54 Cal.3d 26, 50; Garcia v. McCutchen (1997) 16 Cal.4th 469, 476-478.)

Statutes on the same subject should be harmonized, giving effect to all parts of all statutes if possible. An implied repeal is allowed only when there is no rational basis for harmonizing two potentially conflicting statutes, and the statutes are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. (Medical Bd. of California v. Superior Court (2001) 88 Cal.App.4th 1001, 1013; Droeger v. Friedman, Sloan & Ross (1991) 54 Cal.3d 26, 52; Garcia v. McCutchen (1997) 16 Cal.4th 469, 477.)

1103-2

In the construction of a statute, the judicial function is not to insert what has been omitted or to omit what has been inserted. Where there are several provisions, the goal of the courts is to achieve harmony between conflicting laws and avoid an interpretation which would require that one statute be ignored. However, when this is not possible, effect should be given to the more recently enacted law, and a specific statute relating to a particular subject will govern over a general one. (*Larson* v. *California State Personnel Bd.* (1994) 33 Cal. Rptr. 2d 412)

1103-3

The United States Supreme Court has offered the following guidance in determining how to understand the meaning of a statute:

> In *Kaiser Aluminum & Chemical Corp.* v. *Bonjorno* (1990) 494 U.S. 827, 835, the court held: "The starting point for interpretation of a statute 'is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.'" The Court has stated that "the statutory language controls its construction" (*Ford Motor Credit Co.* v. *Cenance* (1981) 452 U.S. 155, 158, fn. 3) and "[t]here is, of course, no more persuasive evidence of the purpose of a statute than the words by which the [L]egislature undertook to give expression to its wishes." (*Griffin* v. *Oceanic Contractors, Inc*. (1982) 458 U.S. 564, 571.) In interpreting a statute, the Court has said: "'In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.' [Citations.] Our objective in a case such as this is to ascertain the congressional intent and give effect to the legislative will.'" (*Philbrook* v. *Glodgett* (1975) 421 U.S. 707, 713.) The Court has also stated, "We do not, however, construe statutory phrases in isolation; we read statutes as a whole." (*United States* v. *Morton* (1984) 467 U.S. 822, 828, fn. omitted.) It has emphasized the importance of avoiding: "absurd results" (*United States* v. *Turkette* (1981) 452 U.S. 576, 580); "an odd result" (*Public Citizen* v. *Department of Justice* (1989) 491 U.S. 440, 454); or "unreasonable results" whenever possible. (*American Tobacco Co.* v. *Patterson* (1982) 456 U.S. 63, 71.)

Moreover, the Court has noted, "Judicial perception that a particular result would be unreasonable may enter into the construction of ambiguous provisions, but cannot justify disregard of what Congress has plainly and intentionally provided." (*Commissioner* v. *Asphalt Products Co., Inc.* (1987) 482 U.S. 117, 121.) In Griffin, supra, 458 U.S. at page 571, the court stated: "Nevertheless, in rare cases the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters, and those intentions must be

controlling.... [Citations.]" When a statute is unambiguous, its language cannot "be expanded or contracted by the statements of individual legislators or committees during the course of the [legislative] process. (*West Virginia Univ*. *Hospitals, Inc.* v. *Casey* (1991) 499 U.S. 83, 98-99)."

1103-3A ADDED 10/15
It is well settled that a general provision is controlled by one that is special, the latter being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates. (Capitol Racing, LLC v. Cal. Horse Racing Bd. (2008) 161 Cal. App. 4th 892, 901-902.)

1103-4

The California Court of Appeal reviewed case law involving the retroactive effect of changes in law in *Rosasco* v. *Commission on Judicial Performance*. The court stated:

> "The general rule, both in California and in the United States, is that absent some clear indication to the contrary, any change in the law is presumed to have prospective application only. The principle that statutes operate only prospectively, while judicial decisions operate retrospectively, is familiar to every law student. [Citations.] This Court has often pointed out: '[T]he first rule of construction is that legislation must be considered as addressed to the future, not to the past…. The rule has been expressed in varying degrees of strength but always of one import, that a retrospective operation will not be given to a statute which interferes with antecedent rights… unless such be 'the unequivocal and inflexible import of the terms, and the manifest intention of the legislature. [Citations.]' (*United States* v. *Security Industrial Bank* (1982) 459 U.S. 70, 79-80; see also *Evangelatos* v. *Superior Court* (1988) 44 Cal.3d 1188, 1207)
>
> "This well-established principle of law was firmly re-enunciated by our Supreme Court in *Evangelatos*, supra 44 Cal.3d 1188. Like the instant case, *Evangelatos* concerned the retroactive application of a voter-approved proposition. The Supreme Court held that Proposition 51, which limited an individual joint tortfeasor's liability for noneconomic damage, could not be retroactively applied to a cause of action that accrued prior to the passage of the proposition. As the court stated: 'California continues to adhere to the time-honored principle, codified by the Legislature in Civil Code section 3 and similar provisions, that in the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature or the voters must have intended a retroactive application' (*Evangelatos*, supra at pp. 1208-1209.) On this basis, the court reaffirmed the fundamental principle that there is a presumption of prospectivity applicable to every new legislative enactment in the absence of a clear legislative intent to the contrary….' *Id.* at pp. 1193-1194, 1208, 1213-1214; see also *Western Security Bank* v. *Superior Court* (1997) 15 Cal.4th 232, 243, *Tapia* v. *Superior Court* (1991) 53 Cal.3d 282, 287; People v. Hayes (1989) 49 Cal.3d 1260, 1274; *Calfarm Ins. Co.* v. *Deukmejian* (1989) 48 Cal.3d 805, 827.)"

