

CALIFORNIA AFFIRMATIVE DEFENSES

2025–2026 EDITION
Issued in December 2025

By

MARTIN D. CARR
Sacramento, California

And

ANN TAYLOR SCHWING
Napa, California

THE EXPERT SERIES

Volume 1

Chapters 1 to 19



For Customer Assistance Call 1-800-328-4880

© 2025 Thomson Reuters

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

Preface to the 2025–2026 Edition

In preparing this 2025–2026 edition, we reviewed each chapter and made updates where needed to ensure that the treatise reflects current law and that all citations are current through July 15, 2025.

Specifically, we made revisions to chapters 4, 7, 12, 14, 16, 21, 23, 25, 31, 32, 37, 38, 47, 48, 55, 62, and 68.

As always, I gratefully acknowledge Ann Schwing for creating the treatise and Mony Chim for his continued work on this project. I am also grateful to the California attorneys who have expressed their appreciation for the treatise or sought my assistance in handling issues addressed in this work. Please do not hesitate to contact me at (916) 730-7197 or marty@martycarr.com if you notice any error or omission.

Martin D. Carr

To Charlie

and, in memory of over thirty years
of friendship and good times,
to Esther Mix
—Ann Taylor Schwing

About the Authors

Martin D. Carr is an attorney for the California Department of Housing and Community Development in Sacramento, California. He earned his bachelor's degree with distinction from Stanford University, and was elected to Phi Beta Kappa. He received his law degree from Yale Law School.

As an adjunct professor at Pacific McGeorge School of Law, Carr has taught negotiation and dispute resolution courses for many years. He is an attorney master with the Anthony M. Kennedy Inn of Court, and received that organization's Voice of Conscience award in 2008. The program he authored in 2013–14 was awarded that year's prize as the nation's best Inn of Court program.

Mr. Carr served on the board of directors of Legal Services of Northern California from 2008 through 2014, and currently serves as a director of the NeighborScapes community development organization in Chicago.

Governor Arnold Schwarzenegger appointed Mr. Carr to the Uniform Law Commission, and Mr. Carr has served that organization in such roles as chair of the California delegation, legislative liaison, member of the National Scope and Program committee, and national division chair.

Ann Taylor Schwing recently retired from her work as an attorney in Sacramento, California, of counsel to Best Best & Krieger LLP since September 1, 2010, and before that of counsel to McDonough Holland & Allen PC since 1986. She received her B.A. from the University of California at Berkeley in 1968, graduating cum laude, and her J.D. from Boston University School of Law in 1975, graduating cum laude, having served on the editorial board of the Boston University Law Review. She clerked for Chief Judge Thomas J. MacBride of the United States District Court, Eastern District of California from 1977 through 1980.

Schwing is the recipient of the American Inns of Court Professionalism Award for the Ninth Circuit for 2004. From 1984 through 1987, Schwing was a member of the California State Bar Standing Committee on Rules and Procedures of Court and served as Chair of that Committee in 1986–1987. She was a member in the Anthony M. Kennedy Inn of Court and served on its Executive Committee (1989–2014). She was a member of the Ninth Circuit Task Force on Self-Represented Litigants (2003–2005), is a member of and reporter for the Judicial Advisory Committee of the Eastern District of California, and was a member of the Ninth Circuit Advisory Board (2000–2003). She has served as a lawyer delegate to the Ninth Circuit Judicial Conference and as a member of and reporter for the Civil Justice Reform Act Committee for the Eastern District of California. Schwing serves on the board of directors for Scribes, The American Society of Legal Writers.

She has been a member of the Board of Trustees of The Land Trust of Napa County 1995–2001, second term 2002–2008 and a third term 2014–present and was its president 1998–2001. In January 2006, Schwing was appointed to a five-year term as one of the thirteen founding members of the Land Trust Accreditation Commission: *An Independent Program of the Land Trust Alliance*. She began a second term in January 2010 and a third in 2014.

