# **REVIEW OF SELECTED 1995 CALIFORNIA LEGISLATION: Torts; pipeline corporations -- strict liability, Civil Code § 3333.4 (new). AB 1868 (Katz); 1995 STAT. Ch. 979**

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**Text**

**[\*1020]** Under existing law, the Public Utilities Commission [[1]](#footnote-2)1 regulates public utilities, [[2]](#footnote-3)2 including pipeline [[3]](#footnote-4)3 corporations. [[4]](#footnote-5)4 Existing law also sets forth the **[\*1021]** measure of damages in various situations. [[5]](#footnote-6)5

Chapter 979, known as the ***Oil*** Pipeline Environmental Responsibility Act, [[6]](#footnote-7)6 requires each pipeline corporation qualifying as a public utility that transports crude ***oil*** [[7]](#footnote-8)7 in a public utility ***oil*** pipeline system, [[8]](#footnote-9)8 to be strictly liable for any damages incurred by any injured party that results from the discharge or leaking of crude ***oil*** from the public utility pipeline. [[9]](#footnote-10)9 Chapter 979 specifically sets out the only instances in which it applies. [[10]](#footnote-11)10 Moreover, Chapter 979 provides that pipeline **[\*1022]** corporations are not liable in certain circumstances. [[11]](#footnote-12)11

Chapter 979 further requires pipeline corporations to immediately clean up all crude ***oil***, or any fraction thereof, that leaks or is discharged from a pipeline. [[12]](#footnote-13)12

Furthermore, Chapter 979 authorizes a court to award reasonable, attorneys' fees and costs, including the expense of any expert witnesses necessary to the prevailing plaintiff. [[13]](#footnote-14)13 A court may also award reasonable costs of the suit, attorneys' fees, and the cost of any necessary expert witnesses to any prevailing defendant if the court finds that the plaintiff commenced or prosecuted the suit in bad faith or solely to harass the defendant. [[14]](#footnote-15)14

Although Chapter 979 does not apply to claims or causes of actions for damages for personal injury or wrongful death, Chapter 979 does not prohibit any party from bringing an action for damages under any other provision or principle of law, including, but not limited to, common law. [[15]](#footnote-16)15 Lastly, Chapter 979 prohibits pipeline systems from operating unless the State Fire Marshal certifies that the pipeline corporation demonstrates minimum financial responsibility to respond to potential liability in the amount of $ 750 times the maximum capacity of the **[\*1023]** pipeline measured by the number of barrels per day. [[16]](#footnote-17)16 The maximum financial responsibility required by the State Fire Marshal is up to $ 100 million per pipeline system, or a maximum of $ 200 million per multiple pipeline system. [[17]](#footnote-18)17

COMMENT

In 1990, the California Legislature enacted the Lempert-Keene-Seastrand ***Oil*** Spill Prevention and Response Act, [[18]](#footnote-19)18 which makes the owners and transporters of ***oil*** strictly liable for damages caused by the discharge or leaking of ***oil*** into marine waters. [[19]](#footnote-20)19 However, no comparable strict liability law was imposed for **[\*1024]** damages caused by ***oil*** spilled while being transported on land. [[20]](#footnote-21)20

Pacific Pipeline, a limited liability company, has been organized by major ***oil*** companies [[21]](#footnote-22)21 to build and operate an ***oil*** pipeline that will run from southern ***Kern*** County to Wilmington, Carson, and El Segundo, California. [[22]](#footnote-23)22 Since the pipeline is a public utility, it is authorized to secure its right-of-way by eminent domain [[23]](#footnote-24)23 through any private property through which it will pass. [[24]](#footnote-25)24

Chapter 979 was sponsored by Tejon Ranch, through whose property the pipeline would pass. [[25]](#footnote-26)25 Tejon Ranch argued that since the federal Superfund law [[26]](#footnote-27)26 **[\*1025]** and the California Carpenter-Presley-Tanner Hazardous Substance Account Act [[27]](#footnote-28)27 both expressly exclude crude ***oil*** and its fractions from strict, [[28]](#footnote-29)28 vicarious, [[29]](#footnote-30)29 and joint and several liability, [[30]](#footnote-31)30 there was no law which addressed liability for cleanups or damages involving crude ***oil*** spillages. [[31]](#footnote-32)31