(*Rosasco*, supra (2000), 82 Cal.App. 4th 315, 98 Cal. Rptr. 2d 111)

1103-4A

In the case of *Canfield* v. *Prod*, an Aid to the Totally Disabled (ATD) recipient requested that the

Department of Benefit Payments (now the Department of Social Services) reimburse her for Social Security payments she was required to make on behalf of her provider of attendant care. In discussing the applicability of the underpayment rules contained in Welfare & Institutions Code §11004(g), the Court of Appeals stated as follows:

> "It is well settled that a statute is not to be given retrospective effect unless the Legislature has expressly so declared and this rule is particularly applicable when the statute affects vested rights. (*Balen* v. *Peralta Junior College Dist.,* 11 Cal.3d 821, 828, 114 Cal Rptr.589, 523 P.2d 629; *DiGenova* v. *State Board of Education*, 57 Cal.2d 167, 172, 18 Cal.Rptr. 369, 367 P.2d 865; *McBarron* v. *Kimball*, 210 Cal.App.2d 218, 220, 26 Cal.Rptr. 379; *McKinney* v. *Ruderman*, 203 Cal.App.2d 109, 117-118, 21 Cal.Rptr. 263.) In the instant case subdivision (g) of section 11004 clearly interferes with a vested right, and tin the absence of any language clearly showing retrospective operation must be construed to operate prospectively, i.e., subsequent to August 13, 1971. Accordingly, such rights may not be impaired by subsequent statutes. (*Grogan* v. *San Francisco*, 18 Cal. 590, 613; *Montgomery* v. *Kasson*, 16 Cal. 189, 194; and see *Kern* v. *City of Long Beach*, 29 Cal.2d 848, 851-853, 179 P.2d 799.)
>
> "[The director's] reliance [on Section 13502] is misplaced in view of the judicial decisions characterizing as a 'debt' the county's obligation to pay an applicant aid as of the date the applicant is first entitled to receive aid and as characterizing as 'vested' an applicant's right to receive benefits as of that date. Section 13502 cannot be interpreted so as to substantially destroy that right or defeat that obligation."

(*Canfield* v. *Prod* (1977) 67 Cal.App.3d 722 at 729-731, 137 Cal.Rptr. 27)

1103-5

Ordinarily courts give the words of a statute the meaning they have in everyday speech. (*Savnik* v. *Hall* (1999) 74 Cal. App. 4th 733, 740) The exception to this rule is that "when a word in a statute has a well established legal meaning, it will be given that meaning in construing the statute." (Arnett v. Dal Cielo (1996) 14 Cal. 4th 4, 19)

1103-6 ADDED 6/04
Provisions of law relating to a public assistance program shall be fairly and equitably construed to affect the stated objects and purposes of the program.

(Welfare and Institutions Code §11000)

1110-1

"Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement or revision of any such rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one which is related only to the internal management of the state agency. "Regulation" does not mean or include any form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation upon any requirement that a regulation be adopted pursuant to this part when one is needed to implement the law under which the form is Issued. (Government Code §11342 b.) (Handbook §17-001.1)

1110-2

"Handbook" material is informational only; it explains and illustrates regulatory sections by example. It is advisory and interpretive in the sense of illustrating appropriate application of a regulation; it may recommend specific processes or methods of implementation of a regulation. However, in order to provide a single source document for departmental clients (county welfare departments, licensees, etc.), appropriate statutes, regulations of other agencies, and court orders will be incorporated verbatim when the result would be helpful to understanding and full compliance with pertinent mandates in any specific program. In addition, it will include published operational standards by which DSS staff evaluate performance within DSS programs, forms, forms' instructions, and other informational materials. (Handbook §17-001.2)

1110-3

Manual letters are informational. They are used to transmit new or revised DSS Regulations or "handbook" sections. They describe the material transmitted and explain the reasons for adoption; give the effective date, filing instructions plus any relevant information. (Handbook §17-001.3)

1110-4

All-County Letters are informational and serve to provide explanatory materials for regulations, material of general interest, or interim procedural information (e.g., new reporting dates). They may be used to clarify statewide questions, but do not change previously-Issued regulatory material. They may also be used to trigger required responses by all counties when the basic authority for such is in regulation. (Handbook §17-001.4)