She is author of *Open Meeting Laws 3d* (2011) and its first and second editions, and co-author with Tamar Frankel of *The Regulation of Money Managers* (2d ed. 2014). She edited the third edition, authored by Tamar Frankel and Arthur B. Laby. She is the editor of the second edition of Tamar Frankel's two-volume treatise *Securitization* (Fathom Publishing Company 2006). She is also a contributing editor to *Black's Law Dictionary*® (7th, 8th, and 10th eds. B. Garner, ed. 2000, 2004, 2014).

Transition Preface

I am very happy to introduce Martin D. Carr. Marty assisted with this edition of California Affirmative Defenses, and he will be taking responsibility for updating and completing future editions. I've known Marty for about 15 years, since he first joined the Anthony M. Kennedy American Inn of Court, and he has been a good friend almost that long. Marty brings wide-ranging legal knowledge and wonderful enthusiasm to every project he undertakes. I hope you will welcome him to this next stage in the life of California Affirmative Defenses. Please reach out to Marty at (916) 730-7197 or marty@martycarr.com with comments or suggestions for future editions.

I am not fading into the sunset yet and will remain available when Marty has questions. Although my client load is reducing, there are a wide range of issues I care deeply about. E.g., Schwing, Perpetuity Is Forever, Almost Always: Why It Is Wrong to Promote Amendment and Termination of Perpetual Conservation Easements, 37 Harv. Envtl. L. Rev. 217 (2013).

February 18, 2016

Ann Taylor Schwing
Napa, California

Preface

Best wishes to you, dear reader. I started writing this treatise in 1986 because it filled a need not met by any other books in the library. It has expanded in the intervening years, and I hope you find it fills your needs. I've often thought of writing the companion treatise on California Causes of Action, but publishers have said no one wants it. If you disagree, please speak up.

In addition to keeping this treatise up to date, I am expanding and revising the existing chapters as needed. Some chapters require updating much more often than others, due to legislative changes and active appellate decisions. Please communicate your special interests in early revision of particular chapters. My email is ann.schwing@bbklaw.com, and my website is www.openmeetinglaws.com. I'll give careful consideration to any suggestions, corrections or additions you may send.

My thanks to attorneys Ken Mennemeier, Tom Swett, Ian Rambaran, Dennis Scott Zell, and Erik Kunkel who have sent in corrections and information to improve this treatise. Thanks also to Bhavani G. Murugesan, Esq., who has been assisting me since September 2008 with this and other books. I look forward to her assistance in the future.

While working on the revisions for 2004 and 2005 annual editions, I enjoyed the valuable assistance of Nicole Moscini and Vasilios S.

Spyridakis. Vasilios worked the summer of 2002 and the spring of 2003 after graduating summa cum laude from Cal. He checked many quotations and filled in the missing district information for a couple thousand Court of Appeal citations. This is mind-numbing work, but it contributes significantly to the value of the treatise for practicing attorneys. More recently, Vasilios updated the secondary sources, checked hundreds of quotations, added many references to law reviews, and enhanced the quality of the treatise in many respects. Nicole completed law school at University of California Davis, joined a Bay Area law firm and recently returned to practice in Sacramento. She could and did handle more varied and complex assignments on this and my other books with expertise and good cheer. I am grateful for their assistance and friendship.

Cindy Langenbeck assisted with the preparation of the 2005 and 2007 editions. Cindy checked and updated the service of process statutes and the section on SLAPP suits along with many other details. Her help and enthusiasm have been greatly appreciated.

I worked happily at McDonough Holland & Allen PC for almost 24 years. The firm supported and encouraged me in this treatise, my other books and other activities, and I am grateful. Something very special was lost when the firm dissolved in 2010. The MHA attorneys and staff, and the Sacramento and California legal communities, were damaged and diminished as a result. With eighteen other MHA attorneys and many staff, I have been welcomed into the Best Best & Krieger LLP Sacramento office. My husband Charlie remains the best and brightest part of my life. There are no words to express what he means to me.

