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PRACTICE BRIEF · PERSONAL INJURY

Recent Developments in California Personal Injury Law (2023–2024)

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The 2023–2024 period brought a series of legislative changes, litigation waves, and judicial decisions that substantially reshaped the practice of personal injury law in California. From the first meaningful reform of medical malpractice damages caps in nearly half a century to an unprecedented surge in childhood sexual abuse claims, practitioners confronted a shifting landscape across virtually every major subspecialty. This article surveys five of the most consequential developments and their practical implications for plaintiffs, defendants, and counsel.

I. AB 35 Signed Into Law: MICRA Reform After 47 Years

Effective January 1, 2023

In September 2022, Governor Newsom signed AB 35, ending a 47-year freeze on MICRA's non-economic damages cap that had held at $250,000 since the statute's enactment in 1975. The new law established a phased increase schedule with two tracks: $350,000 for non-death cases and $500,000 for wrongful-death cases beginning January 1, 2023, with annual increases continuing through 2033. After 2033, both caps adjust by 2% annually for inflation, ensuring that the cap's real value is no longer eroded over time.

The reform represented the most significant change to California medical malpractice damages law since MICRA's original enactment. By creating a dual-track system that distinguished between death and non-death cases, the Legislature acknowledged that wrongful-death claimants—who had been subject to the same $250,000 ceiling as plaintiffs recovering for non-fatal injuries—

faced a particularly acute form of undercompensation. The immediate practical effect was to alter settlement valuations in pending cases, as both plaintiffs' and defense counsel recalibrated their damages models to account for the new cap levels.

For personal injury practitioners whose cases overlap with medical malpractice theories—such as hospital premises liability or negligent credentialing—the AB 35 reform required a careful re-assessment of whether specific claims fell within MICRA's scope. Claims characterized as general negligence rather than "professional negligence" by a "health care provider" remained uncapped for non-economic damages, making the classification question more consequential than ever as the gap between MICRA-capped and uncapped recovery widened.

II. COVID-19 Premises Liability Litigation Wave

2023–2024

A significant wave of premises liability claims emerged from COVID-19 workplace and public-space exposures during 2023 and 2024, as plaintiffs alleged that businesses, healthcare facilities, and government entities failed to implement adequate safety protocols. These claims presented novel questions at the intersection of tort law and public health policy, requiring courts to evaluate whether proprietors had exercised reasonable care in circumstances where the scientific understanding of airborne pathogen transmission was itself evolving during the relevant exposure periods.

California courts grappled with causation challenges unique to airborne pathogen exposure, particularly the difficulty of establishing that a plaintiff contracted the virus at the defendant's premises rather than through community transmission. The duty of care analysis proved equally complex, as courts weighed whether compliance with public health guidance constituted reasonable care or merely established a floor below which conduct was presumptively negligent. The applicability of workers' compensation exclusivity in employer-employee contexts created an additional procedural barrier for workplace-exposure claims, channeling many employees into the workers' compensation system even where employer conduct was arguably egregious.

The CARES Act and various state and local executive orders added further complexity to the liability landscape, with some defendants asserting federal preemption or immunity defenses. The resulting body of case law remains in flux, but the emerging consensus suggests that generalized allegations of inadequate COVID-19 protocols face substantial causation hurdles, while claims targeting specific, identifiable failures—such as concealing known outbreaks or refusing to implement mandatory quarantine procedures—have proven more viable.

III. AB 218 Sexual Abuse Revival Window Expiration

Window closed December 31, 2022 · Litigation through 2024

The AB 218 revival window for childhood sexual abuse claims expired on December 31, 2022, after a three-year period during which plaintiffs could file claims regardless of when the abuse occurred—effectively eliminating the statute of limitations for previously time-barred claims during

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the window period. In the final months before expiration, thousands of claims were filed, creating an extraordinary litigation surge that continued to strain court resources throughout 2023 and 2024 as these cases moved through discovery and toward trial.

Courts confronted a range of procedural and constitutional challenges arising from the revival window. Institutional defendants—including the Catholic Church, public and private school districts, and youth organizations such as the Boy Scouts of America—raised retroactivity challenges, arguing that the revival of time-barred claims violated due process protections. Discovery disputes were particularly contentious, as plaintiffs sought decades-old institutional records regarding notice, prior complaints, and internal investigations, while defendants argued that document destruction policies and the passage of time made meaningful defense impossible.

