

**New American Dream: Book I**

**How to Legally Claim  
Abandoned Real Estate  
via Title by Prescription  
*or* Adverse Possession**

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**A Legal Self-Help Guide**

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- **definitions for hundreds of legal terms from federally recommended law dictionaries**
- **standing case rulings**
- **California *and* Federal Statutes**
- **relevant laws, doctrines, and procedures**

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## ***Dedication***

*This book is dedicated to honest, kind, compassionate people  
who have no place to live sustainably...*

*To all those who long for a place to stick seeds in the ground  
and lay your head down at night without having to pay rent....*

*To those who want to grow enough food  
to feed yourself, your family, and share with friends and community...*

*To those who long and strive for freedom,  
and desire just as much for their fellow (hu)man...*

*To those who seek to share the land with the plants and animals  
rather than replacing their homes with artifice and industry...*

*May you find the home you need  
and the peace you long for.*

This book was not created to show people  
how to scoop up real estate and sell it or rent it out.

It was created to help people break free from that paradigm.

**Let. Freedom. Reign.**

## References:

**Black's Law Dictionary *Deluxe Tenth Edition* by Henry Campbell Black, Editor in Chief  
Bryan A. Garner. ISBN: 978-0-314-61300-4**

Cited throughout this book: ☉

**Ballantine's Law Dictionary *with Pronunciations Third Edition* by James A.  
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**Ballantine's Law Dictionary *Legal Assistant Edition* by Jack Ballantine (*James Arthur  
1871-1949*). Doctored by Jack G. Handler, J.D. © 1994 Delmar by Thomson Learning.  
ISBN 0-8273-4874-6.**

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**Barron's Law Dictionary *3d Ed.* by Steven H. Hifis. (1975, 1984, 1991). ISBN 0-8120-  
4633-1. – ISBN 0-8120-4628-5.**

**Black's Law Dictionary *Sixth "Centennial" Edition* (1891-1991) by Henry Campbell  
Black, M.A.. West Publishing's *Publisher's Editorial Staff*, ISBN-0-314-76271-X.**

**Corpus Juris Secundum ("C.J.S.") A CONTEMPORARY STATEMENT OF  
AMERICAN LAW AS DERIVED FROM REPORTED CASES AND LEGISLATION,  
Volume 2 © 2003 West. THOMPSON – WEST.**

**Additional references are notated throughout the publication.**

## How to Use This Book

This book consists of a compilation of nearly every legal term directly pertaining to *acquiring title to real property* via *occupancy* as opposed to through *purchase*. Generally these procedures are known as *title by prescription* or *adverse possession* depending on the circumstances. For legal terms not found in this book *and* for additional information on how to apply these terms, see [www.ReUniteTheStates.org](http://www.ReUniteTheStates.org).

Initial chapters are presented chronologically based on the *procedure* one would follow when identifying, acquiring possession of, then *claiming* an abandoned property:

- **identifying** – see *presumed dereliction* on page 6;
- **acquiring possession** – see *right of entry* on page 14;
- **claiming** – see *claim of right* on page 14.

Legal terms are presented based on:

- the order of their applicability in regard to procedure, or
- the order in which they appear. Many terms first appear within definitions of other legal terms. Such terms are **highlighted** when they first appear, and definitions are usually found shortly thereafter. To indicate category, many terms and their definitions are indented below the definition in which they first appear.

It is highly recommended to read each entire chapter more than once so as not to miss any nuance within each definition!

California and federal statutes pertaining to definitions and/or procedures cited throughout this book are found beginning on page 83.

The table of contents is found on the next page, and an index is located in the back of the book.

**Note:** This is a companion book for Robbed by Kern County Sheriff's Deputies by Alexandra Wilson, available on [www.WildWillpower.org](http://www.WildWillpower.org).

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**§ 1 – Adverse Possession;  
a procedure for acquiring Absolute Title  
to Real Property**

**adverse possession** – 1. The enjoyment of real property with a claim of right when that enjoyment is opposed to another person’s claim and is continuous, exclusive, hostile, open, and notorious. —aka *adverse dominion*, though not considered an unlawful form of adverse dominion.

2. The doctrine by which title to real property is acquired as a result of such use or enjoyment over a specified period of time. ☼

1. The act of occupying real property in an “open, notorious, and hostile manner,” under a claim of right, contrary to the interests of the true owner. Such possession over a period of years is a method for acquiring title. Ω

A title acquired by adverse possession is a title in fee simple, and is as perfect a title as one by deed from the original owner or by patent or grant from the government. *Thornely v Andrews*, 40 Wash 580, 82 P 899. ☹

**fee simple** – 1. An interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs. — aka *fee*; *fee simple absolute*; *estate in fee simple*; *tenancy in fee fee-simple title*; *exclusive ownership*; *feudum simplex*; *estate in fee*. ☼

1. The largest estate in land known to the law and implying absolute dominion over the land; an estate of inheritance clear of any condition, limitation, or restriction, to particular heirs. 28 Am J2d Est § 10. ☹

1. A person may acquire title to real property by adverse possession continued long enough to raise a presumption of a lost grant and ripen into a title by prescription, or for a period required by statute. Idaho— *DeChambeau v Estate of Smith*, 132 Idaho 568, 976 P.2d 922 (1999).; Ill. —*Klingel v Kehrler*, 81 Ill. App. 3d 431, 36 Ill. Dec. 719, 401 N.E.2d 560 (5th Dist. 1980).; Ind. – *Kline v Kramer*, 179 Ind. App. 592, 386 N.E.2d 982 (3d Dist. 1979).; Iowa —*Johnson v. Kaster*, 637 N.W.2d 174 (Iowa 2001).; Me. —*Striedel v. Charles-Key-Leaman Partnership*, 1999 ME 984 (Me. 1999).

Adverse possession is the open and hostile possession of land under a claim of title to the exclusion of the true owner, which, if continued for a period prescribed by state, ripens into an actual title. Me. — *Colquhoun v. Webber*, 684 A.2d 405 (Me. 1996).; N.D. — *Cranston v Winders*, 238 N.W.2d 647 (N.D. 1976).

Title by adverse possession may be established either pursuant to common law or statutory provisions. Me. —*Colquhoun v. Webber*, 684 A.2d 405 (Me. 1996).

Adverse possession is based on possession which is hostile to the true title owner. Iowa — *Johnson v. Kaster*, 637 N.W.2d 174 (Iowa 2001).

The basis of title by adverse possession is the failure of the true owner to institute suit for the recovery of the land within the period designated by the statute of limitations. N.J. — *Mannillo v. Gorski*, 54 N.J. 378, 255 A.2d 258 (1969).; N.Y. — *Reiter v. Landon Homes, Inc.*, 56 Misc. 2d 168, 538, 295 N.Y.S.2d 103 (2d Dep’t 1968).

Adverse possession becomes a perfect title on the theory that the true owner has by their own fault and neglect failed to assert their right against the hostile holding. **Ala. — *Prestwood v. Hunt*, 285 Ala. 525, 234 So. 2d 545 (1970).**

Establishment of title by adverse possession is based on theory that the owner has abandoned the land to the adverse possessor. **Fla. — *Downing v. Bird*, 100 So. 2d 57 (Fla. 1958).**

Title to property by adverse possession may be acquired by the application of an equitable estoppel. **Fla. — *King. v. Carden*,, 237 So. 2d 26 (Fla. Dist. Ct. App. 1st Dist. 1970).**

The goal of the doctrine of adverse possession is the final settlement of titles. **Ill. — *Klingel v. Kehrer*, 81 Ill. App. 3d 431, 36 Ill. Dec. 719, 401 N.E.2d 560 (5th Dist. 1980).; W.Va. — *Soman v. Murchpy Fabrication & Erection Co.*, 160 W. Va. 84, 232 S.E.2d 524 (1977).; Wyo. — *Big Horn County Com'rs v. Hinckley*, 593 P.2d 573 (Wyo. 1979).**

1. A method of acquisition of title to real property by possession for a statutory period under certain conditions. ***Lowery v. Garfield County*, 122 Mont. 571, 208 P.2d 478, 486.**

It has been described as the statutory method of acquiring title to land by limitation. ***Field v. Sosby*, Tex. Civ. App., 226 S.W.2d 484, 486.**

Because of the statute of limitations on the bringing of actions for the recovery of land, title can be acquired to real property by adverse possession. In order to establish title in this manner, there must be proof of nonpermissive use which is actual, open, notorious, exclusive and adverse for the statutorily prescribed period. ***Ryan v. Stavros*, 348 Mass. 251, 203 N.E.2d 85.**

State statutes differ with respect to the required length of possession from an upper limit of 20 years to a lower one of 5 years, with even more extreme time periods covering certain special cases. There may be different periods of time even within a single state, depending on whether or not the adverse possessor has color of title and/or whether or not taxes have been paid. In some cases a longer possession is required against public entities than against individuals.

Adverse possession depends on intent of occupant to claim and hold real property in opposition to all the world, ***Sertic v. Roberts*, 171 Or. 121, 136 P.2d 248**; and also embodies the idea that owner of or persons interested in property have knowledge of the assertion of ownership by the occupant, ***Field v. Sosby*, Tex. Civ. App., 226 S.W.2d 484, 486.**

Adverse possession consists of actual possession with intent to hold solely for possessor to exclusion of others and is denoted by exercise of acts of dominion over land including making of ordinary use and taking of ordinary profits of which land is susceptible in its present state. ***U.S. v. Chatham*, D.C.N.C., 208 F.Supp. 220, 226.**<sup>1</sup>

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<sup>1</sup> ***Corpus Juris Secundum* ("C.J.S.") A CONTEMPORARY STATEMENT OF AMERICAN LAW AS DERIVED FROM REPORTED CASES AND LEGISLATION, Volume 2**



**§ 2 – Real Property is considered Abandoned,  
and a Record Owner's rights relinquished,  
via the Doctrine of Presumed Dereliction;  
the Title goes dormant**

**presumed dereliction** – 1. The doctrine that a thing is presumed to have been abandoned when it so appears by acts or circumstances, as when it is thrown away in any public place where it cannot be taken up, or where another is suffered to possess it without contradiction, or where possessory acts have long been abstained from. *Rhodes v Whitehead*, 27 Tex 304. ☹

**dereliction** – 1. The state of a building that is run-down and dilapidated. ☹

1. Abandonment of property; abandoned property. 56 Am J1st Wat § 476. ☹

**derelict** – 1. Forsaken; abandoned; cast away <derelict property>.

2. (Of a building) in bad condition from long disuse; rundown and dilapidated. ☹

1. Abandoned; deserted; uninhabited. ☹

**dilapidation** – 1. Gradual ruin or decay through misuse or neglect; especially damage to a building resulting from acts of either commission or omission. \* A dilapidation may give rise to liability if it constitutes an act of waste, a breach of contract, or a statutory violation. – *dilapidate*, *vb.* – *dilapidator*, *n.* ☹

**res derelicta** – 1. A thing thrown away or forsaken by its owner; abandoned property.



1. Abandoned property; property from which the mind has withdrawn affection, and which has thus fallen back into the natural state of *res nullius*, the property of no one, and is again susceptible of becoming the property of the occupant. *Rhodes v Whitehead*, 27 Tex 304. ☹

1. Abandoned property – the literal translation of the term is “derelict thing” (i.e. derelict property). ☹

**res nullius** – 1. [Latin: “thing of no one”] A thing that belongs to no one; an ownerless chattel.

1. The property of no one. ☹

Excerpt from John George Phillimore's Private Law Among the Romans (1863):

“*Res nullius*. Such as belonged to the first occupier. They are of two kinds. Such as never have belonged to anyone, and such as have ceased to belong to the former owner.”<sup>2</sup>

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2 John George Phillimore, Private Law Among the Romans 18 (1863)

**abandonment of property** - 1. Intentional and absolute **relinquishment** of property without reference to any particular person or for any particular purpose. **1 Am J2d Aband § 1; 3 Am J2d Adv P § 77.**

Abandoned property is that to which the owner has voluntarily relinquished all right, title, claim, and possession with the intention of terminating his ownership, but without vesting it in any other person, and with no intention of reclaiming possession or resuming ownership and enjoyment in the future. **1 Am J2d Aband § 1.**

Abandonment is the relinquishment of a right or property with the intention of not reclaiming it or reassuming its ownership or enjoyment. **Ellis v Brown(CA6 Ky) 177 F2d 677, 13 ALR2d 945.** ☹

1. The act, by an owner of property, of voluntarily giving up possession and control of the property with no intention of reclaiming it. Both real property and personal property may be abandoned. Copyrights, inventions, and patents may be abandoned if the owner permits a public use of them. ☹

**abandoned property** - 1. Property that the owner voluntarily **surrenders**, relinquishes, or disclaims. ☹

1. Property to which an owner has voluntarily relinquished all right, title, claim, and possession with the intention of terminating ownership, but without vesting it in any other person and with the intention of not reclaiming future possession or resuming ownership, possession, or enjoyment. **1 Am J2d Aband § 1.** ☹

1. Property of which the owner has voluntarily given up possession and control, and which she has no intention of reclaiming. ☹

**abandonment** – 1. The relinquishing of or departing from a homestead, etc., with the present, definite, and permanent intention of never returning or regaining possession. ☹

1. The act of voluntarily and totally relinquishing a right or property with no thought of reclaiming it or giving or selling it to anyone else. ☹

**relinquishment** – 1. The abandonment of a right or thing. – *relinquish*, *vb.* ☹

1. An abandonment; a yielding up of all claim to a thing. ☹

**surrender** – 1. The giving up of a right or claim. ☹

1. Yielding possession. ☹

**release** – 1. The relinquishment or concession of a right, title, or claim. ☹

**extinguishment** – 1. The cessation or cancellation of some right or interest. ☹

**renunciation of property** – 1. A dereliction. An abandonment of property.

Renunciation or dereliction of property requires both the intention to abandon and external action. This is true of property at sea as well as on land. Even the title of the owner to property lying at the bottom of the sea is not necessarily divested. *Murphy v Dunham* (DC Mich) 38 F 503.

There must be voluntary intention to abandon, or evidence from which such intention may be presumed. *Belcher Oil Co. v Griffin* (CA5 Fla) 97 F2d 425. ☹

**renunciation** – 1. The express or tacit abandonment of a right without transferring it to another. ☹

1. A definite giving up or casting off of something. A legal act by which a person abandons a right acquired, but without transferring it to another. *Johnston's Estate*, 186 Wis 599, 203 SW 376.

A method of discharging a negotiable instrument consisting of the holder's express disclaimer of rights in the instrument. 11 Am J2d B & N § 948.

The refusal of a person designated trustee to act as such. 15 Am J2d Char § 40. ☹

1. In law, an act by which a person abandons or waives a right, but without transferring it to another.

2. Under the Uniform Commercial Code, the expressed willingness not to enforce an instrument by a person entitled to enforce it. ☹

**renounce** – 1. To give up or abandon formally (a right or interest); to disclaim <renounce an inheritance>. ☹

1. To **waive** or relinquish; as, to renounce a right. ☹

1. To waive, particularly a right; to relinquish; to disclaim; to abjure. ☹

**waive** – 1. To abandon, renounce, or surrender (a claim, privilege, right, etc.); to give up (a right or claim) voluntarily. \* Ordinarily, to waive a right one must do it knowingly – with knowledge of the relevant facts.

2. To refrain from insisting on (a strict rule, formality, etc.); to forgo. – *waivable*, *adj.* – *waivability*, *n.* ☹

1. To throw away; to relinquish voluntarily that right which one might have enforced by choice. See *Anglo-Nevada Assur. Corp. v Nadeau*, 90 Cal 393, 27 P 302.

To make or effect a **waiver**. ☹

1. To voluntarily relinquish or renounce a right one knows one has and could have enforced. ☹

**waiver** – 1. The loss of a right to make a claim or argument because it was not raised at the right time or because its maker otherwise did not follow necessary



rules. \* A waiver in this sense can be inadvertent. ☉

1. The intentional relinquishment of a known *right, claim, or privilege*. ***Phillips v Lagaly (CA10 Okla) 214 F2d 527, 50 ALR2d 626; Smith v Smith, 235 Minn 412, 51 NW2d 276, 32 ALR2d 1135.***

2. A voluntary and intentional relinquishment of a known and existing right, or such conduct as warrants an inference of the relinquishment of such right. An election to dispense with something of value or to forego some advantage which one might, at his option, have demanded. **29A Am J Rev ed Ins § 1009.**

Waiver presupposes a full knowledge of a right existing, and an intentional surrender or relinquishment of that right. It contemplates something done designedly or knowingly, which modifies or or changes existing rights or varies or changes the terms and provisions of a contract. It is the voluntary surrender of a right. ***Sovereign Camp, W.W. V Newsom, 142 Ark 132, 219 SW 759, 14 ALR 903.***

To establish a waiver, there must be shown an act or omission on the part of the one charged with the waiver fairly evidencing an intention permanently to surrender the right alleged to have been waived. ***Dunbar v Farnum, 109 Vt 313, 196 A 237, 114 ALR 996.*** ☹

1. The intentional relinquishment or renunciation of a right, claim, or privilege a person knows he has.

Excerpt from ***Bank v. Truck Ins. Exchange, 51 F.3d 736 (7<sup>th</sup> Cir. 1995):***

“Waiver’ is often used as a synonym for ‘forfeiture,’ as when the failure to present a ground in the district court is deemed to ‘waive’ the ground in the court of appeals.”

**implied waiver** – 1. A waiver evidenced by a party's decisive, unequivocal conduct reasonably inferring the intent to waive. ☉

1. A waiver shown by the acts and conduct of the parties from which the intention to waive reasonably may be inferred. **56 Am J1st Waiver § 17.**

A waiver implied as a reasonable inference from the act or silence of the party who has the power to waive. ***Roumage v Mechanics' Fire Ins. Co. 13 NJL 110.*** ☹

1. 1. A waiver inferred from the conduct of the parties. ☹

Excerpt from **28 Am. Jur. 2D Estoppel and Waiver § 160, at 846-46 (1966):**

“An implied waiver may arise where a person has pursued such a course of conduct as to evidence an intention to waive a right, or where his conduct is inconsistent with any other intention than to waive it.”

**dormant title** – 1. A title in real property held in **abeyance**. ☞

1. A title to real estate held in abeyance, unasserted. ☹

1. An unclaimed title to real estate. ☹

**abeyance** – 1. *Property*. A lapse in **succession** during which no person is vested with title. — **abeyant**. *adj.* ☞

1. An estate in fee is in abeyance where there is no person **in esse** in whom it may vest and abide, although the law considers it as always potentially existing and ready to vest when a proper person in whom it may vest appears. **28 Am J2d Est § 10**. ☹

1. A state of inactivity or suspension. ☹

Excerpt from Richard Burn's A New Law Dictionary (1792):

“*Abeyance, from the French buyer, to expect, is that which is in expectation, remembrance, and intendment of law. By a principle of law, in every land there is a fee simple in somebody, or else it is in abeyance; that is, though for the present it be in no man, yet it is in expectancy belonging to him that is next to enjoy the land.*”<sup>3</sup>

**succession** – 1. The acquisition of rights or property by inheritance under the laws of descent and distribution. — **succeed**, *vb.* ☞

1. The passing of property in possession or enjoyment, present or future, and dispositions of property by will, deed, or laws of descent, by reason whereof any person shall become entitled in possession or expectancy to property upon the death of any other person. **Wright v Blakeslee, 101 US 174, 25 L Ed 1048**.

The word is one of technical meaning in the law and signifies the taking of property by inheritance or will from the state of a decedent, or by operation of law; and it is a word which clearly excludes those who take by deed, grant, gift, or any form of purchase or contract. **Quarles v Clayton, 87 Tenn 308, 10 SW 505**. ☹

1. The passing of the property of a decedent by will or by inheritance (intestate succession), as opposed to taking title by deed, grant, gift, or contract.

2. Succeeding to the rights of another. ☹

**vacant succession** – 1. A succession that fails either because there are no known heirs or because the heirs have renounced the estate.

2. An estate that has suffered such a failure. ☞

**in esse** – 1. Alive; living; in being. ☹

**buying and selling in dormant titles** – 1. In some jurisdictions such transactions are prohibited by the common law. In others, statutes forbid the transfer to a stranger of the title to land in adverse possession of another. **14 Am J2d Champ § 11**. ☹

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<sup>3</sup> 1 Richard Burn, A New Law Dictionary 4 (1792)

**vacant and unoccupied building** – A building in which no one is living or residing and which is empty for all practical purposes. **29A Am J Rev ed ins § 907.** ☹

**vacant** – 1. Empty, unoccupied <a vacant office>. \* Courts have sometimes distinguished *vacant* from *unoccupied*, holding that *vacant* means completely empty while *unoccupied* means not routinely characterized by the presence of human beings.

2. Absolutely free, unclaimed, and unoccupied <vacant land>.

3. (Of an estate) abandoned; having no heir or claimant. The term implies either abandonment or nonoccupancy for any purpose. ☹

**vacancy** – 1. The quality, state, or condition of being unoccupied, especially in reference to an office, post, or piece of property.

2. The time during which an office, post, or piece of property is not occupied.

3. An unoccupied office, post, or piece of property; an empty place. ☹

**vacate** – 1. To surrender occupancy or possession; to move out or leave. ☹

1. To annul or set aside. To cease the occupancy of premises, leaving them empty.

To vacate, in its English form, has acquired an active sense through a long period of transition, by popular usage and in consequence of its early adoption as a technical and legal term, although it was originally used only as a passive verb. To leave empty; to cease from occupying; to annul; to make void, express the different meanings which it has acquired.

Originally it meant to be empty, void or vacant; to be void of, free from, or without; to lack or want a thing. **Walsh v Commonwealth, 89 Pa 419.** ☹

1. As applied to land or premises, to quit, depart, or leave. ☹

**improvidence** – 1. A lack of foresight and care in the management of property, especially as grounds for removing an estate administrator. ☹

1. Carelessness, indifference, prodigality, wastefulness, or negligence in reference to the care, management, and preservation of property. **Re Davis' Estate, 10 Mont 228, 25 P 105.** ☹



**§ 3 – Citizens may Claim a Right of Entry  
to enter onto and take Possession of  
Abandoned Property,  
thereby becoming Beneficial Owners  
having Equitable Title thereto**

**claim** – 1. The assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional.

2. An interest or remedy recognized at law; the means by which a person can obtain a privilege, possession, or enjoyment of a right or thing. ☉

1. Something demanded as a matter of right. Ω

**claim of right** – 1. An entry upon land with the intent to claim the land and to hold it; the intention of the disseisor to appropriate and use land as his own to the exclusion of all others, irrespective of any semblance or shadow of actual title or right. *Guaranty Title & Trust Corp. v United States*, 265 US 200, 204, 68 L Ed 636, 638, 44 S Ct 252. ☉

1. In property law, “that claimant is in possession as owner with intent to claim the land as his own and not in recognition of or subordination to the record title owner,” 624 P. 2d 747, 748.<sup>4</sup>

**right** – 1. The **interest**, claim, or ownership that one has in tangible or intangible property. ☉

1. In the purely legal sense, a just or valid claim recognized or granted by the law and enforced by the law. It is important to note that the law arms every legal right with a matching legal remedy. Ω

**substantive right** – 1. A right that can be protected or enforced by law; a right of substance rather than form.

**legal right** – 1. A right created or recognized by law. The breach of a legal right is usually remediable by monetary damages.

2. A right historically recognized by common-law courts.

1. A claim recognizable in an action brought in a court or before an administrative agency; a right recognized by the law. Ω

**right of entry** – 1. The right of taking or resuming possession of land or other real property in a peaceable manner.

2. The right to go into another’s real property for a special purpose without committing trespass. ☉

1. The right to possession of land. Ω

**entry** – The act, right, or privilege of entering real property. – aka *entry onto land*.

**lawful entry** – The entry onto real property by a person not in possession, under a claim or color of right and without force or fraud.

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<sup>4</sup> Barron's Law Dictionary 3d Ed. By Steven H. Hifis. (1975, 1984, 1991). ISBN 0-8120-4633-1. – ISBN 0-8120-4628-5.

**open entry** – A conspicuous entry onto real property to take possession; and entry that is neither clandestine nor carried out by secret artifice or stratagem and that (by law in some states) is accomplished in the presence of two witnesses.

**occupatio** – A mode of acquisition by which a person obtains absolute title by first possessing a thing that previously belonged to no one.

**occupare** – To seize or take possession of (property); to enter (land) upon a vacant possession. ☉

**vacantia bona** – 1. Goods which no one claimed and which by the law of nature belonged to the first occupant or finder. ☹

**occupatile** – Property that has been left by its rightful owner and is now possessed by another.

**procedural right** – 1. A right that derives from legal or administrative procedure; a right that helps in the protection or enforcement of a substantive right. ☉

**unenumerated rights** – 1. A right retained by the people but not explicitly mentioned in the Bill of Rights. \* The Ninth Amendment to the U.S. Constitution states: “The enumeration to the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.”

1. A right inferred from another legal right that is expressly stated in a statute or at common law. – aka **implied right**; **penumbral right**; **background right**. ☉

Excerpt from Leonard W. Levy's *Unenumerated Rights*” in Encyclopedia of the American Constitution (1<sup>st</sup> Supp., Leonard W. Levy ed., 1991):

“Without doubt, the Ninth Amendment and its problem of identifying unenumerated rights continue to bedevil interpreters, on and off the bench. Courts do continue to discover rights that have no textual existence and might be considered unenumerated.... Judges have composed rights great and small, including the *Miranda* rules.... or the right against the invasion of an expectation of privacy.”<sup>5</sup>

**right of property** – 1. The right to freely use, enjoy, and dispose of property without restrictions other than those imposed by the law. ☹

**right of possession** – 1. The right to hold, use, occupy, or otherwise enjoy a given property. ☉

1. A person’s right to occupy and enjoy property. See *2 Bl Comm 196*. ☹

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<sup>5</sup> “*Unenumerated Rights*” by Leonard W. Levy, Encyclopedia of the American Constitution 557 (1<sup>st</sup> Supp., Leonard W. Levy ed., 1991)

**claim of ownership** – 1. The possession of a piece of property with the intention of claiming it in hostility to the true owner.