1110-5

Information notices or unnumbered letters are used to transmit statewide information of short-term interest, booklets, or other materials (including single advance copies of newly adopted regulations). They serve to explain the purpose in sending the attachment; they may include a brief description or summary. (Handbook §17-001.5)

1200-1

Whenever, by the express or implied terms of any statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute. (Government Code §11342.2)

1200-2

Administrative regulations promulgated under the aegis of a statutory scheme are valid insofar as they are authorized by and consistent with the controlling statutes. (*Morris* v. *Williams* (1967) 67 Cal.2d 733, 63 Cal.Rptr. 689)

1200-3

The California Supreme Court has held that the Director of the State Department of Social Services need not apply nor enforce invalid regulations in "fair hearings". (*Woods* v. *Superior Court of Butte County* (1981) 28 Cal.3d 668, 170 Cal.Rptr. 484, 620 P.2d 1032)

1200-4

The California Constitution provides that an administrative agency has no power to declare a statute unenforceable or unconstitutional on the basis of federal law or federal regulations unless an Appellate Court has made a determination that the statute is unconstitutional or unenforceable on such grounds. (California Constitution, Article III, §3.5)

1200-5
In reviewing whether the Department of Transportation's action to rescind the passive restraint requirement for automobile manufacturers was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” the U.S. Supreme Court applied the following analysis:

> “The scope of review under the 'arbitrary and capricious' standard is narrow and a court is not to substitute its judgment for that of the agency. Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.' *Burlington Truck Lines* v. *United States*, 371 U.S. 156, 168, 83 S.Ct. 239, 245-246, 9 L.Ed.2d 207 (1962). In reviewing that explanation, we must 'consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.' *Bowman Transp*. *Inc*. v. *Arkansas-Best Freight System*, supra, 419 U.S., at 285, 95 S.Ct., at 442; *Citizens to Preserve Overton Park* v. *Volpe*, supra, 401 U.S., at 416, 91 S.Ct., at 823. Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. The reviewing court should not attempt itself to make up for such deficiencies: 'We may not supply a reasoned basis for the agency's action that the agency itself has not given.' *SEC* v. *Chenery Corp*., 332 U.S. 194, 196, 67 S.Ct. 1575, 1577, 91 L.Ed. 1995 (1947). We will however, 'uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned.' *Bowman Transp*. *Inc*. v. *Arkansas-Best Freight System*, supra, 419 U.S., at 286, 95 S. Ct. 106 (1973) (per curiam)”

(*Motor Vehicle Mfrs*. *Ass'n* v. *State Farm Mutual*. (1983) 463 U.S. 29, 43, 103 S.Ct. 2856, 2866)

1200-6
In the June 1995 UCLA Law Review, Professor Michael Asimow discusses review of California administrative agency actions which allow discretion to the agency.

“In exercising discretion, an agency generally must consider and balance various factors established by statute, constitution or common law. A reviewing court decides independently whether the agency considered all of the legally relevant factors and whether it considered factors that it should not have considered.” [Footnotes omitted] “Within the legal limits constraining an agency's discretion, the agency has power to choose between alternatives. A court must not substitute its judgment for the agency's, since the legislature delegated discretionary power to the agency, not to the court. Nevertheless, a court should reverse if an

agency's choice was an abuse of discretion. [Footnotes omitted] Review for abuse of discretion consists of two distinct inquiries: the adequacy of the factual underpinning of the discretionary decision and the rationality of the choice." [Footnotes omitted] (Asimow, Michael, 42 UCLA Law Review 1157, 1228, 1229, June 1995)

1200-6A
An action within an agency's discretion is an abuse of discretion if "the decision was arbitrary, capricious, or entirely lacking in evidentiary support. When reviewing an agency's decision, the court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." (California Association for Health Services at Home v. Dept. of Health Care Services (3d Dist. 2012) 204 Cal. App. 4th 676, 686 [citations omitted])

1200-7
Except as provided in Section 11342.4, nothing in this chapter confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any regulation. Each regulation adopted, to be effective, shall be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law. (Gov. Code, §11342.1.)

1200-8
Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute. (Gov. Code, §11342.2.)

1200-8A ADDED 10/15
On remand from the California Supreme Court, the Court of Appeal in *Miller* v. *Woods* (1983) 148 Cal. App. 3d 862, 196 Cal.Rptr. 69, set forth the following rules for statutory construction when considering the validity of a regulation:

> In construing state statutes vis-a-vis administrative regulations, a court should look first to the language (*California Mfrs. Assn*. v. *Public Utilities Com*. (1979) 24 Cal.3d 836, 844, 157 Cal.Rptr. 676, 598 P.2d 836), then to the legislative history (*Cooper* v. *Swoap* (1974) 11 Cal.3d 856, 863-864, 115 Cal.Rptr. 1, 524 P.2d 97) and finally to the general principles and policies underlying the statutory scheme. (Id., pp. 866-867.) Within the ambit of these broad principles, courts have struck down welfare regulations inconsistent with the governing statutory scheme. (See *Green* v. *Obledo* (1983) 29 Cal.3d 126, 134-140, 172 Cal.Rptr. 206; *Cooper* v. *Swoap*, supra, 11 Cal.3d 856, 863.)