Furthermore, Tejon Ranch also maintained that landowners were unable to bargain with the pipeline corporations to assure that their property is adequately protected from spills, because as a public utility, Pacific Pipeline has the authority to demand a right-of-way across Tejon Ranch's land by eminent domain. [[32]](#footnote-33)32

Thus, Chapter 979 was enacted to require pipeline corporations to be held legally and financially responsible for damages caused by ***oil*** pipeline spills. [[33]](#footnote-34)33 Although Pacific Pipeline carries some insurance, the sponsor of Chapter 979 **[\*1026]** believes that if a major ***oil*** spill should occur, the amount of aggregate coverage is totally inadequate. [[34]](#footnote-35)34

Opponents of Chapter 979 argued that the responsibility of spills should be with the facility operators or those causing the accident. [[35]](#footnote-36)35 Furthermore, opponents argued that sufficient protection exists for damages as a result of any spills. [[36]](#footnote-37)36

Although there is liability under the common law for ***oil*** pipeline spills, there are several limitations on this liability. [[37]](#footnote-38)37 First, owners of pipelines are probably not found to be strictly liable without an assessment of fault. [[38]](#footnote-39)38 Even though there are no California cases on this subject, under general principles of law, strict liability can be used only if transporting ***oil*** through a pipeline is considered to be an "ultra-hazardous" or "abnormally dangerous" activity. [[39]](#footnote-40)39 Secondly, even if pipeline owners are found liable for a spill, the damages recoverable are limited under common law. [[40]](#footnote-41)40 Lastly, due to the fact that pipelines are usually owned by corporations organized for the specific purpose of operating the pipeline, the pipeline owner often does not have the resources to pay for a spill. [[41]](#footnote-42)41