2. A party's manifest intention to take over land, regardless of title or right. – aka *claim of right; claim of title*. ☉

1. The claim of a right or a claim of title to enter lands with the intent of claiming and holding it. <sup>6</sup>

**beneficial owner** – 1. One recognized in equity as the owner of something because use and title belong to that person, even though legal title may belong to someone else. — aka *equitable owner*. ☉

1. A person who has equitable title to property but not legal title. Ω

**claim of title** - 1. The entry and occupation of land with the intent to hold it as the claimant's own against the world, irrespective of any shadow or color of right or title as a foundation of his claim. **Anno: 2 ALR 1457.**

**title** – 1. The union of all elements (ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself <no one has title to that land>. ☉

1. The legal estate in fee, clear of all valid claims, liens, and encumbrances whatsoever, or expressed differently, the ownership of land without any rightful participation by any other person in any part of it. *Porter v Noyes, 2 Me 22.*

The union of all the elements which constitute ownership, at common law divided into possession, right of possession and right of property, the last two now, however, being considered essentially the same. *Carrol v Newark, 108 NJ 323, 158 A 485, 79 ALR 509.*

The foundation of ownership; the basis of a person's right or the extent of his interest. The means whereby an owner is enabled to maintain or assert his possession and enjoyment. **42 Am J1st Prop § 36.**

The right of an owner considered with reference either in the manner in which the property has been acquired or its capacity of being effectually transferred. **42 Am J1st Prop § 36.** ☉

1. The rights of an owner with respect to property, real or personal, i.e., possession and the right of possession. Ω

Excerpt from Kent McNeil's *Common Law Aboriginal Title* (1989):

“Though employed in various ways, [title] is generally used to describe either the manner in which a right to real property is acquired, or the right itself. In the first sense, it refers to the conditions necessary to acquire a valid claim to land; in the second, it refers to the legal consequences of such conditions. These two senses are not only interrelated, but inseparable: given the requisite conditions, the legal consequences or rights follow as of course; given the rights, conditions necessary for the creation of those rights must have been satisfied. Thus, when the word ‘title’ is used in one sense, the other sense is necessarily implied.”

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<sup>6</sup> Black's Law Dictionary 2d Ed., “CLAIM OF OWNERSHIP”: <https://thelawdictionary.org/claim-of-ownership/>



**beneficially entitled** – Having title legally or having it equitably, so as to reap the benefits of ownership. *People v McCormick, 208 Ill 437, 70 NE 350.* ☹

**equitable title** – 1. A title that indicates a **beneficial interest** in property and that gives the holder the right to acquire formal **legal title**. ☹

1. A title which is recognized as ownership in equity, whatever cognizance may be taken of it at law. *56 Am J1st V & P § 356.*

1. Title recognized as ownership in equity, even though it is not legal title or marketable title; title sufficient to give the party to whom it belongs the right to have the legal title transferred to him. ☹

**legal title** – 1. A title that evidences apparent ownership but does not necessarily signify full and complete title or a beneficial interest. ☹

1. A title under rules of law as distinguished from a title recognized in equity according to equitable principles. ☹

1. Title that evidences apparent ownership, as distinguished from equitable title, which indicates a beneficial interest. ☹

**interest** – 1. A legal share in something; all or part of a legal or equitable claim to or right in property. \* Collectively, the word includes any aggregation of rights, privileges, powers, and immunities; distributively, it refers to any one right, privilege, power, or immunity. ☹

1. A right; a claim; a share; a title.

**equitable interest** – 1. An interest held by virtue of an equitable title or claimed on equitable grounds, such as the interest held by a trust beneficiary. ☹

**beneficial interest** – 1. A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing. ☹

1. An expression with variable meaning, dependent on the context in which it appears.... an interest that will result in an appreciable gain to the holder. *Cox's Appeal, 126 Me 256, 137 A 771, 53 ALR 208*; an interest of value, worth, advantage, or use. *Re Duffy, 228 Iowa 426, 292 NW 165, 128 ALR 943.* ☹

**expectant right** – 1. A right that is **contingent** on the occurrence of some future event; a contingent right.

**contingent right** – 1. An entitlement that depends on the occurrence of some specified event. ☹

1. A right which depends on the performance of some condition or the happening of some event before some other event or condition happening or some event before some other event or condition happens or is performed. *16 Am J2d Const L § 421.*

**holder** – 1. A person who holds; a person who is in the actual or constructive possession of land. *State v Wheeler, 23 Nev 143, 44 P 430.* ☹

1. A person who has the ownership, possession, or use of any property. ☹

**property interest** – 1. An interest, perhaps including rights of possession and control, held by an owner, beneficiary, or remainderman in land, real estate, business, or other tangible items.

2. *Constitutional law.* A legitimate claim of entitlement to some legal or contractual benefit that cannot be taken away without due process. – aka *proprietary interest; ownership interest; interest in property.*

**legally protected interest** – A property interest that the law will protect against impairment or destruction, whether in law or in equity.

**liberty interest** – An interest protected by the due process clauses of state and federal constitutions. ☹

**possessory interest** – 1. The present right to control property, including the right to exclude others, by a person who is not necessarily the owner.

2. A present or future right to the exclusive use and possession of property – aka *present possessory interest; possessory estate; present estate.* ☹

1. The right to possess property. Such a right may be based upon ownership, or it may arise from an estate or any other interest. ☹

**present interest** – 1. A property interest in which the privilege of possession or enjoyment is present and not merely future; an interest entitling the holder to immediate possession. — aka *present estate.*

**interest in the use and enjoyment of land** – The pleasure, comfort, and advantage that a person may derive from the occupancy of land. \* The term includes not only the interests that a person may have for residential, agricultural, commercial, industrial, and other purposes, but also interests in having the present-use value of the land unimpaired by changes in its physical condition. ☹

**§ 4 – Forms of Possession  
necessary for acquiring Title by Prescription  
(or Adverse Title)**

**possession** – 1. The fact of having or holding property in one’s power; the exercise of dominion over property.

2. The right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object.

3. The detention or use of a physical thing with the intent to hold it as one’s own. ☉

1. Occupancy and exercise of dominion over property. **42 Am J2d Prop § 42.**

A holding of land legally by one’s self or through another, such as a lessee, under title, estate, or interest of any kind. *Whithed v St. Anthony & Dakota Elevator Co.* 9 ND 224, 83 NW 238.

Respecting real property, possession involves exclusive dominion and control such as owners of like property usually exercise over it. The existence of such possession is largely a question of fact dependent on the nature of the property and the surrounding circumstances. **35 Am J2d Fore E & D § 20.** ☹

Excerpt from John Salmond's Jurisprudence (Glanville L. Williams ed., 10th ed. 1947):

“The legal consequences which flow from the acquisition and loss of possession are many and serious. Possession, for example, is evidence of ownership; the possessor of a thing is presumed to be the owner of it, and may put all other claimants to proof of their title.”<sup>7</sup>

**actual possession** – 1. Physical occupancy or control over property. – aka *possession in fact*. ☉

1. Actual possession is an essential of adverse possession. As such it means possession in fact, effected by actual entry upon the premises, and actual occupancy such as to indicate his exclusive ownership. **3 Am J2d Adv P § 13.** ☹

2. 1. Actual occupancy of property and dominion over it; *possession in fact* as opposed to *possession in law*. ☹

**occupancy** – 1. The act, state, or condition of holding, possessing, or residing in or on something; actual possession, residence, or tenancy, especially of a dwelling or land. \* In this sense, the term denotes whatever acts are done on the land to manifest a claim of exclusive control and to indicate to the public that the actor has appropriated the land. Hence, erecting and maintaining a substantial enclosure around a tract of land usually constitutes occupancy of the whole tract.

2. The act of taking possession of something that has no owner (such as abandoned property) so as to acquire legal ownership.. ☉

1. *Possession in fact*. The use of premises. **29A Am J Rev ed Ins § 895.**

The taking possession of those things which before belonged to nobody. **42 Am J1st Prop § 34.**

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<sup>7</sup> John Salmond, Jurisprudence 285 (Glanville L. Williams ed., 10th ed. 1947).

In reference to the rights of an **occupying claimant**: — such an occupancy as under the rules of the common law would entitle one to acquire a title by adverse possession, that is actual, open, and peaceable occupancy, but not necessarily occupancy as one's dwelling place. **27 Am J1st Improv § 8**. ☹

1. The taking possession of those things which previously belonged to no one, with the intention of acquiring a right of ownership. ☹

**pedal possession** — 1. Actual possession, as by living on the land or by improving it. This term usually appears in adverse-possession contexts. ☹

**natural possession** — 1. The exercise of physical detention or control over a thing, as by occupying a building or cultivating farmland. Natural possession may be had without title, and may give rise to a claim of unlawful possession or a claim of ownership by **acquisitive prescription**. — aka *possessio naturalis*. ☹

**hold** — 1. To possess or occupy; to be in possession and administration of. ☹

1. To retain in one's keeping; to possess, occupy, and maintain authority over real property, whatever the source of title or authority may be. *Miller v Oliver*, 54 Cal App 495, 202 P 168; *Ure v Ure*, 185 Ill 216, 217; *Cooke v Doron*, 215 Pa 395, 64 A 595. ☹

**habitation** — The activity of inhabiting; occupancy.

**possessio ad usucapionem** — Possession for the purpose of acquiring ownership.

**possessio amino domini** — Possession with the intent to own a thing, movable or immovable; possession as an owner.

**possessio civilis** — 1. *Legal possession*; that is, possession accompanied by an intent to hold it as one's own. — aka *possession in law*. ☹

1. *Civil possession*, — a possession under a claim of ownership; a possession which anticipated the acquisition of ownership by prescription. See **Mackeldey's Roman Law §§ 241, 285**. ☹

**possession in law** — Possession that is recognized by the law either because it is a specific type of *possession in fact* or because the law for some special reason attributes the advantages and results of possession to someone who does not in fact possess. — aka *possessio civilis*. ☹

**lawful possession** — 1. Possession based on a good-faith belief in and claim of ownership (or claim of right). ☹

**exclusive possession** – 1. The exercise of exclusive dominion over property, including the use and benefit of the property. ☉

1. An exclusive dominion over land and an appropriation of it to one's own use and benefit. **3 Am J2d Adv P § 50.** ☹

**open and notorious possession** – 1. Possession or control that is evident to others; because it is generally known by people in the area where the property is located, gives rise to a presumption that the actual owner has notice of it. \* Notorious possession is one element of adverse possession. — aka *open possession*; *notorious possession*. ☉

1. Possession evidenced by such acts and conduct as are sufficient to put a man of ordinary prudence on notice of the fact that the land in question is held by the claimant as his own. **3 Am J2d Adv P § 47.**

Possession of such openness as that the owner's knowledge of it and of the extent of it may be presumed. *Watrous v Morrison*, **33 Fla 261, 278.** ☹

**open and notorious** – 1. (Of the possession of property) so conspicuous as to impute notice to the true owner. ☉

1. A phrase applied to a number of concepts and terms in the law, which refers to acts that are deliberately not concealed and that are conspicuous and a matter of public knowledge. Thus, for EXAMPLE, *open and notorious possession* means conduct sufficient to put a person of ordinary prudence on notice that his land is the subject of an adverse user or adverse possession. Ω

**notorious possession** – The possession of real property in a clearly defined and open manner. **25 Am J2d Eject § 43.** ☹

**notorious** – 1. (Of the possession of property) so conspicuous as to impute notice to the true owner. – aka *open and notorious*. ☉

**hostile possession** – 1. Possession asserted against the claims of all others, especially the record owner. ☉

1. Possession of land under a claim of an exclusive right thereto, thereby denying the right of any other person. An open and notorious possession of such a character that a claim of ownership inconsistent with the existence of a right on the part of any other person is unquestionably to be inferred. **3 Am J2d Adv P § 34.**

Ill will, malevolence or a desire to thwart and injure are not essential characteristics of hostile possession. *Brewer v Brewer*, **238 NC 607, 78 SE2d 719, 40 ALR2d 763.** ☹

1. Owning property that is legally owned by another party. Ω

**adverse claim** – 1. As respects adverse possession, a claim to possession which is hostile to the true owner. ☉

**adverse enjoyment** – 1. Possession or use of land under a claim of right against the property owner.

**enjoyment** – 1. Possession and use, especially of rights or property.  
2. The exercise of a right.

**enjoy** – 1. To have, possess, and use (something) with satisfaction; to occupy or have the benefit of (property). ☉

**adverse use** – 1. Use without license or permission; an element necessary to acquire title or easement by prescription. *Shuggars v. Brake*, 248 Md. 38, 234 A.2d 752.<sup>8</sup>

1. A continuous exclusive use as of right for as long as the prescriptive period. **25 Am J1st High § 12.** ☉

1. The act of using real property in an “open, notorious, and hostile manner,” under a claim of right, contrary to the interests of the true owner. Such use over a period of years is a method for obtaining the right to continue to do so. Ω

**continuous possession** – 1. An element of adverse possession, being such continuity of possession as will furnish a cause of action for everyday during the whole period required to perfect title by adverse possession. **3 Am J2d Adv P § 54**; that possession of a claimant from which, his acts and conduct, it is apparent to men of ordinary prudence that he is asserting and exercising ownership over the property, taking into consideration the nature, character, and location of the property and the uses for which it is fitted or to which it has been put. **3 Am J2d Adv P § 54.** ☉

**continuous-adverse-use principle** – The rule that the uninterrupted use of land – along with the other elements of adverse possession – will result in a successful claim for adverse possession. – aka *uninterrupted-adverse-use principle*.

**tacking** – 1. The joining of consecutive periods of possession by different persons to treat the periods as one continuous period; especially, the adding of one’s own period of land possession to that of a prior possessor to establish continuous adverse possession for the statutory period. ☉

1. A doctrine which permits an adverse possessor to add his period of possession to that of a prior adverse possessor in order to establish a continuous possession for the period prescribed by statute for the ripening of adverse possession into title. *Pagan v Grady*, 101 NH 18, 131 AM 441. ☉

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<sup>8</sup> **Black’s Law Dictionary Sixth “Centennial” Edition**





**§ 5 – A Record Owner  
who Abandons their Property  
and loses Possession  
owns a Defective, Legally Insufficient Title  
which cannot be bought or sold**

**record owner** – 1. A property owner in whose name the title appears in the public records. ☉

1. The owner of premises under either a legal or equitable title as such ownership appears from the public records of title. *Godwin v Gerling*, 362 Mo 19, 239 SW2d 352, 40 ALR2d 1250. ☹

1. The person who has title to real estate according to the public records. ☽

**record title** – A title as it appears in the public records after the deed is properly recorded.—aka *title of record*; *paper title*. ☉

**title** – 1. The union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself. ☉

1. The legal estate in fee, clear of all valid claims, liens, and encumbrances whatsoever, or expressed differently, the ownership of land without any rightful participation by any other person in any part of it. *Porter v Noyes*, 2 Me 22.

The union of all the elements which constitute ownership, at common law divided into possession, right of possession, and right of property, the last two now, however, being considered essentially the same. *Carrol v Newark*, 108 NJ 323, 158 A 485, 79 ALR 509.

The foundation of ownership; the basis of a person's right or the extent of his interest. The means whereby an owner is enabled to maintain or assert his possession and enjoyment. **42 Am J1st Prop § 36.**

The right of an owner considered with reference either in the manner in which the property has been acquired or its capacity of being effectually transferred. **42 Am J1st Prop § 36.** ☹

1. The rights of an owner with respect to property, real or personal, i.e., possession and the right of possession. ☽

Excerpt from Kent McNeil's Common Law Aboriginal Title (1989):

“Though employed in various ways, [title] is generally used to describe either the manner in which a right to real property is acquired, or the right itself. In the first sense, it refers to the conditions necessary to acquire a valid claim to land; in the second, it refers to the legal consequences of such conditions. These two senses are not only interrelated, but inseparable: given the requisite conditions, the legal consequences or rights follow as of course; given the rights, conditions necessary for the creation of those rights must have been satisfied. Thus, when the word ‘title’ is used in one sense, the other sense is necessarily implied.”<sup>9</sup>

**legally insufficient title** – A title which, not being free from a reasonable doubt, is not a marketable title. **55 Am J1st V & P §§ 157, 158.** ☽

**unmarketable title** – 1. A title that a reasonable buyer would refuse to accept because of possible conflicting interests in or litigation over the property.— aka *bad title*;

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<sup>9</sup> Common Law Aboriginal Title by Kent McNeil, p.10 (1989).

**unmerchantable title; nonmerchantable title.** ☉

1. Title that a person of reasonable prudence and intelligence would not accept, or would not be willing to pay fair market value for, because it is not sufficiently clear. Ω

**defective title** – 1. A title that cannot legally convey the property to which it applies, usually because of some conflicting claim to that property. — aka **bad title.** ☉

1. Title to real estate is defective when it is not marketable. Ω

**doubtful title** – 1. A title that exposes the party holding it to the risk of litigation with an adverse claimant. ☉

1. A title which is open to reasonable doubt; one for which a purchaser who takes it probably will be subjected to contest and litigation; one which can be established only by parol testimony difficult to procure; one that an ordinarily prudent man would not accept if he were buying the property or taking it as security for a loan. **Wanser v De Nyse, 188 NY 378, 80 NE 1088.** ☉

1. Title that is open to reasonable doubt; title that will probably cause a purchaser to be involved in litigation. Ω

Excerpt from Chapman W. Maupin's *Marketable Title to Real Estate 2* (2d ed. 1907):

“Doubtful titles are those which turn upon some question of law or fact which the court considers so doubtful that the purchaser will not be compelled to accept the title and incur the risk of a lawsuit by adverse claimants.”<sup>10</sup>

**buying of titles** – 1. At common law, it is an high offence to buy or sell any doubtful title to lands known to be disputed, to the intent that the buyer may carry on the suit, which the seller is not able, or doth not think is worth his while to do, and on that consideration sells his pretensions at an under-rate; and it seems not to be material whether the title so sold be good or bad, or whether the seller were in possession or not, unless his possession was lawful and uncontested.

**1. Haw, 261. And by statute 32 H. 8. c.9. none shall buy any pretended right in any land, unless the seller has been in possession of the same, or of the reversion of the remainder thereof; on pain that the seller shall forfeit the land, and the buyer the value thereof.**<sup>11</sup>

1. Purchasing the rights to lands of parties who are out of possession. At common law the sale of the legal title to land by a disseized party is void, and this is the general rule in the United States, in some of which the vendor is also punishable criminally for making such sale. – aka **buying titles.**<sup>12</sup>

<sup>10</sup> Chapman W. Maupin's *Marketable Title to Real Estate 2* (2d ed. 1907).

<sup>11</sup> A New Law Dictionary, Intended for General Use as well as for Gentlemen of the Profession by Richard Burn, LL. D. (Late Chancellor of the Diocese of Carlisle) and John Burn, Esq (his son) (one of His Majesty's Justices of the Peace fo the Counties of Westmorland and Cumberland). Printed by Brett Smith in London. (1792)

<sup>12</sup> A Dictionary of American and English law, with definitions of the Technical Terms fo the Canon and Civil Laws. Also, containing a full collection of Latin maxims, and citations of by Rapalje, Steward; Lawrence, Robert Linn.



**§ 6 – A Record Owner  
may file an Action of Ejectment  
within the Prescriptive Period to reclaim the property;  
An Adverse Claimant  
may file an Action to Quiet Title  
to acquire the Deed to the Property  
following the Prescriptive Period**

**Note:** See California statutes re: *Time for Commencing a Civil Action to Recover Real Property* beginning on page 84.

**action of ejectment** – 1. The ejection of an owner or occupier from property. — aka *ejectment*; *action for the recovery of land*; *ejection*. ☼

1. An action at common law for the right to possession of land. Ω

1. An action which is purely possessory; a form of action in which the right of possession to corporeal hereditaments may be tried and possession obtained. *Kingsnorth v Baker*, 213 Mich 294, 182 NW 108. ☹

**ouster judgment** – A judgment against the defendant in ejectment. 25 Am j2d Eject § 122. ☹

**action to quiet title** – 1. A proceeding to establish a plaintiff's title to land by compelling the adverse claimant to establish a claim or be forever estopped from asserting it. — aka *quiet-title action*. ☼

**quieting title** – 1. Bringing an action to quiet title, i.e., a lawsuit brought to remove a cloud on the title so that the plaintiff and those in privity with her may forever be free of claims against the property. Ω

1. An action or suit in court designed to effect a removal of a cloud or cloud on title to real property, known in older times as a *bill qui timet*. *Sharon v Tucker*, 144 US 533, 36 L Ed 532, 12 S Ct 720. ☹

**cloud on title** – 1. A defect or potential defect in the owner's title to a piece of land arising from some claim or encumbrance, such as a lien, an easement, or a court order. — aka *blot on title*. ☼

1. An outstanding instrument, record, claim, unreleased encumbrance, or defectively executed deed in the chain of title, which superficially renders the title doubtful but is actually illegal or unenforceable for want of equity in enforcement of which equity will take cognizance in a suit for cancellation of the offending instrument or the quieting of the title against the defect or imperfection. 13 Am J2d Canc Inst § 50; 44 Am J1st Quiet T § 11; a semblance of title, either legal or equitable, or a claim of a right in lands, appearing in some legal form, but which is, in fact, invalid, or which it would be inequitable to enforce. 44 Am J1st Quiet T § 11. ☹

1. An outstanding potential claim against real estate somewhere in the chain of title, which reduces the market value of the property. Ω

**presumed grant** – 1. A theoretical basis of the acquisition of title by adverse possession or of a prescriptive right by adverse possession or adverse use. 3 Am J2d Advv P § 3; 25 Am J2d Ease § 39. ☹

**adverse title** – 1. A title acquired by adverse possession. ☼

**prescription** – 1. The effect of a lapse of time in creating and destroying rights. ☉

A presumption of grant from long possession and exercise of right. **25 Am J2d Ease § 39.**

In the broad sense of modern times, the gaining of a title by adverse possession. **3 Am J2d Adv P § 4.** ☹

1. The acquisition of title by adverse possession. ☽

Excerpt from J.H. Miller's A Handbook of Prescription (1893):

“Prescription— which originally signified any exception, but came latterly to be especially identified with the *exceptio ratione temporis* ('rule of exception due to a plea of freedom from claims in law, that plea being founded on a presumption of the pursuer's consent and long period of having chosen not to object') — is a plea which may be employed for the purpose either of extinguishing or of establishing a right of property. The manifest desirability of 'fixing and ascertaining property', and of preventing forgeries, has procured it a place in the municipal code of all human societies.”

**prescriptive** – 1. Expressing what must or should be done <prescriptive legal instruments>.

2. Based on or determined by ancient custom or long-standing use; having existed for so long as to have become a matter of right. <prescriptive easements>. ☉

1. Pertaining to or created by prescription. ☽

**positive prescription** – 1. The acquisition of title to a thing (especially an intangible thing such as the use of real property) by open and continuous possession over a statutory period. — aka *acquisitive prescription*. ☉

1. (Civil law) The Roman *usucapio*, which is the acquisition of property, real or personal, immovable or movable, by the continued possession of the acquirer for such a time as is described by the law to be sufficient. **Townsend v Jemison (US) 9 How 401, 417, 13 L Ed 194, 198.** ☹

**prescriptive right** – 1. A right obtained by prescription. ☉

**usucapio** – 1. The acquisition of ownership by long, continuous possession begun in good faith; especially, the acquisition of ownership by prescription. \* In classical law, the minimum periods required were one year for movables and two for land. Under Justinian law, the minimum periods were three years for movables and ten years for land. – aka *usus*; *usucaption*; *usucapion*; – *usucapt*, *vb.*; *usucaption*, *n.* ☉

1. A term of the Roman law for the acquisition of title to property by continued possession. **Townsend v Jemison (US) 9 How 407, 13 L. Ed 194.**

*usucapio constituta est ut aliquis litium finis esset* – Prescription was instituted in order that there might be some end to litigation. See *Broom's Legal Maxims* 894, footnote. ☺

Excerpt from Henry S. Maine's *Ancient Law* (17<sup>th</sup> ed. 1901):

“There is no principle in all law which the moderns, in spite of its beneficial character, have been so loath to adopt and to carry to its legitimate consequences as that which was known to the Romans as *Usucapion*, and which has descended to modern jurisprudence under the name of prescription.”<sup>13</sup>

**acquiescence** – 1. A person's tacit or passive acceptance; implied consent to an act. ☺

1. Conduct from which may be inferred assent with a consequent estoppel or quasi estoppel. *Uccello v Gold'n Foods*, 325 Mass 319, 90 NE2d 530, 16 ALR2d 459.

The position of one who knows that he is entitled to impeach a transaction or to enforce a right and who neglects to do so for such a length of time that under the circumstances of the case the other party may fairly infer that he has waived or abandoned his right. *Scott v Jackson*, 89 Cal 258, 26 P 898, quoting *Rapalje and Lawrence's Law Dictionary*. See also *Lux v Haggin*, 69 Cal 255, 10 P 674. ☺

**negative prescription** – 1. The extinction of a title or right by failure to claim or exercise it over a long period. – aka *negative prescription*; *extinctive prescription*. ☺

1. (Civil law) The loss or forfeiture of a right, by the proprietor's neglecting to exercise or prosecute it during the whole period which the law hath declared to be sufficient to infer the loss of it. *Townsend v Jemison (US)* 9 How 407, 417, 13 L Ed 194, 198. ☺

**forfeiture** – 1. An enforced and involuntary loss of a right. *Storm v Barbara Oil Co.* 177 Kan 589, 282 P2d 417. ☺

**forfeit** – 1. That which is forfeited or lost by neglect of duty, or, in other words a fine, a mulct, a penalty, a forfeiture. *State v. Baltimore & Ohio Railroad Co. (Md)* 12 Gill & J 399. ☺

**period of prescription** – 1. The period fixed by local law as sufficient for obtaining or extinguishing a right through lapse of time. In addition to a fixed number of years, the period includes whatever further time is allowed by local law because of infancy, insanity, coverture, and other like circumstances. ☺

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<sup>13</sup>*Ancient Law* by Henry S. Maine; 236 (17<sup>th</sup> ed. 1901).



**§ 7 – A Lawful Possessor who made  
Repairs or Improvements  
may retain possession of  
and place a lien on the property**

**occupying claimant** – 1. Someone who claims the right under a statute to recover for the cost of improvements done to land that is later found not to belong to the person. ☼

1. A term that is applied to person who has improved his house as he thinks he will own it one day and when he discovers he won't is a claim for work done. <sup>14</sup>

**betterment act** – 1. A statute requiring a landowner to compensate an occupant who improves the land under a mistaken belief that the occupant is the real owner. \* The compensation usually equals the increase in the land's value generated by the improvements. — aka **occupying-claimant act**; **occupant-statute**. ☼

**Occupying Claimant Acts** – 1. Statutes providing for the reimbursement of a bona fide occupant and claimant of land, on its recovery by the true owner, to the extent to which lasting improvements made by him have increased the value of the land, and generally giving him a **lien** therefore. *Jones v. Great Southern Hotel Co.*, 80 Fed. 370, 30 C. C. A. 108. OCEAN 847  
**OFFENSE** <sup>15</sup>

**betterment** – 1. An improvement that increases the value of real property, especially, an enhancement in the nature of an alteration or addition that goes beyond **repair** or restoration to a former condition.

