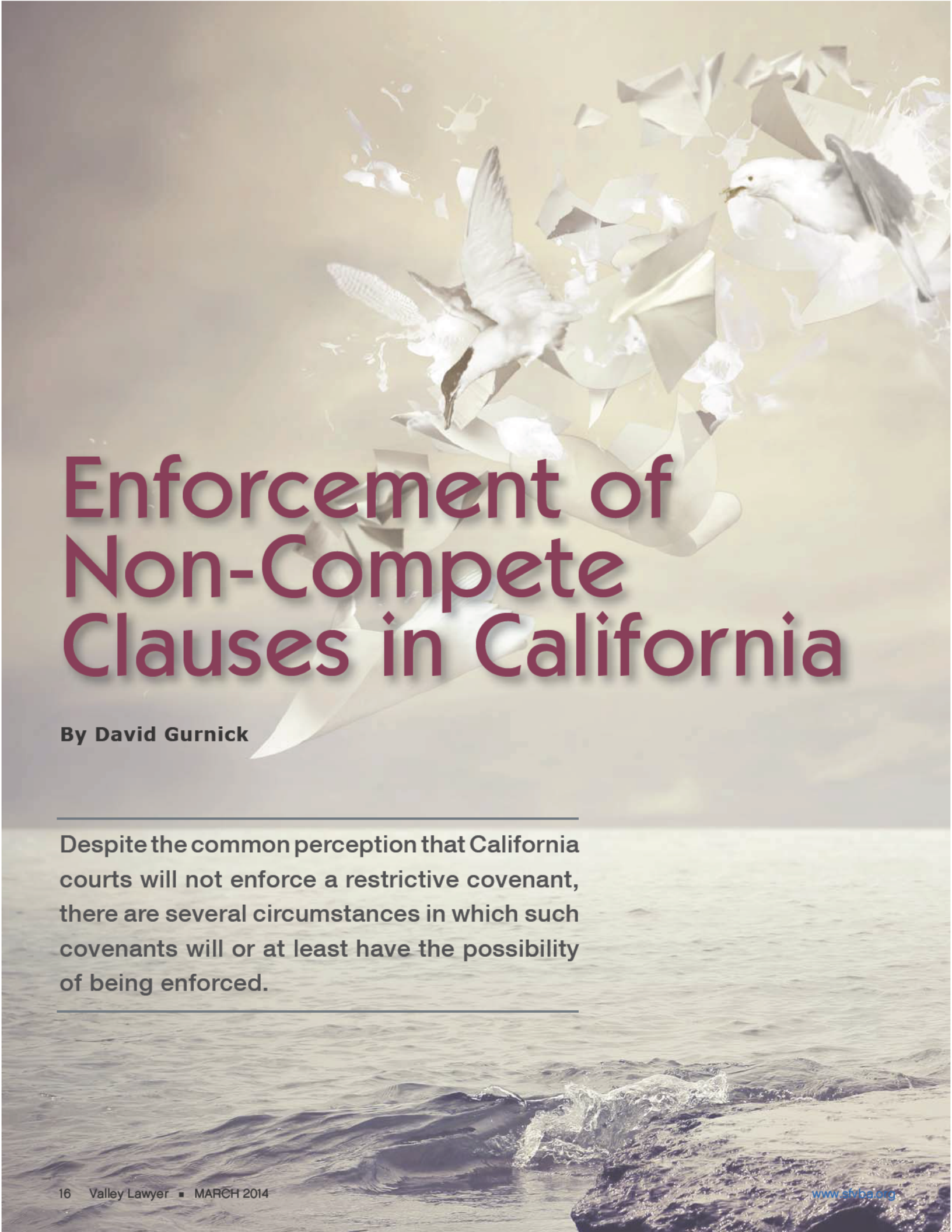

Enforcement of Non-Compete Clauses in California

By David Gurnick

Despite the common perception that California courts will not enforce a restrictive covenant, there are several circumstances in which such covenants will or at least have the possibility of being enforced.