Pacific Law Journal

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1. 1 *See generally* CAL. PUB. UTIL. CODE §§ 301-325 (West 1975 & Supp. 1995) (setting forth the organization of the Public Utilities Commission). [↑](#footnote-ref-2)
2. 2 *See id.* § 216(a) (West Supp. 1995) (defining "public utility" to include common carriers, toll bridge corporations, pipeline corporations, gas corporations, electrical corporations, telephone corporations, telegraph corporations, water corporations, sewer system corporations, and heat corporations, where the service or commodity performed for, or delivered to, the public); *see also* CAL. CONST. art. XII, §§ 1-9 (discussing public utilities); Unocal Cal. Pipeline Co. v. Conway, 23 Cal. App. 4th 331, 334-35, 28 Cal. Rptr. 2d 429, 431 (1994) (holding that a pipeline corporation which has as its only customer its parent company, is a public utility as defined in California Public Utilities Code § 216, and thus, the pipeline corporation has the power of eminent domain). [↑](#footnote-ref-3)
3. 3 *See* CAL. PUB. UTIL. CODE § 227 (West 1975) (defining "pipeline" to include real estate, and personal property, controlled, operated, or managed in connection with the transmission, distribution, or delivery of crude ***oil*** and other non-water fluid substances through pipelines). [↑](#footnote-ref-4)
4. 4 *Id.* § 701 (West 1975); *see* CAL. CIV. CODE § 3333.4(m)(1) (enacted by Chapter 979) (stating that notwithstanding California Public Utilities Code § 228, "pipeline corporation" includes any corporation or person who directly operates, manages or owns any pipeline system qualifying as a public utility within California Public Utilities Code § 216 and for compensation within this state); CAL. PUB. UTIL. CODE § 228 (West Supp. 1995) (defining "pipeline corporation" as every corporation or person, who for compensation, owns, controls, operates, or manages any pipeline within California; however, "pipeline corporation" does not encompass corporations or persons using landfill gas technology and owning, operating, or managing any pipeline solely for the distribution of landfill gas or other type of generated or produced energy); *see also* Television Transmission, Inc. v. Public Util. Comm'n, 47 Cal. 2d 82, 84, 301 P.2d 862, 863 (1956) (determining that the Public Utilities Commission "is a regulatory body of constitutional origin and derives its powers from the Constitution and the Legislature"); Motor Transit Co. v. Railroad Comm'n of Cal., 189 Cal. 573, 581, 209 P. 586, 589 (1922) (holding that regulation of public utilities are a proper exercise by the State of its police power and when the power is exercised, all phases of operation of such utilities become at once subject to the state's police power). [↑](#footnote-ref-5)
5. 5 CAL. CIV. CODE § 3333 (West 1970); *see id.* (explaining that for the breach of a non-contractual obligation the measure of damages is the amount which accounts for all the detriment proximately caused, unless otherwise expressly provided); *see also id.* §§ 3333-3343.7 (West 1970 & Supp. 1995) (setting forth the damages for wrongs in various situations; for example, the negligence of health care providers, wrongful occupation of real property, willful holding over of real property, conversion of personal property, injuries to animals, and fraud in the purchase, sale, or exchange of property). [↑](#footnote-ref-6)
6. 6 *See* 1995 Cal. Legis. Serv. ch. 979, sec. 1(a), at 5782 (declaring the title of the act). [↑](#footnote-ref-7)
7. 7 *See* CAL. GOV'T CODE § 8670.3(j) (West Supp. 1995) (defining "***oil***" as any petroleum, liquid hydrocarbons, or petroleum products and providing a non-exclusive list of those products); *see also* CAL. CIV. CODE § 3333.4(l) (enacted by Chapter 979) (describing "fraction of crude ***oil***" as "a group of compounds collected by fractional distillation that condenses within the same temperature band, or a material that consists primarily of such a group of compounds, or of a mixture of such groups of compounds"). [↑](#footnote-ref-8)
8. 8 *See* CAL. CIV. CODE § 3333.4(m)(3) (enacted by Chapter 979) (defining and describing a "pipeline system" as a construction through which crude ***oil*** moves in transportation). [↑](#footnote-ref-9)
9. 9 *Id.* § 3333.4(a) (enacted by Chapter 979); *see id.* § 3333.4(c) (enacted by Chapter 979) (listing the damages for which a pipeline corporation is liable under this section, including: "(1) all costs of response, containment, cleanup, removal, and treatment, including, but not limited to, monitoring and administration costs; (2) injury to, or economic losses resulting from destruction of or injury to, real or personal property; (3) injury to, destruction of, or loss of, natural resources, including, but not limited to, the reasonable cost of rehabilitating wildlife, habitat, and other resources and the reasonable cost of assessing that injury, destruction, or loss, in any action brought by the state, a county, city, or district; (4) loss of taxes, royalties, rents, use, or profit shares caused by the injury, destruction, loss or impairment of use of real property, personal property, or natural resources; and (5) loss of use and enjoyment of natural resources and other public resources or facilities in any action brought by the state, county, city, or district"); *see also id.