2. An improvement of a highway, railroad, or building that goes beyond repair or restoration.

3. An increase in value especially real-estate value, attributable to improvements. ☼

1. An improvement to real estate which is more extensive than ordinary repair and which substantially increases the value of the property. Ω

**improvement** – 1. An addition to property, usually real estate, whether permanent or not; especially, one that increases its value or utility or that enhances its appearance. — aka **land improvement**. ☼

1. A change for the better. Anything that enhances the value of real property permanently for general uses, including buildings, fixtures, fences, wells, orchards, etc., including additions to existing buildings. **27 Am J1st Improv § 2; 36 Am J1st Mech L § 43..** ∅

1. Anything that enhances the value of real property permanently. EXAMPLE: buildings; fences; landscaping; a swimming pool. Ω

**general improvement** – An improvement whose primary purpose or effect is to benefit the public generally, though it may incidentally benefit property owners in its vicinity.

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<sup>14</sup> **Black's Law Dictionary 2d ed.**, “OCCUPYING CLAIMANT”: <https://thelawdictionary.org/occupying-claimant/>

<sup>15</sup> **Black's Law Dictionary 2d ed.**, “OCCUPYING CLAIMANT ACTS”: <https://thelawdictionary.org/occupying-claimant-acts/>

**valuable improvement** — An improvement that adds permanent value to the freehold. \* Because of its nature, a valuable improvement would not typically be made by anyone other than the owner. A valuable improvement may be slight and of small value, as long as it is both permanent and beneficial to the property. — aka *beneficial improvement*.

**repair** — *vb.* 1. The process of restoring something that has been subjected to decay, waste, injury, or partial destruction, dilapidation, etc.; an instance or a result of this process <the repair of a building> <hardly noticeable repairs>.

*n.* 1. To restore to a sound or good condition after decay, waste, injury, partial destruction, dilapidation, etc.; to fix (something broken, split, or not working properly) <the repair the road>. ☉

**habitable repair** — Good repair; such state of repair as renders a building fit for occupancy by an inhabitant. ☉

**lien** — 1. A legal right or interest that a **creditor** has in another's property, lasting usually until a debt or duty that it secures is satisfied. \* Typically, the creditor does not take possession of the property on which the lien has been obtained. — *lien, vb.* — *liable, liened, adj.* ☉

1. A charge upon property for the payment or discharge of a debt or duty. The right which the law gives to have a debt satisfied out of a particular thing; a **proprietary interest** which, in a given case, may be exercised over the property of another. **33 Am J1st Liens § 2.**

The word "lien" is the same origin as the word "liable," and the right of lien expresses the liability of certain property for a certain legal duty, or a right to resort to it in order to enforce that duty. *Wood's Appeal, 30 Pa 274, 277.* ☉

1. A claim or charge on, or right against, personal property, or an **encumbrance** on real property, for the payment of a debt. A lien may be created by statute (EXAMPLES: a tax lien; an attachment lien) or by agreement between the parties (EXAMPLES: a mortgage on real estate; a security agreement covering personal property). In some instances, a lien permits the creditor to retain the debtor's property in his possession until the debt is satisfied. Such a lien is called a **possessory lien**. (EXAMPLES: a landlord's lien; an attorney's lien.) There is a great variety of liens. ☉

1. A charge, hold, claim, or incumbrance upon the property of another as security for some debt or discharge, **227 A. 2d 425, 426**; not a title to property but rather a charge upon it; the term connotes the right which the law gives to have a debt satisfied out of the property, **429 S.W. 2D 381, 382**, by the sale of the property if necessary. <sup>16</sup>

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<sup>16</sup> **Barron's Law Dictionary 3d Ed. By Steven H. Hifis. (1975, 1984, 1991). ISBN 0-8120-4633-1. – ISBN 0-8120-4628-5.**

**creditor** – 1. A person or entity with a definite claim against another, especially a claim that is capable of **adjustment** and **liquidation**. ☉

1. An obligee; a person, natural or artificial, public or private, in whose favor an obligation exists by reason of which he is or may become entitled to the payment of money, at least if the obligation is one on a liquidated demand based upon an agreement. *Henley v Myers*, 76 Kan 723, 93 P 168; ALR 968, 971.

A general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assigned for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate. 15 Am J2d Com C § 7.

At the term appears in an assignment for the benefit of creditors, “creditor” means one who has a definite demand against the assignor, or a cause of action capable of adjustment and liquidation at trial. 6 Am J2d Assign or Crs § 109.

A creditor is person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent. Uniform Fraudulent Conveyances Act § 1. ☹

1. A person to whom a debt is owed by a debtor. Ω

**adjustment** – 1. The act of **settling** or arranging, as a dispute or difference.

2. An amount added or deducted based on settlement.

**settlement** – 1. An agreement ending a dispute or lawsuit <the parties reached a settlement the day before trial>. — aka *settlement agreement*. ☉

1. The ending of a controversy by agreement. The determination of an issue or of the correctness of an account. The payment of an obligation. The order made upon a trustee's account, determining the amount of the trust in the hands of the trustee and his liability therefore, decreeing distribution to the parties entitled thereto, and in the case of a continuing trust, re-awarding the body of the trust to the trustee for further administration. 54 Am J1st Trusts § 511.

An administrative determination of the amount due from the United States upon a public contract. *Illinois Surety Co. v United States*, 240 US 214, 221, 60 L Ed 609, 614, 36 S Ct 328. ☹

1. The ending of a lawsuit by agreement.

2. A determination with respect to the correctness of an **open account** by the parties to the account; the adjustment of an account.

**open account** – 1. An **account** whose balance has not been determined.

2. An account that has not been closed, settled or stated in circumstances where further dealings between the parties are anticipated.

3. A transaction whose terms have not been completely agreed upon or are expressly understood to be subject to change. Ω

**account** – A claim by one person (the creditor) against another (the debtor), which usually involves a detailed written record or list kept by one or both of them of the transactions between them.

A computation of credits and debits. Ω

**liquidation** – 1. The act of determining by agreement or litigation the exact amount of something (as a debt or damages) that before was uncertain.

2. The act of settling a debt by payment or other satisfaction.

3. The act or process of converting assets into cash, especially to settle debts. ☉

1. The extinguishment of a debt by payment.

2. The ascertainment of the amount of a **debt** or **demand** by agreement or by legal proceedings.

3. The winding up of a corporation, partnership or other business enterprise upon dissolution by converting the assets to money, collecting the accounts receivable, paying the debts and distributing the surplus if any exists. Ω

**debt** – 1. Liability on a claim; a specific sum of money due by agreement or otherwise.

2. The aggregate of all existing claims against a person, entity, or state <the bank denied the loan application after analyzing the applicant's outstanding debt>.

3. A nonmonetary thing that one person owes another, such as goods or services. ☉

1. An unconditional and legally enforceable obligation or the payment of money.

2. That which is owing under any form of promise, including obligations arising under a contract and obligations imposed by law without contract (EXAMPLES: a judgment, unliquidated damages). A debt not presently due is nonetheless a debt. Ω

Excerpt from Benjamin J. Shipman's Handbook of Common-Law Pleading:

“The action of debt lies where a party claims the recovery of a debt; that is, a liquidated or certain sum of money due him. The action is based upon contract, but the contract may be implied, either in fact or in law, as well as express; and it may be either a simple contract or a specialty. The most common instances of its use are for debts:

a.) Upon unilateral contracts express or implied in fact.

b.) Upon quasi-contractual obligations having the force and effect of simple contracts.

c.) Upon bonds and covenants under seal.

d.) Upon judgments or obligations of record.

e.) Upon obligations imposed by statute.”<sup>17</sup>

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<sup>17</sup> Handbook of Common-Law Pleading by Benjamin J. Shipman; § 52, at 132 (Henry Winthrop Ballantine ed., 3d ed. 1923).

**demand** – *vb.* 1. To claim as one's due; to require; to seek relief.

*n.* 1. The assertion of a legal or procedural right. ☒

1. A claim; a legal obligation; a request to perform an alleged obligation; a written statement of a claim. *Brennan v Swasey, 16 Cal 141*; a requisition or request under a claim of right, *Brackenridge v Texas, 27 Tex App 513, 11 SW 630*; the assertion of a right to recover a sum of money from the person upon whom the demand is made. *Mack v Hugger Bros. Constr. Co., 153 Tenn 260, 283 SW 448, 46 ALR 389, 392.* ☐

1. A claim of legal entitlement; a request to perform an obligation.

2. The assertion of a right to recover a sum of money. ☒

**demand letter** – A letter by which one party explains its legal position in a dispute and requests that the recipient take some action (such as paying money owed), or else risk being sued. \* Under some statutes (especially consumer-protection laws), a demand letter is a prerequisite for filing a lawsuit. ☒

1. A statement in writing setting forth the demand, showing its nature and character and the amount due and owing thereon. *Brennan v Swasey, 16 Cal 141.* – aka *statement of demand.* ☐

1. A letter requesting the performance of some obligation or making a claim for something to which the writer is entitled. ☒

**creditor's rights** – The interests or claims of a person who or entity that is owed a debt.

2. The procedures, usually defined by statute, to collect these interests or claims, such as **garnishment** of wages or the seizure and sale of property.

3. The branch of law relating to these procedures. – aka *creditor's rights.* ☒

**garnishment** – 1. A judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to or is bailee for the debtor to turn over to the creditor any of the debtor's property (such as wages or bank accounts) held by that third party). \* A plaintiff initiates a garnishment action as a means of either prejudgment seizure or postjudgment collection.

2. The judicial order by which such a turnover is effected. ☒

1. A proceeding by a creditor to obtain satisfaction of a debt from money or property of the debtor, which is in the possession of a third person or is owned by such a person to the debtor. *Note* that a garnishment is distinguished from an attachment by the fact that the money or property reached by the garnishment is remains in the hands of the third party until there is a judgment in the action involving the basic debt. ☒

**proprietary interest** – A property right; specifically, the interest held by a property owner together with all appurtenant rights, such as a stockholder's right to vote the shares. ☉ Note: A lien is a type of *proprietary interest*. – see page 35.

**proprietary** – *Adj.* 1. In the capacity of an owner. Being a proprietor.

*n.* 1. A proprietor. An owner. ☹

**property interest** – *Property law.* 1. An interest, perhaps including rights of possession and control, held by an owner, beneficiary, or remainderman in land, real estate, business, or other tangible items. ☉

2. *Constitutional law.* A legitimate claim of entitlement to some legal or contractual benefit that cannot be taken away without due process. – aka ***proprietary interest; ownership interest; interest in property.***

**encumbrance** – 1. A claim or liability that is attached to property or some other right and that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest. \* An encumbrance cannot defeat the transfer of possession, but it remains after the property or right is transferred. — Also spelled ***incumbrance.***  
— ***encumber, vb.*** ☉

1. Literally a hindrance, impediment, or obstruction, such as an object in a highway. **25 Am J1st High § 272.**

Including whatever charges, burdens, obstructs, or impairs the use of the land, depreciates it in value, or impedes its transfer, such as a lien, a mortgage, deed of trust, or an easement. **Anno: 57 ALR 1376; 55 Am J 1st V & P § 225.**

“Encumbrances” fall into two general classes:

- (1) Those which affect or relate to the title or the record thereof, and
- (2) those which affect or relate to the actual physical conditions upon the realty such as a path or roadway indicating a servitude. **Anno: 64 ALR 1480.**

The application of the term “encumbrance” is almost invariably made to real estate, although it would seem entirely proper to speak of a chattel mortgage or lien upon personal property as an “encumbrance.” ☹

1. An interest in land that exists in someone other than the owner of the land. It reduces the value of the land, but does not prevent the owner from transferring marketable title. ☹

UCC § 9-102(a)(32):

“‘Encumbrance’ means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.”



**common-law lien** – 1. A lien granted by the common law, rather than by statute, equity, or agreement by the parties.

2. The right of one person to retain possession of property belonging to another until certain demands of the possessing party are met. \* This type of lien, unlike an equitable lien, cannot exist without possession. ☒

1. A lien arising by implication of law, not by contract, which entitles the lienor to retain possession of an article in his possession which belongs to another until certain demands against such other person are satisfied. **33 Am J1st Liens § 16.**

In the aspect of a common-law lien, the mere right in one person to retain that which is in his possession belonging to another until certain demands of the person in possession are satisfied. ***Agnew v American Ice Co.* 2 NJ 291, 66 A2d 330, 10 ALR2d 232.** (found under definition for *lien*) ☐

1. A lien existing under the common law. ☒

***pro possessore habetur qui dolo injuriave desiit possidere*** – a person is deemed to be a possessor who has been dispossessed by fraud or injury. ☐

**possessory lien** – A lien allowing the creditor to keep possession of the encumbered property until the debt is satisfied. \* A power of sale may or may not be combined with this right of possession. ☒

**general lien** – A possessory lien by which the lien holder may retain any of the debtor's goods in the lien holder's possession until any debt due from the debtor, whether in connection with the retained goods or otherwise, has been paid. \* Factors, insurance brokers, packers, stockbrokers, and bankers have a general lien over the property of their clients or customers.

**particular lien** – A possessory lien by which the possessor of goods has the right to retain specific goods until a debt incurred in connection with those goods has been paid. — aka ***special lien***.

Excerpt from James Kent's Commentaries on American Law (George Comstock ed., 11th ed. 1866):

“A general lien is the right to retain the property of another, for a general balance of accounts; but a particular lien is a right to retain it only for a charge on account of labor employed or expenses bestowed upon the identical property detained. The former is taken strictly, but the latter is favored in law. The right rests on principles of natural equity and commercial necessity, and it prevents circuitry of action, and gives security and confidence.”<sup>18</sup>

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18 James Kent, Commentaries on American Law by James Kent; 2 (George Comstock ed., 11th ed. 1866).



**equitable lien** – A right, enforceable only in equity, to have a demand satisfied from a particular fund or specific property, without having possession of the fund or property. \* It arises mainly in four circumstances:

- (1) when an occupant of land, believing in good faith to be the owner of that land, makes improvements, repairs, or other expenditures that permanently increase the land's value,
- (2) when one of two or more joint owners makes expenditures of that kind,
- (3) when a tenant for life completes permanent and beneficial improvements to the estate begun earlier by the testator, and
- (4) when land or other property is transferred subject to the payment of debts, legacies, portions, or annuities to third persons. — aka *equitable levy*.

**improvement lien** – A lien recognized in equity in a proper case for the benefit of one who claims compensation for an improvement made on the land of another. **27 Am J1st Improv § 30.** ☹

**judicial lien** – A lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding. \* If a debtor is adjudged to owe money to a creditor and the judgment has not been satisfied, the creditor can ask the court to impose a lien on specific property owned and possessed by the debtor. After the court imposes the lien, it usually issues a writ directing the local sheriff to seize the property, sell it, and turn over the proceeds to the creditor.

**levy** – 1. To take or seize property in execution of a judgment <the judgment creditor may levy on the debtor's assets>. ☹

1. The seizure of property by the sheriff or other officer under a writ to ensure payment of a judgment debt or to pay it. Such a levy is called a *levy of execution*.
2. To attach property by judicial order. ☹

**sequestration** – The deposit of property with a neutral third party, either by agreement or by judicial order, by one or both parties while the property is being subjected to adverse claims, until the question of ownership is decided.

**attachment lien** – A lien on property seized by prejudgment attachment. \* Such a lien is initially inchoate but becomes final and perfected upon entry of a judgment for the attaching creditor and relates back to the date when the lien first arose. — aka *lien of attachment*. ☹

1. A lien that arises when property is attached; it is perfected when judgment is entered. ☹

**prejudgment attachment** – An attachment ordered before a case is decided.

**attachment** – 1. The seizing of a person's property to secure a judgment or to be sold in satisfaction of a judgment. – aka (in civil law) *provisional seizure*. ☒

1. The process by which a person's property is figuratively brought into court to ensure satisfaction of a judgment that may be rendered against him. In the event judgment is rendered, the property may be sold to satisfy the judgment. Ω

**attaching creditor** – A creditor who has caused an attachment to be issued and levied on the debtor's property.

**inchoate lien** – A judgment lien that may be defeated if the judgment is vacated or a motion for new trial is granted. ☒

**inchoate** – Imperfect; not completely formed; just beginning. Ω

**consummate lien** – A judgment lien arising after the denial of a motion for a new trial. ☒

**judgment lien** – A lien imposed on a judgment debtor's nonexempt property. \* This lien gives the judgment creditor the right to attach the judgment debtor's property. — aka *lien of judgment*.

**judgment debtor** – A person against whom a money judgment has been entered but not yet satisfied.

**nonexempt property** – A debtor's holdings and possessions that can be liquidated in bankruptcy to satisfy creditors' claims. – aka *nonexempt assets*.

**exempt property** – 1. A debtor's holdings and possession that, by law, a creditor cannot attach to satisfy a debt. All the property that creditors may lawfully reach is known as *nonexempt property*. Many states provide a homestead exemption that excludes a person's house and household items, but not a certain amount, from the liens of most creditors. The purpose of the exemption is to prevent debtors from becoming destitute.

**judgment creditor** – A person having a legal right to enforce execution of a judgment or a specific sum of money.

**creditor's suit** – An equitable suit in which a judgment creditor seeks to reach property that cannot be reached by the process available to enforce a judgment. – aka *creditor's bill*. ☞

**chaste lien** – A lien in which the **lienholder**, the property, and the monetary amount are established so that the lien is perfected and nothing else needs to be done to make it enforceable.

**lienholder** – A person having or owning a lien. — aka *lienor*; *lienee*.



**§ 8 – It is Illegal and Tortious  
to Trespass or Wrongfully Evict  
a Lawful Possessor  
(including for the purpose  
of regaining possession)**

*pro possessione praesumitur de jure* – A presumption of law arises from possession.

*pro possessore habetur qui dolo injuriave desiit possidere* – A person is deemed to be a possessor who has been dispossessed by fraud or injury. ☹

**civil possession** – Possession existing by virtue of a person's intent to own property even though the person no longer occupies or has physical control of it.

**restorative remedies** – Those remedies in equity by which the plaintiff is restored to the full enjoyment of the right, property, or estate to which he is entitled, but which use and enjoyment have been hindered, interfered with, prevented, or withheld by the wrongdoer. See *1 Pomeroy's Equity Jurisprudence* § 112. ☹

**unlawful entry** – The crime of intentionally entering another's real property, by fraud or other illegal means without the owner's consent. ☹

1. A **trespass**. A going upon the property of another without right or authority. ☹

**trespass** – 1. An unauthorized entry on another's property. *Heller v New York, N.H. & H.R. Co. (CA2 NY) 265 F 192, 17 ALR 823, 825.* ☹

1. An unauthorized entry or intrusion on the real property of another. ☹

1. An unlawful act committed against the person or property of another; especially, wrongful entry on another's real property. — *trespass*, *vb.* — *trespassory*, *adj.* ☹

**criminal trespass** – 1. A trespass on property that is clearly marked against trespass by signs or fences.

2. A trespass in which the trespasser remains on the property after being ordered off by a person authorized to do so. ☹

1. The crime of entering on or into the property of another after having notice not to or refusing to leave after being told to do so. ☹

**trespass vi et armis** – 1. At common law, an action for **damages** resulting from an intentional injury to person or property, especially if by violent means; trespass to the plaintiff's person, as in illegal assault battery, wounding, or imprisonment, when not under color of legal process, or when the battery, wounding, or imprisonment was in the first instance lawful, but unnecessary violence was used or the imprisonment continued after the process had ceased to be lawful. \* This action also lay for injury to relative rights, such as menacing tenants or servants, beating and wounding a spouse, criminal conversation with or seducing a wife, or debauching a daughter or servant.

2. See *trespass quare clausum fregit*. \* In this sense the “force” is implied by the “breaking” of the close (that is, an enclosed area), even if no real force is used. ☹

**trespass *quare clausum fregit*** – [Latin: “why he broke the close”] 1. A person's unlawful entry on another's land that is visibly enclosed. This tort consists of doing any of the following without lawful justification:

- (1) entering on to land in the possession of another,
- (2) remaining on the land, or
- (3) placing or projecting any object on it.

2. At common law, an action to recover damages resulting from another's unlawful entry on one's land that is visibly enclosed. – Abbr. ***trespass q.c.f.*** – aka ***trespass to real property***; ***trespass to land***; ***quare clausium querentis fregit***. ☒

**continuing trespass** – A trespass in the nature of a permanent invasion on another's rights, such as a sign that overhangs another's property. ☒

1. A wrongful act involving a course of action which is a direct invasion of the rights of another. **52 Am J1st Tresp § 18.**

A trespass in the taking of goods, although without intent to appropriate them, followed by an appropriation, the original trespass being deemed to continue to the time of the appropriation, so that the subsequent appropriation is larceny. ***State v Coombs, 55 Me 477.*** ☒

1. A permanent encroachment or intrusion upon the property of another. ☒

Excerpt from ***People v. Laurence, 137 N.Y. 517 (N.Y. 1893)***:

“[I]f a person obtains possession of property from the owner for a special purpose by some device, trick, artifice, fraud or false pretense, intending at the time to appropriate it to his own use, and he subsequently does appropriate it to his own use and not to the special purpose for which he received it, he is guilty of larceny. In such a case it is essential for the People to show not only that the person obtained possession of the property in that way, but that he did it *animo furandi*, with the intention at the time of subsequently appropriating it to his own use.”<sup>19</sup>

**permanent trespass** – 1. A trespass consisting of a series of acts, done on consecutive days, that are of the same nature and are renewed or continued from day to day, so that the acts in the aggregate form one indivisible harm. ☒

1. A trespass where the injury is continually renewed. EXAMPLE: Smith's cattle trespassing onto the Jones farm day after day, trampling and eating the crop. ☒

**joint trespass** – A trespass committed by two or more persons,, or by one or more of them at the bidding or with the encouragement of the others. ☒

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19 Casetext: ***People v. Laurence, 137 N.Y. 517 (N.Y. 1893)***: <https://casetext.com/case/people-v-laurence-1>

**wrongful eviction action** – 1. A lawsuit brought by a former tenant or possessor of real property against one who has put the plaintiff out of possession, alleging that the eviction was illegal. ☞

**continual claim** – 1. A formal claim of right to the possession of land made by a person entitled thereto who does not dare enter through fear of his life or bodily harm. The claimant thus effects a livery in law, if he makes such claim during the life of the feoffor. **2 Bl Comm 316.** ☹

**dispossession** – 1. Deprivation of, or eviction from, rightful possession of property; the wrongful taking or withholding of possession of land from the person lawfully entitled to it; *ouster*. ☞

1. Changing from the possession of one person to that of another; *ouster*; a wrong or injury that carries with it the amotion of possession thereby getting the wrongdoer into the actual occupation of the land or hereditament, an obliging him who has a right to seek his legal remedy in order to gain possession, and damages for the injuries he has sustained. See *3 Bl Comm 167.* ☹

1. A forced or fraudulent changing of possession of land from one person to another; *ouster*. ☹

**ouster** – 1. The wrongful dispossession or exclusion of someone from property (especially real property); *dispossession*. ☞

1. A forced dispossession of real estate. A *disseisin*. The wrongful dispossession or exclusion from real property of a person entitled to the possession thereof. **23 Am J2d Eject § 47.** ☹

1. The dispossession from real property of a person entitled to possession. ☹

**oust** – 1. To put out of possession; to deprive of a right or inheritance. ☞

1. To effect an ouster. ☹

1. To carry out an ouster. ☹

**ouster in pais** – A dispossession or disseisin of a person in possession of land effected otherwise than by means of resort to legal proceedings. ☹

**disseisin** – 1. The act of wrongfully depriving someone of the freehold possession of property; *dispossession*. — aka *disseisitus*. ☞

1. An ouster or wrongful dispossession of one in possession of real property who is seized of a freehold therein. **3 Am J2d Adv P § 52.**

More broadly defined as the wrongful dispossession or exclusion of a person entitled to possession. **25 Am J2d Eject § 47.** ☹

1. Same as *dispossession*. ☹



Excerpt from J.B. Ames' The Disseisin of Chattels (1889):

“The disseised owner of land... has still a right of entry and a right of action. But by an inveterate rule of our law, a right of entry and a chose in action were strictly personal rights. Neither was assignable. It follows, then, that the disseisee cannot transfer the land. In other words, as long as the disseisin continues, the disseised owner is deprived of the two characteristic features of property, — he has neither the present enjoyment nor the power of alienation.”<sup>20</sup>

**forcible entry** – 1. The act or an instance of violently and unlawfully taking possession of lands and tenements against the will of those in lawful possession.

2. The act of entering land in another's possession by the use of force against another or by breaking into the premises. ☉

An entry on real property peaceably in the possession of another, against his will, without authority of law, by actual force, or with such an array of force and apparent intent to employ it for the purpose of overcoming resistance, that the occupant, in yielding and permitting possession to be taken from him, must be regarded as acting from a well-founded apprehension that resistance by him would be perilous or unavailing. **35 Am J2d Forc E & D § 1.** ☽

1. An entry into a house or other structure with at least some force.

2. An entry on real property which is in the possession of another person, without her consent and by actual force or threats by force, causing her to surrender possession of the property. ☽

2. In many states a mere trespass without any force will be considered “forcible” and a simple refusal to surrender possession after a lawful demand will constitute a “forcible detainer.” See *198 P. 646.*<sup>21</sup>

**forcible** – 1. Effected by force or threat of force against opposition or resistance.



1. With force; resulting in force; having the quality of force. ☽

Excerpt from R.F.V. Heuston's Salmond on the Law of Torts (17th ed. 1977):

“[In the law of trespass, the] term ‘forcible’ is used in a wide and somewhat unnatural sense to include any act of physical interference with the person or property of another. To lay one's finger on another person without lawful justification is as much a forcible injury in the eye of the law, and therefore a trespass, as to beat him with a stick. To walk peacefully across another man's land is a forcible injury and a trespass, no less than to break into his house *vi et armis*. So also it is probably a trespass deliberately to put matter where natural forces will take it on to the plaintiff's land.”<sup>22</sup>

<sup>20</sup> J.B. Ames' The Disseisin of Chattels, 3 Harv. L. Rev. 23, 25 (1889)

<sup>21</sup> Barron's Law Dictionary Third Edition by Steven H. Gifis (1975, 1991). ISBN0-8120-4633-1.

<sup>22</sup> Salmond on the Law of Torts by R.F.V. Heuston 5 (17th ed. 1977)

**forcible entry and detainer** – 1. The act of violently taking and keeping possession of lands and tenements without legal authority. ☉

1. A common-law offense against the public peace committed by violently taking or keeping possession of lands and tenements, with menaces, force and arms, and without the authority of law. **4 Bl Comm 148.** ☹

1. The act of a person who wrongfully deprives another of possession of land. ☹

Excerpt from Rollin M. Perkins & Ronald N Boyce’s Criminal Law (3d ed. 1982):

“[I]f an entry upon real estate is accomplished by violence or intimidation, or if such methods are employed for detention after a peaceable entry, there is a crime... known as forcible entry and detainer.... It has sometimes been said that there are two separate offenses —

- (1) forcible entry and
- (2) forcible detainer.