(*Miller* v. *Woods*, supra, 148 Cal. App. 3d at 876-877)

1200-9
Agency action must "be within the scope of authority conferred" by the Legislature, and cannot be inconsistent with its authorizing statutes. (Gov. Code, §§ 11342.1, 11342.2; County of San Diego v. Bowen (2008) Cal.App.4th 501, 508, citing Agnew v. State Bd. of Equalization (1999) 21 Cal.4th 310, 321.)

"[I]t is well established that the rulemaking power of an administrative agency does not permit the agency to exceed the scope of authority conferred on the agency by the Legislature." (Bowen, supra, Cal.App.4th at p. 508, citing Ontario Community Foundations, Inc. v. State Bd. of Equalization (1984) 35 Cal.3d 811, 816.)

1200-10
The department shall adopt regulations to implement the provisions of the Welfare and Institutions Code pertaining to public assistance. In adopting regulations the department shall strive for clarity of language that may be readily understood by those administering public social services or subject to the regulations. (Welfare and Institutions Code 10554)

1200-11
No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State. (Gov. Code 11340.5(a))

1200-12 ADDED
5/16"Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure. (Gov. Code §11342.600)

1200-13 ADDED
7/16No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter. (Government Code §11340.5(a))

1201-1

If any applicant for or recipient of public social services is dissatisfied with any action of the county department relating to his or her application for or receipt of public social services, if his or her application is not acted upon with reasonable promptness, or if the person is refused the opportunity to submit a signed application for such services, and the person is dissatisfied with the action or inaction, the person or his or her authorized representative shall be accorded an opportunity for a state hearing. A "recipient" means an applicant for or recipient of public social services, except aid exclusively financed by county funds, or under Article 1 (commencing with §12000) to Article 6 (commencing with §12250) of Chapter 3, Part 3, or under Chapter 6 (commencing with §18350) of Part 6. (Welfare and Institutions Code §10950)

1201-2 ADDED 8/05
Each county shall maintain a local child support agency, as specified in Section 17304, that shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock.
In carrying out its obligations under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the local child support agency shall have the responsibility for promptly and effectively collecting and enforcing child support obligations.
(California Family Code §§17400(a) and 17500. (a))

1201-2A ADDED 8/05
Each local child support agency shall maintain a complaint resolution process. A complaint shall be made within 90 days after the custodial or noncustodial parent affected knew or should have known of the child support action complained of.

A custodial or non-custodial parent who is dissatisfied with the LCSA's resolution of a complaint shall be accorded an opportunity for a state hearing.

The California Department of Child Support Services (DCSS) has promulgated implementing regulations in Title 22, Division 13, of the California Code of Regulations

(California Family Code §§17800 and 17801)

1201-3

The Court of Appeals has held that the referral of a recipient's case to the SIU, the investigation of the case by the SIU, and the subsequent referral by the SIU to the District Attorney are all internal actions having no immediate or direct impact on plaintiff's application for or receipt of benefits. Consequently they are not actions which are subject to the state hearing process. (*Madrid* v. *McMahon* (1986) 183 Cal.App.3d 151, 228 Cal.Rptr. 14) The court also stated that the test of whether an agency action is subject to challenge in a fair hearing is whether it has a significant effect on the claimant's application for or receipt of the aid or other service provided by the county agency. (Madrid, supra, 183 Cal.App.3d at 156)

1201-4

The Board of Supervisors shall prescribe the compensation of all county officers and shall provide for the number, compensation, tenure, appointment and conditions of employment of county employees. (Government Code (Gov.C) §25300) The Board of Supervisors of any county may establish the office of county hearing officer. The duties of the office are to conduct hearings for the county or any board, agency, commission, or committee of the county. (Gov.C §27720) Any county may contract with the Office of Administrative Hearings of the State of California and the office is hereby authorized to contract for services for an Administrative Law Judge or Hearing Officer to conduct hearings pursuant to this chapter. (Gov.C §27727)

1201-5

The administration of public social services in each of the several counties of the state is declared to be a county function and responsibility and therefore rests upon the Boards of Supervisors in the respective counties pursuant to the applicable laws, and in the case of public social services for which federal or state funds are provided, subject to the regulations of the California Departments of Social and Health Services. For the purpose of providing for and carrying out this function and responsibility, the Board of Supervisors of each county, or other agency as may be otherwise provided by county charter, shall establish a county department, unless otherwise provided by the county charter. Except as otherwise provided, the county department shall be the county agency for the administration of public social services and for the promotion of public understanding of the public social services provided under this code and the problems with which they deal. (Welfare and Institutions Code §10800)

1202-1

Collateral estoppel precludes a party to an action from relitigating in a second proceeding matters litigated and determined in a prior proceeding by a court of competent jurisdiction. (*Teitelbaum Furs, Inc.* v. *Dominion Ins. Co. Ltd*. (1962) 58 Cal.2d 601, 25 Cal.Rptr. 559, 375 P.2d 439, *Clark* v. *Lesher* (1958) 46 Cal.2d 874, 239 P.2d 865)

In *Teitelbaum*, the Supreme Court held that a guilty plea is admissible in a subsequent civil trial as an admission, but such plea is not conclusive for the purpose of applying the doctrine of collateral estoppel.