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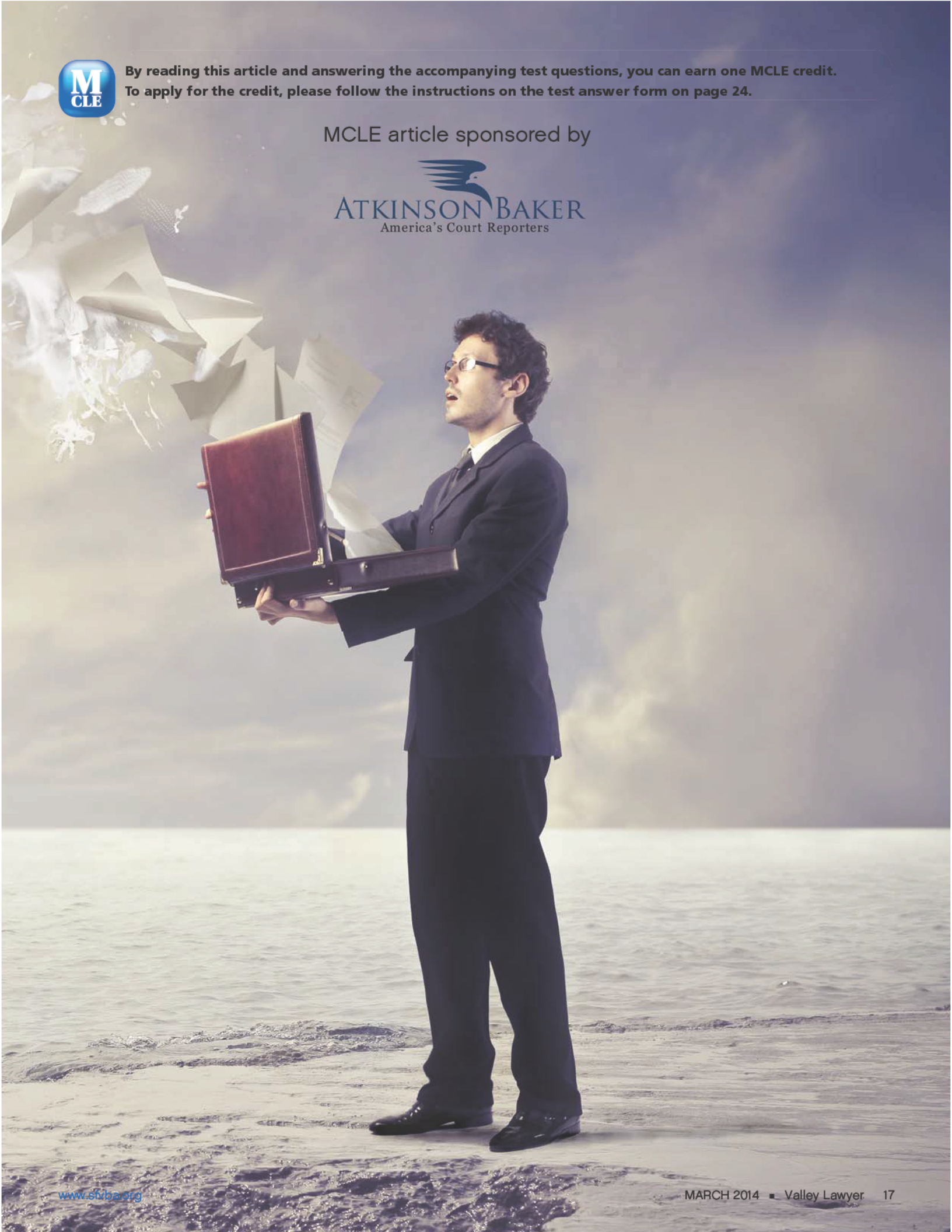


MANY LAWYERS AND OTHERS THINK CALIFORNIA courts will not enforce a covenant restricting a person or entity from competing. Often, they are right. This is because the Business and Professions Code establishes a rule that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."[1] California courts have declared this represents a strong, fundamental policy against the enforcement of noncompetition restrictions.[2] But there are some circumstances when a restrictive covenant may be enforced in California.

First, the statute that makes noncompetition restrictions unenforceable has exceptions. One who sells their interest in a business and its goodwill, or a business that sells substantially all its operating assets or sells a division or subsidiary, along with its goodwill, may agree with the buyer to not carry on a similar business in a specified area where the sold business operated, so long as the buyer or successor carries on a like business.[3] In these circumstances, which also apply to a partner in a partnership, a limited liability company member, or a corporate shareholder,[4] a noncompetition restriction is enforceable.