This may be true under the peculiar wording of some particular statute, but in general it seems to be one offense which may be committed in two different ways.”<sup>23</sup>

1. After a forcible entry and detainer the aggrieved party is entitled to bring “a summary statutory proceeding for restoring to the possession of land one who is wrongfully kept out or has been wrongfully deprived of the possession, in the particular cases mentioned in the statute. It is a possessory action only and it usually arises where one's possession has been forcibly invaded between landlord and lessee, vendor and vendee, or the purchaser at a judicial sale and a party to the judicial proceeding. The question of title cannot be tried, but only the right of possession.” **100 N.E. 520, 521.**

Its purpose is “to protect the actual possession of real estate against unlawful and forcible invasion, to remove occasion for actual violence in defending such possession, and to punish breaches of the peace committed in the entry upon or the detainer of real property.” **17 N.Y.S. 522, 523.**<sup>24</sup>

2. A summary remedy for obtaining possession of real property by a person who has been wrongfully put out or kept out of possession. ☹

2. A remedy to obtain restitution to possession of one turned or kept out of possession of real property by strong hand, violence, or terror. **35 Am J2d Force E & D § 5.** ☹

2. A quick and simple legal proceeding for regaining possession of real property from someone who has wrongfully taken, or refused to surrender, possession. Abbr. **FED.** — aka **forcible detainer.** ☉

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<sup>23</sup> Criminal Law by Rollin M. Perkins & Ronald N Boyce; 487-88 (3d ed. 1982)

<sup>24</sup> Barron’s Law Dictionary Third Edition by Steven H. Gifis (1975, 1991). ISBN0-8120-4633-1.

**forcible detainer** – 1. The wrongful retention of possession of property by one originally in lawful possession, often with threats or actual use of violence. ☒

1. The act of a person who remains in possession of land after her right to do so has ended. Ω

1. The unlawful holding or detention of real property by force, threats, or menaces after the making of a peaceable, though unlawful, entry thereon. **35 Am J2d Forc E & D § 1.** ∅

1. Holding in custody by the use of force or the show of force. <sup>25</sup>

2. A quick and simple legal proceeding for regaining possession of real property from someone who has wrongfully taken, or refused to surrender, possession. — Abbr. **FED.** — aka **forcible detainer and detainer.** ☒

2. A summary remedy for regaining possession of real property from one who continues to hold the property after his right to possession has expired or has been lawfully terminated. Ω

2. A summary action based on a statutory right to obtain possession of premises by one entitled to actual possession. **444 P. 2d 521, 523.** <sup>26</sup>

Excerpt from Benjamin J. Shipman’s Handbook of Common-Law Pleading (Henry Winthrop Ballantine ed., 3d ed. 1923):

“Forcible entry and detainer is a remedy given by statute for the recover of possession of land and of damages for its detention. It is entirely regulated by statute, and the statutes vary materially in he different states.” <sup>27</sup>

**unlawful detainer** – 1. The unjustifiable retention of the possession of real property by one whose original entry was lawful, as when a tenant holds over after lease termination despite the landlord’s demand for possession. ☒

**detainer** – 1. The action of detaining, withholding, or keeping something in one’s custody. ☒

**ouster judgment** – A judgment in forcible entry and detainer calling for the restitution of the premises to the plaintiff. **35 Am J2d Forc E & D § 53.** ∅

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<sup>25</sup> Barron’s Law Dictionary Third Edition by Steven H. Gifis (1975, 1991). ISBN0-8120-4633-1.

<sup>26</sup> Barron’s Law Dictionary “ ”

<sup>27</sup> Handbook of Common-Law Pleading by Benjamin J. Shipman ; § 74, at 188 (Henry Winthrop Ballantine ed., 3d ed. 1923)



**§ 9 – A Wrongfully Evicted Occupant  
may sue to regain possession and/or for damages**

**damages** – 1. Money claimed by, or ordered to be paid to, a person as compensation for loss or **injury** <the plaintiff seeks \$8,000 in damages from the defendant>. — *damage,adj.* ☉

1. The sum of money which the law awards or imposes as **pecuniary** compensation, **recompense**, or **satisfaction** for an injury done or a wrong sustained as a consequence either as a breach of a contractual obligation or a tortious act. **22 Am J2d Damg § 1.**

The pecuniary compensation or indemnity which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another. *Aetna Casualty & Surety Co. v Hanna (CA5 Fla) 224 F2d 499, 53 ALR 2d 1125.* ☹

1. The sum of money that may be recovered in the courts as financial reparation for an injury or wrong suffered as a result of breach of contract or a tortious act. ☹

Excerpt from Martin L. Newell's A Treatise on the Law of Malicious Prosecution, False Imprisonment, & the Abuse of Legal Process (1892):

“The term defined: A sum of money adjudged to be paid by one person to another as compensation for a loss sustained by the latter in consequence of an injury committed by the former or the violation of some right.”<sup>28</sup>

Excerpt from Frank Gahan's The Law of Damages (1936):

“Damages are the sum of money which a person wronged is entitled to receive from the wrongdoer as compensation for the wrong.”<sup>29</sup>

**injury** – 1. The violation of another's legal right, for which the law provides a remedy; a wrong or injustice.

2. Any harm or damage. Some authorities distinguish harm from injury, holding that while harm denotes any personal loss or detriment, injury involves an actionable invasion of a legally protected interest. — **injury, vb.** — **injurious, adj.** ☉

1. The invasion of a legal right. *Bowman v Davenport, 243 Iowa 1135, 53 NW2d 249, 63 ALR2d 853.*

To be distinguished from “damage,” which is the loss, hurt, or harm resulting from the “injury.” **22 Am J2d Damg § 1.**

Damage or harm to the physical structure of the body, although not necessarily presenting external or visible signs of its existence, **58 Am J1st Workm Comp § 194**; sometimes construed to include simple and common diseases, **58 Am J 1st Workm Comp §244**; including also nonoccupational diseases and disorders of an idiopathic nature, as well as those having a definitely traumatic origin. **58 Am J1st Workm Comp §244.** ☹

1. The invasion of a legal right; an actionable wrong done to a person, her property, or her

<sup>28</sup> Martin L. Newell, A Treatise on the Law of Malicious Prosecution, False Imprisonment, & the Abuse of Legal Process 491 (1892)

<sup>29</sup> Frank Gahan, The Law of Damages 1 (1936)

reputation. (Compare “damage,” which is the loss, hurt, or harm resulting from “injury.”) Note that an injury, as the law uses that term, is not limited to physical harm done to the body; note too that, in the language of the law, an injury to the body (that is, a personal injury) may mean death as well as mere physical harm. Ω

**pecuniary** – 1. Involving money or money’s worth. Financial; pertaining or relating to money; capable of being estimated, computed, or measured by money value. ⊠

**pecuniary damages** – 1. Damages that can be estimated and monetarily compensated. \* Although this phrase appears in many old cases, it is now widely considered a redundancy since damages are always pecuniary. ∅

**pecuniary injury** – 1. An injury, the damages from which are measurable in money. Such an injury as can be, and usually is, without difficulty, estimated by a money standard. *Broughel v Southern New England Tel. Co.* 73 Conn 614, 621.

**pecuniary loss** – 1. A loss of money or of something by which money or something of money value may be acquired. *Dow v Legg*, 120 Neb 271, 231 NW 747, 74 ALR 5; *Green v Hudson River Railroad Co.* (NY) 32 Barb 25, 33.. ∅

1. A loss of money; a loss by which money, or that which has a monetary value, may be acquired. Ω

**recompense** – 1. Repayment, compensation, or retribution for something, especially an injury or loss. — **recompense**, *vb.* ⊠

1. A reward; compensation; remuneration. Ω

**remuneration** – 1. The act of paying or compensating. — **remunerative**. *adj.* — **remunerate**, *vb.* ⊠

## Types of Damages applicable to Adverse Possession and/or Wrongful Eviction Cases:

**measurable damages** – 1. Damages whose amount can be determined with a high degree of certainty. ☉

**lawful damages** – 1. Those damages fixed by law and ascertained in a court of law. ☉  
1. Such loss resulting from injury as the law compensates. Ω

**lawful** – 1. According to law. In accord with the spirit of the law, not merely the form of law. **State ex rel Van Nice v Whealey, 5 SD 427, 431, 59 NW 211.** ☉

**actual damages** – 1. An amount awarded to a complainant to compensate for a proven injury or loss; damages that repay actual losses. — aka **compensatory damages; tangible damages; real damages.** ☉

1. Damages in compensation for the loss or injury suffered rather than those allowed by way of punishment of the defendant or deterring others. **22 Am J2d Damg § 11.** ☉

1. Monetary compensation for a loss or injury which a plaintiff has suffered rather than a sum of money awarded by way of punishing a defendant or to deter others. Ω

**compensatory damages** – 1. Damages sufficient in amount to **indemnify** the injured person for the loss suffered. – aka **compensatories.**

2. See **actual damages.** ☉

1. The damages recoverable in satisfaction of, or in recompense for, loss or injury sustained, including all damages, except **nominal damages, punitive, or exemplary damages.** **22 Am J2d Damg § 11.**

Damages awarded not only as a recompense for actual injury to the person or property, including expenses, loss of time, bodily suffering, etc., occasioned by the defendant's wrongful act, but also such additional sum as in the opinion of the jury is warranted by the circumstances of contumely, anguish or oppression, including mental suffering and wounded sensibilities. **Murphy v Hobbs, 7 Colo 541, 5 P 119.** ☉

1. Damages recoverable in a lawsuit for loss or injury suffered by the plaintiff as a result of the defendant's conduct. Also called actual damages, they may include expenses, loss of time, reduced earning capacity, bodily injury, and mental anguish. Ω



**indemnify** – 1. To reimburse (another) for a loss suffered because of a third party's or one's own act or default; *hold harmless*.

2. To promise to reimburse (another) for such a loss.

3. To give (another) security against such a loss. – *indemnifiable*, *adj.* ☒

1. To save harmless; to secure against future loss or damage; to give indemnity. To recompense for a past loss. **27 Am J1st Indem § 2.** ☐

1. To compensate or reimburse a person for loss or damage.

2. To promise to compensate or reimburse in the event of future loss or damage.

☐

**general damages** – 1. Damages that the law presumes follow from the type of wrong complained of; specifically compensatory damages for harm that so frequently results from the tort for which a party has sued that the harm is reasonably expected and need not be alleged or proved; \* General damages do not need to be specifically claimed. — aka *direct damages*; *necessary damages*. ☒

1. Those damages which are the natural and necessary result of the wrongful act or omission asserted as the foundation of liability. *Parker v Harris Pine Mills*, 206 Or 187, 291 P2d 709, 56ALR2d Cust & U § 6.

Those damages which are traceable to, and are the probable and necessary result of, the injury complained of, or which are presumed by, or implied in, law to have resulted therefrom. **22 Am J2d Damg § 15.** ☐

1. Damages that are the natural and probable result of the wrongful acts complained of. ☐

**substantial damages** – 1. A considerable sum awarded to compensate for a significant loss or injury. ☒

Excerpt from Charles T. McCormick's Handbook on the Law of Damages (1935):

“Substantial damages . . . are the result of an effort at measured compensation, and are to be contrasted with nominal damages, which are in no sense compensatory, but merely symbolic.”<sup>30</sup>

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30 Charles T. McCormick, Handbook on the Law of Damages § 20, at 85 (1935)

**additional damages** – 1. Damages usually provided by statute in addition to direct (general) damages. \* Additional damages can include expenses resulting from the injury, **consequential damages**, or **punitive damages**. ☒

**special damages** – 1. Damages that are alleged to have been sustained in the circumstances of a particular wrong. \* To be awardable, special damages must be specifically claimed and proved. See **Fed. R. Civ. P. 9(g)**. — Often shortened to **specials**. — aka **particular damages**; **extraordinary damages**. ☒

1. Such **compensatory damages** as arise from the special circumstances of the case, that is, the pecuniary circumstances of the case, and may, if properly pleaded, be **added to the general damages**. **22 Am J2d Damg § 15**.

The natural, but not the necessary, result of an injury. **22 Am J2d Damg § 15**.

Damages sustained by a plaintiff beyond the mere loss of his property **Sarkesian v Cedric Chase Photographic Laboratories, 324 Mass 620, 87 NE2d 745, 12 ALR2d 899**. ☒

1. Damages that may be added to the general damages in a case, and arise from the particular or special circumstances of the case; the natural but not necessary result of a tort; damages arising naturally but not necessarily from a breach of contract. ☒

**Fed. R. Civ. P. 9(g) – Special Damages.** If an item of special damage is claimed, it must be specifically stated.

**nominal damages** – 1. A trifling sum awarded when a legal injury is suffered but there is no substantial loss or injury to be compensated.

2. A small amount fixed as damages for breach of contract without regard to the amount of harm. — aka **contemptuous damages**; **diminutive damages**. ☒

1. An award to which the plaintiff is entitled, although he gives no evidence of any particular amount of law, because the law infers damages from the breach of an agreement or the invasion of a right. **Ferreira v Honolulu Star Bulletin Ltd. 44 Hawaii 567, 356 P2d 651, reh den 44 Hawaii 581, 357 P2d 112**.

1. Damages recoverable where a legal right is to be vindicated against an invasion that has produced no actual present loss of any kind or where, from the nature of the case, some compensable injury has been shown but the amount of that injury has not been proved. **22 Am J2d Damg § 5**. ☒

1. Damages awarded to a plaintiff in a very small or merely symbolic amount. Such damages are appropriate in a situation where:

(1) although a legal right has been violated, no actual damages have been

incurred, but the law recognizes the need to vindicate the plaintiff (see vindictive damages); or  
(2) some compensable injury has been shown, but the amount of that injury has not been proven. Ω

Excerpt from Charles T. McCormick's Handbook on the Law of Damages (1935):

“Nominal damages are damages awarded for the infraction of a legal right, where the extent of the loss is not shown, or where the right is one not dependent upon loss or damage, as in the case of rights of bodily immunity or rights to have one's material property undisturbed by direct invasion. The award of nominal damages is made as a judicial declaration that the plaintiff's right has been violated.”<sup>31</sup>

Excerpt from S.M. Waddams' The Law Of Damages (3d ed. 1997):

“Nominal damages are awarded if the plaintiff establishes a breach of contract or a tort of the kind that is said to be ‘actionable per se’ but fails to establish a loss caused by the wrong. In the case of tort not actionable per se as, for example, negligence, if the plaintiff fails to establish a loss, the action will be dismissed. The practical significance of a judgment for nominal damages is that the plaintiff thereby establishes a legal right. The judgment has the effect of a declaration of legal rights and may deter future infringements or may enable the plaintiff to obtain an injunction to restrain a repetition of the wrong. The obtaining of nominal damages will also, in many cases, entitle a plaintiff to costs . . . . [Also,] nominal damages might serve as a peg upon which to hang an award of exemplary damages.”<sup>32</sup>

**continuing damages** – 1. Ongoing damages arising from the same injury.  
2. Damages arising from the repetition of similar acts within a definite period.  
⊗

1. Intermittent or occasional damages, sometimes called *temporary damages*, for the recovery of which successive actions may be required. **22 Am J2d Damg § 28.** ⊕

**intervening damages** – 1. Continuing damages that accrue during the pendency and prosecution of an unsuccessful appeal. \* A lower court may include intervening damages in an award. ⊗

1. Damages resulting to an appellee from the delay caused by the appeal. *Peasley v Buckminster (Vt) 2 Tyler 264, 267.* ⊕

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31 Charles T. McCormick, Handbook on the Law of Damages § 20, at 85 (1935)

32 S.M. Waddams, The Law Of Damages 477-78 (3d ed. 1997)

**consequential damages** – Losses that do not flow directly and immediately from an injurious act but that result indirectly from the act. ☒

**future damages** – 1. Money awarded to an injured party for an injury's residual or projected effects, such as those that reduce the person's ability to function. \* Examples are expected pain and suffering, loss or impairment of earning capacity, and projected medical expenses. ☒

1. The consequences of the defendant's wrongful act to occur in the future, that is, after the commencement of action. **22 Am J2d Damg § 26.** ☐

1. A sum of money awarded to a plaintiff as compensation for the consequences of a defendant's wrongful act that will occur in the future; **prospective damages.** ☐

**prospective damages** – 1. Future damages that, based on the facts pleaded and proved by the plaintiff, can reasonably be expected to occur. ☒

**proximate damages** – 1. Compensation for reasonably foreseeable harm that directly, immediately, and naturally results from the act complained of. ☒

1. As opposed to **remote damages**, damages that may be recovered in a tort case, i.e., damages that are the direct result of the wrongful act. ☐

**remote damages** – 1. Damages that are so uncertain to occur that they will not be awarded. — aka **speculative damages.**

**temperate damages** – 1. Reasonable damages. ☒

1. Damages allowed in cases of a certain class, without proof of actual or special damage, where the wrong done must in fact have caused actual damage to the plaintiff, though, from the nature of the case, he cannot furnish independent, distinct proof thereof. **22 Am J2d Damg § 16.** ☐

**punitive damages** – 1. Damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit; specifically, damages assessed by way of penalizing the wrongdoer or making an example to others. \* Punitive damages, which are intended to punish and thereby deter blameworthy conduct, are generally not recoverable for breach of contract. The Supreme Court has held that three guidelines help determine whether a punitive-damages award violates constitutional due process:

- (1) the reprehensibility of the conduct being punished;
  - (2) the reasonableness of the relationship between the harm and the award;
- and

(3) the difference between the award and the civil penalties authorized in comparable cases. *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589 (1996).

— aka *exemplary damages*; *vindictive damages*; *punitory damages*; *presumptive damages*; *added damages*; *aggravated damages*; *speculative damages*; *imaginary damages*; *smart money*; *punies*. ☉

1. Damages which are allowed as an enhancement of compensatory damages because of the wanton, reckless, malicious, or oppressive character of the acts of which the plaintiff complains. **22 Am J2d Damg § 236.**

Damages awarded to punish the defendant for a willful act and to vindicate the rights of a party in substitution for personal revenge, thus safeguarding the public peace. *Winkler v Hartford Acci. & Indem. Co.* 66 NJ Super 22, 168 A2d 418. ☹

Excerpt from *Cooper Indus. v Leatherman Tool*, 532 U.S. 424, 432, 121 S.Ct. 1678, 1683 (2001):

“Although compensatory damages and punitive damages are typically awarded at the same time by the same decisionmaker, they serve distinct purposes. The former are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant’s wrongful conduct. The latter, which have been described as ‘quasi-criminal,’ operate as ‘private fines’ intended to punish the defendant and to deter future wrongdoing. A jury’s assessment of the extent of a plaintiff’s injuries is essentially a factual determination, whereas its imposition of punitive damages is an expression of its moral condemnation.” ☉

**punitive** – 1. Having to do with punishment. ☹

**unliquidated damages** – 1. Damages that cannot be determined by a fixed formula and must be established by a judge or jury. ☉

1. Damages not stipulated by the parties or otherwise determined as to amount thereof. **22 Am J2d Damg § 212.**

Not an existing indebtedness within the meaning of attachment statutes. *Craig v Gaddis*, 171 Miss 379, 157 So 684, 95 ALR 1494.

A claim for unliquidated damages is not included within the expression “goods, effects, or credits.” *Wilde v Mahancy*, 183 Mass 455, 67 NE 337. ☹

1. Damages whose amount is not agreed upon by the parties or which cannot be determined by applying the rules of law or by mathematical calculation. ☹

**discretionary damages** – 1. Damages (such as mental anguish or pain and suffering) that are not precisely measurable but are determined by the subjective judgment of a jury. — aka *indeterminate damages*. ☉

**discretionary** – 1. That which is subject to a person’s discretion. ☹

**tort damages** – 1. Monetary compensation for tangible and intangible harm to persons and property as the result of a tort. ☒

**common-law damages** – 1. A court ordered monetary award intended to return an injured party, as nearly as possible, to the position that party occupied before suffering harm. ☒

**statutory damages** – 1. Damages provided by statute (*such as a wrongful death and survival statute*), as distinguished from damages provided under the common law. ☒

**accumulative damages** – 1. Statutory damages allowed in addition to amounts available under the common law. — aka *enhanced damages*. ☒

**multiple damages** – 1. Statutory damages (such as **double** or **treble damages**) that are a multiple of the amount that the fact-finder determines to be owed. — aka *multiplied damages*. ☒

**double damages** – 1. Damages that, by statute, are twice the amount that the fact-finder determines is owed or twice the amount of actual damages awarded. \* In some cases, double damages are awarded in addition to actual damages, so the effect is the same as treble damages. ☒

**treble damages** – 1. Damages that, by statute, are three times the amount of actual damages that the fact-finder determines is owed. — aka *triple damages*. ☒

**permanent damages** – 1. Damages for past, present, and future harm that cannot be avoided or remedied. ☒

1. Literally, lasting injury to person or property. Technically, injury in real estate which is permanent in character, so that all the damages, whether present, past, or prospective must be recovered in a single action. **22 Am J2d Damg § 28**. ☐

**gross damages** – The total damages found before adjustments and offsets. ☒

**irreparable damages** – 1. Damages that cannot be easily ascertained because there is no fixed pecuniary standard of measurement, e.g., damages for a repeated public nuisance. — aka *nonpecuniary damages*. ☒

1. In the law of **injunctions**, an injury of such a nature that there is no adequate remedy in a court of law and for which, therefore, recourse must be sought in a court of equity; an injury that cannot be satisfactorily or completely compensated with money. The term does not refer to the *amount* of damage caused, or the *amount* of the damages, but to the *difficult of measuring* the amount of the damages. Ω

1. See *irreparable injury*. ☐



**nonpecuniary damages** – 1. Damages that cannot be measured in money. — aka *noneconomic damages*. ☼

1. Damages for injury of such nature that there is no money standard applicable in measurement of the amount of damages. *Broughel v Southern New England Tel. Co.* 73 Conn 614, 621.

Damages the amount of which depends upon the enlightened judgment of an impartial court or jury, since it is not a matter of mathematical calculation, as illustrated in damages for pain, suffering, and defamation. *L.W. Pomereae v White*, 70 Neb 171, 97 NW 232. ☹

**injunction** – 1. A court order commanding or preventing an action. To get an injunction, the complainant must show that there is not plain, adequate, and complete remedy at law and that an irreparable injury will result unless the relief is granted. — aka *writ of injunction*; *equitable injunction*. ☼

1. A court order that commands or prohibits some act or course of conduct. It is preventive in nature and designed to protect a plaintiff from irreparable injury to his property or property rights by prohibiting or commanding the doing of certain acts. An injunction is a form of equitable relief. ☹

**irreparable injury** – 1. An injury that cannot be adequately measured or compensated by money and is therefore often considered remediable by injunction. — aka *irreparable harm*; *nonpecuniary injury*. ☼

1. As the term applies in the law of injunctions: — an injury of such a character that a fair and reasonable redress may not be had in a court of law, so that to refuse the injunction would be a denial of justice — in other words, where, from the nature of the act, or from the circumstances surrounding the person injured, or from the financial condition of the person committing it, the injury cannot be readily, adequately, and completely compensated for with money. *Miller v Lawlor*, 245 Iowa 1144, 66 NW2d 267, 48 ALR2d 1058. ☹

**Irreparable-Injury Rule** – 1. The principle that equitable relief (granted via an injunction) is available only when no adequate legal remedy (monetary damages) exists. Although courts continue to cite this rule, they do not usually follow it literally in practice. — aka *adequacy test*. ☼

**equitable remedy** – 1. A remedy, usually a non-monetary one such as an injunction or specific performance, obtained when available legal remedies, usually monetary damages, cannot adequately redress the injury. \* Historically, an equitable remedy was available only from a court of equity. — aka *equitable relief*, *equitable damages*. ☼

1. See *equitable relief*. ☹

**equitable relief** – 1. A remedy available in equity rather than at law; generally relief other than money damages. EXAMPLES: an injunction, specific performance. ☹





**§ 10 – If Government Official(s) Violate  
an Equitable Owner's  
Right of Possession  
it is a Color of Law Crime  
and a Constitutional Tort**

**abuse of power** – 1. The misuse or improper exercise one’s authority; especially, the exercise of a statutorily or otherwise duly conferred authority in a way that is tortious, unlawful, or outside its proper scope. ☉

**malversation** – 1. [French “ill behavior”] Official corruption; misbehavior by an official in the exercise of the duties of the office. ☉

1. Official misconduct; corruption in office. ☹

**official misconduct** – 1. A public officer’s corrupt violation of assigned duties by malfeasance, misfeasance, or nonfeasance. — aka *misconduct in office; misbehavior in office; malconduct in office; misdemeanor in office; corruption in office; official corruption; political corruption*. ☉

1. An act constituting a breach of the good faith and right action impliedly required of all public officers. *Etzler v Brown, 58 Fla 221, 50 So 416*.

Any act involving moral turpitude, or any act which is contrary to justice, honest, principle, or good morals, if performed by virtue of authority of office. *State v Examining & Trial Board, 43 Mont 399, 117 P 77*. ☹

**malfeasance** – 1. A wrongful, unlawful, or dishonest act; especially, wrongdoing or misconduct by a public official. — *malfeasant, adj.* — *malfeasor, n.* ☉

1. The doing of an act which is positively unlawful or wrong. *Alias v Rumson, 115 NJL 593, 181 A175, 102 ALR 648*.

An act forbidden by law, or illegal, causing injury to the person or party of another. **35 Am J1st M & S § 588**.

Of public officer: — the performance of an act in an official capacity that is wholly illegal and wrongful. *People ex rel. Johnson v Coffey, 237 Mich 591, 213 NW 460, 52 ALR 1*. ☹

1. The doing of a wrongful act or unlawful act.

**malfeasance in office** – 1. The performance by a public official of an official act that is illegal or wrongful. ☹

**misfeasance** – 1. A lawful act performed in a wrongful manner. — *misfeasant, adj.* — *misfeasor, n.* ☉

1. The improper doing of an act which a person might lawfully do. *Greenberg v Whitecomb Lumber Co. 90 Wis 225, 63 NW 93*.

The unlawful and injurious exercise of lawful authority, or the doing of a lawful act in an unlawful manner. *Allas v Rumson, 115 NJL 593, 181 A 175, 102 ALR 988*.