ANN TAYLOR SCHWING

December 18, 2010
Sacramento, California

PREFACE 2005–2009

Best wishes to you, dear reader. I started writing this treatise in 1986 because it filled a need not met by any other books in the library. It has expanded in the intervening years, and I hope you find it fills your needs. I've often thought of writing the companion treatise on California Causes of Action, but publishers have said no one wants it. If you disagree, please speak up.

In addition to keeping this treatise up to date, I am expanding and revising the existing chapters as needed. Some chapters require updating much more often than others, due to legislative changes and active appellate decisions. Please communicate your special interests in early revision of particular chapters. My email is aschwing@mhalaw.com, and my website is www.openmeetinglaws.com. I'll give careful consideration to any suggestions, corrections or additions you may send.

My thanks to attorneys Ken Mennemeier, Tom Swett, Ian Rambaran, Dennis Scott Zell, and Erik Kunkel who have sent in corrections and information to improve this treatise. Thanks also to Bhavani G. Murugesan, Esq., who has been assisting me since September 2008

PREFACE

with this and other books. I look forward to her assistance in the future.

While working on the revisions for 2004 and 2005 annual editions, I enjoyed the valuable assistance of Nicole Moscini and Vasilios S. Spyridakis. Vasilios worked the summer of 2002 and the spring of 2003 after graduating summa cum laude from Cal. He checked many quotations and filled in the missing district information for a couple thousand Court of Appeal citations. This is mind-numbing work, but it contributes significantly to the value of the treatise for practicing attorneys. More recently, Vasilios has updated the secondary sources, checked hundreds of quotations, added many references to law reviews, and enhanced the quality of the treatise in many respects. Nicole has now completed law school at University of California Davis, and joined a Bay Area law firm. She could and did handle more varied and complex assignments on this and my other books with expertise and good cheer. I am grateful for their assistance and friendship.

Cindy Langenbeck assisted with the preparation of the 2005 and 2007 editions. Cindy checked and updated the service of process statutes and the section on SLAPP suits along with many other details. Her help and enthusiasm have been greatly appreciated.

I continue to work happily at McDonough Holland & Allen PC. The firm has supported and encouraged me in this treatise, my other books and other activities, and I am grateful. My husband Charlie remains the best and brightest part of my life. There are no words to express what he means to me.

ANN TAYLOR SCHWING

January 2005, 2006, 2007, 2008, 2009

PREFACE 2004

The supplements and pocket parts of prior years are now behind us, and this preface introduces the first edition of this treatise to be annually updated. Also new with this edition is a significant revision and expansion of Chapter 25, the statute of limitations chapter. This edition fully updates the many treatises and other secondary sources, and its cases and statutes are current as of May 2003. A number of months have elapsed since then, and I regret that the treatise could not be more current on the date of publication. Both West and I will work hard to remedy the delay in future annual editions.

In future years, West and I have agreed to make every effort to make the new edition available by April, three months after its contents are current. Once the 2003 legislative year is concluded, I will prepare an update to bring the treatise current to the end of 2003. In February, West will make this update available on Westlaw, and the update will also be available for free on my website *www.openmeetinglaws.com*.

In addition to keeping this treatise up to date, I plan to expand and revise the existing chapters as needed. Some chapters require updating much more often than others, due to legislative changes and active appellate decisions. Please communicate your special interests in early revision of particular chapters. My email is *aschwing@mhalaw.com*, and I'll give careful considerations to any suggestions, corrections or addi-

tions you may send.

Best wishes to you, dear reader. I started writing this treatise in 1986 because it filled a need not met by any other books in the library. It has expanded in the intervening years, and I hope you find it fills your needs. I've often thought of writing the companion treatise on California Causes of Action, but publishers have said no one wants it. If you disagree, please speak up.