Similarly, a member of a limited liability company may, in anticipation of terminating his or her interest in the entity, or dissolution of the entity, agree not to compete in a specified area, so long as the company or any other member carries on a like business.[5]

Noncompetition Restrictions in Employer-Employee Relationships

A California court will enforce a restrictive covenant during the term of a contractual relationship. Recently, this was reaffirmed by the Court of Appeal. In *Angelica Textile Services, Inc. v. Park*,[6] an employee promised "to give his best endeavors, skill and attention to the discharge of his duties with the Company" and promised "he would not, during his employment, become interested, directly or indirectly, as a partner, officer, director, stockholder, advisor, employee, independent contractor or in any other form or capacity, in any other business similar to Company's business."[7] Despite this promise, while employed, the individual became part of a group that formed a competing company. The new company then solicited away clients of the former employer.

The ex-employee claimed the restrictive covenant was unenforceable under Business and Professions Code Section 16600. The Court of Appeal rejected this argument. The court agreed "section 16600 has consistently been interpreted as invalidating any employment agreement that unreasonably interferes with an employee's ability to compete with an employer after his or her employment ends." But, the court noted, it "does not affect limitations on an employee's conduct or duties while employed. . . . During the term of employment, an employer is entitled to its employees' undivided loyalty."[8] Because the employee owed his employer a "broad duty of loyalty," and the claims were based on "conduct during his employment," the court ruled "they are in no sense barred by Business and Professions Code Section 16600."[9]

Noncompetition Restrictions in Franchise Relationships

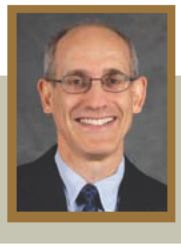
The *Angelica* case was in the employer-employee context. A similar principle applies in other business contexts. In *Dayton Time Lock Service, Inc. v. Silent Watchman Corp.*,[10] a covenant restricting competition in a business franchise relationship was enforced during the term of the franchise.

Silent Watchman Corporation manufactured a recording time lock system, a lock that keeps track of when it is opened and closed. Dayton Time Lock was a franchisee for several states under an exclusive ten-year franchise agreement. Dayton Time Lock agreed not to compete with its franchisor during the term of the franchise.[11] The agreement stated:

> [Franchisee] agrees that, during the life of this contract, and any renewal or extension thereof, except as herein provided, it will not sell or lease any locks, devices or service of any kind in competition with the business of [Franchisor] or use any time recording lock not supplied by [Franchisor] under this agreement. . . .[12]

The Court of Appeal viewed this as an "exclusive-dealing contract" and noted such contracts "are not necessarily invalid. They may provide an incentive for the marketing of new products and a guarantee of quality-control distribution. They are proscribed when it is probable that performance of the contract will foreclose competition in a substantial share of the affected line of commerce. A determination of illegality requires knowledge and analysis of the line of commerce, the market area, and the affected share of the relevant market."[13] The court ruled that without evidence in these areas, it could not be said "that the challenged provision is invalid as a matter of law."[14]

Dayton Time Lock remains good law, although later decisions limit its holding to the field of business franchises.[15] And within franchising, the *Dayton* decision has been limited



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further. In *Comedy Club, Inc. v. Improv West Associates*,[16] the Ninth Circuit Court of Appeals ruled that an in-term restrictive covenant in a franchise relationship "will be void if it forecloses competition in a substantial share of a business, trade or market."[17]

Improv West created and owned trademarks for operating restaurants and comedy clubs. It granted a license to Comedy Club, Inc.; Comedy Club, Inc. agreed to open four new clubs per year, and not to open non-Improv clubs during the agreement's term. When Comedy Club failed to meet the development schedule, Improv West terminated the right to open more locations. The agreement remained in effect for locations that were in existence. This had the effect of foreclosing Comedy Club from opening more locations throughout the United States.

The Ninth Circuit ruled that "to comply with §16600, the covenant not to compete must be more narrowly tailored to relate to the areas in which CCI is operating Improv clubs under the license agreement."[18] The court weighed Comedy Club, Inc.'s right to operate its business against Improv West's interest in protecting its trademark, trade name and goodwill. The balance favored Improv West in counties where Comedy Club operated Improv clubs. Therefore, the restrictive covenant was enforceable in those counties. But the court said Business and Professions Code Section 16600 did not permit foreclosing Comedy Club, Inc. from competing in the rest of the United States.[19]