The performance of a duty or act which one ought or has a right to do, but in a manner such as to infringe upon the rights of others. **Anno: 20 ALR 104**. ☹

1. The improper performance of a lawful act. Ω

**misfeasance in public office** – 1. The tort of excessive, malicious, or negligent exercise of statutory powers by a public officer. — aka *malfeasance*. ☉

1. The performance by a public officer in his official capacity of a legal act in an improper or illegal manner. *State ex rel. Hardie v Coleman*, 115 Fla 119, 155 So 129, 92 ALR 988.

A common-law offense, generally termed “official misconduct,” and composed of the commission of a series of unlawful acts. *State v Bolitho*, 103 NJL 246, 261, 136 A 164, 172. ☹

1. The performance by a public official, in an official capacity, of a legal act in an illegal or improper manner. Ω

**nonfeasance** – 1. The failure to act when a duty to act exists. — *nonfeasant*, *adj.* — *nonfeasor*, *n.* ☉

1. Of public officer: — neglect or refusal, without sufficient excuse, to do that which it is the officer’s legal duty to do, whether willfully, or through malice, ignorance, or oversight. *State ex rel. Hardie v Coleman*, 115 Fla 119, 155 So 129, 92 ALR 988.

Of agent: — the total omission or failure of an agent to enter upon the performance of some distinct duty or undertaking which he has agreed with his principal to do. *Anno: 20 ALR 104.* ☹

1. The failure or omission to do something that should be done or especially something that should be done or especially something that one is under a duty or obligation to do. <sup>33</sup>

1. The law of the agency, “the total omission or failure of an agent to enter upon the performance of some distinct duty or undertaking which he has agreed with his principal to do.” 191 N.E. 2d. 588, 591.

Also, it is the “substantial failure [of an officer] to perform a duty,” 115 N.W.2d 411, 413. or, in other words, the neglect or refusal, without sufficient excuse, to do that which is the officer’s legal duty to do. It differs from misfeasance, which is the improper doing of an act that one might lawfully do, and from malfeasance, which is the doing of an act that is wholly wrongful and unlawful. <sup>34</sup>

Excerpt from W. Page Keeton’s *Prosser and Keeton on the Law of Torts* (5th ed. 1984):

“Hence there arose very early a difference, still deeply rooted in the law of negligence, between ‘misfeasance’ and ‘nonfeasance’ — that is to say, between active misconduct working positive injury to others and passive inaction or a failure to take steps to protect them from harm.” <sup>35</sup>

<sup>33</sup> Merriam-Webster’s Dictionary of Law Revised (2011) ISBN 978-0-87779-719-7.

<sup>34</sup> Barron’s Law Dictionary Third Edition by Steven H. Gifis (1975, 1991). ISBN0-8120-4633-1.

<sup>35</sup> W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 56, at 374 (5th ed. 1984).

**color of law** – 1. The appearance or semblance, without the substance, of a legal right. The term usually implies a misuse of power made possible because the wrongdoer is clothed with the authority of the state. State action is synonymous with color of [state] law in the context of federal civil-rights statutes or criminal law. ☉

**color of office** – 1. An expression for acts performed by an officer which are entirely outside of or beyond the authority conferred by the office. *Haffner v United States Fidelity & Guaranty Co.* 35 Idaho 517, 207 P 716; *Wilson v Fowler*, 88 Md 601, 42 A 201. ☹

1. An expression for acts performed by an officer that are outside of the authority conferred by her office. ☹

**false imprisonment** – 1. The restraint of a person in a bounded area without legal authority, justification, or consent. \* False imprisonment is a common-law misdemeanor and a tort. It applies to private as well as governmental detention. ☉

1. The unlawful restraint by one person of the physical liberty of another. **22 Am J False Imp § 1.**

An unlawful violation of the personal liberty of another, whether considered as a tort or a crime. *Parrot v Bank of America Nat Trust & Sav. Assoc.* 97 Cal App 2d 14, 217 P2d 89, 35 ALR2d 263.

To constitute an unlawful arrest or a false imprisonment, it is not necessary that force be used. The wrong done is one which may be committed by acts or by words, or by both. An unlawful restraint of the person, or an interference with his personal liberty, is essential, but this is deemed to have been put under restraint if words or acts induced a reasonable apprehension that force would be used, if he did not submit. In short, any unlawful exercise or show of force, by which a person is compelled to remain where he does not wish to remain or to go where he does not wish to go is an unlawful arrest *Durgin v Cohen*, 168 Minn 77, 209 NW 532. ☹

1. The unlawful restraint by one person of the physical liberty of another. Like false arrest, to which it is closely related, it is both a tort and a crime. ☹

Excerpt from 32 Am. Jur. 2d *False Imprisonment* § 3 (1995):

“Some courts have described false arrest and false imprisonment as causes of action which are distinguishable only in terminology. The two have been called virtually indistinguishable, and identical. However, the difference between them lies in the manner in which they arise. In order to commit false imprisonment, it is not necessary either to intend to make an arrest or actually to make an arrest. By contrast, a person who is falsely arrested is at the same time falsely imprisoned.”

**Restatement (Second) of Torts § 35 (1977):**

**§ 35: False Imprisonment**

- (1) An actor is subject to liability to another for false imprisonment if:
  - (a) he acts intending to confine the other or a third person within boundaries fixed by the actor, and
  - (b) his act directly or indirectly results in such a confinement of the other, and
  - (c) the other is conscious of the confinement or is harmed by it.

### § 36: What Constitutes Confinement

- (1) To make the actor liable for false imprisonment, the other's confinement within the boundaries fixed by the actor must be complete.
- (2) The confinement is complete although there is a reasonable means of escape, unless the other knows of it.
- (3) The actor does not become liable for false imprisonment by intentionally preventing another from going in a particular direction in which he has a right or privilege to go.

**false arrest** – 1. An arrest made without proper legal authority. ☉

1. The unlawful restraint and/or imprisonment of a person and an illegal arrest.<sup>36</sup>

1. The unlawful restraint by one person of the physical liberty of another under an asserted legal authority to enforce the processes of the law. **22 Am J2d False Imp §§ 1, 2.** ☹

1. An arrest made by a person with no legal authority to do so. False arrest is both a tort and a crime, and is a form of false imprisonment. Ω

**unlawful arrest** – 1. The taking of a person into custody either without a valid warrant or without **probable cause** to believe that the person has committed a crime. ☉

**arbitrary arrest** – 1. An arrest of a person without probable cause to believe the person committed a crime. ☉

**probable cause for arrest** – A reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused to be guilty. In substance, a reasonable ground for belief in guilt. **Brinegar v United States, 338 US 160, 93 L Ed 1879, 69 S Ct 1302, reh den 338 US 839, 94 L Ed 513, 70 S Ct 31.** ☉

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<sup>36</sup> **Black's Law Dictionary Second Edition Online, "FALSE ARREST":** <http://thelawdictionary.org/false-arrest/>

**malicious prosecution** – 1. The institution of a criminal or civil proceeding for an improper purpose and without probable cause. \* The tort requires proof of four elements:

- (1) the initiation or continuation of a lawsuit;
- (2) lack of **probable cause** for the lawsuit's initiation;
- (3) **malice**; and
- (4) favorable termination of the original lawsuit. *Restatement (Second) of Torts §§ 674-81B (1977)*.

2. The tort claim resulting from the institution of such a proceeding. \* Once a wrongful prosecution has ended in the defendant's favor, he or she may sue for tort damages. — aka (in the context of civil proceedings) *malicious use of process*; (archaically) *malicious institution of civil proceedings*. ☉

1. A criminal prosecution begun in malice, without probable cause to believe it can succeed, and finally ending in failure. **34 Am J1st Mal Pros § 2**.

An action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein. *Shedd v Patterson, 302 III 355, 134 NE 705, 26 ALR 1004; 34 Am J1st Mal Pros § 2*.

An action for the wrong of instituting a civil action without probable cause, especially where there is in such action a seizure of property or of the person of the defendant or other circumstances giving rise to special damages. **34 Am J1st Mal Pros § 10**. — aka *malicious prosecution of civil action*. ☹

Excerpt from Martin L. Newell's *A Treatise on the Law of Malicious Prosecution, False Imprisonment, and the Abuse of Legal Process* (1892):

“Malicious prosecution — *The action of*, defined. — A judicial proceeding, instituted by one person against another from wrongful or improper motives, and without probable cause to sustain it. It is usually called a malicious prosecution; and an action for damages for being subjected to such a suit is called an *action for malicious prosecution*. In strictness, the prosecution might be malicious, that is, brought from unlawful motives, although founded on good cause. But it is well established that unless want of probable cause and malice occur no damages are recoverable.”

Excerpt from 52 Am. Jur. 2d Malicious Prosecution § 2, at 187 (1970):

“The distinction between an *action for malicious prosecution* and an *action for abuse of process* is that a malicious prosecution consists in maliciously causing process to be issued, whereas an abuse of process is the employment of legal process for some purpose other than that which it was intended by the law to effect the improper use of a regularly issued process. For instance, the initiation of vexatious civil proceedings known to be groundless is not abuse of process, but is governed by substantially the same rules as the malicious prosecution of criminal proceedings.”

**probable cause** – 1. *Criminal law*. A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a

crime. \* Under the Fourth Amendment, probable cause — which amounts to more than a bare suspicion but less than evidence that would justify a conviction — must be shown before an arrest warrant or search warrant may be issued. — aka **reasonable cause; sufficient cause; reasonable grounds; reasonable excuse**. ☉

1. A reasonable amount of suspicions, supported by circumstances sufficiently strong to justify a prudent and cautious person's belief that certain facts are probably true. A judge may not issue a search warrant unless she is shown probable cause to believe there is evidence of crime on the premises. A police officer may not make an arrest without a warrant unless he has reasonable cause, based upon reliable information, to believe a crime has been or is being committed. Ω

Excerpt from Wayne R. LaFare & Jerold H. Israel's *Criminal Procedure* (2d ed. 1992):

“Probable cause may not be established simply by showing that the officer who made the challenged arrest or search subjectively believed he had grounds for his action. As emphasized in *Beck v. Ohio* [379 U.S. 89, 85 S.Ct. 223 (1964)]: ‘If subjective good faith alone were the test, the protection of the Fourth Amendment would evaporate, and the people would be “secure in their persons, houses, papers, and effects” only in the discretion of the police.’ The probable cause test, then, is an objective one; for there to be probable cause, the facts must be such as would warrant a belief by a reasonable man.”<sup>37</sup>

**malice** — 1. The intent, without justification or excuse, to commit a wrongful act.

2. Reckless disregard of the law or of a person's legal rights. ☉

1. As a mental element in crime: — sometimes a connotation of ill will, but frequently merely the state of mind prompting a wrongful act without legal justification or excuse. **21 Am J2d Crim L § 86**.

As an element of malicious prosecution: — either personal malice or the malice indicated by an improper motive. **34 Am J1st Mal Pros § 45**.

Not necessarily ill will, hatred, or express malice, but a want of probable cause. ***Schnathorst v Williams*, 240 Iowa 561, 36 NW2d 739, 10 ALR2d 1199**. ∅

Excerpt from John Salmond's *Jurisprudence* (Glanville L. Williams ed., 10th ed. 1947):

“Malice means in law *wrongful intention*. It includes any intent which the law deems wrongful, and which therefore serves as a ground of liability. Any act done with such an intent is, in the language of the law, malicious, and this legal usage has etymology in its favour. The Latin *malitia* means badness, physical or moral wickedness in disposition or in conduct — not specifically or exclusively ill-will or malevolence; hence the malice of English law, including all forms of evil purpose, design, intent, or motive. [But] intent is of two kinds, being either immediate or ulterior, the ulterior intent being commonly distinguished as the motive. The term malice is applied in law to both these forms of intent, and the result is a somewhat puzzling ambiguity which requires careful notice. When we say that an act is done maliciously, we mean... either that it is done intentionally, or that it is done with some wrongful motive.”<sup>38</sup>

<sup>37</sup> Wayne R. LaFare & Jerold H. Israel, *Criminal Procedure* 9 3.3, at 140 (2d ed. 1992).

<sup>38</sup> John Salmond, *Jurisprudence* 384 (Glanville L. Williams ed., 10th ed. 1947).



**malicious abuse of process** – 1. The improper and tortious use of a legitimately issued court process to obtain a result that is either unlawful or beyond the process’s scope. — aka *abuse of legal process; abuse of process; malicious abuse of legal process; wrongful process; wrongful process of law*. ☉

1. The malicious perversion of a regularly issued civil or criminal process, for a purpose, and to obtain a result not lawfully warranted or properly attainable thereby, and for which perversion an action will lie to recover the pecuniary loss sustained. **1 Am J2d Abuse P § 1**.

Malicious use of process is the employment of process for its ostensible purpose, but without reasonable or probable cause, whereas the malicious abuse of process is the employment of a process in a manner not contemplated by law, or to effect a purpose which such a process is not intended by law to effect. **1 Am J2d Abuse P § 2**. ☹

1. The willful and intentional misuse of process for a purpose other than the purpose for which it was designed. Ω

Excerpt from Martin L. Newell’s *A Treatise on the Law of Malicious Prosecution, False Imprisonment, and the Abuse of Legal Process* 7 (1892):

“There is a distinction between a malicious *use* and a malicious *abuse* of legal process. An abuse of legal process is where the party employs it for some unlawful object, not for the purpose which it is intended by law to effect; in other words, it is a perversion of it. For example, if a man is arrested, or his property seized, in order to extort from him, even though it be to pay a just claim, other than that in suit, or to compel him to give up possession of a deed or anything of value not the legal object of the process, it is settled there is an action for such malicious abuse of process. It is not necessary to prove that the action in which the process issued has been determined or to aver that it was sued out without probable cause.”

Excerpt from Restatement (Second) of Torts § 682 (1977):

“One who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed is subject to liability to the other for harm caused by the abuse of process.”

**official immunity** – 1. A legal doctrine which declares that a government official is exempt from **civil liability** for injury resulting from his conduct if his action that caused the injury was within the scope of his authority and required the exercise of discretion. Ω

**qualified immunity** – 1. Immunity from **civil liability** for a public official who is performing a discretionary function, as long as the conduct does not violate clearly established constitutional or statutory rights. — aka *prima facie privilege*. ☉

**civil liability** – 1. Liability imposed under the civil, as opposed to the criminal, law.

2. The quality, state, or condition of being legally obligated for civil damages. ☉



**malice exception** – 1. A limitation on public official's **qualified immunity**, by which the official can face civil liability for **willfully** exercising discretion in a way that violates a known or well-established right. ☒

**constitutional tort** – 1. A violation of one's constitutional rights by a government officer, redressable by a civil action filed directly against the officer. A constitutional tort committed under color of state law (*such as a civil rights violation*) is actionable under 42 USCA § 1983.— Sometimes (informally) shortened to **contort**. ☒

**government tort** – 1. A tort committed by the government through an employee, agent, or instrumentality under its control. \* The tort may or may not be actionable, depending on whether the government is entitled to **sovereign immunity**. A tort action against the US government is regulated by the **Federal Tort Claims Act**, while a state action is governed by the state's tort claims act. ☒

**sovereign immunity** – 1. The principle that the government — specifically, the United States or any state of the United States — is immune from suit except when it consents to be sued, as, for EXAMPLE: through a statute such as the Federal Tort Claims Act. ☒

**Federal Tort Claims Act** – 1. An Act of Congress that allows the federal government to be sued for most torts committed by its employees and agents. The Act largely nullifies the doctrine of sovereign immunity as it applies to the federal government, with some exceptions, including discretionary acts of public officials. ☒

1. A statute that limits federal sovereign immunity and allows recovery in federal court for tort damages caused by federal employees, but only if the law of the state where the injury occurred would hold a private person liable for the injury. **28 USCA §§ 2671-2680** – Abbr. **FTCA**. ☒

**tort-claims act** – 1. A federal or state statute that, under stated circumstances, waives sovereign immunity and allows lawsuits by people who claim they have been injured by the government or its agents and employees. \* These laws typically require the prospective plaintiff to file a claim before starting litigation, giving the government an opportunity to engage in discovery and, sometimes, settle. Although often called tort-claims acts, these laws often apply to contract claims as well. ☒

## Unjust Determinations by Judges and/or Agencies:

**arbitrary and capricious** – 1. A reference to the concept in administrative law that permits a court to substitute its judgment for that of an administrative agency if the agency's decision unreasonably ignores the law or the facts of the case. Ω

**capricious** – 1. (Of a person) characterized by or guided by unpredictable or impulsive behavior; likely to change one's mind suddenly or to behave in unexpected ways.

2. (Of a decree) contrary to the evidence or established rules of law. ⊠

1. Changeable in purpose or view; freakish; whimsical. *United States v Carmack*, 329 US 245, 91 L Ed 209, 67 S Ct 252. ∅

1. Changeable in purpose without reason; based upon whim or impulse rather than upon fact or law; arbitrary. Ω

**caprice** – 1. Arbitrary or unfounded motivation. 2. The disposition to change one's mind impulsively. ⊠

1. A turn of mind without substantial cause, implying willfulness or wantonness in some degree. *Waller v Skelton*, 186 Tenn 433, 211 SW2d 445. ∅

**arbitrary** – 1. Depending on individual discretion; of, relating to, or involving a determination made without consideration of or regard for facts, circumstances, fixed rules, or procedures.

2. (Of a judicial decision) founded on prejudice or preference rather than on reason or fact. \* This type of decision is often termed *arbitrary and capricious*.—*arbitrariness*, *n.* ⊠

1. According to notion or whim rather than according to law. Despotism; without reason. Fixed or arrived at through an exercise of will or by caprice, without consideration or adjustment with reference to principles, circumstance or significance. *United States v Carmac*, 329 US 230 91 L Ed 209, 67 S Ct 252.

A legislative classification of a group of persons is not arbitrary if it is based on substantial difference between that group of persons and all other persons and such difference bears a property relation to the purposes of the statute. *Krebs v Board of Trustees*, 410 Ill 435, 102 NE2d 321, 27 ALR2d 1434. ∅

1. According to notion or whim rather than law; in accordance with personal wishes or one's prejudices, and not on the basis of principles or reason. Ω

**arbitrary decision** – 1. A decision rendered by a court, or judge, or other officer exercising judicial functions which is based upon the will of the officer alone, and not

upon any course of reasoning and exercise of judgment. *Mutual Ben. Life Ins. Co. v Welch*, 71 Okla 59, 175 P 45, 49.

**arbitrary discretion** – 1. Unsound discretion; deciding by whim or caprice; discretion exercised for an erroneous reason. *National Ben. Life Ins. Co v Shaw-Walker Co.* 71 App DC 276, III F2d 497. ☹

**abuse of discretion** – 1. An adjudicator’s failure to exercise sound, reasonable, and legal decision-making.

2. An appellate court’s standard for reviewing a decision that is asserted to be grossly unsound, unreasonable, illegal, or unsupported by the evidence. ☹

1. Decision by whim or caprice, arbitrarily, or from a bad motive which amounts practically to a denial of justice as clearly erroneous conclusion, one that is clearly against logic an effect of the facts presented. **5 Am J2d A & E § 774.**

Abuse of judicial discretion, within the rule that an appellate court will not disturb the discretionary action of the court below unless the discretion was abused, is an exercise of discretionary power to an end or purpose not justified by, and clearly against, reason and evidence. *Re Creane’s Estate*, 201 Okla 354, 206 P2d 726, 9 ALR2d 524.

There is no hard and fast rule by which an abuse of discretion may be determined, but in general an exercise of discretion, not to amount to an abuse, must be legally sound, there must be an honest attempt by the court to do what is right and equitable under the circumstances and the law, without the dictates of whim or caprice. **5 Am J2d A & E § 774.** ☹

1. A judicial or administrative decision so grounded in whim or caprice, or against logic, that it amounts to a denial of justice. ☹

**denial of justice** – 1. *Int’l law.* A defect in a country’s organization of courts or administration of justice, resulting in the country’s violating its international legal duties to protect aliens. \* A denial of justice is a wrongful act under international law. — aka *justitia denegata*; *dé de justice*; *refus de justice*.

**denial of natural justice** – 1. An unjustified and unjustifiable act that violates rules, principles, or notions of fundamental law. ☹



**§ 11 – Statutes of Limitations  
may become *Toiled* (extended)  
if Extraordinary Circumstances  
prevent of Plaintiff from Filing on Time**

**statute of limitations** – 1. A law that bars claims after a specified period; specifically , a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered). The purpose of such a statute is to require diligent prosecution of known claims, thereby providing finality & predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available & fresh. — aka *nonclaim statute*, *limitations period*. ☒

1. Federal and state statutes prescribing the maximum period of time during which various types of civil actions and criminal prosecutions can be brought after the occurrence of the injury or the offense. Ω

Excerpt from *Order of r. R. Telegraphers v. Railway Express Agency*, 321 348-49, 64 S. Ct. 582, 586 (1944):

“Statutes of limitations, like the equitable **doctrine of laches**, in their conclusive effects are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.”

2. A statute establishing a time limit for prosecuting a crime, based on the date when the offense occurred. — Abbr. *S/L*; *SOL*.

Excerpt from *Toussle v. U.S.* 397 U.S. 112, 90 S.Ct. 858 (1970):

“The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far distance past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity.” ☒

### **Statute of Limitations re: FALSE ARREST (page 69) Cases:**

Excerpt from *Represent Yourself in Court; How to Prepare and Try a Winning Case* (7th ed.) by Paul Bergman and Sara J. Berman (NOLO):

“**EXAMPLE:** After Andre was convicted of murder, the conviction was set aside by an appellate court because Andrew’s arrest was illegal. After the charges were dropped, Andre sued the arresting officers and the city for false arrest. Andre argued that the statute of limitations did not begin to run until the murder charges were dropped. However, because false arrest consists of “detention without legal process,” the statute of limitations on Andre’s lawsuit began to run much earlier, on the date that he was taken to court and charged with murder. (*Wallace v. Kato*, 549 U.S. 1362 (2007).)”<sup>39</sup>

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<sup>39</sup> *Represent Yourself in Court; How to Prepare & Try a Winning Case* (7th ed.) by Paul Bergman and Sara J. Berman. (p.44-45) NOLO. ISBN-13: 978-1-4133-1269-0

**tolling the statute** – 1. The *suspension or interruption of the statute of limitations* by reason of circumstances such as absence of the defendant from the state, concealment to avoid the service or process, etc. **21 Am J2d Crim L § 158; 34 Am J1st Lim Ac §§ 186 et seq.** ☺

1. A law that interrupts the running of a statute of limitations in certain situations, as when the defendant cannot be served with process in the forum jurisdiction. ☺

1. A term referring to circumstances that, by operation of law, suspend or interrupt the running of the statute of limitations. ☺

**toll** – 1. To suspend or interrupt the running of the statute of limitations. **21 Am 21 Am J2d Crim L § 158; 34 Am J1st Lim Ac §§ 186 et seq.** ☺

**suspension of statute of limitations** – 1. The lifting of a statute of limitations from a *cause of action* because of certain circumstances such as disability of the plaintiff, the absence of the defendant from the state, concealment of cause of action, etc. **34 Am J1st Lim Ac §§ 186 et seq.** ☺

**interruption of statute** – 1. The suspension of the running of a statute of limitations. **34 Am J1st Lim Ac §§ 186 et seq.** ☺

**equitable tolling** – 1. The doctrine that the statute of limitations will not bar a claim if the plaintiff, despite diligent efforts, did not discover the injury until after the limitations period had expired, in which case the statute is upended or tolled until the plaintiff discovers the injury. \* Equitable tolling does not require misconduct such as concealment by the defendant.

2. The doctrine that if a plaintiff files a suit first in one court and then refiles in another, the statute of limitations does not run when the litigation is pending in the first court if various requirements are not met. \* Among those requirements are

- (1) timely notice to the defendant;
- (2) no prejudice to the defendant; and
- (3) reasonable and good-faith conduct on the part of the plaintiff.

3. A court's discretionary extension of a legal deadline as a result of extraordinary circumstances that prevented one from complying despite reasonable diligence throughout the period before the deadline passed. ☺

It has been held that equitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights. However, it has also been held that the equitable tolling doctrine does not require wrongful conduct on the part of the defendant, such as fraud or misrepresentation.<sup>40</sup>

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40 **51 American Jurisprudence 2d Limitation of Actions § 174 (2007).**

**accrual rule** – 1. A doctrine delaying the existence of a claim until the plaintiff has discovered it. \* The accrual rule arose in fraud cases as an exception to the general limitations rule that a claim comes into existence once the plaintiff knows, or with due diligence should know, facts to form the bases for a cause of action. See *Merck & Co. v. Reynolds*, 559 U.S. 633, 646-47, 130 S.Ct. 1784, 1794-95 (2010). ☹

**accrual of cause of action** – 1. The event whereby a cause of action becomes complete so that the aggrieved party can begin and maintain his cause of action.

A cause may accrue at the moment of the wrong, default, or delict by the defendant and the injury to the plaintiff, although the actual damage resulting therefrom may not be discovered until some time afterward, if the injury, however slight, is complete at the time of the act. *Eising v Andrews*, 66 Conn 58, 1 Am J2d Actions § 88.

As a general proposition, a cause of action accrues the moment it comes into existence. 34 Am J1st Lim Ac § 113. ☹

1. The point in time when a cause of action becomes complete so that the aggrieved party can file a lawsuit. Generally, a cause of action accrues at the moment the wrong occurs. ☹

**cause of action** – 1. A term difficult of precise definition, perhaps best defined as the fact or facts which establish or give rise to a right of action, in other words, give to a person a right to judicial relief; *Fielder v Ohio Edison Co.* 158 Ohio St 375, 109 NE2d 855, 35 ALR2d 1365.

More, summarily defined, a cause of action is the right which a party has to institute a judicial proceeding. 1 Am J2d Actions § 1.

A cause of action is to be distinguished from right of action. A right of action is the right to enforce presently a cause of action, that is, it is the operative fact or facts which give rise to a right of action. 1 Am J2d Actions § 2.

A cause of action is a matter of substance concerned with the violation of a right, not a matter of remedy. 34 Am J1st Lim Ac § 45.

But “cause of action” is synonymous with “action” in the sense that the survival of an “action” is the survival of a “cause of action.” 1 Am J2d Abat & R § 1. ☹

1. Circumstances that give a person the right to bring a lawsuit and to receive relief from a court. ☹

1. A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person; **CLAIM (4)** <after the crash, Aronson had a cause of action>. ☹



**discovery rule** – 1. *Civil procedure*. The rule that a limitations period does not begin to run until the plaintiff discovers (or reasonably should have discovered) the injury giving rise to the claim. \* The discovery rule usually applies to injuries that are inherently difficult to detect, such as those resulting from medical malpractice. ☒

**occurrence rule** – 1. *Civil procedure*. The rule that a limitations period begins to run when the alleged wrongful act or omission occurs, rather than when the plaintiff discovers the injury. \* This rule applies, for example, to most breach-of-contract claims. ☒

**laches** – [Law French “remissness; slackness”] 1. Unreasonable delay in pursuing a right or claim — almost always are equitable one — in a way that prejudices the party against whom relief is sought. — aka *sleeping on rights*.