While working on the revisions for this new annual edition and the revisions to chapter 25, I enjoyed the valuable assistance of Nicole Moscini and Vasilios S. Spyridakis. Vasilios is now in his first year of law school at the University of Cincinnati; he worked the summer of 2002 and the spring of 2003 after graduating summa cum laude from Cal. He checked many quotations and filled in the missing district information for a couple thousand Court of Appeal citations. This is mind-numbing work, but it contributes significantly to the value of the treatise for practicing attorneys. Nicole is now in her third year of law school at University of California Davis, and she could and did handle more varied and complex assignments on this and my other books with expertise and good cheer. I am grateful for their assistance and friendship.

I continue to work happily at McDonough Holland & Allen PC. The firm has supported and encouraged me in this treatise, my other books and other activities, and I am grateful. My husband Charlie remains the best and brightest part of my life. There are no words to express what he means to me.

Ann Taylor Schwing

November 2003
Sacramento, California

PREFACE TO SECOND EDITION

Many changes have occurred since the initial publication of the first two volumes of this treatise in 1988. The Probate Code has been repealed and reenacted in its entirety and revised in major respects both substantively and in the placement of various provisions. The Family Code has been enacted, drawing its provisions from the Civil, Civil Procedure, Health and Safety, Welfare and Institutions, and other California Codes. The Public Contract Code has been enacted, drawing provisions from the Civil, Government, and other California Codes. Numerous statutes cited in the original treatise have been amended, revised, or repealed, and others that might appropriately have been cited have been enacted. These statutory changes have been reflected in the following pages. New court decisions have altered the governing law or added new dimensions to existing law. These decisions are cited and discussed as appropriate.

This treatise adds significant new materials. Forms for complaint paragraphs, affirmative defenses, and jury instructions have been added throughout when appropriate. Other relevant forms, such as a tolling agreement and a notice of rescission, are provided. The forms refer to "plaintiff" and "defendant," on the assumption that the names of the

PREFACE

specific parties will typically be substituted. Obviously, the forms should be revised to fit the circumstances of the particular cases in which they are used. Forms of jury instructions are not provided when BAJI already includes a form adequately addressing the subject matter.

I welcome suggestions and corrections. Readers are invited to contact me by mail at 555 Capitol Mall, Suite 950, Sacramento, CA 95814; or by telephone at (916) 325-4501; or by e-mail at *aschwing@mhalaw.com*.

The treatise comes home to California with this edition. A new publisher, Bancroft-Whitney, is publishing the second edition in place of West Publishing Company, the publisher of the first edition. I am grateful to both publishers for making the transition as smooth as possible, and I look forward to a long and fruitful relationship with Bancroft-Whitney.

Some things have not changed. McDonough, Holland & Allen continues to provide a warm and comfortable environment for my writing, free of stress and filled with encouragement. I still have not found words to express the professional satisfaction and personal joy that my relationship with McDonough, Holland & Allen provides every day. My continuing thanks go to McDonough, Holland & Allen and its fine attorneys, librarians, paralegals, and staff who have enabled me to work on this treatise.

Ani Kindall (J.D., 1984) provided steadfast assistance throughout the completion of the first edition. She contributed enormously to the accuracy and breadth of the four original volumes and, through them, to these volumes. She has remained a close friend since going to more traditional legal employment in 1990. Since then, a number of short-term and part-time assistants have checked cites and quotations in pocket parts and in this second edition, including Stacey Bernard Karpinen, Alexa Swerdloff Armanino and, finally, Jon Soneff who checked all statutes in the completed manuscript. I am grateful to all of them for their help and friendship.

My husband Charlie has supported my goals and encouraged me at every step. I would surely have faltered without his help, but he has always shared his strength when I had none.

