

INDEMNITY



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- Types I, II and III
- *MacDonald & Kruse v. San Jose Steel*, 29 Cal.3d 413 (1972).
- Type I: express statement that indemnitor indemnifies Indemnatee for its own negligence.
- Type II – not cover indemnatee's own negligence.



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- Active/passive dichotomy not dispositive, but depends upon contract interpretation, and parties' intent. *Rossmoor Sanitation Inc. v. Pylon, Inc.*, 13 Cal.3d 622 (1975).
- "Benefit of bargain" rule can turn Type II into strong indemnity, if indemnitee deprived of benefit of bargain. *Morton Thokol v. Metal Building*, 193 Cal.3d 1025 (1987).



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- No mechanical application of Type I or II or III.
- Interpret language per parties' intent. . . . Inquire into circumstances of injury or damage.
- Need clear expression of intent to indemnify under circumstances. *Heppler v. J.M. Peters*, 73 Cal.4th 1265 (1999).



Interpretation of Subcontract Indemnity Clauses

- The Court in *Centex Construction Company v. Dale Tile Company*, 93 Cal. Rptr. 2d 259 (2000), dealt with an indemnity clause in Dale Tile's subcontract agreement. Dale agreed to indemnify the developer with respect to all work which is covered by, or incidental to, the subcontract.
- Dale argued that it was not required to indemnify Centex in the absence of some showing that it had been negligent.
- The Court of Appeal in *Centex* held that the language of the parties' contract imposed no requirement that the developer prove that Dale Tile was negligent.