2. The equitable doctrine by which a court denies relief to a claimant who has unreasonably delayed in asserting the claim, when that delay has prejudiced the party against whom relief is sought. ☒

1. A doctrine, otherwise known as the doctrine of state demand, by which equitable relief is denied to one who has been guilty of unconscionable delay, as shown by surrounding facts and circumstances, in seeking that relief. **Anno: 34 ALR2d 1314 § 1**. More precisely, such neglect or omission to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar to relief in equity. **Re O’Donnell’s Estate, 8 I11 App 2d 348, 132 NE2d 74; Boehnke v Roenfanz, 246 Iowa 240, 67 NW2d 585, 54 ALR2d 1; Simmerman v Ft. Hartford Coal Co. 310 Ky 572, 221 SW2d 442, 11 ALR2d 381; Aronovitch v Levy, 238 Minn 237, 56 NW2d 570, 34 ALR2d 1306.** ☹

1. The equitable doctrine that a plaintiff’s neglect or failure to assert a right that may cause the court to deny him relief if, as a result, the defendant has changed position so that the defendant’s rights are at risk. Ω

Excerpt from William F. Walsh’s *A Treatise on Equity*:

“The doctrine of laches... is an instance of the exercise of the reserved power of equity to withhold relief otherwise regularly given where in the particular case the granting of such relief would be unfair or unjust.”<sup>41</sup>

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41 William F. Walsh, *A Treatise on Equity* 472 (1930)



# **§ 12 -Representing Yourself in Court**

## **Filing as a Pro Se Litigant**

The term “pro se” (or “pro per”) is an abbreviated form of the Latin term *propria persona*, which translates “on behalf of themselves.” To advocate “pro se” means *to advocate on one’s own behalf before a court* rather than being represented by a lawyer, which may be done while acting as the plaintiff *or* defendant in a civil case, *or* as a defendant in a criminal case.<sup>42</sup>

Within most pro se self-help sections within various official courthouse websites is that Black’s Law Dictionary and Ballantine’s Law Dictionary are both recommended as credible sources. As you can see, these dictionaries are cited throughout this book (see “References” in front of book).

Although rigorous study is important prior to entering into a court and attempting to present on behalf of your own case, there *are* Supreme Court Rulings that work in favor of pro se litigants, such as:

*Haines v. Kerner*, 404 U. S. 519 (1972) (*per curiam*):

“[A]llegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence... under the allegations of the pro se complaint [are held] to ‘less stringent standards’ than formal pleadings drafted by lawyers.”

*Baldwin County Welcome Center v. Brown*, 466 U. S. 147 (1984) (*per curiam*):

“Pleadings shall be so construed as to do substantial justice. We frequently have stated that pro se pleadings are to be given a liberal construction.”

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<sup>42</sup> Madelynn Herman (September 25, 2006). “Self-Representation: Pro Se Statistics”. National Center for State Courts. Archived from the original on 2012-05-04.

## § 13 - California Statutes

### Note

Legal terms (including synonyms) found within statutes are underlined to indicate definitions are located within this book. See the index in the back of the book to find the page number in which the definition is located. When a synonym is underlined, the actual term that is found in the index is underlined, italicized, and written in parentheses immediately after the statute.

### Notice

Although Title by Prescription and Adverse are sparsely mentioned throughout California statutes,<sup>43</sup> “title by adverse possession may be established either pursuant to common law or statutory provisions.” **Me. —*Colquhoun v. Webber*, 684 A.2d 405 (Me. 1996)**. Sections of the law which do not pertain to aforementioned information are omitted from this publication.

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43 California Legislative Information *code search*: <https://leginfo.legislature.ca.gov/faces/codes.xhtml>

# Time for Commencing a Civil Action to Recover Real Property

Statutes pertaining to *recovering real property from lawful possessors* are located within in California's *Code of Civil Procedure*.

## CODE OF CIVIL PROCEDURE – CCP

### PART 2. OF CIVIL ACTIONS

#### TITLE 2. OF THE TIME OF COMMENCING CIVIL ACTIONS

#### CHAPTER 2. The Time of Commencing Actions for the Recovery of Real Property

#### **318.**

No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question, within five years before the commencement of the action.

#### **319.**

No cause of action, or defense to an action, arising out of the title to real property, or to rents or profits out of the same, can be effectual, unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted, or the defense is made, or the ancestor, predecessor, or grantor of such person was seized or possessed of the premises in question within five years before the commencement of the Act in respect to which such action is prosecuted or defense made.

#### **320.**

No entry upon real estate is deemed sufficient or valid as a claim, unless an action be commenced thereupon within one year after making such entry, and within five years from the time when the right to make it descended or accrued. (*see accrual of cause of action*)

#### **321.**

In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title, for five years before the commencement of the action. (*see occupancy*)

#### **322.**

When it appears that the occupant, or those under whom he claims, entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument, as being a conveyance of the property in question, or upon the decree or judgment of a competent Court, and that there has been a continued occupation and possession of the property included in such instrument, decree, or judgment, or of some part of the property, under such claim, for five years, the property so included is deemed to have been held adversely, except that when it consists of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot of the same tract.

### **323.**

For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

1. Where it has been usually cultivated or improved;
2. Where it has been protected by a substantial inclosure;
3. Where, although not inclosed, it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry, or for pasturage, or for the ordinary use of the occupant;
4. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared, or not inclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

### **324.**

Where it appears that there has been an actual continued occupation of land, under a claim of title, exclusive of any other right, but not founded upon a written instrument, judgment, or decree, the land so actually occupied, and no other, is deemed to have been held adversely.

### **325.**

- (a) For the purpose of constituting an adverse possession by a person claiming title, not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:
- (1) Where it has been protected by a substantial enclosure.
  - (2) Where it has been usually cultivated or improved.
- (b) In no case shall adverse possession be considered established under the provision of any section of this code, unless it shall be shown that the land has been occupied and claimed for the period of five years continuously, and the party or persons, their predecessors and grantors, have timely paid all state, county, or municipal taxes that have been levied and assessed upon the land for the period of five years during which the land has been occupied and claimed. Payment of those taxes by the party or persons, their predecessors and grantors shall be established by certified records of the county tax collector.

### **326.**

When the relation of landlord and tenant has existed between any persons, the possession of the tenant is deemed the possession of the landlord until the expiration of five years from the termination of the tenancy, or, where there has been no written lease, until the expiration of five years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions cannot be made after the periods herein limited.

### **327.**

The right of a person to the possession of real property is not impaired or affected by a descent cast in consequence of the death of a person in possession of such property. (*see right of possession*)

### **328.**

If a person entitled to commence an action for the recovery of real property, or for the recovery of the possession thereof, or to make an entry or defense founded on the title to real property, or to rents or services out of the property, is, at the time title first descends or accrues, either under the age of majority or lacking legal capacity to make decisions, the time, not exceeding 20 years, during which the disability continues is not deemed a portion of the time in this chapter limited for the commencement of the action, or the making of the entry or defense, but the action may be commenced, or entry or defense made, within the period of five years after the disability shall cease, or after the death of the person entitled, who shall die under the disability. The action shall not be commenced, or entry or defense made, after that period.

### **328.5.**

If a person entitled to commence an action for the recovery of real property, or for the recovery of the possession thereof, or to make any entry or defense founded on the title to real property, or to rents or services out of the property, is, at the time the title first descends or accrues, imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term less than life, the time, not exceeding two years, during which imprisonment continues is not deemed any portion of the time in this chapter limited for the commencement of the action, or the making of the entry or defense, but the action may be commenced, or entry or defense made, within the period of five years after the imprisonment ceases, or after the death of the person entitled, who dies while imprisoned; but the action shall not be commenced, or entry or defense made, after that period. <sup>44</sup>

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**44 California Legislative Information, CODE OF CIVIL PROCEDURE – PART 2. OF CIVIL ACTIONS – TITLE 2. OF THE TIME OF COMMENCING CIVIL ACTIONS – CHAPTER 2. The Time of Commencing Actions for the Recovery of Real Property:**  
[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CCP&division=&title=2.&part=2.&chapter=2.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CCP&division=&title=2.&part=2.&chapter=2.&article=)



# Acquiring Property via Occupancy

Statutes pertaining to *acquiring property through occupancy* are located within California's *Civil Code*.

## CIVIL CODE – CIV

### DIVISION 2. PROPERTY

#### PART 4. ACQUISITION OF PROPERTY

#### TITLE 1. MODES IN WHICH PROPERTY MAY BE ACQUIRED

#### 1000.

Property is acquired by:

1. Occupancy;
2. Accession;
3. Transfer;
4. Will; or,
5. Succession.

**accession** – When one party takes charge of another's property or records by a contract that both parties agree to.<sup>45</sup>

#### TITLE 2. OCCUPANCY

#### 1006.

Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession; but the title conferred by occupancy is not a sufficient interest in real property to enable the occupant or the occupant's privies to commence or maintain an action to quiet title, unless the occupancy has ripened into title by prescription.

#### 1007.

Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar any action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all, but no possession by any person, firm or corporation no matter how long continued of any land, water, water right, easement, or other property whatsoever dedicated to a public use by a public utility, or dedicated to or owned by the state or any public entity, shall ever ripen into any title, interest or right against the owner thereof.<sup>46</sup>

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<sup>45</sup> **Black's Law Dictionary *Second Edition*, "ACCESSION":** <https://thelawdictionary.org/accession/>

<sup>46</sup> **California Civil Code Division 2. Property – PART 2. ACQUISITION OF PROPERTY:**

[https://leginfo.legislature.ca.gov/faces/codes\\_displayexpandedbranch.xhtml?tocCode=CIV&division=2.&title=&part=4.&chapter=&article=](https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=CIV&division=2.&title=&part=4.&chapter=&article=)

# Quieting Title

Statutes pertaining to *quieting title* (page 30) are found within California's *Code of Civil Procedure*:

**CODE OF CIVIL PROCEDURE – CCP**  
**PART 2. OF CIVIL ACTIONS**  
**TITLE 10. ACTIONS IN PARTICULAR CASES**  
**CHAPTER 4. Quiet Title**  
**ARTICLE 1. General Provisions**

**760.010.**

As used in this chapter:

- (a) “Claim” includes a legal or equitable right, title, estate, lien, or interest in property or cloud upon title.
- (b) “Property” includes real property, and to the extent applicable, personal property.

*(see legal title, legal right, equitable title, equitable lien, equitable interest, and cloud on title)*

**760.020.**

- (a) An action may be brought under this chapter to establish title against adverse claims to real or personal property or any interest therein.
- (b) An action may be brought under this chapter by parties to an agreement entered into pursuant to Section 6307 or 6357 of the Public Resources Code to confirm the validity of the agreement.
- (c) Nothing in this section shall be construed to limit the right of members of the public to bring or participate in actions challenging the validity of agreements entered into pursuant to Section 6307 or 6357 of the Public Resources Code.

**760.030.**

- (a) The remedy provided in this chapter is cumulative and not exclusive of any other remedy, form or right of action, or proceeding provided by law for establishing or quieting title to property.
- (b) In an action or proceeding in which establishing or quieting title to property is in issue the court in its discretion may, upon motion of any party, require that the issue be resolved pursuant to the provisions of this chapter to the extent practicable.

**760.040.**

- (a) The superior court has jurisdiction of actions under this chapter.
- (b) The court has complete jurisdiction over the parties to the action and the property described in the complaint and is deemed to have obtained possession and control of the property for the purposes of the action with complete jurisdiction to render the judgment provided for in this chapter.
- (c) Nothing in this chapter limits any authority the court may have to grant such equitable relief as may be proper under the circumstances of the case.

**760.050.**

Subject to the power of the court to transfer actions, the proper county for the trial of an action under this chapter is:

- (a) Where the subject of the action is real property or real and personal property, the county in which the real property, or some part thereof, is located.
- (b) Where the subject of the action is personal property, the county in which the personal property is principally located at the commencement of the action or in which the defendants, or any of them, reside at the commencement of the action.

**760.060.**

The statutes and rules governing practice in civil actions generally apply to actions under this chapter except where they are inconsistent with the provisions of this chapter.

**ARTICLE 2. Commencement of Action**

**761.010.**

- (a) An action under this chapter is commenced by filing a complaint with the court.
- (b) Immediately upon commencement of the action, the plaintiff shall file a notice of the pendency of the action in the office of the county recorder of each county in which any real property described in the complaint is located.

**761.020.**

The complaint shall be verified and shall include all of the following:

- (a) A description of the property that is the subject of the action. In the case of tangible personal property, the description shall include its usual location. In the case of real property, the description shall include both its legal description and its street address or common designation, if any.
- (b) The title of the plaintiff as to which a determination under this chapter is sought and the basis of the title. If the title is based upon adverse possession, the complaint shall allege the specific facts constituting the adverse possession.
- (c) The adverse claims to the title of the plaintiff against which a determination is sought.
- (d) The date as of which the determination is sought. If the determination is sought as of a date other than the date the complaint is filed, the complaint shall include a statement of the reasons why a determination as of that date is sought.
- (e) A prayer for the determination of the title of the plaintiff against the adverse claims.

**761.030.**

- (a) The answer shall be verified and shall set forth:
  - (1) Any claim the defendant has.
  - (2) Any facts tending to controvert such material allegations of the complaint as the defendant does not wish to be taken as true.
  - (3) A statement of any new matter constituting a defense.
- (b) If the defendant disclaims in the answer any claim, or suffers judgment to be taken without answer, the plaintiff shall not recover costs.

**761.040.**

- (a) The defendant may by cross-complaint seek affirmative relief in the action.
- (b) If the defendant seeks a determination of title as of a date other than the date specified in the complaint, the cross-complaint shall include the date and a statement of the reasons why a determination as of that date is sought.

**ARTICLE 3. Defendants**

**762.010.**

The plaintiff shall name as defendants in the action the persons having adverse claims to the title of the plaintiff against which a determination is sought.

**762.020.**

- (a) If the name of a person required to be named as a defendant is not known to the plaintiff, the plaintiff shall so state in the complaint and shall name as parties all persons unknown in the manner provided in Section 762.060.
- (b) If the claim or the share or quantity of the claim of a person required to be named as a defendant is unknown, uncertain, or contingent, the plaintiff shall so state in the complaint. If the lack of knowledge, uncertainty, or contingency is caused by a transfer to an unborn or unascertained person or class member, or by a transfer in the form of a contingent remainder, vested remainder subject to defeasance, executory interest, or similar disposition, the plaintiff shall also state in the complaint, so far as is known to the plaintiff, the name, age, and legal disability (if any) of the person in being who would be entitled to the claim had the contingency upon which the claim depends occurred prior to the commencement of the action.

**762.030.**

- (a) If a person required to be named as a defendant is dead and the plaintiff knows of a personal representative, the plaintiff shall join the personal representative as a defendant.
- (b) If a person required to be named as a defendant is dead, or is believed by the plaintiff to be dead, and the plaintiff knows of no personal representative:
  - (1) The plaintiff shall state these facts in an affidavit filed with the complaint.
  - (2) Where it is stated in the affidavit that such person is dead, the plaintiff may join as defendants "the testate and intestate successors of \_\_\_\_ (naming the deceased person), deceased, and all persons claiming by, through, or under such decedent," naming them in that manner.
  - (3) Where it is stated in the affidavit that such person is believed to be dead, the plaintiff may join the person as a defendant, and may also join "the testate and intestate successors of \_\_\_\_ (naming the person) believed to be deceased, and all persons claiming by, through, or under such person," naming them in that manner.

**762.040.**

The court upon its own motion may, and upon motion of any party shall, make such orders as appear appropriate:

- (a) For joinder of such additional parties as are necessary or proper.
- (b) Requiring the plaintiff to procure a title report and designate a place where it shall be kept for inspection, use, and copying by the parties.

**762.050.**

Any person who has a claim to the property described in the complaint may appear in the proceeding. Whether or not the person is named as a defendant in the complaint, the person shall appear as a defendant.

**762.060.**

- (a) In addition to the persons required to be named as defendants in the action, the plaintiff may name as defendants "all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to plaintiff's title, or any cloud upon plaintiff's title thereto," naming them in that manner.
- (b) In an action under this section, the plaintiff shall name as defendants the persons having adverse claims that are of record or known to the plaintiff or reasonably apparent from an inspection of the property.
- (c) If the plaintiff admits the validity of any adverse claim, the complaint shall so state.

**762.070.**

A person named and served as an unknown defendant has the same rights as are provided by law in cases of all other defendants named and served, and the action shall proceed against unknown defendants in the same manner as against other defendants named and served, and with the same effect.

**762.080.**

The court upon its own motion may, and upon motion of any party shall, make such orders for appointment of guardians ad litem as appear necessary to protect the interest of any party.

**762.090.**

- (a) The state may be joined as a party to an action under this chapter.
- (b) This section does not constitute a change in, but is declaratory of, existing law.

**ARTICLE 4. Service of Process**

**763.010.**

- (a) The form, content, and manner of the service of summons shall be the same as in civil actions generally.
- (b) If upon affidavit it appears to the satisfaction of the court that the plaintiff has used reasonable diligence to ascertain the identity and residence of and to serve summons on the persons named as unknown defendants and persons joined as testate or intestate successors of a person known or believed to be dead, the court shall order service by publication pursuant to Section 415.50 and the provisions of this article. The court may, in its discretion, appoint a referee to investigate whether the plaintiff has used reasonable diligence to ascertain the identity and residence of persons sought to be served by publication, and the court may rely on the report of the referee instead of the affidavit of the plaintiff in making the order for service by publication.
- (c) Nothing in this section authorizes service by publication upon any person named as an unknown defendant who is in open and actual possession of the property.

**763.020.**

Whenever the court orders service by publication, the order is subject to the following conditions:

- (a) The plaintiff shall post, not later than 10 days after the date the order is made, a copy of the summons and complaint in a conspicuous place on the real property that is the subject of the action.
- (b) The plaintiff shall record, if not already recorded, a notice of the pendency of the action.
- (c) The publication shall describe the property that is the subject of the action. In addition to particularly describing the property, the publication shall describe the property by giving its street address, if any, or other common designation, if any; but, if a legal description of the property is given, the validity of the publication shall not be affected by the fact that the street address or other common designation recited is erroneous or that the street address or other common designation is omitted.

**763.030.**

- (a) Whenever the court orders service by publication, the publication may:
  - (1) Name only the defendants to be served thereby.
  - (2) Describe only the property in which the defendants to be served thereby claim interests.
- (b) Judgment against a defendant who fails to appear and answer following service under this section shall be conclusive against the defendant named in respect only to property described in the publication.

**763.040.**

Whenever the court orders service by publication, the court before hearing the case shall require proof that the summons has been served, posted, published as required, and that the notice of pendency of action has been filed.

**ARTICLE 5. Judgment**

**764.010.**

The court shall examine into and determine the plaintiff's title against the claims of all the defendants. The court shall not enter judgment by default but shall in all cases require evidence of plaintiff's title and hear such evidence as may be offered respecting the claims of any of the defendants, other than claims the validity of which is admitted by the plaintiff in the complaint. The court shall render judgment in accordance with the evidence and the law.

**764.020.**

- (a) If in an action under this chapter the validity or interpretation of a gift, devise, bequest, or trust, under a will or instrument purporting to be a will, whether admitted to probate or not, is involved:
  - (1) The will or instrument purporting to be a will is admissible in evidence.
  - (2) All questions concerning the validity of the gift, devise, bequest, or trust shall be finally determined in the action.
  - (3) If the will has been admitted to probate and the gift, devise, bequest, or trust has been interpreted by a final decree of the probate court, the interpretation is conclusive as to the proper construction thereof.

(b) Nothing in this section deprives a party of the right to a jury trial in any case where, by law, the right is now given.

**764.030.**

The judgment in the action is binding and conclusive on all of the following persons, regardless of any legal disability:

- (a) All persons known and unknown who were parties to the action and who have any claim to the property, whether present or future, vested or contingent, legal or equitable, several or undivided.
- (b) Except as provided in Section 764.045, all persons who were not parties to the action and who have any claim to the property which was not of record at the time the lis pendens was filed or, if none was filed, at the time the judgment was recorded.

**764.045.**

Except to the extent provided in Section 1908, the judgment does not affect a claim in the property or part thereof of any person who was not a party to the action if any of the following conditions is satisfied:

- (a) The claim was of record at the time the lis pendens was filed or, if none was filed, at the time the judgment was recorded.
- (b) The claim was actually known to the plaintiff or would have been reasonably apparent from an inspection of the property at the time the lis pendens was filed or, if none was filed, at the time the judgment was entered. Nothing in this subdivision shall be construed to impair the rights of a bona fide purchaser or encumbrancer for value dealing with the plaintiff or the plaintiff's successors in interest.

**764.060.**

The relief granted in an action or proceeding directly or collaterally attacking the judgment in the action, whether based on lack of actual notice to a party or otherwise, shall not impair the rights of a purchaser or encumbrancer for value of the property acting in reliance on the judgment without knowledge of any defects or irregularities in the judgment or the proceedings.

**764.070.**

Notwithstanding any other provision of this chapter, the judgment in the action is not binding or conclusive on the following:

- (a) The state, unless individually joined as a party to the action.
- (b) The United States, unless the United States is individually joined as a party to the action and federal law authorizes judgment in the action to be binding or conclusive as to its interests.

**764.080.**

(a) In any action brought to quiet title to land that has been subject to an agreement entered into pursuant to Section 6307 or 6357 of the Public Resources Code, at the time set for trial the court shall, at the request of any party, receive evidence on the nature of the agreement. After receiving that evidence, the court shall render a statement of decision. In the case of an agreement pursuant to Section 6357, the statement of decision shall include a recitation of the underlying facts and a determination whether the agreement

meets the criteria of Section 6357 and other law applicable to the validity of boundary line agreements. In the case of an agreement pursuant to Section 6307, the statement of decision shall recite the relevant facts and shall contain a determination whether the requirements of Section 6307 of the Public Resources Code, Sections 3 and 4 of Article 10 of the California Constitution, and other applicable law have been met. If the court finds the agreement to be valid, the judgment in the action shall quiet title in the parties named in the agreement in accordance with the agreement. If the judgment is entered prior to the effective date of the agreement, the judgment shall provide that, upon the effective date, title is quieted in the parties in accordance with the agreements. However, no action may be brought pursuant to this section until the State Lands Commission has approved the agreement following a public hearing. All such actions shall be set on the trial calendar within one year from the filing of a memorandum to set, unless the court extends this time for good cause.

- (b) Nothing in this section shall be construed to limit the right of members of the public to bring or participate in actions challenging the validity of agreements entered into pursuant to Section 6307 or 6357 of the Public Resources Code. Any action brought by a member of the public shall be set on the trial calendar within one year from the filing of a memorandum to set, unless the court extends this time for good cause.

**ARTICLE 6. Liens and Encumbrances**

**765.010.**

- (a) For purposes of this section:
  - (1) "Harass" means engage in knowing and willful conduct that serves no legitimate purpose.
  - (2) "Entity" includes both governmental and private entities.
- (b) A person shall not file or record, or direct another to file or record, a lawsuit, lien, or other encumbrance, including a notice of lis pendens, against another person or entity knowing it is false, with the intent to harass the person or entity or to influence or hinder the person in discharging his or her official duties if the person is a public officer or employee.
- (c)
  - (1) A person or entity whose property is subject to a lien or encumbrance in violation of this section may petition the superior court of the county in which the person or entity resides or in which the property is located for an order, which may be granted ex parte, directing the lien or other encumbrance claimant to appear at a hearing before the court and show cause why the lien or other encumbrance should not be stricken and other relief provided by this article should not be granted.
  - (2) The court shall schedule the hearing no earlier than 14 days after the date of the order. The scheduled date of the hearing shall allow adequate time for notice of the hearing.

**765.020.**

A petition under this article shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or the petitioner's attorney setting forth a concise statement of the facts upon which the motion is based. The petition and affidavit shall be in substantially the form prescribed by the Judicial Council.



#### **765.030.**

If the court determines that the lien or other encumbrance is in violation of Section 765.010, the court shall issue an order striking and releasing the lien or other encumbrance and may award costs and reasonable attorney's fees to the petitioner to be paid by the lien or other encumbrance claimant. If the court determines that the lien or other encumbrance is valid, the court shall issue an order so stating and may award costs and reasonable attorney's fees to the encumbrance claimant to be paid by the petitioner. The court may direct that an order issued pursuant to this section be recorded.

#### **765.040.**

Any lien or encumbrance claimant who records or files, or directs another to record or file, a lawsuit, lien, or other encumbrance in violation of Section 765.010 shall be liable to the person subject to the lawsuit or the owner of the property bound by the lien or other encumbrance for a civil penalty of up to five thousand dollars (\$5,000).

#### **765.050.**

This article does not apply to a document which acts as a claim of encumbrance by a financial institution, as defined in subdivision (a) of Section 14161 of the Penal Code or Section 481.113 of this code, or a public entity, as defined in Section 481.200 of this code.

#### **765.060.**

If a lien or other encumbrance is recorded or filed against a public officer or employee in violation of Section 765.010, the state or local agency that employs the public officer or employee may provide counsel for the public officer or employee in an action brought pursuant to that section.<sup>47</sup>

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<sup>47</sup> **California Legislative Information, "CODE OF CIVIL PROCEDURE – PART 2. OF CIVIL ACTIONS – TITLE 10. ACTIONS IN PARTICULAR CASES – CHAPTER 4. Quiet Title":**

[https://leginfo.legislature.ca.gov/faces/codes\\_displayexpandedbranch.xhtml?tocCode=CCP&division=&title=10.&part=2.&chapter=4.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=CCP&division=&title=10.&part=2.&chapter=4.&article=)

# Trespassing

*Trespassing (page 46) statutes are found within California's Penal Code:*

**PENAL CODE – PEN  
PART 1. OF CRIMES AND PUNISHMENTS  
TITLE 14. MALICIOUS CONDUCT**

**602.**

Except as provided in subdivisions (u), (v), and (x), and Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

- (i) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.
- (k) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent, or the person in lawful possession.
- (l) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent, or the person in lawful possession, and any of the following:
  - (1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent, or by the person in lawful possession to leave the lands.
- (m) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.
- (o) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by
  - (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or
  - (2) The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent, or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed 12 months when the premises or property is closed to the public and posted as being closed. The requestor shall inform the law enforcement

agency to which the request was made when the assistance is no longer desired, before the period not exceeding 12 months expires. The request for assistance shall expire upon transfer of ownership of the property or upon a change in the person in lawful possession. .... this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.<sup>48</sup>

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48 **California Legislative Information, PENAL CODE – PART 1. OF CRIMES AND PUNISHMENTS – TITLE 14. MALICIOUS MISCHIEF:**  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=602.](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=602)

# Forcible Entry and Detainer

*Forcible entry and detainer (page 50)* statutes are found within California's Penal Code:

**CODE OF CIVIL PROCEDURE – CCP  
PART 3. OF SPECIAL PROCEEDINGS OF A CIVIL NATURE  
TITLE 3. OF SUMMARY PROCEEDINGS**

**CHAPTER 4. Summary Proceedings for Obtaining Possession of Real Property in Certain Cases**

**1159.**

- (a) Every person is guilty of a forcible entry who either:
- (1) By breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror enters upon or into any real property.
  - (2) Who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession.
- (b) For purposes of this section, "party in possession" means any person who hires real property and includes a boarder or lodger, except those persons whose occupancy is described in subdivision (b) of Section 1940 of the Civil Code.