* § 3333.4(m)(2) (enacted by Chapter 979) (defining "owning" as the legal entity owning the pipeline system itself but not including those entities holding an ownership interest in the entity owning the pipeline system or multiple pipeline systems); 1995 Cal. Legis. Serv. ch. 979, sec. 1(b), at 5782-83 (declaring the legislative intent for Chapter 979 and recognizing both the economic importance of crude ***oil*** and the hazards of ***oil*** pipelines); *id.* sec. 1(c), at 5783 (noting that in order to mitigate the risks and hazards of public utility ***oil*** pipeline operation, the responsibility for preventing, abating, and remediating ***oil*** spills from pipelines and the pipeline corporation's absolute liability for damage caused by such spills should be clarified; thus, to ensure that pipeline corporations have the ability to fulfill these obligations financially, it is necessary to require that specified evidence of financial responsibility be provided); *id.* sec. 1(d), at 5783 (noting further that financial responsibility evidence should continue to be maintained to cover risks posed by the pipeline and related facilities following the cessation of operation until the pipeline's closure and the cleanup of releases from the pipeline have been determined to be satisfactory by the State Fire Marshal). *See generally* 42 U.S.C.A. § 9607 (West Pamphlet 1995) (discussing liability and compensation when hazardous substances are released). [↑](#footnote-ref-10)
10. 10 CAL. CIV. CODE § 3333.4(h) (enacted by Chapter 979); *see id.* (listing the pipeline systems for which this section is applicable, including: (1) the pipeline system proposed by Pacific Pipeline System, Inc., identified in PUC Application No. 91-10-013, for which the maximum requirement of $ 100 million shall apply; (2) any other public utility pipeline system for which completion of construction will occur on or after January 1, 1996, other than a system subject to the Lempert-Keene-Seastrand ***Oil*** Spill Prevention and Response Act; however, if only a part of a pipeline system is subject to the Act, any evidence of financial responsibility that satisfies that act, and that meets the conditions of this section, must be credited toward this section's requirements; and (3) any major relocation of three miles or more of a pipeline system accomplished through eminent domain; however, this section is inapplicable to portions of the pipeline not relocated). [↑](#footnote-ref-11)
11. 11 *Id.* § 3333.4(b) (enacted by Chapter 979); *see id.* (stating that a pipeline corporation is not liable to an injured party under California Civil Code § 3333.4 for any of the following reasons: (1) damages, other than removal costs incurred by the state or a local government due to an act of war, hostilities, civil war, or insurrection or by a natural disaster or other calamity of an exceptional and inevitable character -- aside from an earthquake -- where damages could not have been prevented or avoided by the exercise of due care or foresight; (2) damages caused by negligence, intentional wrongdoing, or by the landowner's criminal conduct (including the agent, employee or contractor of the landowner) upon whose property the pipeline system is situated; (3) except as provided by California Civil Code § 3333.4(b)(2), damages caused by the negligence or intentional conduct of the person; (4) except as provided by California Civil Code § 3333.4(b)(2), damages caused solely by the criminal act of someone other than the pipeline corporation or one of its agents or employees; (5) natural seepage from other sources than the public utility pipeline; and (6) damages that arise out of, or are caused by, a state or federally authorized discharge); *id.* § 3333.4(i) (enacted by Chapter 979) (declaring that California Civil Code § 3333.4 does not apply to the following: (1) a pipeline system constructed before January 1, 1996, that is converted to a public utility prior or after that date; and (2) a public utility pipeline system not already subject to this section, that is undergoing repair, replacement or maintenance, unless such work is for relocation purposes). [↑](#footnote-ref-12)
12. 12 *Id.* § 3333.4(e)(1) (enacted by Chapter 979); *see id.* (noting that the pipeline corporation must abate as soon as practical any effects of the leak or discharge and take any other remedial action, as necessary); *see also id.* § 3333.4(e)(2) (enacted by Chapter 979) (permitting a pipeline corporation to recover costs for the circumstances listed in California Civil Code § 3333.4 for which it is not at fault by means of other available causes of action, including indemnification or subrogation). *See generally* CAL. CORP. CODE § 25505 (West 1977) (allowing corporations, in certain circumstances, the right of indemnification for civil liability). [↑](#footnote-ref-13)
13. 13 CAL. CIV. CODE § 3333.4(d) (enacted by Chapter 979). [↑](#footnote-ref-14)
14. 14 *Id.* [↑](#footnote-ref-15)