The Route Cases

The Route Cases present another context in which California precedents indicate that restrictive covenants may be enforced. These are exemplified by a trio of decisions from the 1950s, *Gordon v. Landau,*[20] *Gordon v. Schwartz,*[21] *and Gordon v. Wasserman*.[22] These cases involved salesmen who quit a house-to-house installment sales business. The salesmen visited each home weekly on a scheduled day, collected payments, and sold merchandise to regular customers who could be counted on to buy month after month, year after year. The salesmen knew each customer's identity, the balance due, products purchased in the past, previous payments, and the source of the referral.[23]

The *Gordon* trio held that a covenant which barred salesmen from soliciting business from customers for one year after termination of employment passed muster under Business & Professions Code Section 16600. The courts reasoned that the information about customers could be protected because it was confidential, proprietary, and/or trade secret.[24] A principle of the Route Cases is that "the identity of the customer is not generally known and the employee has become familiar with special information regarding customer lists, quantities, price lists, discounts, etc."[25] Though the Route Cases are more than 50 years old, the decisions, and their principles, remain good law.[26]

While the origin of the Route Cases is in employer-employee relationships, the principles also apply to independent contractors.[27] Nor is a "delivery route" essential to the application of these principles.[28]

Choice of Law in Application of Restrictive Covenants

Though California has a fundamental policy against noncompetition restrictions,[29] some agreements that include such restrictions provide for the application of another state's law. Applying choice of law principles, it is possible in some circumstances for a California court to enforce a restrictive covenant in an agreement that applies the law of another state. The other state's law must enforce restrictive covenants. And the facts must be such that California does not have a materially greater interest than the other state in applying California's policy against such covenants. Generally, this requires that the agreement be in a context and concern activity that has little or no contact with California.

Say two parties entered into an agreement with a restrictive covenant. If the agreement provides for application of the other state's law, that state's law enforces a noncompetition covenant, and the other party is outside California with little or no contact with California, then a California court could potentially enforce the restriction. In *Application Group v. Hunter Group*,[30] the Court of Appeal set forth the analytical framework to be undertaken when a party seeks to enforce in California an agreement with a noncompetition restriction that applies another state's law.

Application Group concerned a California company that hired employees in Maryland. The employment agreements included a noncompetition restriction and provided they would be governed by Maryland law. There was no dispute that under Maryland law the restrictions were enforceable, but under California law they were not.[31] A competitor located in California sought to hire away an employee which would result in the employee being in breach of the noncompetition restrictions. Therefore, the court had to address choice-of-law principles.

The court made it clear that "California strongly favors enforcement of choice-of-law provisions."[32] This is "consistent with the modern approach of section 187 of the Restatement Second of Conflict of Laws" which "reflect[s] a strong policy favoring enforcement of such provisions."[33] Thus, California will apply the parties' chosen law, unless the chosen state has no substantial relationship to the parties or the transaction, or application of the chosen law would be contrary to a fundamental policy of the state.[34] Under the second exception, where application of the chosen law would violate California's public policy, the provision will be disregarded to the extent necessary to preserve California public policy.[35]

Therefore, in evaluating a restrictive covenant where the parties' agreement applies the law of another state, the

court first determines if the chosen state has a substantial relationship to the parties or their transaction, or if there is another reasonable basis for the parties' choice of law. If neither of these tests is met, the inquiry ends, and the court need not enforce the parties' choice of law. If either test is met, the court determines if the chosen state's law is contrary to a fundamental California policy. If there is no conflict, the court enforces the parties' choice of law.

If there is a fundamental conflict with California law, the court determines if California has a materially greater interest than the chosen state in the determination of the particular issue. If California has a materially greater interest, the parties' choice of law is not enforced because doing so would violate a fundamental policy of this state."[36] Because the formulation is "whether California has a materially greater interest than the chosen state in the determination of the particular issue,"[37] the other state's law (the law chosen by the parties' agreement) applies if the other state has a greater interest; or if the question of which state has a greater interest in its policy being applied is a close call; or if the states' respective interests are equal; or if California has only a slightly greater interest but not "materially" greater interest in deciding the particular issue.[38]

In various other states, the law permits reasonable restrictive covenants. Maryland and New Jersey are examples. With many corporations, drug manufacturers and other technology companies based in those states, their courts have analyzed their interests in enforcing noncompetition restrictions. Maryland will enforce a reasonable restrictive covenant.[39] Decisions in New Jersey "recognize as legitimate the employer's interest in protecting trade secrets, confidential information and customer relations."[40] The New Jersey Supreme Court has stated:

> [T]he public has an enormously strong interest in both fostering ingenuity and innovation of the inventor and maintaining adequate protection and incentives to corporations to undertake long-range and extremely costly research and development programs. We have held such contracts to be enforceable when reasonable.[41]

In the context of franchising, New Jersey courts have stated: "Because covenants not to compete in Franchise Agreements are similar to those that are ancillary to the sale of a business, they must be freely enforced and afforded additional latitude."[42]

In *Application Group*, the California court analyzed whether to apply California's law prohibiting noncompetition restrictions, or Maryland's law which allows them.[43] The court had to determine which state's law would apply to a covenant not to compete. The covenant was in an employment agreement between an employee who resided in Maryland and had never been to California, and her employer whose business was based in Maryland. The business had a

small number of California employees. A California-based employer sought to recruit or hire the nonresident individual to work in California.[44]

The Court of Appeal considered that California's policy affords every citizen the right to pursue employment of their choice; employees' interest in mobility and betterment are paramount to the competitive business interests of employers; and that the state has a strong interest in protecting freedom of movement of persons whom California-based employers wish to hire to work in California. The court added that California policy seeks to ensure that "California employers will be able to compete effectively for the most talented, skilled employees in their industries, wherever they may reside."[45] These considerations outweighed Maryland's interest in using restrictive covenants to prevent recruitment of employees who provide unique services, and misuse of trade secrets, routes, client lists or solicitation of customers.[46] Therefore, the court applied California law and refused to enforce the noncompetition restriction.

Given that the employer and employee in *Application Group* were both nonresidents of California, the decision must be seen as stretching the limit of California's ability to apply its policy against a noncompetition restriction. Another scenario is also possible. A franchise agreement, for example, involving a California-based franchisor and a franchisee operating in New Jersey, might contain an in-term and post-term restriction and provide that the relationship is governed by New Jersey law. During and after the end of the term, a question might arise whether the franchisee is permitted to ignore the noncompetition restriction and engage in a competitive business.

In such a case, arguably the other state (in this example, New Jersey) has an interest that is materially greater than California's interest in its rules on restrictive covenants being enforced. The franchisee and franchised business are located there. The New Jersey Supreme Court has stated that the public in that state "has an enormously strong interest" in fostering ingenuity and innovation of the inventor and protecting and incentivizing long-range and costly research and development.[47]

Arguably, California has little or no interest in applying its rule or policy on restrictive covenants in New Jersey. California's interest is to protect California residents or persons working in this state. The only California resident affected is the franchisor, and that party wants its agreement to be enforced. An argument could be made that California would be hurt by applying its policy against enforcement. This is because doing so would allow post-term competitive activity, to the injury of the California-based company without any countervailing benefit. Arguably, even if the question were a close call, it might not be possible to conclude that California has a materially greater interest in not enforcing the restrictive covenant. The interest-based analysis provides a cogent argument that the franchisee's home state law, including enforceability of the restrictive covenant, would prevail.[48]

At least one other circumstance presents the possibility of a noncompetition restriction being enforced despite the Business and Professions Code restriction. For many years California courts considered that there was a "trade secrets" exception to Section 16600.[49] A noncompetition restriction could be enforced if the reason for doing so was to protect an employer's trade secrets.[50]

The trade secret exception was brought into doubt by the California Supreme Court in *Edwards v. Arthur Anderson*.[51] The Court stated that "California courts have been clear in their expression that section 16600 represents a strong public policy of the state which should not be diluted by judicial fiat."[52] The Court of Appeal also expressed doubt about "the continued viability of the common law trade secret exception to covenants not to compete."[53] However, in *Edwards*, the Supreme Court reserved the question whether there is a trade secret exception to enforceability of noncompete restrictions.[54] Subsequently, a federal court has suggested the exception still exists.[55] The answer to this question awaits an appropriate case.