**1160.**

- (a) Every person is guilty of a forcible detainer who either:
- (1) By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise.
  - (2) Who, in the night-time, or during the absence of the occupant of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the period of five days, refuses to surrender the same to such former occupant.
- (b) The occupant of real property, within the meaning of this section is one who, within five days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

**1170.8.**

In any action under this chapter, a discovery motion may be made at any time upon giving five days' notice.

**1171.**

Whenever an issue of fact is presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in an action of the same jurisdictional classification in the Court in which the action is pending.

**1172.**

On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was

entitled to the possession at the time of the forcible detainer. The defendant may show in his defense that he or his ancestors, or those whose interest in such premises he claims, have been in the quiet possession thereof for the space of one whole year together next before the commencement of the proceedings, and that his interest therein is not then ended or determined; and such showing is a bar to the proceedings.

### **1173.**

When, upon the trial of any proceeding under this chapter, it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible or unlawful detainer, and other than the offense charged in the complaint, the Judge must order that such complaint be forthwith amended to conform to such proofs; such amendment must be made without any imposition of terms. No continuance shall be permitted upon account of such amendment unless the defendant, by affidavit filed, shows to the satisfaction of the Court good cause therefor.

### **1174.**

- (a) If upon the trial, the verdict of the jury, or, if the case be tried without a jury, the findings of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the possession of the premises; and if the proceedings be for an unlawful detainer after neglect, or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of that lease or agreement if the notice required by Section 1161 states the election of the landlord to declare the forfeiture thereof, but if that notice does not so state that election, the lease or agreement shall not be forfeited....
- (b) The jury or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent. If the defendant is found guilty of forcible entry, or forcible or unlawful detainer, and malice is shown, the plaintiff may be awarded statutory damages of up to six hundred dollars (\$600), in addition to actual damages, including rent found due. The trier of fact shall determine whether actual damages, statutory damages, or both, shall be awarded, and judgment shall be entered accordingly.
- (c) [this section pertains only to rental situations]
- (d) Subject to subdivision (c), the judgment for possession of the premises may be enforced as provided in Division 3 (commencing with Section 712.010) of Title 9 of Part 2.
- (e) [sections (e) – (m) pertain only to rental situations]

### **1174.25.**

- (a)
  - (1) Except as provided in paragraph (2), an occupant who is served with a prejudgment claim of right to possession in accordance with Section 415.46 may file a claim as prescribed in Section 415.46, with the court within 10 days of the date of service of the prejudgment claim of right to possession as shown on the return of service, which period shall include Saturday and Sunday but exclude all other judicial holidays. If the last day for filing the claim falls on a Saturday or Sunday, the filing period shall be extended to and including the next court day. Filing the prejudgment claim of right to possession shall constitute a general appearance for which a fee shall be collected as provided in Section 70614 of the Government Code. Section 68511.3 of the Government Code applies to the

prejudgment claim of right to possession.

- (2) In an action as described in paragraph (2) of subdivision (e) of Section 415.46, an occupant may file a prejudgment claim of right to possession at any time before judgment is entered.
- (b) At the time of filing, the claimant shall be added as a defendant in the action for unlawful detainer and the clerk shall notify the plaintiff that the claimant has been added as a defendant in the action by mailing a copy of the claim filed with the court to the plaintiff with a notation so indicating. The claimant shall answer or otherwise respond to the summons and complaint within five days, including Saturdays and Sundays, but excluding all other judicial holidays, after filing the prejudgment claim of possession. Thereafter, the name of the claimant shall be added to any pleading, filing or form filed in the action for unlawful detainer.

### 1174.3.

- (a)
  - (1) Except as provided in paragraph (2), unless a prejudgment claim of right to possession has been served upon occupants in accordance with Section 415.46, any occupant not named in the judgment for possession who occupied the premises on the date of the filing of the action may object to enforcement of the judgment against that occupant by filing a claim of right to possession as prescribed in this section. A claim of right to possession may be filed at any time after service or posting of the writ of possession pursuant to subdivision (a) or (b) of Section 715.020, up to and including the time at which the levying officer returns to effect the eviction of those named in the judgment of possession. Filing the claim of right to possession shall constitute a general appearance for which a fee shall be collected as provided in Section 70614 of the Government Code. Section 68511.3 of the Government Code applies to the claim of right to possession. An occupant or tenant who is named in the action shall not be required to file a claim of right to possession to protect that occupant's right to possession of the premises.
  - (2) In an action as described in paragraph (2) of subdivision (e) of Section 415.46, an occupant may file a claim of right to possession at any time up to and including the time at which the levying officer returns to effect the eviction of those named in the judgment of possession, without regard to whether a prejudgment claim of right to possession has been served upon the occupant.
- (b) The court issuing the writ of possession of real property shall set a date or dates when the court will hold a hearing to determine the validity of objections to enforcement of the judgment specified in subdivision (a). An occupant of the real property for which the writ is issued may make an objection to eviction to the levying officer at the office of the levying officer or at the premises at the time of the eviction. If a claim of right to possession is completed and presented to the sheriff, marshal, or other levying officer, the officer shall forthwith
  - (1) stop the eviction of occupants at the premises, and
  - (2) provide a receipt or copy of the completed claim of right of possession to the claimant indicating the date and time the completed form was received, and
  - (3) deliver the original completed claim of right to possession to the court issuing the writ of possession of real property.
- (c) A claim of right to possession is effected by any of the following:
  - (1) Presenting a completed claim form in person with identification to the sheriff, marshal, or other levying officer as prescribed in this section, and delivering to the

court within two court days after its presentation, an amount equal to 15 days' rent together with the appropriate fee or form for proceeding in forma pauperis. Upon receipt of a claim of right to possession, the sheriff, marshal, or other levying officer shall indicate thereon the date and time of its receipt and forthwith deliver the original to the issuing court and a receipt or copy of the claim to the claimant and notify the plaintiff of that fact. Immediately upon receipt of an amount equal to 15 days' rent and the appropriate fee or form for proceeding in forma pauperis, the court shall file the claim of right to possession and serve an endorsed copy with the notice of the hearing date on the plaintiff and the claimant by first-class mail. The court issuing the writ of possession shall set and hold a hearing on the claim not less than five nor more than 15 days after the claim is filed with the court.

- (2) Presenting a completed claim form in person with identification to the sheriff, marshal, or other levying officer as prescribed in this section, and delivering to the court within two court days after its presentation, the appropriate fee or form for proceeding in forma pauperis without delivering the amount equivalent to 15 days' rent. In this case, the court shall immediately set a hearing on the claim to be held on the fifth day after the filing is completed. The court shall notify the claimant of the hearing date at the time the claimant completes the filing by delivering to the court the appropriate fee or form for proceeding in forma pauperis, and shall notify the plaintiff of the hearing date by first-class mail. Upon receipt of a claim of right to possession, the sheriff, marshal, or other levying officer shall indicate thereon the date and time of its receipt and forthwith deliver the original to the issuing court and a receipt or copy of the claim to the claimant and notify the plaintiff of that fact.
- (d) At the hearing, the court shall determine whether there is a valid claim of possession by the claimant who filed the claim, and the court shall consider all evidence produced at the hearing, including, but not limited to, the information set forth in the claim. The court may determine the claim to be valid or invalid based upon the evidence presented at the hearing. The court shall determine the claim to be invalid if the court determines that the claimant is an invitee, licensee, guest, or trespasser. If the court determines the claim is invalid, the court shall order the return to the claimant of the amount of the 15 days' rent paid by the claimant, if that amount was paid pursuant to paragraph (1) or (3) of subdivision (c), less a pro rata amount for each day that enforcement of the judgment was delayed by reason of making the claim of right to possession, which pro rata amount shall be paid to the landlord. If the court determines the claim is valid, the amount equal to 15 days' rent paid by the claimant shall be returned immediately to the claimant.
- (e) If, upon hearing, the court determines that the claim is valid, then the court shall order further proceedings as follows:
  - (1) If the unlawful detainer is based upon a curable breach, and the claimant was not previously served with a proper notice, if any notice is required, then the required notice may at the plaintiff's discretion be served on the claimant at the hearing or thereafter. If the claimant does not cure the breach within the required time, then a supplemental complaint may be filed and served on the claimant as defendant if the plaintiff proceeds against the claimant in the same action. For the purposes of this section only, service of the required notice, if any notice is required, and of the supplemental complaint may be made by first-class mail addressed to the claimant at the subject premises or upon his or her attorney of record and, in either case, Section 1013 shall otherwise apply. Further proceedings on the merits of the claimant's continued right to possession after service of the Summons and Supplemental Complaint as prescribed by this subdivision shall be conducted

pursuant to this chapter.

(2) In all other cases, the court shall deem the unlawful detainer Summons and Complaint to be amended on their faces to include the claimant as defendant, service of the Summons and Complaint, as thus amended, may at the plaintiff's discretion be made at the hearing or thereafter, and the claimant thus named and served as a defendant in the action shall answer or otherwise respond within five days thereafter.

(f) If a claim is made without delivery to the court of the appropriate filing fee or a form for proceeding in forma pauperis, as prescribed in this section, the claim shall be immediately deemed denied and the court shall so order. Upon the denial of the claim, the court shall immediately deliver an endorsed copy of the order to the levying officer and shall serve an endorsed copy of the order on the plaintiff and claimant by first-class mail.

(g) If the claim of right to possession is denied pursuant to subdivision (f), or if the claimant fails to appear at the hearing or, upon hearing, if the court determines that there are no valid claims, or if the claimant does not prevail at a trial on the merits of the unlawful detainer action, the court shall order the levying officer to proceed with enforcement of the original writ of possession of real property as deemed amended to include the claimant, which shall be effected within a reasonable time not to exceed five days. Upon receipt of the court's order, the levying officer shall enforce the writ of possession of real property against any occupant or occupants.

(h) The claim of right to possession shall be made on the following form:

\* \* \* \* \*

NOTICE OF INCOMPLETE TEXT: The Claim of Right to Possession form appears in the published chaptered bill. See Sec. 9, Chapter 913 (pp. 81-83), Statutes of 2014. <sup>49</sup>

\* \* \* \* \*

**1176.**

(a) An appeal taken by the defendant shall not automatically stay proceedings upon the judgment. Petition for stay of the judgment pending appeal shall first be directed to the judge before whom it was rendered. Stay of judgment shall be granted when the court finds that the moving party will suffer extreme hardship in the absence of a stay and that the nonmoving party will not be irreparably injured by its issuance. If the stay is denied by the trial court, the defendant may forthwith file a petition for an extraordinary writ with the appropriate appeals court. If the trial or appellate court stays enforcement of the judgment, the court may condition the stay on whatever conditions the court deems just, but in any case it shall order the payment of the reasonable monthly rental value to the court monthly in advance as rent would otherwise become due as a condition of issuing the stay of enforcement. As used in this subdivision, "reasonable rental value" means the contract rent unless the rental value has been modified by the trial court in which case that modified rental value shall be used.

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<sup>49</sup> **Notice:** The above *NOTICE OF INCOMPLETE TEXT* is located within the actual code. The Claim of Right to Possession form is also located here: <https://www.courts.ca.gov/documents/cp10.pdf>



### 1179.

The court may relieve a tenant against a forfeiture of a lease or rental agreement, whether written or oral, and whether or not the tenancy has terminated, and restore him or her to his or her former estate or tenancy, in case of hardship, as provided in Section 1174. The court has the discretion to relieve any person against forfeiture on its own motion.

An application for relief against forfeiture may be made at any time prior to restoration of the premises to the landlord. The application may be made by a tenant or subtenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served at least five days prior to the hearing on the plaintiff in the judgment, who may appear and contest the application. Alternatively, a person appearing without an attorney may make the application orally, if the plaintiff either is present and has an opportunity to contest the application, or has been given ex parte notice of the hearing and the purpose of the oral application. In no case shall the application or motion be granted except on condition that full payment of rent due, or full performance of conditions or covenants stipulated, so far as the same is practicable, be made.

### 1179a.

In all proceedings brought to recover the possession of real property pursuant to the provisions of this chapter all courts, wherein such actions are or may hereafter be pending, shall give such actions precedence over all other civil actions therein, except actions to which special precedence is given by law, in the matter of the setting the same for hearing or trial, and in hearing the same, to the end that all such actions shall be quickly heard and determined.<sup>50</sup>

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<sup>50</sup> **California Legislative Information, “CODE OF CIVIL PROCEDURE – PART 3. OF SPECIAL PROCEEDINGS OF A CIVIL NATURE – TITLE 3. OF SUMMARY PROCEEDINGS – CHAPTER 4. Summary Proceedings for Obtaining Possession of Real Property in Certain Cases”:**  
[https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?chapter=4.&part=3.&lawCode=CCP&title=3](https://leginfo.ca.gov/faces/codes_displayText.xhtml?chapter=4.&part=3.&lawCode=CCP&title=3).

**CODE OF CIVIL PROCEDURE - CCP**  
**PART 2. OF CIVIL ACTIONS**  
**TITLE 9. ENFORCEMENT OF JUDGMENTS**  
**DIVISION 3. ENFORCEMENT OF NONMONEY JUDGMENTS**

**CHAPTER 3. Judgment for Possession of Real Property**  
*(mentioned in 3 CCP § 1174.3(a)(1) on page 111)*

**715.020.**

To execute the writ of possession of real property:

- (a) The levying officer shall serve a copy of the writ of possession on one occupant of the property. Service on the occupant shall be made by leaving the copy of the writ with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon the property when service is attempted who is either an employee or agent of the occupant or a member of the occupant's household.
- (b) If unable to serve an occupant described in subdivision (a) at the time service is attempted, the levying officer shall execute the writ of possession by posting a copy of the writ in a conspicuous place on the property and serving a copy of the writ of possession on the judgment debtor. Service shall be made personally or by mail. If the judgment debtor's address is not known, the copy of the writ may be served by mailing it to the address of the property.
- (c) If the judgment debtor, members of the judgment debtor's household, and any other occupants holding under the judgment debtor do not vacate the property within five days from the date of service on an occupant pursuant to subdivision (a) or on the judgment debtor pursuant to subdivision (b), the levying officer shall remove the occupants from the property and place the judgment creditor in possession. The provisions of Section 684.120 extending time do not apply to the five-day period specified in this subdivision.
- (d) Notwithstanding subdivision (c), unless the person is named in the writ, the levying officer may not remove any person from the property who claims a right to possession of the property accruing prior to the commencement of the unlawful detainer action or who claims to have been in possession of the property on the date of the filing of the unlawful detainer action. However, if the summons, complaint, and prejudgment claim of right to possession were served upon the occupants in accordance with Section 415.46, no occupant of the premises, whether or not the occupant is named in the judgment for possession, may object to the enforcement of the judgment as prescribed in Section 1174.3.<sup>51</sup>

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51 California Legislative Information, "CODE OF CIVIL PROCEDURE – PART 2. OF CIVIL ACTIONS – TITLE 9. ENFORCEMENT OF JUDGMENTS – DIVISION 3. ENFORCEMENT OF NONMONEY JUDGMENTS – CHAPTER 3. Judgment for Possession of Real Property":  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=715.020.&lawCode=CCP](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=715.020.&lawCode=CCP)

# California Statutes pertaining to Liens:

## CODE OF CIVIL PROCEDURE – CCP

### PART 2. OF CIVIL ACTIONS

#### TITLE 6.5. ATTACHMENT

#### CHAPTER 8. Levy Procedures; Lien of Attachment; Management and Disposition of Attached Property

### ARTICLE 1. General Provisions

#### 488.010.

The writ of attachment shall include the following information:

- (a) The date of issuance of the writ.
- (b) The title of the court that issued the writ and the cause and number of the action.
- (c) The name and address of the plaintiff and the name and last known address of the defendant.
- (d) The amount to be secured by the attachment.
- (e) A description of the property to be levied upon to satisfy the attachment.

#### 488.020.

- (a) A writ of attachment shall be directed to a levying officer in the county in which property of the defendant described in the writ may be located and to any registered process server.
- (b) Upon the receipt of written instructions from the plaintiff's attorney of record or, if the plaintiff has no attorney of record, from the plaintiff, the levying officer to whom the writ is directed and delivered shall levy the writ without delay in the manner provided in this chapter on the property described in the writ or so much thereof as is clearly sufficient to satisfy the amount to be secured by the attachment. The levying officer is not liable for a determination made in good faith under this subdivision.
- (c) If a copy of the summons and complaint has not previously been served on the defendant, the instructions to the levying officer shall instruct the levying officer to make the service at the same time the levying officer serves the defendant with a copy of the writ of attachment.

#### 488.030.

- (a) The plaintiff shall give the levying officer instructions in writing. The instructions shall be signed by the plaintiff's attorney of record or, if the plaintiff does not have an attorney of record, by the plaintiff. The instructions shall contain the information needed or requested by the levying officer to comply with the provisions of this title, including but not limited to:
  - (1) An adequate description of any property to be levied upon.
  - (2) A statement whether the property is a dwelling.
  - (3) If the property is a dwelling, whether it is real or personal property.
- (b) Subject to subdivision (c), the levying officer shall act in accordance with the written instructions to the extent the actions are taken in conformance with the provisions of this title.
- (c) Except to the extent the levying officer has actual knowledge that the information is incorrect, the levying officer may rely on any information contained in the written instructions.

#### **488.040.**

- (a) If the levying officer is required by any provision of this title to serve any writ, order, notice, or other paper on any person, the plaintiff shall include in the instructions to the levying officer the correct name and address of the person. The plaintiff shall use reasonable diligence to ascertain the correct name and address of the person.
- (b) Unless the levying officer has actual knowledge that the name or address included in the instructions is incorrect, the levying officer shall rely on the instructions in serving the writ, order, notice, or other paper on the person.

#### **488.050.**

- (a) Except as otherwise provided by law:
  - (1) As a prerequisite to the performance by the levying officer of a duty under this title, the plaintiff shall deposit a sum of money with the levying officer sufficient to pay the costs of performing the duty.
  - (2) As a prerequisite to the taking of property into custody by the levying officer under this chapter, whether by keeper or otherwise, the plaintiff shall deposit with the levying officer a sum of money sufficient to pay the costs of taking the property and keeping it safely for a period not to exceed 15 days. If continuation of the custody of the property is required, the levying officer shall, from time to time, demand orally or in writing that the plaintiff deposit additional amounts to cover estimated costs for periods not to exceed 30 days each. A written demand may be mailed or delivered to the plaintiff. The plaintiff has not less than three business days after receipt of the demand within which to comply with the demand. If the amount demanded is not paid within the time specified in the oral or written demand, the levying officer shall release the property.
- (b) The levying officer is not liable for failure to take or hold property unless the plaintiff has complied with the provisions of this section.

#### **488.060.**

The notice of attachment shall inform the person notified of all of the following:

- (a) The capacity in which the person is notified.
- (b) The specific property which is sought to be attached.
- (c) The person's rights under the attachment, including the right to make a third-party claim pursuant to Division 4 (commencing with Section 720.010) of Title 9.
- (d) The person's duties under the attachment.

#### **488.065.**

A copy of the original notice of attachment which has been served upon a third party holding the property sought to be attached, if served upon the defendant or any other party, shall suffice as the notice of attachment to that person.

#### **488.070.**

If a writ of attachment has been issued and personal property sought to be attached under the writ is located in a private place of the defendant:

- (a) The levying officer shall comply with the provisions of Section 699.030.
- (b) The plaintiff may obtain the relief provided under Section 699.030 in the manner and subject to the requirements of that section.

#### **488.080.**

- (a) A registered process server may levy under a writ of attachment on the following types of property:
- (1) Real property, pursuant to **Section 488.315**.
  - (2) Growing crops, timber to be cut, or minerals or the like, including oil and gas, to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, pursuant to Section 488.325.
  - (3) Personal property in the custody of a levying officer, pursuant to Section 488.355.
  - (4) Equipment of a going business, pursuant to Section 488.375.
  - (5) Motor vehicles, vessels, mobilehomes, or commercial coaches used as equipment of a going business, pursuant to Section 488.385.
  - (6) Farm products or inventory of a going business, pursuant to Section 488.405.
  - (7) Personal property used as a dwelling, pursuant to subdivision (a) of Section 700.080.
  - (8) Deposit accounts, pursuant to Section 488.455.
  - (9) Property in a safe-deposit box, pursuant to Section 488.460.
  - (10) Accounts receivable or general intangibles, pursuant to Section 488.470.
  - (11) Final money judgments, pursuant to Section 488.480.
  - (12) Interest of a defendant in personal property in the estate of a decedent, pursuant to Section 488.485.
- (b) Before levying under the writ of attachment, the registered process server shall cause to be deposited with the levying officer a copy of the writ and the fee, as provided by Section 26721 of the Government Code.
- (c) If a registered process server levies on property pursuant to subdivision (a), the registered process server shall do both of the following:
- (1) Comply with the applicable levy, posting, and service provisions of Article 2 (commencing with Section 488.300).
  - (2) Request any third person served to give a garnishee's memorandum to the levying officer in compliance with Section 488.610 on a form provided by the registered process server.
- (d) Within five court days after levy under this section, all of the following shall be filed with the levying officer:
- (1) The writ of attachment.
  - (2) A proof of service by the registered process server stating the manner of levy performed.
  - (3) Proof of service of the copy of the writ and notice of attachment on other persons, as required by Article 2 (commencing with Section 488.300).
  - (4) Instructions in writing, as required by the provisions of Section 488.030.
- (e) If the fee provided by Section 26721 of the Government Code has been paid, the levying officer shall perform all other duties under the writ as if the levying officer had levied under the writ and shall return the writ to the court. If the registered process server does not comply with subdivisions (b) and (d), the levy is ineffective and the levying officer shall not be required to perform any duties under the writ, and may issue a release for any property sought to be attached. The levying officer is not liable for actions taken in conformance with the provisions of this title in reliance on information provided to the levying officer under subdivision (d), except to the extent that the levying officer has actual knowledge that the information is incorrect. Nothing in this subdivision limits any liability the plaintiff or registered process server may have if the levying officer acts on the basis of incorrect information provided under subdivision (d).
- (f) The fee for services of a registered process server under this section is a recoverable cost pursuant to Section 1033.5.

#### **488.090.**

Except as otherwise provided by statute, where the method of levy upon property requires that property be taken into custody or where the levying officer is otherwise directed to take property into custody, the levying officer may do so by any of the following methods:

- (a) Removing the property to a place of safekeeping.
- (b) Installing a keeper.
- (c) Otherwise obtaining possession or control of the property.

#### **488.100.**

The levying officer has a special lien, dependent upon possession, on personal property levied upon in the amount of the levying officer's costs for which an advance has not been made.

#### **488.110.**

A third person shall claim an interest in property attached in the manner provided for third-party claims under Division 4 (commencing with Section 720.010) of Title 9.

#### **488.120.**

In any case where property has been levied upon and, pursuant to a levy, a copy of the writ of attachment and a notice of attachment are required by statute to be posted or to be served on or mailed to the defendant or other person, failure to post, serve, or mail the copy of the writ and the notice does not affect the attachment lien created by the levy.

#### **488.130.**

- (a) The levying officer to whom the writ of attachment is delivered shall return the writ to the court from which the writ issued, together with a report of the levying officer's actions. The return shall be made promptly in accordance with the plaintiff's instructions given to the levying officer but in no event later than 60 days after the levying officer receives the writ.
- (b) The levying officer shall make a full inventory of property attached and return the inventory with the writ.

#### **488.140.**

- (a) The levying officer or registered process server is not liable for actions taken in conformance with the provisions of this title, including actions taken in conformance with the provisions of this title in reliance on information contained in the written instructions of the plaintiff except to the extent the levying officer or registered process server has actual knowledge that the information is incorrect. Nothing in this subdivision limits any liability the plaintiff may have if the levying officer or registered process server acts on the basis of incorrect information given in the written instructions.
- (b) Unless the levying officer is negligent in the care or handling of the property, the levying officer is not liable to either the plaintiff or the defendant for loss by fire, theft, injury, or damage of any kind to personal property while (1) in the possession of the levying officer either in a warehouse or other storage place or in the custody of a keeper or (2) in transit to or from a warehouse or other storage place. <sup>52</sup>

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<sup>52</sup> California Legislative Information, "CODE OF CIVIL PROCEDURE – PART 2. OF CIVIL ACTIONS – TITLE 6.5. ATTACHMENT – CHAPTER 8. Levy Procedures; Lien of Attachment; Management and Disposition of Attached Property – ARTICLE 1. General Provisions": [leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CCP&division=&title=6.5.&part=2.&chapter=8.&article=1](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CCP&division=&title=6.5.&part=2.&chapter=8.&article=1).

# Color of Law Crimes (California)

**PENAL CODE – PEN**  
**PART 1. OF CRIMES AND PUNISHMENTS**  
**TITLE 7. OF CRIMES AGAINST PUBLIC JUSTICE**  
**CHAPTER 7. Other Offenses Against Public Justice**

**146.**

Every public officer, or person pretending to be a public officer, who, under the pretense or color of any process or other legal authority, does any of the following, without a regular process or other lawful authority, is guilty of a misdemeanor:

- (a) Arrests any person or detains that person against his or her will.
- (b) Seizes or levies upon any property.
- (c) Dispossesses any one of any lands or tenements. <sup>53</sup>

*(see color of law)*

**PENAL CODE - PEN**  
**PART 1. OF CRIMES AND PUNISHMENTS**  
**TITLE 8. OF CRIMES AGAINST THE PERSON**  
**CHAPTER 8. False Imprisonment and Human Trafficking**

**236.**

False imprisonment is the unlawful violation of the personal liberty of another.