15. 15 *Id.* § 3333.4(f), (g) (enacted by Chapter 979); *see id.* § 3333.4(g) (enacted by Chapter 979) (noting that damages shall not be awarded pursuant to California Civil Code § 3333.4 if the injured party has been awarded damages for the same injury under another provision or principle of law). [↑](#footnote-ref-16)
16. 16 *Id.* § 3333.4(j)(1) (enacted by Chapter 979); *see id.* § 3333.4(j)(2) (enacted by Chapter 979) (declaring that for the purposes of this section, financial responsibility must be shown by evidence that is substantially the same as that necessary under California Government Code § 8670.37.54); *id.* (instructing that the State Fire Marshal will require the documentation evidencing financial responsibility to be placed on file with that office, and will allow financial responsibility to be available for payment of claims for damages of any party, including, but not limited to, the State of California, local governments, special districts, and private parties, that obtain a final judgment against a pipeline corporation); *id.* § 3333.4(k) (enacted by Chapter 979) (stating that the State Fire Marshal requires proof of financial responsibility to cover postclosure cleanup costs; furthermore, this evidence of financial responsibility must equate to 15% of the total amount of financial obligations, and must be maintained by the pipeline corporation for four years after the pipeline is fully idled pursuant to an approved closure plan); *cf.* CAL. GOV'T CODE § 8670.37.53(a) (West Supp. 1995) (requiring vessels carrying ***oil*** to demonstrate the financial ability to pay at least $ 750 million for any damages caused, and this requirement rises to $ 1 billion on January 1, 2000). *See generally id.* § 8670.37.54(a) (West 1992) (discussing how financial responsibility may be demonstrated). [↑](#footnote-ref-17)
17. 17 CAL. CIV. CODE § 3333.4(j)(1) (enacted by Chapter 979). [↑](#footnote-ref-18)
18. 18 *See generally* CAL. GOV'T CODE §§ 8574.1-8574.10, 8670.1-8670.72 (West 1992 & Supp. 1995); CAL. PUB. RES. CODE §§ 8750-8760 (West Supp. 1995) (setting forth the Lempert-Keene-Seastrand ***Oil*** Spill Prevention and Response Act). [↑](#footnote-ref-19)
19. 19 ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1868, at 1 (Apr. 19, 1995); CAL. GOV'T CODE § 8670.56.5(a) (West 1992); *see id.* § 8670.56.5(b) (West 1992) (noting that a responsible person is not liable to an injured party under the act for any of the damages caused under specified circumstances); *see also id.* § 8670.3(h) (West Supp. 1995) (defining "marine waters" as waters subject to tidal influence, but excluding the Sacramento-San Joaquin Delta waters upstream from a line travelling north to south through the point where Contra Costa, Sacramento, and Solano Counties meet); *id.* § 8670.3(o) (West Supp. 1995) (defining "responsible party" as either of the following: (1) "the owner or transporter of ***oil*** or a person or entity accepting responsibility for the ***oil***"; or (2) "the owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility"). *See generally Chevron to Clean Pipe Leak*, L.A. TIMES, Mar. 13, 1995, at D4 (quoting Chevron which stated it would take full responsibility for cleaning up the approximately 200 barrels of crude ***oil*** blend that was released from a break in a pipeline into the Los Gatos Creek in Kettleman City, California); David Haldane, ***Oil*** *Firm, Industry to Pay Spill Settlement*, L.A. TIMES, Feb. 8, 1995, at B11 (discussing a 1990 ***oil*** spill off Huntington Beach which ruined 15 miles of beaches, caused environmental damage, and killed birds and marine animals); Jeff McDonald, *Texaco OK's Settlement Over Spills*, L.A. TIMES, July 19, 1995, at B1 (commenting that Texaco settled a civil lawsuit for $ 195,000 for a crude ***oil*** spill of thousands of gallons which tainted western Ventura County streams); Jeff McDonald & Julie Fields, *Cleanup Crews Also Battling* ***Oil*** *Leaks*, L.A. TIMES, Mar. 16, 1995, at B1 (reporting that storms in Ventura County helped cause nearly 2,000 gallons of crude ***oil*** to leak into the mountains looming above the Ventura River); Thomas S. Mulligan & Michael Parrish, *Exxon Ordered to Pay $ 5 Billion for* ***Oil*** *Spill*, L.A. TIMES, Sept. 17, 1994, at A1 (discussing the $ 5 billion jury award against Exxon for the 11,000,000 gallons of crude ***oil*** spilled into Alaska's Prince William Sound on March 24, 1989); *id.* (noting that the spill caused fish, ducks, and sea lions to become scarce, and thus prevented natives from practicing subsistence fishing and hunting methods that have been practiced for thousands of years); Lee Romney, *Unocal* ***Oil*** *Spill Produces a Sticky Mess in Fullerton*, L.A. TIMES, July 12, 1995, at B4 (discussing the 200 gallons of crude ***oil*** that leaked from a Unocal ***oil*** field in July 1995). [↑](#footnote-ref-20)
20. 20 ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1868, at 1 (Apr. 19, 1995). [↑](#footnote-ref-21)
21. 21 *See* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1868, at 6 (July 25, 1995) (listing the four owners of Pacific Pipeline as Chevron, Unocal, Texaco, and Anschutz Company). [↑](#footnote-ref-22)