The principles of collateral estoppel apply to the decisions of administrative agencies when the agencies are acting in a judicial or quasi-judicial capacity. (*Hollywood Circle, Inc.* v. *Department of Alcoholic Beverage Control* (1961) 55 Cal.2d 728, 13 Cal.Rptr. 104, 361 P.2d 712; *People* v. *Sims* (1982) 32 Cal.3d 468, 186 Cal.Rptr. 77)

In order for the principles of collateral estoppel to apply, three elements must be present: (1) the issue decided at the previous proceeding is identical to the one which is sought to be relitigated; (2) the previous proceeding resulted in a final judgment on the merits; and (3) the party against whom collateral estoppel is asserted was a party or in privity with a party at the prior proceeding. (People v. Taylor (1974) 12 Cal.3d 686, 117 Cal.Rptr. 70)

Only judgments which are free from direct attack are final and may not be modified. See Morris v. McCauley's Quality Transmission Service (1976) 60 Cal.App.3d 964, 132 Cal.Rptr. 37. With respect to administrative hearings, an agency's hearing decision is to be regarded as final unless the agency has the statutory authority to subsequently modify the decision. See *Olive Proration Program* v. *Agriculture Commission* (1941) 17 Cal.2d 204, 109 P.2d 918.

1202-2

Frommhagen v. Board of Santa Cruz County (1987) 243 Cal.Rptr. 390, 1977 Cal.App.3d 1292 discussed the doctrine of res judicata. As follows:

> "The doctrine of res judicata has a double aspect. First, it precludes parties or their privies from relitigating the same cause of action that has been finally determined by a court of competent jurisdiction. Second, although a second suit between the same parties on a different cause of action is not precluded by a prior judgment, the first judgment operates as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action. (Safeco Insurance Co. v. Tholen, supra, 117 Cal.App.3d at p. 696; 173 Cal.Rptr. 23; 7 Witkin, Cal.Procedure (3d ed. 1985) Judgment, Sections 243, 249, 253; see also, Commissioner v. Sunnen (1948) 333, U.S. 591, 597-598, 68 S.Ct. 715, 92 L.Ed. 898.) This second aspect of res judicata is commonly referred to as collateral estoppel. (117 Cal.App.3d at p. 697, 173 Cal. Rptr. 23; 7 Witkin, Cal.Procedure, supra, Section 253.)" [See 243 Cal.Rptr. at 393-394.]

The court then went on to discuss the collateral estoppel aspect of res judicata:

> "The collateral estoppel aspect of res judicata will apply as to all issues which were involved in the prior case even through some factual matters or legal arguments which

> could have been presented in the prior case in support of such issues were not presented. (*Kingsbury* v. *Tevco, Inc.* (1978) 79 Cal.App.3d 314, 318 [144 Cal.Rptr.] 773....) Thus, where two lawsuits are brought and they arise out of the same alleged factual situation, and although the causes of action or forms of relief may be different, the prior determination of an issue in the first lawsuit becomes conclusive in the subsequent lawsuit between the same parties with respect to that issue and also with respect to every matter which might have been urged to sustain or defeat its determination. (Pacific Mut. Life Ins. Co. v. McConnell (1955) 44 Cal.2d 715, 724-725 [285 P.2d 636]....) If the legal principle were otherwise, litigation would end finally only when a party could no longer find counsel whose knowledge and imagination could conceive of different theories of relief based upon the same factual background. (*Kronkright* v. *Gardner* (1973) 31 Cal.App.3d 214 [107 Cal.Rptr. 270]....)" (Safeco Insurance Co. v. Tholen, supra, 117 Cal.App.3d at p. 697, 173 Cal.Rptr. 23.)"

See Frommhagen, supra, 243 Cal.Rptr. at 394-395.

1202-3

The Second District Court of Appeals stated as follows as regards to administrative collateral estoppel:

> "Collateral estoppel precludes a party from relitigating in a subsequent action matters previously litigated and determined. (*Teitelbaum* Furs, Inc. v. Dominion Ins. Co., Ltd. (1962) 58 Cal.2d 601, 604, 25 Cal.Rptr. 559, 375 P.2d 439.) The traditional elements of collateral estoppel include the requirement that the prior judgment be final. (Ibid.)
>
> "Finality for the purposes of administrative collateral estoppel may be understood as a two step process: (1) The decision must be final with respect to action by the administrative agency (see Code Civ. Proc., §1094.5, subd. (a)); and (2) the decision must have conclusive effect (Sandoval v. Superior Court (1983) 140 Cal.App.3d 932, 936-937, 190 Cal.Rptr. 29)...
>
> "A decision attains the requisite administrative finality when the agency has exhausted its jurisdiction and possesses 'no further power to reconsider or rehear the claim (Fn. omitted.)' (Chas L. Harney, Inc. v. State of California (1963) 217 Cal.App.2d 77, 98, 31 Cal.Rptr.524.)...
>
> "Next, the decision must have conclusive effect. (Sandoval v. Superior Court, supra, 140 Cal.App.3d 932, 936-937, 190 Cal.Rptr.29.) In other words, the decision must be free from direct attack. (*People* v. *Sims* (1982) 32 Cal.3d 468, 486, 186 Cal.Rptr. 77, 651 P.2d 321.) A direct attack on an administrative decision may be made by appeal to the superior court for review by petition for administrative mandamus. (Code Civ.Proc., §1094.5.) A decision will not be given collateral estoppel effect if such appeal has been taken or if the time for such appeal has not lapsed. (Sandoval v. Superior Court, supra, 140 Cal.App.3d at pp. 936-937, 190 Cal.Rptr. 29; Producers Dairy Delivery Co. v. Sentry Ins. Co. (1986) 41 Cal.3d 903, 911, 226 Cal.Rptr. 558, 718 P.2d 920.)... A statute of limitations commences to run at the point where a cause of action accrues and a suit may be maintained thereon. (*Dillon* v. *Board of Pension Comm'rs.* (1941) 18 Cal.2d 427, 430, 116 P.2d 37.)" (Long Beach Unified School District v. State of California (1990) 275 Cal.Rptr. 449)

This case was followed by the California Court of Appeal, First District. The court said there that "but according to California Law, a judgment is not final for purposes of collateral estoppel while open to direct attack, e.g., by appeal." (Abelson v . Nat. Union Fire Ins. Co. (1994) 35 Cal.Rptr.2d 13, 19)

1202-4

The First District Court of Appeal has held that collateral estoppel effect may not be accorded the judgment of a small claims court or Superior Court in an action arising under the Small Claims Act. (*Craig-Casey* v. *Rosse* (1995) 40 Cal. Rptr.2d 680)

1202-5

The First District Court of Appeal has held that an order of restitution imposed by the Superior Court judge following a guilty plea in criminal court did not collaterally estop the CDSS (or its agent counties) from seeking to collect a larger dollar amount from the overpaid AFDC recipient in an administrative proceeding, i.e., the state hearing. (Shor v. Dept. of Social Services (1990) 223 Cal. App. 3d 70, 272 Cal. Rptr. 632)

1202-6

Applying the principles of collateral estoppel adopted by the California Supreme Court in *Teitelbaum Furs, Inc.* v. *Dominion Inc. Co., Ltd.* (1962) 58 Cal. 2d 601, the Court of Appeal for the Second District held that a trial court in a civil proceeding could not give collateral estoppel effect to a criminal conviction involving the same issues when the conviction resulted from a guilty plea. (*Pease* v. *Pease* (1988) 201 Cal. App. 3d 29, 266 Cal. Rptr. 762)

1202-7

A principle of law that bars relitigation of matter is called issue preclusion, also known as collateral estoppel.

In addressing this matter in an appeal from a summary judgment by the trial court (which affirmed the administrative hearing decision to uphold the discharge of the petitioner from the Los Angeles Department of Public Works) the Second Appellate District, Division Four, stated as follows:

> "Issue preclusion prevents 'relitigation of issues argued and decided in prior proceedings.' (*Lucido* v. *Superior Court* (1990) 51 Cal.3d 335, 341.) The threshold requirements for issue preclusion are: (1) the issue is identical to that decided in the former proceeding, (2) the issue was actually litigated in the former proceeding, (3) the issue was necessarily decided in the former proceeding, (4) the decision in the former proceeding is final and on the merits, and (5) preclusion is sought against a person who was a party or in privity with a party to the former proceeding. (Ibid.) When those requirements are met, the propriety of preclusion depends upon whether application will further the public policies of 'preservation of the integrity of the judicial system, promotion of the judicial economy, and protection of litigants from harassment by vexatious litigation.' (*Id.* at p. 343.) Issue preclusion is not limited to barring relitigation of court findings. It also 'bars the relitigating of issues which were previously resolved in an

administrative hearing by an agency acting in a judicial capacity.' (*Knickerbocker* v. *City of Stockton* (1988) 199 Cal. App.3d 235, 242.)"