ANN TAYLOR SCHWING

November 1995
Sacramento, California

PREFACE TO FIRST EDITION

California law contains approximately one hundred affirmative defenses that may be raised by a defendant faced with the necessity of responding to a complaint. Although a very few of them, such as lack of subject matter jurisdiction and laches, may bar plaintiff's recovery even if the defendant neglects to assert them, the vast majority are waived if not asserted in a timely and proper manner. No one source has ever gathered the various defenses recognized in California law into a single reference. These volumes contain the jurisdictional and procedural defenses. Companion volumes will contain substantive defenses. The

CALIFORNIA AFFIRMATIVE DEFENSES

materials set out for each defense follow the same pattern: the nature and elements of the defense, the manner of asserting the defense, the burden of proof for the defense, waiver of the defense, and any related defenses and principles. The content of these sections is determined by the content of California law.

This work is devoted to California law. When pertinent, citation is made to federal cases and other authorities outside California, but no effort has been made to address the law of other jurisdictions. Within California, every effort has been made to provide a comprehensive explanation and analysis of the nature and scope of each affirmative defense. Unavoidably, however, certain defenses have received greater attention than others as a result of extraneous circumstances during the process of research and writing.

This work and its companion volumes on substantive defenses have taken a long time to research and write, much longer than I had contemplated. No matter how long it has taken, however, I have enjoyed the task. In December 1986 I became of counsel at McDonough, Holland & Allen. The firm has provided a warm and comfortable environment, free of stress and filled with encouragement, where I have been able to write without impediment. I have no words to express the professional satisfaction and personal joy that my relationship with McDonough, Holland & Allen provides.

I have been blessed since May 1986 by the steadfast assistance of Ani Kindall (J.D., 1984). Ani has contributed enormously to the accuracy and depth of these books and has made my task far easier and smoother than I could have imagined. No other author has ever enjoyed as helpful and wonderful an assistant.

Finally, I have been blessed beyond description by a husband who has supported my goals and encouraged me at every step. Without his help, I would surely have faltered many times over, but he gave me strength when I had none. I dedicate far more than this book to him.

ANN TAYLOR SCHWING

August 1988
Sacramento, California

Foreword

Daniel Webster said, “The power of clear statement is the great power at the bar.” Ann Taylor Schwing possesses the power of clear statement. Her most recent work, *California Affirmative Defenses 2d*, is tightly organized, clearly written, and extremely useful for the busy lawyer and the legal scholar.

If you ever wondered whether your client would benefit from the defenses of “retraxit,” “force majeure” or “ripeness,” it is all in here. More important, the more common and frequently occurring affirmative defenses such as lack of jurisdiction, *res judicata*, failure to state a cause of action, uncertainty, collateral estoppel, and many other affirmative defenses are discussed in detail, yet not in too much detail. Ms. Schwing’s work strikes just the right balance between too much and not enough.

Ms. Schwing’s scholarship is superb. For every defense she discusses and cites California case and statutory law and selectively refers the reader to useful secondary authority.

These are the books that you want to consult when you need a concise, yet thorough and useful, discussion of the law relating to virtually every affirmative defense available under California law. Not only does *California Affirmative Defenses 2d* contain a useful and understandable discussion of the law, the author also has included the relevant jury instructions and pleading allegations. This feature will be extremely helpful to the lawyer preparing to answer a complex or unusual complaint. I know of no other source for the kind of clear exposition, analysis, and practical application that relates specifically to affirmative defenses.

For many years, I have known of Ann Schwing’s excellent reputation as a lawyer, writer and scholar. I also have had the pleasure of working with her in the Anthony M. Kennedy American Inn of Court. This experience has given me the opportunity to observe these qualities firsthand. She brings a wealth of experience, technical expertise, and practical judgment to this work.

The civil bar is fortunate to have this outstanding treatise at hand to help ease the many pitfalls of civil pleading and the subsequent litigation.