22. 22 ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1868, at 1 (Apr. 19, 1995); *see* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1868, at 6 (July 25, 1995) (noting that the proposed Pacific Pipeline will carry crude ***oil*** 132 miles from ***Kern*** County to refineries in the Los Angeles-South Bay area); *id.* (stating that the proposed Pacific Pipeline route will pass through mainly industrial areas along the Southern Pacific railroad's right of way; furthermore, the route will parallel Interstate 5); *id.* (commenting that the pipeline is intended to replace the method of transporting crude ***oil*** from ***Kern*** County to Los Angeles refineries, which involves 50,000 tanker truck trips per year, half-mile long ***oil*** trains, and old pipelines). [↑](#footnote-ref-23)
23. 23 *See* BLACK'S LAW DICTIONARY 523 (6th ed. 1990) (defining "eminent domain" as the power to take private property for public use by the state, municipalities, and private persons or corporations authorized to exercise functions of public character). [↑](#footnote-ref-24)
24. 24 CAL. PUB. UTIL. CODE § 615 (West 1975); *see id.* (authorizing a pipeline corporation to condemn any property necessary for the construction and maintenance of its pipeline); *cf.* MD. ANN. CODE art. 23, § 341A(b) (1994) (stating that an ***oil*** pipeline corporation which is operating pipelines in Maryland may attain by eminent domain any property necessary for the operation of those pipelines and appurtenances or necessary for the construction and operation of additional ***oil*** pipelines along, on, adjacent to, or incidentally deviating, from routes within its established rights-of-way); OKLA. STAT. ANN. tit. 52, § 9 (West 1991) (authorizing all domestic gas pipeline corporations in Oklahoma to build, operate, and to acquire, by purchase or by eminent domain, sites for pumping stations in Oklahoma wherever necessary, with consideration being given to the size, capacity, pressure, facilities and powers of all other possibily affected gas pipeline corporations, consumers, and producers); TENN. CODE ANN. § 65-28-101 (1993) (declaring that a pipeline corporation has the right to appropriate as an easement or right-of-way lands necessary for its pipelines, lands, and rights in land, for the development, construction and operation of underground storage reservoirs for natural gas, and lands for pump stations and terminal facilities over any lands of any person or corporation through which a pipeline may be located); WASH. REV. CODE ANN. § 81.88.020 (West 1962) (noting that the power of eminent domain is conferred for acquiring rights of way for common carrier pipelines and the pipeline corporations have the right to condemn and appropriate lands and property under the same procedure as is provided for condemnation and appropriation by railway companies, but clarifying that no private property shall be taken or damaged until compensation has been made); WIS. STAT. ANN. § 32.03(2) (West 1989) (allowing any railroad corporation or pipeline corporation to acquire by condemnation lands or interest which are held and owned by another railroad corporation or pipeline corporation; moreover, in the case of a pipeline corporation no such land shall be taken except for crossing or in such manner as to interfere with or endanger railroad operations). [↑](#footnote-ref-25)
25. 25 ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1868, at 2 (June 1, 1995). [↑](#footnote-ref-26)
26. 26 *See generally* 42 U.S.C.A. §§ 9601-9675 (West 1983 & Pamphlet 1995) (setting forth the federal Superfund law, which is the common name for the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)); *id.* (authorizing the federal government to impose liability upon parties involved with a release or a threatened release of a hazardous substance). [↑](#footnote-ref-27)
27. 27 *See generally* CAL. HEALTH & SAFETY CODE §§ 25300-25395 (West 1992 & Supp. 1995) (setting forth the California Carpenter-Presley-Tanner Hazardous Substance Account Act); *id.* § 25301 (West 1992) (declaring the purposes of the California Hazardous Substance Account Act as establishing a program to provide for response authority for releases of hazardous substances, compensating certain persons for expenses resulting from injuries caused by exposure to released hazardous substances, and making funds available in order to permit California to pay its 10% of the costs mandated by federal law). [↑](#footnote-ref-28)
28. 28 *See* BLACK'S LAW DICTIONARY 1422 (6th ed. 1990) (defining "strict liability" as liability without fault). [↑](#footnote-ref-29)
29. 29 *See id.* at 1566 (defining "vicarious liability" as the imposition of liability on one person for the actionable conduct of another, based solely on a relationship between the two persons). [↑](#footnote-ref-30)
30. 30 *See id.* at 837 (defining "joint and several liability" as the liability of joint tortfeasors, *i.e.*, liability that an individual or business either shares with other tortfeasors or bears individually without the others). [↑](#footnote-ref-31)