(*Castillo* v. *City of Los Angeles* (2001) 2001 92 Cal.App. 4th 477, 111 Cal.Rptr.2d 870)

1203-1

There is no authority within the state hearing process with which to award damages or injunctive relief based on tortious conduct on the part of the County Welfare Department. (*Ramos* v. *Madera* County (1971) 94 Cal.Rptr. 421, 484 P.2d 93)

1203-2

The county director shall comply with and execute every decision of the Director of the Department of Social Services or the Department of Health Services. (Welfare and Institutions Code (W&IC) §10963) This statutory language is mandatory, and applies to initial state hearing decisions pending rehearing. (*Taylor* v. *McKay* (1975) 53 Cal.App.3d 644, 126 Cal.Rptr. 204) Even if the initial state hearing decision is found erroneous on rehearing or direct review, the county remains liable for interim payments. The right to receive benefits vests when the initial decision is adopted by the Director. (*Blackburn* v. *Sarsfield* (1981) 125 Cal.App.3d 143, 178 Cal.Rptr. 15)

1203-6

The California Rules of Court deal with whether unpublished opinions may be cited. The rules provide as follows:

(a) An opinion of a Court of Appeal or an appellate department of the superior court that is not certified for publication or ordered published shall not be cited or relied on by a court or a party in any other action or proceeding except as provided in subdivision (b).

(b) Such an opinion may be cited or relied on:

(1) when the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel; or

(2) when the opinion is relevant to a criminal or disciplinary action or proceeding because it states reasons for a decision affecting the same defendant or respondent in another such action or proceeding.

(c) A copy of any opinion citable under subdivision (b) or of a cited opinion of any court that is available only in a computer-based source of decisional law shall be furnished to the court and all parties by attaching it to the document in which it is cited, or, if the citation is to be made orally, within a reasonable time in advance of citation.

(California Rules of Court, Rule 8.1115)

1204-1

Unless otherwise provided, and, to the extent not in conflict with federal law, the residence of a

minor person shall be determined by the following rules:

(a) The residence of the parent with whom a child maintains his or her place of abode or the residence of any individual who has been appointed legal guardian or the individual who has been given the care or custody by a court of competent jurisdiction, determines the residence of the child.

(b) Wherever in this section it is provided that the residence of a child is determined by the residence of the person who has custody, "custody" means the legal right to custody of the child unless that right is held jointly by two or more persons, in which case "custody" means the physical custody of the child by one of the persons sharing the right to custody.

(c) The residence of a foundling shall be deemed to be that of the county in which the child is found.

(d) If the residence of the child is not determined under (a), (b), (c), or (e), the county in which the child is living shall be deemed the county of residence, once the child has had a physical presence in the county for one year.

(e) If the child has been declared permanently free from the custody and control of his or her parents, his or her residence is the county in which the court issuing the order is situated.

(Welfare and Institutions Code §17.1)

1204-2

If a child has been declared permanently free from the custody and control of his or her parents, his or her residence is the county in which the court issuing the order is situated. (Welfare and Institutions Code §17.1(e))

1204-3

Any use of or reference to the words "age of majority," "age of minority," "adult," "minor" or words of similar intent in any instrument, order, transfer, or governmental communication shall on or after March 4, 1972 make reference to persons 18 years of age and older, or younger than 18 years of age. (Family Code §6502)

1205-1

If a person was born abroad and one parent is an alien and the other a citizen, the citizen parent must, prior to the birth of the child of such parent, have been physically present in the United States or its outlying possessions for a period of not less than five years, at least two of which were after attaining the age of 14, in order for the child of such parents to be considered a citizen. Periods of overseas service in the armed forces would count toward the physical residence requirement, as long as the individual in question was born on or after December 24, 1952. (8 United States Code §1401(g))

1205-2

Federal law provides that a child born outside of the United States of alien parents becomes a citizen of the United States upon the naturalization of both parents. (8 United States Code (USC) §1432(a)(1))

1206-1 ADDED 1/13
Under California law, the statute of limitations for an action based on fraud or mistake is three years. The filing period extends from the time of the discovery of the fraud or mistake. (California Civil Code §338)

1206-10 ADDED 1/13
In *Lam* v. *Bureau of Security and Investigation Services* (1995) 34 Cal.App.4th 29, the court stated: "Statutes of limitation and the doctrine of laches are both designed 'to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.'" These policies also guard against other injuries caused by a change of position during a delay. While a statute of limitations bars proceedings without proof of prejudice, laches "requires proof of delay which results in prejudice or change of position." (Ibid.) Delay alone ordinarily does not constitute laches, as lapse of time is separately embodied in statutes of limitation. (Id. at p. 1159.) What makes the delay unreasonable in the case of laches is that it results in prejudice."

1206-12 ADDED 1/13
The doctrine of laches is based upon maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity. *Wooded Shores Property Owners Ass'n Inc.* v. *Mathews*, 37 Ill. App.3d 334, 345 N.E.2d. 186, 189.

1206-13 ADDED 1/13
In the defense of laches, the elements of unreasonable delay and resulting prejudice may be satisfied in two ways: First, through evidence presented by the party claiming the defense and that party has the burden of proof. Second, the element of prejudice may be "presumed" if there exists a statute of limitations which is sufficiently analogous to the facts of the case, and the period of such statute of limitations has been exceeded by the public administrative agency in making the claim. In the second situation, the limitations period is borrowed from the analogous statute, and the burden of proof shifts to the administrative agency.