The constitutional questions surrounding the revival of time-barred claims remained unsettled, with defendants pressing arguments that the retroactive elimination of a vested limitations defense constituted an unconstitutional taking. Meanwhile, the sheer volume of claims created practical challenges for courts, including judicial resource allocation, coordination of related cases involving common institutional defendants, and the management of bellwether trial selections. The AB 218 litigation wave is expected to continue generating significant case law well beyond the 2023–2024 period surveyed here.

IV. E-Scooter Injury Litigation Surge

2023–2024

The proliferation of electric scooters from companies such as Bird, Lime, and Spin generated a marked increase in personal injury claims across California during 2023 and 2024. According to U.S. Consumer Product Safety Commission data, e-scooter-related emergency department visits increased dramatically during this period, and the litigation followed accordingly. Plaintiffs pursued claims under multiple theories, including product liability for design defects and failure to warn, premises liability against municipalities for dangerous road conditions that contributed to scooter accidents, and straightforward negligence claims against other riders.

Arbitration clauses embedded in the rental agreements of major scooter companies created significant procedural obstacles for plaintiffs. California courts split on the enforceability of these clauses, with some finding that clickwrap agreements presented at the point of rental satisfied the requirements for mutual assent and others concluding that the terms were procedurally and substantively unconscionable. The resolution of these enforceability disputes often determined whether claims could proceed in court or were diverted to individual arbitration, where the economics of smaller injury claims made prosecution impractical.

Municipal liability presented its own set of challenges. Plaintiffs who were injured due to poorly maintained bike lanes, unmarked road hazards, or inadequate infrastructure argued that cities bore responsibility for creating conditions that made scooter travel unreasonably dangerous. These claims required plaintiffs to navigate the government tort claims process under

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Government Code section 835 and to overcome the immunities and procedural hurdles that apply to claims against public entities—issues that intersected with the broader government immunity developments discussed below.

V. Government Immunity Narrowing: Government Code Section 835

2023–2024

California courts continued to narrow the scope of government immunity for dangerous conditions of public property under Government Code section 835 during the 2023–2024 period. Several appellate decisions addressed the "trivial defect" defense—which shields public entities from liability for minor sidewalk or roadway irregularities—and clarified the threshold at which a defect ceases to be trivial as a matter of law. Courts increasingly looked beyond the physical dimensions of the defect to consider surrounding circumstances, including pedestrian traffic volume, lighting conditions, and proximity to areas frequented by elderly or disabled individuals.

The requirement of actual or constructive notice received renewed scrutiny as plaintiffs challenged the adequacy of municipal inspection programs. Courts examined whether a public entity's failure to implement a reasonable inspection regime could itself establish constructive notice, and whether budget-driven deferrals of routine maintenance created an inference that the entity knew or should have known of the dangerous condition. These decisions placed pressure on municipalities to document their inspection schedules and maintenance prioritization decisions with greater rigor.

The line between discretionary immunity under Government Code section 820.2 and ministerial duties that created liability exposure continued to shift, particularly in cases involving deferred road maintenance and inadequate pedestrian infrastructure. Courts distinguished between high-level policy decisions—such as budget allocation across departments—that remained shielded by discretionary immunity and operational-level decisions about which specific repairs to perform and when, which were increasingly treated as ministerial acts subject to tort liability. The interplay between design immunity and changed conditions also generated significant litigation, as plaintiffs argued that infrastructure originally designed to reasonable standards had become dangerous due to increased traffic, altered use patterns, or deferred maintenance that the original design did not contemplate.

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PRACTICAL CONSIDERATIONS

- **MICRA cap tracking:** Verify the applicable AB 35 cap year under Civil Code section 3333.2 for any case involving medical negligence theories; the cap increases annually through 2033 and the correct figure depends on the date of injury or accrual
- **COVID causation:** Premises liability claims arising from COVID-19 exposure require specific, evidence-based causation theories; generalized allegations of inadequate protocols face substantial judicial skepticism
- **AB 218 deadlines:** Although the revival window closed on December 31, 2022, prospective limitations periods under AB 218 remain extended; evaluate whether ongoing discovery of abuse may trigger a new accrual date
- **Scooter arbitration:** Review the specific version of the rental agreement in effect at the time of injury; enforceability rulings have turned on the particular clickwrap mechanism and unconscionability factors present
- **Government claims:** File a timely Government Tort Claim (generally within six months) and develop evidence of actual or constructive notice early; courts are scrutinizing municipal inspection records and maintenance logs with increasing granularity

Legal developments described reflect the state of the law as of early 2024. Consult qualified counsel for advice specific to your situation.

Practice	Personal Injury
Topics	AB 35 · MICRA · Premises Liability · Motor Vehicle Collisions
Publication	Recent Developments · 2023–2024

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