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[1] Cal. Bus. & Profs. Code Sec. 16600. All further code references are to this code.
[2] See *Edwards v. Arthur Andersen LLP* 44 Cal.4th 937, 949 (2008) ("we are of the view that California courts have been clear in their expression that section 16600 represents a strong public policy of the state which should not be diluted by judicial fiat."); see also, Silguero v. Creteguard, Inc. 187 Cal.App.4th 60, 67 (2010); *D sa v. Playhut, Inc*. 85 Cal.App.4th 927, 933 (2000) (Bus. & Profs. Code Sec. 16600 "represents a strong public policy of this state.").
[3] Bus. & Profs. Code Secs. 16601-16602.
[4] Bus. & Profs. Code Sec. 16601.
[5] Bus. & Profs. Code Sec. 16602.5.
[6] Angelica Textile Services, Inc. v. Park, 220 Cal.App.4th 495 (2013).
[7] Id. at 500.
[8] Id. at 509.
[9] Id.
[10] Dayton Time Lock Service, Inc. v. Silent Watchman Corp., 52 C.A 3d 1 (1975).
[11] Id. at 4-5.
[12] Id. at 6.
[13] Id. at 6-7 (internal citation omitted).
[14] Id. at 7.
[15] See e g., Kelton v. Stravinski, 138 C A.4th 941, 948 (2006) (stating that the Dayton Time Lock reasoning "is tied to the franchise context.").
[16] Comedy Club, Inc. v. Improv West Associates, 553 F 3d 1277 (9th Cir. 2009).
[17] Id. at 1292. See also, Schwartz v. Rent A Wreck America, 468 Fed. Appx. 238, 250-251 (4th Cir. 2012) ("an in-term exclusive dealing agreement in the context of a franchising agreement does not run afoul of §16600, provided that it does not foreclose competition in a substantial share of the market.").
[18] Comedy Club, Inc., supra, at 1293.
[19] Id.
[20] Gordon v. Landau, 49 Cal.2d 690 (1958).
[21] Gordon v. Schwartz, 147 Cal App 2d 213 (1956).
[22] Gordon v. Wasserman, 153 Cal.App.2d 328 (1957).
[23] Landau, supra, at 690, 691.
[24] Landau, supra at 694 (noting that the customers "are a real asset" and "the foundation upon which" the business's success "and indeed its survival, rests. It thus logically follows that a list of such customers is a valuable trade secret. . . ."); Schwartz, supra, at 217 ('the list of customers, not ordinarily entitled to judicial protection, may become a trade secret, if there is confidential information concerning the value of these customers.").
[25] Metro Traffic Control, Inc. v. Shadow Traffic Network 22 Cal.App.4th 853, 862 (1994).
[26] See e g., Rusnak Auto Group v. McTaggart 2011 WL 4825895 at *6 (Cal.App. 2011) (citing Gordon v. Landau for the proposition that "if an employer has expended time and effort identifying customers with particular needs or characteristics, courts will prohibit former employees from using this information to capture a share of the market."); Klamath-Orleans Lumber, Inc. v. Miller 87 Cal.App 3d 458, 465 (1978) ("Equitable protection may be invoked against the subsequent use by a former employee of knowledge of the 'peculiar likes and fancies and other characteristics' of the former employer's customers where such knowledge will aid him in securing and retaining their business. This rule applies generally to trade route

cases as well as others involving a knowledge of the customers desired . . . their preferences for certain products, and their buying habits."); Peerless Oakland Laundry Co. v. Hickman 205 Cal. App 2d 556 (1962).

[27] Ingrassia v. Bailey 172 Cal App.2d 117, 122 (1959) ("While it is obvious that the instant case does not involve an employer-employee relationship, we believe the principles enunciated in the route cases are here fully applicable."); Alex Foods, Inc. v. Metcalfe 137 Cal.App.2d 415, 427 (1956) ("Equitable protection may be invoked against the subsequent use by a former employee of knowledge of the 'peculiar likes and fancies and other characteristics' of the former employer's customers where such knowledge will aid him in securing and retaining their business. This rule applies generally to trade route cases as well as others involving a knowledge of the customers desired for specialized information, their preferences for certain products, and their buying habits.").

[28] Reid v. Mass Co. 155 Cal App.2d 293, 301(1958)("While it is obvious that the case at bar does not involve a retail delivery route, we believe that the principles laid down in the 'route cases' are here applicable."). In California Intelligence Bureau v. Cunningham 83 Cal App.2d 197, 202-203 (1948) the Court of Appeal summarized two lines of Route Cases, listing factors that resulted in granting of injunctions enforcing restrictions in one line of cases, and factors that led to courts' refusal to enjoin former employees in the other line.

[29] See e.g., Application Group, Inc. v. Hunter Group, Inc. 61 Cal.App.4th 881, 900 (1998).

