

**JAMES M. FISCHER**  
**Professor of Law**

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**PROFESSIONAL EXPERIENCE**

Professor of Law  
Southwestern Law School  
1976 to present

Of Counsel  
Gilbert, Kelly, Crowley & Jennett  
1984 to 1992

Attorney  
Beardsley, Hufstedler & Kemble [subsequently merged into Morrison & Foerster]  
1974-1976

Law Clerk to the Honorable Clarke E. Stephens  
California Court of Appeal, Second Appellate District  
1973-74

**APPOINTMENTS**

Advisor, American Law Institute, Restatement of the Law Third Torts: Remedies

Member, State Bar of California Committee on Professional Responsibility and Conduct, 2005-2008

Chair, Professional Responsibility and Ethics Committee of the Los Angeles County Bar Association, 1995-96. Member 1992-1999

Vice Chair, Committee on Property Insurance Law, Section of Tort and Insurance Practice, American Bar Association, 1992-1997.

Member, Executive Committee, Solo and Small Firm Section, State Bar of California, 1997-1998.

Member, Committee on Professional Liability Insurance, State Bar of California, 1991-1997.

Arbitrator, Los Angeles County Superior Court, Court Annexed Arbitration Program, 1982-1996

Member, Hearing Board, South Coast Air Quality Management District, 1983-86

Special Assistant to the United States Attorney for the Central District of California, 1980-81

Judge Pro Tem, Municipal Court, Los Angeles County Judicial District, State of California - Small Claims Court, 1981-83

President, Board of Trustees, North Los Angeles County Regional Center, 2004-05; Member 1991-1996, 2001-2005

Member, Committee on Administration of Justice, State Bar of California, 1984-1987

### **PUBLICATIONS**

#### **BOOKS:**

Keeton, Widiss & Fischer, Insurance Law (2d ed. 2016)

Understanding Remedies (Lexis/Nexis) (4<sup>th</sup> ed. 2021).

Federal Trial Procedure Handbook (John Wiley & Sons, Inc.) (1984).

#### **RECENT ARTICLES ON PROFESSIONAL RESPONSIBILITY:**

*The Lawyer's Affirmative Duty to Disclose to the Court* (forthcoming 47 The Journal of the Legal Profession Fall 2022).

*Litigation Financing: A Real or Phantom Menace to Lawyer Professional Responsibility*, 27 Georgetown Journal of Legal Ethics 191 (2014).

*The Crime-Fraud Exception to Privilege*, The Brief 30 (Vol. 41, No. 2, Winter 2012)

*Large Law Firm Lateral Hire Conflicts Checking: Professional Duty Meets Actual Practice*, 36 Journal of the Legal Profession 167 (2011)

*Ethically Handling the Receipt of Possibly Privileged Information*, 1 St. Mary's J. Leg. Mal. & Ethics 202 (2011) (Symposium Issue)

*The Professional Obligations of Counsel Retained for the Policyholder But Not Subject to Insurer Control*, 43 Tort Trial & Ins. Prac. L. J. 173 (Winter 2008)

*External Control Over The American Bar*, 19 Georgetown J. Legal Ethics (2006)

*Non-Client Standing To Move To Disqualify Counsel For Conflicts of Interest*, The Professional Lawyer, Vol. 8 (May 1997)

*Representing Partnerships: Who Is/Are the Client(s)?*, 26 Pacific L.J. 961 (1995)

*Should Advice of Counsel Constitute a Defense for Insurer Bad Faith?*, 72 Tex. L. Rev. 1447 (1994) (Symposium Issue)

*Why Can't Lawyers Split Fees? Why Ask Why, Ask When!*, 6 Georgetown J. Legal Ethics 1 (1992)

#### **OTHER PUBLISHED ARTICLES:**

*Is Poker Legal or Illegal in California?* 12 UNLV GAMING L.J. 27 (2021).

*Is Online Sport Betting Illegal in California?* 18 HASTINGS BUS L.J. 61 (2021).

*Exhaustion of Underlying Insurance in the Context of Continuous Trigger Coverage*. 25 U. Conn. Ins. L.J. 263 (2018).

*Accidental or Willful?: The California Insurance Law Conundrum*, 54 Santa Clara Law Review 69 (2014).

*Does An Insured Have a Duty to Mitigate Damages When the Insurer Breaches?*, 20 Connecticut Journal of Insurance Law 89 (2013-2014).