Accordingly, "when the Department seeks to revise its final reimbursement settlements, the borrowing rule for periods of limitation should be applied by ALJs in administrative hearings on such revisions, if factually appropriate." On the issue of prejudice, the court noted that "At some point, there must be a finality to the Department's final reimbursement settlements. Otherwise, a hospital's financial planning and rational allocation of its resources will simply be impossible."

Thus, the court found that the Hospital may rely upon a limitations period "borrowed" from an analogous statute of limitations (i.e., Code of Civil Procedure §338(d) (3-year statute of limitations for actions for relief on the ground of fraud or mistake)). Because the Department exceeded that 3-year period when it issued its September 1994 notices claiming entitlement to the overpaid funds, a presumption arose that the delay in the issuance of those notices was

unreasonable, and that the Hospital had been prejudiced by that delay, because of the length of time that elapsed between the Department's issuance of its original final reimbursement settlements and its issuance of the revised final reimbursement settlements. The court found that the Department has the burden of rebutting that presumption at the administrative hearing, and if the burden is not met the Department could not recover on its claim.

(*Fountain Valley Regional Hospital and Medical Center* v. *Bonta*, 75 Cal. App. 4th 323-24 (Cal. App. 2d Dist.1999)

1207-1 ADDED
5/16According to the California Supreme Court, to constitute a waiver, it is essential that there be an existing right, benefit or advantage; a knowledge, actual or constructive, of its existence, and an intention to relinquish it. No man can be bound by a waiver of his rights, unless waiver is distinctly made, with full knowledge of the rights which he intends to waive; and the fact that he knows his rights, and intends to waive them. (Craig v. White (1921) 187 Cal. 489, 498, 202 P. 648 (citation omitted))

"'A waiver of a right cannot be established without a clear showing of an intent to relinquish such right, and doubtful cases will be decided against a waiver' (Greninger v. Fischer (1947) 81 Cal.App.2d 549, 554, 184 P.2d 694); nor will a waiver be presumed or implied contrary to the intention of a party whose rights would be injuriously affected, unless by his conduct the opposite party has been misled to his prejudice into the honest belief that such waiver was intended. (Craig v. White (1921) 187 Cal. 489, 498, 202 P. 648)" (Roberson v. Industrial Accident Comm'n. (1956) 146 Cal. App. 2d 627, 629)

"'Waiver always rests upon intent. Waiver is the intentional relinquishment of a known right after knowledge of the facts.' (Roesch v. De Mota (1944) 24 Cal.2d 563, 572, 150 P.2d 422; accord, Church v. Public Utilities Com. (1958) 51 Cal.2d 399, 401, 333 P.2d 321; Henderson v. Drake (1953) 42 Cal.2d 1, 5, 264 P.2d 921) The burden, moreover, is on the party claiming a waiver of a right to prove it by clear and convincing evidence that does not leave the matter to speculation, and 'doubtful cases will be decided against a waiver.' (Church v. Public Utilities Com. (1958) supra, 51 Cal.2d 399, 401) This is particularly apropos in cases in which the right in question is one that is 'favored' in the law." (Ukiah v. Fones (1966) 64 Cal. 2d 104, 107-108 (right of a wage earner to all wages lawfully accrued), citing Estate of Coffin (1937) 22 Cal.App.2d 469, 471 (right of widow to family allowance))

"The courts should indulge every reasonable presumption against a waiver of a constitutional right." (People v. Houston, (1970) 10 Cal. App. 3d 894, 900 (right to evidentiary hearing), citing Aetna Ins. Co. v. Kennedy (1937) 301 U.S. 389, 393, (right to trial by jury))

1220-1 ADDED 10/15
The maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this Code, but to aid in their just application.
(California Civil Code 3509)

1220-2 ADDED 10/15
Where the reason of a rule ceases, so should the rule itself.
(California Civil Code 3510)

1220-3 ADDED 10/15
For every wrong, there is a remedy.
(California Civil Code 3523)

1220-4 ADDED 10/15
That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.
(California Civil Code 3529)

1220-5 ADDED 10/15
An interpretation which gives effect is preferred to one which makes void. (California Civil Code 3542)

1220-6 ADDED 11/15
The Constitutional requirements of notice and a hearing for the protection of individual property rights are reflected in this state's long-standing judicial policy that strongly favors determination of disputed issues on the merits. (See *Addison* v. *State of California* (1978) 21 Cal.3d 313, 319 [146 Cal.Rptr. 224, 578 P.2d 941]; *Bollinger* v. *National Fire Ins. Co.* (1944) 25 Cal.2d 399, 407-408 [154 P.2d 399]; *Waybright* v. *Anderson* (1927) 200 Cal. 374, 377 [253 P. 148].)

1220-7 ADDED 11/15
The law abhors a forfeiture. (See Civil Code, §§3275, 3369; *Ellis* v. *Order of United etc. Travelers* (1942) 20 Cal.2d 290, 301 [125 P.2d 457].)" (*Nasir* v. *Sacramento County Off. of the Dist. Atty.* (1992) 11 Cal.App.4th 976, 985-986, 15 Cal.Rptr. 2d 694, 700)