[30] Application Group, Inc. v. Hunter Group, Inc. 61 Cal.App.4th 881 (1998).

[31] Application Group, Inc., supra, at 881 ("we must decide whether California or Maryland law applies to a dispute over the enforceability of Hunter's noncompetition clause").

[32] Harris v. McCutchen __ C.A.4th __ 2013 Daily Journal D.A.R. 4165 (Mar. 29, 2013).

[33] Nedlloyd Lines v. Superior Court 3 Cal.4th 459, 464-465 (2002).

[34] Application Group, Inc. supra, at 881, 896. 35 Restatement Second of Conflicts of Law, section 187, subdivision (2), provides that the law of the chosen state will be applied unless: "(a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which ... would be the state of applicable law in the absence of an effective choice of law by the parties."

[35] Restatement Second of Conflicts of Law, section 187, subdivision (2), provides that the law of the chosen state will be applied unless: "(a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which ... would be the state of applicable law in the absence of an effective choice of law by the parties."

[36] Nedlloyd, supra, at 466.

[37] Discover Bank v. Superior Court 134 C A.4th 886, 891 (2005).

[38] The case of Guardian Savings & Loan v. MD Assoc. 64 C.A.4th 309 (1998) presents an example of this principle. The Court of Appeal recognized California's antideficiency legislation was a fundamental policy, but gave way where California's interest in enforcing policies underlying the antideficiency statute was "not materially greater than Texas's policy of assuring the justified expectations of the parties." Therefore the California court applied the parties' Texas choice-of-law law. The court recognized "that the issue is close." But because California did not have a materially greater interest, the court enforced the parties' choice of another state's law.

[39] See e.g., Holloway v. Faw, Casson & Co. (1990) 319 Md. 324, 572 A.2d 510, 515 (noncompetition agreements are enforceable so long as they are reasonable in scope and duration); Ruhl v. F.A. Bartlett Tree Expert Co. (1967) 245 Md. 118, 225 A.2d 288, 291 (same).

[40] Ingersoll-Rand v. Ciavatta 542 A.2d 879, 888 (N.J. 1988). New Jersey Supreme Court's established a three-part test for validity of a noncompetition agreement under New Jersey law. "[A] court will find a noncompetition covenant reasonable if it "simply protects the legitimate interests of the employer, imposes no undue hardship on the employee and is not injurious to the public."

[41] Id. at 634.

[42] Jackson Hewitt, Inc. v. Childress (D.N.J. 2008) 2008 WL 834386 *6-7 (citing Jiffy Lube Int'l. v. Weiss Bros. 834 F.Supp. 683, 691 (D.N J. 1993)).

[43] Application Group, Inc., supra, at 881, 899 (noting California and Maryland have "diametrically opposed laws regarding the enforceability" of a noncompetition clause).

[44] Id. at 892.

[45] Id. at 901.

[46] Id.

[47] Ingersoll-Rand, supra, at 634.

[48] See, for example, Actega Kelstar, Inc. v. Musselwhite (D.N.J. 2010) 2010 WL 744126 at *3. A federal court in New Jersey evaluated whether to apply New Jersey or Georgia law. The court noted "New Jersey has an interest in ensuring that contracts entered into by its citizens are "fully complied with and enforced." The court concluded: "While no doubt Georgia also has an interest in protecting its citizens from oppressive [noncompetition agreements] New Jersey has a similar policy. Therefore, on the whole, although Georgia may have perhaps some greater interest in resolving this dispute, it cannot be said to have a materially greater interest

[49] See e.g., Muggill v. Reuben H. Donnelley Corp. 62 Cal.2d 239, 242 (1965); Metro Traffic Control, Inc. v. Shadow Traffic Network 22 Cal App.4th 853, 860 (1994).

[50] See e.g., Thompson v. Impaxx, Inc. 113 Cal.App.4th 1425 (2003) ("Antisolicitation covenants are void as unlawful business restraints except where their enforcement is necessary to protect trade secrets;" quoting Moss, Adams & Co. v. Shilling 179 Cal.App.3d 124, 129 (1986)).

[51] Edwards v. Arthur Anderson, 44 Cal.4th 937 (2008).

[52] Id. at 949.

[53] Dowell v. Biosense Webster, Inc. 179 Cal.App.4th 564, 577 (2009).

[54] Edwards v. Arthur Anderson, supra, 44 Cal.4th at 946 n.4.

