Government Tort Issues:

There has been a long history of disputes between the government and private individuals concerning injuries resulting from defects of public property. Originally at common law the government was immune from suit. The first major California legislation waiving governmental immunity was the Public Liability Act of 1923, which imposed liability under a limited set of circumstances, including injuries caused by dangerous or defective property conditions. Additional common law liabilities and judicially declared liabilities were created over time. This resulted in much uncertainty. The California Tort Claims Act of 1963 made important changes which clarified the liability of the State of California for damages. **NOTE: Government Code Section 910 claims must be filed within a short 6 month statute of limitations. You must act promptly to preserve your legal rights as failure to timely file a government tort claim is used as a**
complete legal defense.

MAJOR AREAS OF GOVERNMENT TORT LIABILITY

DANGEROUS CONDITION OF PUBLIC PROPERTY (Government Code Section 835)

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The California Tort Claims Act of 1963 made important changes which essentially nullified or seriously modified previous case law relating to defective property liability. Government Code Section 815(a) declares that: "[e]xcept as otherwise provided for by statute, [a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." This provision abolished all common law or judicially created liabilities, except those required under the State or Federal Constitutions.

Under present law, governmental liability for dangerous conditions of public property is imposed by Government Code Section 835. Public entity liability exists when: (1) an injury occurs on property owned or controlled by a public entity, (2) the property was in a dangerous condition, (3) the dangerous condition created a reasonably foreseeable risk of this kind of injury, (4) the dangerous condition was created by the negligent or wrongful act or omission of an employee of the public entity acting within the scope of his employment, OR, the public entity had actual or constructive notice of the dangerous condition a sufficient time before the injury to have taken reasonable measures to protect against such injury, and (5) said dangerous condition was a proximate cause of the plaintiff's injury. However, even where all of these elements are present a statutory immunity or other defense may preclude liability.

MANDATORY DUTY (Government Code Section 815.6)

Another area of government liability is where a mandatory duty is imposed on a public entity by

statute. Government Code Section 815.6 provides that "where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." Thus, there is a three prong test to establish governmental liability under a mandatory duty cause of action: (1) a statute imposes a mandatory duty, (2) the enactment was intended to protect against the kind of risk suffered by the plaintiff, and (3) the public entity's breach of that mandatory duty was a proximate cause of the plaintiff's injury.
Government Code
Section 815.6 is analogous to
Evidence Code
Section 669 and case law under this section of the
Evidence Code
regarding the theory of negligence per se is interchangeable. (
Brenneman v. State
(1989) 208 Cal.App.3d 812, 816 n2.) However, one must exercise caution in relying solely upon the presumption of negligence doctrine (codified under
Government Code
Section 815.6 and
Evidence Code
Section 669) as multiple theories of liability may be alleged.

The public entity's duty must be imposed by an enactment, i.e. "a constitutional provision, statute, charter provision, ordinance, or regulation." (Government Code Section 810.6) By statute, in cases accruing on or after January 1, 1988, internal policy manuals of public entities are not deemed an enactment for purposes of the mandatory duty liability under
Government Code
Section 815.6. Additionally, the public entity's breach of the particular enactment creating a mandatory duty relied upon must be specifically pled. (
Lehto v.City of Oxnard
(1985) 171 Cal.App.3d 285, 292;
Sullivan v. City of Sacramento
(1987) 190 Cal.App.3d 1070, 1080.) Whether the enactment in question creates a mandatory duty, as opposed to a permissive power, is a question of interpretation for the court. (
Nunn v. State
(1984) 35 Cal.3d 616, 624;
Fox v. County of Fresno
(1985) 170 Cal.App.3d 1238, 1242.) While a mandatory duty is often held to arise with the use of the word "shall", however, it is not dispositive on the issue. (
Morris v. County of Marin
(1977) 18 Cal.3d 901, 907 (the court discussed the circumstances under which apparently mandatory language may be construed as "directory" rather than "obligatory.")) Thus, there are numerous cases in which a mandatory duty was held not to exist despite the legislature's use of the word "shall" in the enactment.

Liability for a breach of a mandatory duty arises only when the enactment in question was

designed to protect against the kind of injury suffered by the plaintiff. (Government Code Section 815.6;
Sheldon v. City of Westminster
(1982) 138 Cal.App.3d 610, 620;
Morris v. County of Marin
(1977) 18 Cal.3d 901, 907.)

Finally, the failure of a public entity to discharge a mandatory duty is not actionable unless the plaintiff establishes that the entity's violation was a proximate cause of the injuries. (Government Code
Section 815.6.) Whether the violation is a proximate cause of the plaintiff's injuries is ordinarily a question of fact unless the facts are undisputed. (
Whitcombe v. County of Yolo
(1977) 73 Cal.App.3d 698, 707 (demurrer sustained as proximate cause requirement unsatisfied under facts of case);
City of Los Angeles v. Shpegel-Dimsey, Inc.
(1977) 73 Cal.App.3d 698, 707.)

LIABILITY THROUGH ACTS OF PUBLIC EMPLOYEES (Government Code Section 815.2)

Unless a statutory immunity applies a public employee is liable for torts to the same extend as a private person. (Government Code Section 820(a).) Because a public employee's liability is normally the same as tort liability for a private person counsel must analyze liability according to general tort law principles, and also determine whether any governmental immunities or defenses apply. These immunities apply only when the alleged tort occurred in the course and scope of public employment. (Vivell v. City of Belmont
(1969) 274 Cal.App.2d 38, 41.) In the absence of actual fraud, malice, corruption, or failure to cooperate in the defense of the action, a public employee will be indemnified by the public entity. (
Government Code
Sections 825-825.6.)
Government Code
Section 815.2 provides that the public entity is liable for its employees' torts, as follows: "(a) A public entity is liable for injury proximately caused by an act or omission of an employee of a public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee ...."

Thus, Government Code Section 815.2 is analogous to the tort doctrine of respondeat superior, with the exception that certain governmental immunities may apply to both the employee and the public entity. (Note that Government Code
Section 815.2(b) provides that the entity is not liable for injuries where the employee is immune from liability.)

One should file a claim under Government Code Section 910 against a public entity even if it appears that the employee is outside the scope and course of his employment, or it will be barred by the claims statute.

GOVERMNENTAL IMMUNITIES:

Any government tort case will be vigorously defended by the public entity, and any and all applicable immunities will likely be claimed. Some of those immunities are:

LICENSING IMMUNITY (Government Code Sections 818.2 & 818.4)
IMMUNITY FROM MALICIOUS PROSECUTION (Government Code Section 821.6)
IMMUNITY FROM CLAIMS ABOUT FIRE PROTECTION SERVICES (Government Code Sections 850, 850.2, and 850.4)
IMMUMITY FOR CERTAIN DANGEROUS CONDITION CLAIMS:
... Lack of Traffic Control Signals or Other Regulatory Controls (Government Code Section 830.4)
... Lack of Warning Signals, Signs, Markings, or Devices (Government Code Section 830.8)
... Design Immunity (Government Code Section 830.6)
... Weather Condition Immunity (Government Code Section 831)
... Natural Condition Immunity (Government Code Section 831.2)
... Hazardous Recreational Activity Immunity (Government Code Section 831.7)
... Reasonable Act or Omission Defense (Government Code Section 835.4)