



# California Corporate & Securities Law

## Ahistorical Bedfellows: The California Corporations Code And The Common Law

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Unlike New York or Virginia, the State of California was never an English colony (although Francis Drake named it New Albion and claimed it for England on June 17, 1579). Rather than English, California's European historical roots are Spanish. Spain and then Mexico ruled what was to become California before it was ceded to the United States by the [Treaty of Guadalupe Hidalgo](#) (*Tratado de Guadalupe Hidalgo*) in 1848.

Given the limited role of England in California history, does the law of a feudal, island kingdom that is half the world away have any place in modern California law? Yet, tenuous historical ties notwithstanding, the common law of England is California's *lex terrae* (law of the land).

Doubters of this proposition need only consult California Civil Code Section 22.2 which provides:

*The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State.*

This phraseology in fact is an inversion of the language used in English colonial charters. The Crown granted colonial governors the authority to enact laws but with the proviso that their laws could not be repugnant to English law. For example, the 1629 [charter](#) of the Massachusetts Bay Colony issued by King Charles I includes the following limitation: "soe as such Lawes and Ordinances be not contrarie or repugnant to the Lawes and Statuts of this our Reaime of England" (original spelling).

In addition to generally adopting English common law, the California legislature makes several direct references to the common law in the Corporate Securities Law of 1968 and the General Corporation Law. However, it should be noted that these references are to the "common law" and not the common law of England as in Section 22.2.

Corporations Code Section 25510 preserves common law liability by providing that nothing in the CSL "shall limit any liability which may exist by virtue of any other statute or under common law if this law were not in effect." Section 25006, on the other hand, expands upon the common law by providing that the terms "fraud," "deceit," and "defraud" are not limited to common law fraud or deceit. Finally, Section 25605(a) provides that nothing in the CSL "either creates or derogates from any privilege which exists at common law or otherwise

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when documentary or other evidence is sought under a subpoena directed to the commissioner or any of his assistants, clerks, or deputies.”

Section 308 of the General Corporation Law refers to the common law definition of “consanguinity within the third degree” by providing that a provisional director may not be so related “according to the common law”.

California is not alone in its adoption of English common law. The Nevada Legislature has enacted an identical provision, NRS 1.030. Nevada’s securities law, which is based on the Uniform Securities Act, contains a provision, NRS 90.730(5) similar to Section 25605(a). However, Nevada’s private corporation law (Chapter 78) makes no mention of the common law.

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