[55] Juarez v. Jani-King of California, Inc., 2012 WL 177564 (N.D.Cal.,2012) ("The California Supreme Court has recognized an exception to Section 16600 where a noncompetition clause is necessary to protect a franchisor's trade secrets or proprietary information." citing, Muggill v. Reuben H. Donnelley Corp., 62 Cal 2d 239, 242 (1965)).

Test No. 65

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. California law states that every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.
   ❑ True ❑ False

2. A California statute that makes noncompetition restrictions unenforceable has several exceptions.
   ❑ True ❑ False

3. It is settled that a trade secrets exception permits covenants not to compete to be enforced when a trade secret is involved.
   ❑ True ❑ False

4. Like California, Maryland, New Jersey and almost every other state also discourage and will not enforce restrictive covenants.
   ❑ True ❑ False

5. The "Route Driver" cases apply only to employer-employee relationships.
   ❑ True ❑ False

6. Generally, one who sells their interest in a business and its goodwill, or a business that sells substantially all its operating assets together with its goodwill, may agree with the buyer to not carry on a similar business in a specified area where the sold business operated, so long as the buyer or successor carries on a like business.
   ❑ True ❑ False

7. In the *Improv West v. Comedy Club* case, the comics' routines and jokes were considered trade secrets until the routines were made public; therefore, the covenant not to compete was enforced in its entirety.
   ❑ True ❑ False

8. Where salespersons made weekly house-to-house sales calls, collected payments, sold merchandise, knew customer identities, knew the amounts of money due, they had become so familiar with their customers that the court ruled they must be allowed to continue to service the customers despite terminating their employment.
   ❑ True ❑ False

9. The principle of the *Dayton Time Lock Service* case is that a restrictive covenant can be enforced during the term of an agreement.
   ❑ True ❑ False

10. California's policy against enforcement of noncompetition restrictions is a strong, fundamental policy of the state.
    ❑ True ❑ False

11. The "Route Driver" cases established exceptions to the rule against noncompetition restrictions, but these cases are 50 years old so their principles are no longer good law.
    ❑ True ❑ False

12. California gives preference to applying its own law, and discourages choice-of-law provisions in agreements.
    ❑ True ❑ False

13. The Restatement Second of Conflicts of Law reflects a policy favoring enforcement of choice-of-law provisions.
    ❑ True ❑ False

14. An agreed choice of law provision will be respected, and the choice will be enforced, unless the chosen state law has no substantial relationship to the parties or transaction, or application of the chosen law would be contrary to a fundamental policy of the state.
    ❑ True ❑ False

15. Though the application of an agreed choice of law would violate California public policy, such agreed choice will still be applied as the courts and Restatement respect the parties' choice of law.
    ❑ True ❑ False

16. Despite California public policy, if certain conditions are met, the court will apply the rule of the state that has a materially greater interest in its law applying.
    ❑ True ❑ False

17. Though a covenant not to compete may sometimes be enforced against an individual who agrees not to compete as part of the sale of a business, a covenant can never be enforced against a member of a limited liability company.
    ❑ True ❑ False

18. A restrictive covenant, no matter how reasonable, generally will not be enforced during the term of an employment agreement.
    ❑ True ❑ False

19. The *Dayton Time Lock Service* decision was overruled by the Supreme Court in *Edwards v. Arthur Anderson*.
    ❑ True ❑ False

20. Whether or not a trade secret exception to enforcement of noncompetition restrictions will be fully recognized awaits a proper case.
    ❑ True ❑ False

MCLE Answer Sheet No. 65

INSTRUCTIONS:
1. Accurately complete this form.
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3. Answer the test questions by marking the appropriate boxes below.
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ANSWERS:
Mark your answers by checking the appropriate box. Each question only has one answer.

1.	❑ True	❑ False
2.	❑ True	❑ False
3.	❑ True	❑ False
4.	❑ True	❑ False
5.	❑ True	❑ False
6.	❑ True	❑ False
7.	❑ True	❑ False
8.	❑ True	❑ False
9.	❑ True	❑ False
10.	❑ True	❑ False
11.	❑ True	❑ False
12.	❑ True	❑ False
13.	❑ True	❑ False
14.	❑ True	❑ False
15.	❑ True	❑ False
16.	❑ True	❑ False
17.	❑ True	❑ False
18.	❑ True	❑ False
19.	❑ True	❑ False
20.	❑ True	❑ False