**236.1.**

(h) For purposes of this chapter, the following definitions apply:

- (1) "Coercion" includes a scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; the abuse or threatened abuse of the legal process; debt bondage; or providing and facilitating the possession of a controlled substance to a person with the intent to impair the person's judgment.
- (3) "Deprivation or violation of the personal liberty of another" includes substantial and sustained restriction of another's liberty accomplished through force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out.
- (4) "Duress" includes a direct or implied threat of force, violence, danger, hardship, or retribution sufficient to cause a reasonable person to acquiesce in or perform an act which he or she would otherwise not have submitted to or performed; a direct or implied threat to destroy, conceal, remove, confiscate, or possess an actual or purported passport or immigration document of the victim; or knowingly

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<sup>53</sup> California Legislative information, "PENAL CODE – PART 1. OF CRIMES AND PUNISHMENTS – TITLE 7. OF CRIMES AGAINST PUBLIC JUSTICE – CHAPTER 7. Other Offenses Against Public Justice": [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=146.&highlight=true&keyword=%22color%20of%20law%22](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=146.&highlight=true&keyword=%22color%20of%20law%22)



destroying, concealing, removing, confiscating, or possessing an actual or purported passport or immigration document of the victim.

- (8) "Serious harm" includes any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or commercial sexual acts in order to avoid incurring that harm.
- (i) The total circumstances, including the age of the victim, the relationship between the victim and the trafficker or agents of the trafficker, and any handicap or disability of the victim, shall be factors to consider in determining the presence of "deprivation or violation of the personal liberty of another," "duress," and "coercion" as described in this section.

### **237.**

- (a) False imprisonment is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If the false imprisonment be effected by violence, menace, fraud, or deceit, it shall be punishable by imprisonment pursuant to **subdivision (h) of Section 1170**. *(see next statute)*
- (b) False imprisonment of an elder or dependent adult by use of violence, menace, fraud, or deceit shall be punishable as described in **subdivision (f) of Section 368**.<sup>54</sup>

## **PART 2. OF CRIMINAL PROCEDURE**

### **TITLE 7. OF PROCEEDINGS AFTER THE COMMENCEMENT OF THE TRIAL AND BEFORE JUDGMENT**

#### **CHAPTER 4.5. Trial Court Sentencing**

#### **ARTICLE 1. Initial Sentencing**

### **1170.**

(h) *(mentioned in previous statute)*

- (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.
- (2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.
- (3) *(where the defendant has a prior or current felony conviction)*
- (4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.
- (5)
  - (A) Unless the court finds that, in the interests of justice, it is not appropriate in a particular case, the court, when imposing a sentence pursuant to

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<sup>54</sup> **California Legislative information, False Imprisonment:**

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PEN&division=&title=8.&part=1.&chapter=8.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=8.&part=1.&chapter=8.&article=)



paragraph (1) or (2), shall suspend execution of a concluding portion of the term for a period selected at the court's discretion.

- (B) The portion of a defendant's sentenced term that is suspended pursuant to this paragraph shall be known as mandatory supervision, and, unless otherwise ordered by the court, shall commence upon release from physical custody or an alternative custody program, whichever is later. During the period of mandatory supervision, the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. Any proceeding to revoke or modify mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3. During the period when the defendant is under that supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court. Any time period which is suspended because a person has absconded shall not be credited toward the period of supervision.
- (6) When the court is imposing a judgment pursuant to this subdivision concurrent or consecutive to a judgment or judgments previously imposed pursuant to this subdivision in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant. <sup>55</sup>

## **PENAL CODE – PEN**

### **PART 1. OF CRIMES AND PUNISHMENTS**

#### **TITLE 9. OF CRIMES AGAINST THE PERSON INVOLVING SEXUAL ASSAULT, AND CRIMES AGAINST PUBLIC DECENCY AND GOOD MORALS**

##### **CHAPTER 13. Crimes Against Elders, Dependent Adults, and Persons with Disabilities**

(f) *(mentioned in 8 PEN § 237(b) on page 112)* A person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

(g) As used in this section, "elder" means a person who is 65 years of age or older.

(h) As used in this section, "dependent adult" means a person, regardless of whether the person lives independently, who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes a person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

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<sup>55</sup> **California Legislative Information, Trial Court Sentencing:**

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PEN&division=&title=7.&part=2.&chapter=4.5.&article=1](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=7.&part=2.&chapter=4.5.&article=1)

# Statutes of Limitations in California:

**Note:** Text that is *italicized* and within parentheses is not part of the actual text of the code, but rather it has been added solely for the purpose of clarification.

## PENAL CODE – PEN

### PART 2. OF CRIMINAL PROCEDURE

#### TITLE 3. ADDITIONAL PROVISIONS REGARDING CRIMINAL PROCEDURE

#### CHAPTER 2. Time of Commencing Criminal Actions

#### 803.

- (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.
- (b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.
- (c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison or imprisonment pursuant to subdivision (h) of Section 1170 (*Section 1170 describes felonies*), a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:
  - (1) Grand theft of any type, forgery, falsification of public records, or acceptance of, or asking, receiving, or agreeing to receive, a bribe, by a public official or a public employee, including, but not limited to, a violation of Section 68, 86, or 93.
  - (2) A violation of Section 72 (*fraud and bribery*), 118 (*perjury and false statements or writings*), 118a, 132, 134 (*falsifying evidence or tampering w evidence or witnesses*), or 186.10.
  - (3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code (*willingly financing/coordinating corrupt activities*).
  - (4) A violation of Section 1090 or 27443 of the Government Code (*profiting personally via contracts engaged in during official capacity*).
  - (5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.
  - (6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.
  - (7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code (*medical records, credentials, or payments fraud*).
  - (8) A violation of Section 22430 of the Business and Professions Code (*deceptive identification documents*).
  - (9) A violation of Section 103800 of the Health and Safety Code (*falsification of records*).
  - (10) A violation of Section 529a (*impersonating someone*).
  - (11) A violation of subdivision (d) or (e) of Section 368 (*crimes against elderly, dependents, or disabled*).
- (d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 (*page 114*) within the limitations of time prescribed by this chapter, and no time up to a maximum of three

years during which the defendant is not within the state shall be a part of those limitations.

- (e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.
- (f) *(this section pertains to sexual misconduct.)*
- (g)
  - (1) .... a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing.... *(majority of text omitted for this publication)*
- (h) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, *People v. Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.
- (i) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which a hidden recording is discovered related to a violation of paragraph (2) or (3) of subdivision (j) of Section 647.
- (j) Notwithstanding any other limitation of time described in this chapter, if a person flees the scene of an accident that caused death or permanent, serious injury.... *(majority of text omitted for this publication)*
- (k) Notwithstanding any other limitation of time described in this chapter, if a person flees the scene of an accident.... *(majority of text omitted for this publication)*
- (l) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense involving the offering or giving of a bribe to a public official or public employee, including, but not limited to, a violation of Section 67, 67.5, 85, 92, or 165, or Section 35230 or 72530 of the Education Code.
- (m) Notwithstanding any other limitation of time prescribed in this chapter, if a person actively conceals or attempts to conceal an accidental death.... *(majority of text omitted for this publication)*.<sup>56</sup>

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<sup>56</sup> CA 3 PEN § 803: [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=803.&highlight=true&keyword=%22statute%20of%20limitations%22](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=803.&highlight=true&keyword=%22statute%20of%20limitations%22)

*Statutes of Limitations – PEN continued...*

**803.6.**

- (a) If more than one time period described in this chapter applies, the time for commencing an action shall be governed by that period that expires the latest in time.
- (b) Any change in the time period for the commencement of prosecution described in this chapter applies to any crime if prosecution for the crime was not barred on the effective date of the change by the statute of limitations in effect immediately prior to the effective date of the change.<sup>57</sup>

**804.**

Except as otherwise provided in this chapter, for the purpose of this chapter, prosecution for an offense is commenced when any of the following occurs:

- (a) An indictment or information is filed.
- (b) A complaint is filed charging a misdemeanor or infraction.
- (c) The defendant is arraigned on a complaint that charges the defendant with a felony.
- (d) An arrest warrant or bench warrant is issued, provided the warrant names or describes the defendant with the same degree of particularity required for an indictment, information, or complaint.<sup>58</sup>

**805.**

For the purpose of determining the applicable limitation of time pursuant to this chapter:

- (a) An offense is deemed punishable by the maximum punishment prescribed by statute for the offense, regardless of the punishment actually sought or imposed. Any enhancement of punishment prescribed by statute shall be disregarded in determining the maximum punishment prescribed by statute for an offense.
- (b) The limitation of time applicable to an offense that is necessarily included within a greater offense is the limitation of time applicable to the lesser included offense, regardless of the limitation of time applicable to the greater offense.<sup>59</sup>

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<sup>57</sup> CA 3 PEN § 804: [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=803.6.&highlight=true&keyword=%22statute%20of%20limitations%22](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=803.6.&highlight=true&keyword=%22statute%20of%20limitations%22)

<sup>58</sup> CA 3 PEN § 804: [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=804&lawCode=PEN](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=804&lawCode=PEN)

<sup>59</sup> CA 3 PEN § 805: [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=805.&highlight=true&keyword=%22statute%20of%20limitations%22](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=805.&highlight=true&keyword=%22statute%20of%20limitations%22)

## GOVERNMENT CODE – GOV

### TITLE 1. GENERAL

#### DIVISION 3.6. CLAIMS AND ACTIONS AGAINST PUBLIC ENTITIES AND PUBLIC EMPLOYEES PART 3. CLAIMS AGAINST PUBLIC ENTITIES

##### CHAPTER 1. General

##### ARTICLE 2. General Provisions

##### 905.

There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) all claims for money or damages against local public entities except any of the following:

- (a) Claims under the Revenue and Taxation Code or other statute prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification, or adjustment of any tax, assessment, fee, or charge or any portion thereof, or of any penalties, costs, or charges related thereto.
- (b) Claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any law relating to liens of mechanics, laborers, or materialmen.
- (c) Claims by public employees for fees, salaries, wages, mileage, or other expenses and allowances.
- (d) Claims for which the workers' compensation authorized by Division 4 (commencing with Section 3200) of the Labor Code is the exclusive remedy.
- (e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions, or other assistance rendered for or on behalf of any recipient of any form of public assistance.
- (f) Applications or claims for money or benefits under any public retirement or pension system.
- (g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.
- (h) Claims that relate to a special assessment constituting a specific lien against the property assessed and that are payable from the proceeds of the assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.
- (i) Claims by the state or by a state department or agency or by another local public entity or by a judicial branch entity.
- (j) Claims arising under any provision of the Unemployment Insurance Code, including, but not limited to, claims for money or benefits, or for refunds or credits of employer or worker contributions, penalties, or interest, or for refunds to workers of deductions from wages in excess of the amount prescribed.
- (k) Claims for the recovery of penalties or forfeitures made pursuant to Article 1 (commencing with Section 1720) of Chapter 1 of Part 7 of Division 2 of the Labor Code.
- (l) Claims governed by the Pedestrian Mall Law of 1960 (Part 1 (commencing with Section 11000) of Division 13 of the Streets and Highways Code).
- (m) Claims made pursuant to Section 340.1 of the Code of Civil Procedure for the recovery of damages suffered as a result of childhood sexual abuse. This

*Statutes of Limitations – GOV continued...*

subdivision shall apply only to claims arising out of conduct occurring on or after January 1, 2009.

- (n) Claims made pursuant to Section 701.820 of the Code of Civil Procedure for the recovery of money pursuant to Section 26680.
- (o) Claims made pursuant to Section 49013 of the Education Code for reimbursement of pupil fees for participation in educational activities. <sup>60</sup>

## **CHAPTER 5. Claims Procedures Established by Agreement**

### **930.**

- (a) Any state agency may include in any written agreement to which the agency is a party, provisions governing the following:
  - (1) The presentation, by or on behalf of any party thereto, of any or all claims that are required to be presented to the board arising out of or related to the agreement.
  - (2) The consideration and payment of the claims described in paragraph (1).
- (b) As used in this section, "state agency" means any office, officer, department, division, bureau, board, commission or agency of the state, claims against which are paid by warrants drawn by the Controller. <sup>61</sup>

## **CHAPTER 6. Claims Procedures Established by Public Entities [935 - 935.9]**

### **935.**

- (a) Claims against a local public entity for money or damages which are excepted by Section 905 from Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part, and which are not governed by any other statutes or regulations expressly relating thereto, shall be governed by the procedure prescribed in any charter, ordinance, or regulation adopted by the local public entity.
- (b) The procedure so prescribed may include a requirement that a claim be presented and acted upon as a prerequisite to suit thereon. If such a requirement is included, any action brought against the public entity on the claim shall be subject to Sections 945.6 and 946.
- (c) The procedure so prescribed shall not require a shorter time for presentation of any claim than the time provided in Section 911.2.
- (d) The procedure so prescribed shall not provide a longer time for the board to take action upon any claim than the time provided in Section 912.4.
- (e) When a claim required by the procedure to be presented within a period of less than one year after the accrual of the cause of action is not presented within the required time, an application may be made to the public entity for leave to present such claim. Subdivision (b) of Section 911.4, Sections 911.6 to 912.2, inclusive, and Sections 946.4 and 946.6 are applicable to all such claims, and the time specified in the charter, ordinance, or regulation shall be deemed the "time specified in Section 911.2" within the meaning of Sections 911.6 and 946.6.

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<sup>60</sup> CA 1 GOV § 905: [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=905&lawCode=GOV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=905&lawCode=GOV)

<sup>61</sup> CA 1 GOV § 930: [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=930&lawCode=GOV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=930&lawCode=GOV)

(f) Any procedure authorized to be prescribed by this section does not apply to claims of childhood sexual abuse made as described in subdivision (m) of Section 905. This subdivision is declaratory of existing law. <sup>62</sup>

**PART 4. ACTIONS AGAINST PUBLIC ENTITIES AND PUBLIC EMPLOYEES**  
**CHAPTER 2. Actions Against Public Entities**

**945.8.**

Except where a different statute of limitations is specifically applicable to the public entity, and except as provided in Sections 930.6 (*previous page*) and 935, any action against a public entity upon a cause of action for which a claim is not required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be commenced within the time prescribed by the statute of limitations that would be applicable if the action were brought against a defendant other than a public entity. <sup>63</sup>

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<sup>62</sup> CA 1 GOV § 946.8: [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=935&lawCode=GOV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=935&lawCode=GOV)

<sup>63</sup> CA 1 GOV § 945.8: [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=945.8.&highlight=true&keyword=%22statute%20of%20limitations%22](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=945.8.&highlight=true&keyword=%22statute%20of%20limitations%22)

## CODE OF CIVIL PROCEDURE – CCP

### **PART 1. OF COURTS OF JUSTICE**

#### **TITLE 5. PERSONS SPECIALLY INVESTED WITH MINISTERIAL POWERS RELATING TO COURTS OF JUSTICE**

##### **CHAPTER 1. Attorneys and Counselors at Law**

###### **285.3.**

The court, upon the granting of a motion for withdrawal pursuant to Section 285.2, may toll the running of any statute of limitations, filing requirement, statute providing for mandatory dismissal, notice of appeal, or discovery requirement, for a period not to exceed 90 days, on the court's own motion or on motion of any party or attorney, when the court finds that tolling is required to avoid legal prejudice caused by the withdrawal of the legal service agency attorney.<sup>64</sup>

### **PART 2. OF CIVIL ACTIONS**

#### **TITLE 2. OF THE TIME OF COMMENCING CIVIL ACTIONS**

##### **CHAPTER 1. The Time of Commencing Actions in General**

###### **312.**

Civil actions, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute.<sup>65</sup>

##### **CHAPTER 4. General Provisions as to the Time of Commencing Actions**

###### **353.1.**

If a person entitled to bring an action or other proceeding, which action or other proceeding has not been filed or otherwise instituted, is represented by an attorney over whose practice a court of this state has assumed jurisdiction pursuant to Section 6180 or Section 6190 of the Business and Professions Code, and the application for the court to assume jurisdiction is filed prior to the expiration of the applicable statute of limitation or claim statute, the person shall have six months from the date of entry of the order assuming jurisdiction within which to file or otherwise institute the matter, if the applicable statute of limitation otherwise would have expired.<sup>66</sup>

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64 CA 5 CCP § 285.3: [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=285.3.&highlight=true&keyword=%22statute%20of%20limitations%22](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=285.3.&highlight=true&keyword=%22statute%20of%20limitations%22)

65 CA 2 CCP § 312: [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=312.&highlight=true&keyword=%22statute%20of%20limitations%22](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=312.&highlight=true&keyword=%22statute%20of%20limitations%22)

66 CA 2 CCP § 353.1: [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=353.1.&highlight=true&keyword=%22statute%20of%20limitations%22](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=353.1.&highlight=true&keyword=%22statute%20of%20limitations%22)



**359.5.**

If the obligations under a surety bond are conditioned upon performance of the principal, the expiration of the statute of limitations with respect to the obligations of the principal, other than the obligations of the principal under the bond, shall also bar an action against the principal or surety under the bond, unless the terms of the bond provide otherwise.<sup>67</sup>

**TITLE 3. OF THE PARTIES TO CIVIL ACTIONS**

**CHAPTER 4. Effect of Death**

**ARTICLE 2. Survival and Continuation**

**377.20.**

- (a) Except as otherwise provided by statute, a cause of action for or against a person is not lost by reason of the person's death, but survives subject to the applicable limitations period.
- (b) This section applies even though a loss or damage occurs simultaneously with or after the death of a person who would have been liable if the person's death had not preceded or occurred simultaneously with the loss or damage.<sup>68</sup>

**TITLE 6. OF THE PLEADINGS IN CIVIL ACTIONS**

**CHAPTER 7. General Rules of Pleading**

**458.**

In pleading the Statute of Limitations it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred by the provisions of Section \_\_\_\_\_ (giving the number of the section and subdivision thereof, if it is so divided, relied upon) of The Code of Civil Procedure; and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing that the cause of action is so barred.<sup>69</sup>

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67 **CA 2 CCP § 359:** [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=359.5.&highlight=true&keyword=%22statute%20of%20limitations%22](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=359.5.&highlight=true&keyword=%22statute%20of%20limitations%22)

68 **CA 3 CCP § 377.20:** [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=377.20.&article=2.&highlight=true&keyword=%22statute%20of%20limitations%22](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=377.20.&article=2.&highlight=true&keyword=%22statute%20of%20limitations%22)

69 **CA 7 CCP § 458:** [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=458.&highlight=true&keyword=%22statute%20of%20limitations%22](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=458.&highlight=true&keyword=%22statute%20of%20limitations%22)

**CIVIL CODE – CIV**

**DIVISION 2. PROPERTY  
PART 2. REAL OR IMMOVABLE PROPERTY  
TITLE 5. MARKETABLE RECORD TITLE  
CHAPTER 1. General Provisions  
ARTICLE 2. Application of Title**

**880.250.**

- (a) The times prescribed in this title for expiration or expiration of record of an interest in real property or for enforcement, for bringing an action, or for doing any other required act are absolute and apply notwithstanding any disability or lack of knowledge of any person or any provisions for tolling a statute of limitation and notwithstanding any longer time applicable pursuant to any statute of limitation.
- (b) Nothing in this title extends the period for enforcement, for bringing an action, or for doing any other required act, or revives an interest in real property that expires and is unenforceable, pursuant to any applicable statute of limitation. <sup>70</sup>

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<sup>70</sup> CA 5 CIV § 880.250: [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CIV&sectionNum=880.250.&article=2.&highlight=true&keyword=%22statute%20of%20limitations%22](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=880.250.&article=2.&highlight=true&keyword=%22statute%20of%20limitations%22)

## § 14 – Federal Statutes pertaining to the aforementioned

**Notice:** Although *adverse possession* and *title by prescription* are sparsely mentioned throughout California statutes,<sup>71</sup> “title by adverse possession may be established either pursuant to common law or statutory provisions.” **Me. — *Colquhoun v. Webber*, 684 A.2d 405 (Me. 1996).** Sections of the law which do not pertain to aforementioned information are omitted from this publication.

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71 California Legislative Information *code search*: <https://leginfo.legislature.ca.gov/faces/codes.xhtml>

**United States Code – USC**  
**Title 18 – CRIMES AND CRIMINAL PROCEDURE**  
**PART I – CRIMES**  
**CHAPTER 13 – CIVIL RIGHTS**

**§241. Conspiracy against rights**

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured-

They shall be fined under this title (see **18 USC §3571**) or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.<sup>72</sup>

**§242. Deprivation of rights under color of law**

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.<sup>73</sup>

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<sup>72</sup> U.S. House of Representatives' Office of Law Revision Counsel, “United States Code – USC – Title 18 – CRIMES AND CRIMINAL PROCEDURE – PART I – CRIMES – CHAPTER 13 – CIVIL RIGHTS §241. Conspiracy against rights”: <http://uscode.house.gov/view.xhtml?req=%22conspiracy+against+rights%22&f=treesort&fq=true&num=1&hl=true&edition=prelim&granuleId=USC-prelim-title18-section241>

<sup>73</sup> “ ” – §242. Deprivation of rights under color of law”: <http://uscode.house.gov/view.xhtml?req=%22deprivation+of+rights+under+color+of+law%22&f=treesort&fq=true&num=1&hl=true&edition=prelim&granuleId=USC-prelim-title18-section242>

## CHAPTER 79-PERJURY

### §1621. Perjury generally

Whoever-

- (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or
- (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.<sup>74</sup>

The following statute applies to the previous federal statutes wherein they reference “fined under this title”:

## CHAPTER 227-SENTENCES

### §3571. Sentence of fine

**(a) In General.**—A defendant who has been found guilty of an offense may be sentenced to pay a fine.

**(b) Fines for Individuals.**—Except as provided in subsection (e) of this section, an individual who has been found guilty of an offense may be fined not more than the greatest of—

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under subsection (d) of this section;
- (3) for a felony, not more than \$250,000;
- (4) for a misdemeanor resulting in death, not more than \$250,000;
- (5) for a Class A misdemeanor that does not result in death, not more than \$100,000;
- (6) for a Class B or C misdemeanor that does not result in death, not more than \$5,000; or
- (7) for an infraction, not more than \$5,000.

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<sup>74</sup> U.S. House of Representatives' *Office of Law Revision Counsel*, “Title 18-CRIMES AND CRIMINAL PROCEDURE – PART I-CRIMES – CHAPTER 79-PERJURY §1621. Perjury generally: <http://uscode.house.gov/view.xhtml?req=perjury&f=treesort&fq=true&num=49&hl=true&edition=prelim&granuleId=USC-prelim-title18-section1621>”

**(c) Fines for Organizations.**—Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense may be fined not more than the greatest of—

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under subsection (d) of this section;
- (3) for a felony, not more than \$500,000;
- (4) for a misdemeanor resulting in death, not more than \$500,000;
- (5) for a Class A misdemeanor that does not result in death, not more than \$200,000;
- (6) for a Class B or C misdemeanor that does not result in death, not more than \$10,000; and
- (7) for an infraction, not more than \$10,000.

**(d) Alternative Fine Based on Gain or Loss.**—If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

**(e) Special Rule for Lower Fine Specified in Substantive Provision.**—If a law setting forth an offense specifies no fine or a fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section, the defendant may not be fined more than the amount specified in the law setting forth the offense.

## **Title 42-THE PUBLIC HEALTH AND WELFARE**

### **CHAPTER 21-CIVIL RIGHTS**

#### **SUBCHAPTER I-GENERALLY**

### **§1983. Civil action for deprivation of rights**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.<sup>75</sup>

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<sup>75</sup> U.S. Government Publishing Office, "Title 42 – THE PUBLIC HEALTH AND WELFARE, CHAPTER 21 – CIVIL RIGHTS, SUBCHAPTER I – GENERALLY, Sec. 1983 – Civil action for deprivation of rights": [www.gpo.gov/fdsys/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap21-subchapI-sec1983.htm](http://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap21-subchapI-sec1983.htm)

## **§1985. Conspiracy to interfere with civil rights**

- (2) *Obstructing justice; intimidating party, witness, or juror* – If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;
- (3) *Depriving persons of rights or privileges* – If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.<sup>76</sup>

## **§1986. Action for neglect to prevent**

Every person who, having knowledge that any of the wrongs conspired to be done, and **mentioned in section 1985 of this title**, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.<sup>77</sup>

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<sup>76</sup> US House of Representatives' Office of Law Revision Counsel, 42 U.S.C. §1985. Conspiracy to interfere with civil rights": <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section241&num=0&edition=prelim>

<sup>77</sup> “ ” 42 U.S.C. § 1986. Action for neglect to prevent: <http://uscode.house.gov/view.xhtml?req=>

# Statutes of Limitations for Federal Cases:

## United States Code

### Title 18-CRIMES AND CRIMINAL PROCEDURE

#### PART II-CRIMINAL PROCEDURE

#### CHAPTER 213-LIMITATIONS

### §3282. Offenses not capital

(a) In General.-Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.

### Conspiracy Cases:

Conspiracy is a continuing offense. For statutes such as 18 U.S.C. § 371, which require an overt act in furtherance of the conspiracy, the statute of limitations begins to run on the date of the last overt act. ***Fiswick v. United States, 329 U.S. 211 (1946); United States v. Butler, 792 F.2d 1528 (11th Cir. 1986).***<sup>78</sup>

**conspiracy** – 1. An agreement between two or more persons to accomplish together a criminal or unlawful act or to achieve by criminal or unlawful means an act not in itself criminal or unlawful. **16 Am J2d Consp § 1.**

Conspiracy is a criminal offense, a misdemeanor in some jurisdictions, a felony in others. **16 Am J2d Consp §§ 2, 3.**

Conspiracy is also a wrong which will constitute a cause for a civil action. **16 Am J2d Consp § 43.** The cause of action is the damage suffered. It is the civil wrong resulting in damage, and not the conspiracy which constitutes the cause of action. ***Mox, Inc. v Woods, 202 Cal 675, 262 P 302.*** ☹

1. A combination or confederacy between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or some act which is innocent in itself, but becomes unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal or unlawful means to the commission of an act not in itself unlawful. Conspiracy is a consultation or agreement between two or more persons, either falsely to accuse another of a crime punishable by law; or wrongfully to injure or prejudice a third person, or any body of men, in any manner; or to commit any offense punishable by law; or to do any act with intent to prevent the course of justice; or to affect a legal purpose with a corrupt intent, or by improper means. ☹

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[%22action+for+neglect+to+prevent%22&f=treesort&fq=true&num=1&hl=true&edition=prelim&granuleId=USC-prelim-title42-section1986](#)

78 The United States Department of Justice, “Home » Resources » Justice Manual » Criminal Resource Manual » CRM 500-999 » Criminal Resource Manual 601-699 > .652 Statute of Limitations for Conspiracy: <https://www.justice.gov/jm/criminal-resource-manual-652-statute-limitations-conspiracy>



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