31. 31 ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1868, at 2 (June 1, 1995); *see id.* (quoting Tejon Ranch in the following statement: "'Congress and the California Legislature have woven an elaborate statutory quilt to address liability for the environmental harm that often results from the release of hazardous substances. Nevertheless, a regulatory void exists with respect to personal injuries, property damage, damage to natural resources and consequential damages caused by spills or leaks from crude ***oil*** pipelines in upland environments'"); *see also* 42 U.S.C.A. § 9601(14) (West Pamphlet 1995) (stating that the term "hazardous substance" does not include petroleum, including crude ***oil*** or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance); CAL. HEALTH & SAFETY CODE § 25317(a) (West 1992) (defining "hazardous substance" to include crude ***oil*** or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance, but excluding petroleum). *See generally* Robert N. Aguiluz, *Refining CERCLA's Petroleum Exclusion*, 7 TUL. ENVTL. L.J. 41 (1993) (discussing the legislative, administrative, and judicial history of CERCLA's petroleum exclusion); Robert B. McKinstry, Jr., *The Role of State "Little Superfunds" in Allocation and Indemnity Actions Under the Comprehensive Environmental Response, Compensation, and Liability Act*, 5 VILL. ENVTL. L.J. 83, 84-85 (1994) (listing the states that have some version of a Superfund law); id. at 85 (stating that the states' own Superfund laws were enacted to enable states to fulfill their statutory responsibilities under CERCLA); William B. Johnson, Annotation, *Determination Whether Substance Is "Hazardous Substance" Within Meaning of § 101(14) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9601(14))*, 118 A.L.R. FED. 293 (1994) (analyzing federal cases in which courts have discussed the question whether particular wastes were "hazardous substances" within the meaning of § 101(14) of CERCLA). [↑](#footnote-ref-32)
32. 32 ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1868, at 2 (Apr. 19, 1995); *see id.* (stating that because public utilities have eminent domain rights, "landowners cannot demand, as a condition of granting permission to cross their land, that they be assured by the public utility that they will have adequate recovery in the event of an ***oil*** spill"). [↑](#footnote-ref-33)
33. 33 ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1868, at 2 (May 24, 1995); *see id.* (commenting that supporters of AB 1868 believe that protection will be provided from companies who may attempt to escape liability through a series of financial and legal structures); *see also* ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1868, at 2 (June 1, 1995) (stating that the sponsor of AB 1868 argues that it is not enough to make Pacific Pipeline liable because it is a limited liability company -- an organization set up to protect owners from liability, including those related to environmental disasters). [↑](#footnote-ref-34)
34. 34 ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1868, at 2 (June 1, 1995); *see id.* (noting that many of Pacific Pipeline's policy exclusions make potential recovery difficult in many spillage scenarios; furthermore, the lending institutions financing the pipeline have first priority in the event of damage). [↑](#footnote-ref-35)
35. 35 ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1868, at 2 (May 24, 1995). [↑](#footnote-ref-36)
36. 36 *Id.* [↑](#footnote-ref-37)
37. 37 SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1868, at 7 (July 25, 1995). [↑](#footnote-ref-38)
38. 38 *Id.* [↑](#footnote-ref-39)
39. 39 *Id.; see id.* (noting that strict liability is clearly specified for marine ***oil*** transporters because of the uncertainty of whether their activities are considered "ultra-hazardous"). *Compare* RESTATEMENT (SECOND) OF TORTS § 519 (1977) (proposing strict liability for "abnormally dangerous" activity) *with* RESTATEMENT OF TORTS § 519 (1938) (urging strict liability for an "ultra-hazardous" activity). *See generally* RESTATEMENT (SECOND) OF TORTS § 520 (1977) (listing six factors to be considered in determining whether an activity is "abnormally dangerous": (1) the existence of a high degree of risk of some harm to the person, land or chattels of others; (2) the possibility that the resulting harm will be great; (3) the inability to eliminate the risk even if reasonable care is used; (4) the extent to which the activity is not a "common usage"; (5) the inappropriateness of the activity to the location where it occurs; and (6) the extent to which its societal value is outweighed by its dangerousness); RESTATEMENT OF TORTS § 520 (1938) (defining an activity as "ultra-hazardous" if it "necessarily involves a risk of serious harm to the person, land or chattels of others which cannot be eliminated by the exercise of the utmost care, and is not a matter of common usage"); Indiana Harbor Belt R.R. Co. v. American Cyanamid Co., 662 F. Supp. 635, 644 (1987) (holding that shipping acrylonitrile, a flammable and toxic chemical, through a residential Chicago area was an "abnormally dangerous" activity within the meaning of the Restatement (Second) of Torts § 520, and thus the defendant was strictly liable for a chemical spill). [↑](#footnote-ref-40)
40. 40 SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1868, at 7 (July 25, 1995); *see id.* (suggesting that economic and natural resources damages, and the costs of measuring such damages are most likely not recoverable under the common law). [↑](#footnote-ref-41)
41. 41 *Id.* [↑](#footnote-ref-42)