*What Hath eBay v. MercExchange Wrought?* 14 Lewis & Clark L. Rev. 555 (2010) (Symposium Issue)

*The Puzzle of the Actual Injury Requirement for Damages*, 42 Loy. (L.A.) L. Rev. 197 (2008) (Symposium Issue)

*Insurer-Policyholder Conflicts of Interest and Retained Defense Counsel's Professional Duties*, 14 Conn. Ins. L.J. 21 (2008)

*The "Right" to Injunctive Relief For Patent Infringement*, 24 Santa Clara Computer & High Technology Law J. 1 (2007)

*"Preliminarily" Enjoining Elections: A Tale of Two Ninth Circuit Panels*, 41 San Diego L. Rev. 1647 (2004) (Symposium Issue)

*Insurer or Policyholder Control of the Defense and the Duty to Fund Settlements*, 2 Nev. L.J. 1 (2002)

*Discretion and Politics: Ruminations on the Recent Presidential Election*, 69 U. Cin. L. Rev. 807 (April 2001)

*Plebiscites, The Guaranty Clause, and The Role of the Judiciary*, 41 Santa Clara L. Rev. 973 (2001)

*Teaching Remedies Versus Learning Remedies*, 39 Brandeis L.J. 575 (2001) (Symposium Issue)

*The Doctrine of Reasonable Expectations Is Indispensable, If We Only Knew What For*, 5 Conn. Ins. L. J. 151 (1999) (Symposium Issue)

*The Attorney-Client Privilege Meets The Common Interest Arrangement: Protecting Confidence While Exchanging Information For Mutual Gain*, 16 The Review of Litigation 631 (1997) (Symposium Issue)

*Insurance Coverage For Mass Exposure Tort Claims: The Debate Over the Appropriate Trigger Rule*, 45 Drake L. Rev. 625 (1997)

*The Presence of Insurance and the Legal Allocation of Risk*, 2 Conn. Ins. L.J. 1 (1996)

*Why Are Insurance Contracts Subject to Special Rules of Interpretation?: Text v. Context*, 24 Ariz. St. Univ. L. Rev. 995 (1992)

*Broadening The Insurer's Duty to Defend: How "Gray v. Zurich Insurance Co." Transformed Liability Insurance Into Litigation Insurance*, 25 U. Cal. (Davis) L. Rev. 141 (1991)

*Enforcement of Settlements: A Survey*, 27 Tort & Ins. L. J. 82 (1991).

*The Exclusion From Insurance Coverage of Losses Caused By the Intentional Acts of the Insured: A Policy in Search of a Justification*, 30 Santa Clara Law Review 95 (1990)

*The Limits of Statutes of Limitation*, 16 Sw. Univ. L. Rev. 1 (1986)

*Network "Early Calls" of Elections: An Analysis of the Legality of Proposals to Keep the Voting Process from Becoming An Academic Exercise*, 14 Sw. Univ. L. Rev. 428 (1984)

*Ballot Propositions: The Challenge of Direct Democracy to State Constitutional Jurisprudence*, 11 Hast. Const. L.Q. 43 (1983)

*Acid Rain: The Availability of Private Damages for Acid Rain Damage*, 9 Ecol. L.Q. 601 (1981)

*The Concept of Mandatory Jurisdiction*, 41 Ohio State L.J. 858 (1981)

*The New Synthetic Fuels Program: Boomlet or Bust?* 16 Tulsa L.J. 357 (1981)

*Allocating Decisionmaking in the Field of Energy Resource Development: Some Questions and Suggestions*, 22 Ariz. L. Rev. 1001 (1980)

*Shaffer v. Heitner: Some Thoughts On Its Impact on the Doctrine of Preclusion by Judgment and Choice of Law*, 30 Case Western Reserve L. Rev. 74 (1979)

*Contribution in 10b-5 Actions*, 33 Business Lawyer 1821 (1978)

*State Interest, Minimum Contacts, and In Personam Jurisdiction Under Code of Civil Procedure Section 410.10*, 12 U.S.F.L. Rev. 387 (1978)

*HIV & Insurance Coverage Overview*, published by the Los Angeles County Bar Association Barristers AIDS Legal Services Project

### **RECENT PRESENTATIONS**

- ABA Tort Insurance & Practice Section  
Mid-year Meeting – February 2019  
(Insurance Coverage) (Moderator)
- ABA Tort Insurance & Practice Section  
Mid-year meeting- February 2013  
(Litigation Financing)
- ABA Tort Insurance & Practice Section  
Mid-year meeting- February 2012  
(Ethical Duties of Retained Defense Counsel)
- HP Construction Defect Coverage Conference – March 2011  
(Professional Duties of Retained Defense Counsel)
- ABA Tort Insurance & Practice Section  
Mid-year meeting – February 2011  
(Attorney Client Privilege in Coverage Litigation)
- Los Angeles County Bar Association – October 2010  
(Substance Abuse & Legal Practice)