

## Henrioulle v. Marin Ventures, Inc.

Supreme Court of California, 1978  
20 Cal.3d 512, 573 P.2d 465, 143 Cal.Rptr. 247

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**FACTS** Henrioulle, an unemployed widower with two children, received public assistance in the form of a rent subsidy. He entered into an apartment lease agreement with Marin Ventures that provided "INDEMNIFICATION: Owner shall not be liable for any damage or injury to the tenant, or any other person, or to any property, occurring on the premises, or any part thereof, and Tenant agrees to hold Owner harmless for any claims for damages no matter how caused." Henrioulle fractured his wrist when he tripped over a rock on a common stairway in the apartment building. At the time of the accident, the landlord had been having difficulty keeping the common areas of the apartment building clean. Henrioulle appealed from the trial court's orders granting Marin Ventures a judgment notwithstanding the jury's verdict and a new trial.

**DECISION** Orders of the trial court reversed and case remanded with directions to enter a judgment for Henrioulle on the verdict.

**OPINION** Bird, C. J. In *Tunkl v. Regents of the University of California* [citation], this court held invalid a clause in a hospital admission form which released the hospital from liability for future negligence. This court noted that although courts have made "diverse" interpretations of [California] Civil Code section 1668, which invalidates contracts which exempt one from responsibility for certain willful or negligent acts, all the decisions were in accord that exculpatory clauses affecting the public interest are invalid. [Citation.]

In *Tunkl*, six criteria are used to identify the kind of agreement in which an exculpatory clause is invalid as

contrary to public policy: “[1] It concerns a business of a type generally thought suitable for public regulation. [2] The party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public. [3] The party holds himself out as willing to perform this service for any member of the public who seeks it, or at least any member coming within certain established standards. [4] As a result of the essential nature of the service, in the economic setting of the transaction, the party invoking exculpation possesses a decisive advantage of bargaining strength against any member of the public who seeks his services. [5] In exercising a superior bargaining power the party confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser may pay additional fees and obtain protection against negligence. [6] Finally, as a result of the

transaction, the person or property of the purchaser is placed under the control of the seller, subject to the risk of carelessness by the seller or his agents.” [Citation.]

The transaction before this court, a residential rental agreement, meets the *Tunkl* criteria.

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In holding that exculpatory clauses in residential leases violate public policy, this court joins an increasing number of jurisdictions. [Citations.]

**INTERPRETATION** An exculpatory clause is valid only if it is not contrary to public policy.

**ETHICAL QUESTION** Did Marin Ventures, Inc. act unethically? Explain.

**CRITICAL THINKING QUESTION** When should an exculpatory clause be held invalid? Explain.