FRED K. MORRISON
ASSOCIATE JUSTICE (Retired 2009)
Third District Court of Appeal

December 1995
Sacramento, California



Alphabetical List Of Affirmative Defenses

Abandonment	47:18
Abandonment of Property	61:13
Abandonment of Contract	61:1–61:13
Abstention	6:34, 22:12
Abstract Issue	22:1–22:11
Accord and Satisfaction	63:1–63:14
Acts of God	30:1–30:20
Adequacy of the Remedy at Law	31:1–31:11
Adhesion Contracts, Arbitration	68:2
Advice of Counsel	41:26–41:33
Advisory Opinion	22:3, 27:8
Alteration of Contract	66:1–66:10
Another Action Pending	23:1–23:11
Appraisal	68:23
Arbitration, Failure to Participate in	68:1 et seq.
Assignment	18:18–18:27, 64:14
Assumption of the Risk	48:24
Breach of Arbitration Clause	68:1–68:21
Breach of Contract	59:1–59:11
Business Compulsion	33:7
Cancellation of Contracts	62:38
Claims Requirements	12:19–12:35, 25:84
Collateral Estoppel	15:1–15:15
Collateral Source Rule	36:3
Commercial Frustration	57:8, 58:1–58:5
Common Enemy Doctrine	49:9
Comparative Fault	48:1–48:31
Compensated Surety Defense	35:6
Competitor’s Privilege	41:20
Concurrent Exclusive Jurisdiction	23:11
Confidential Relations, Undue Influence	46:1–46:9
Consent	32:1–32:11
Consideration Impossible to Ascertain	56:17
Covenant Not to Sue or Not to Execute	42:16
Death of the Real Party in Interest	17:1–17:41
Destruction of Contract	66:1–66:10

Discretionary Dismissal for Lack of Prosecution	29:1–29:13
Disentitlement Doctrine	18:33, 34:18
Doctrine of Necessity	49:8
Doctrine of Superior Equities	35:6
Duress	33:1–33:14, 62:4
Economic Compulsion	33:7
Election of Remedies	24:1–24:15
Emergency	32:9, 33:14, 49:1–49:9
Equal Dignities Rule	54:1–54:10
Estoppel	34:1–34:18
One Who Seeks Equity Must Do Equity	35:1–35:5
Exclusive Concurrent Jurisdiction	23:11
Exhaustion of Administrative Remedies	8:6, 16:1–16:18
Exhaustion of Nonadministrative Remedies	16:17
Exhaustion in Labor Law	16:18
Exoneration of a Surety	67:1–67:10
Failure to Appear at Trial	29:13
Failure to Arbitrate or Breach of Arbitration Clause	68:1–68:21
Failure to Commence Trial Within Five Years or to Commence New Trial Within Three Years	28:1–28:36
Failure of Consideration	57:1–57:8, 62:8–62:11
Failure to Furnish Security for Costs	13:1–13:11
Failure to Give Notice of Trial	2:31
Failure to Join an Indispensable Party	6:33, 21:1–21:10
Failure to Mediate	12:38, 68:22
Failure to Mitigate	36:1–36:10
Failure to State a Cause of Action	9:1–9:8
Failure to Serve and Return Summons	3:1–3:33
Failure to Subscribe	11:30
Fiduciary Relations, Undue Influence	46:1–46:9
Firefighter’s Rule	48:25
Five-Year Rule	28:1–28:36
Force Majeure	30:18
Forfeiture	47:20
Forum Non Conveniens	6:1–6:33
Forum Selection Clause	4:5, 6:24, 7:9
Fraud	33:12, 40:14, 46:16
Frustration of Purpose	58:1–58:5, 60:18, 62:12
Full Credit Bid	69:15
Gambling	37:20

ALPHABETICAL LIST OF AFFIRMATIVE DEFENSES

Good Samaritan Immunities	38:39–38:49
Gross Negligence	48:23
Government Claims Act	12:20–12:30, 38:56 et seq.
Hypothetical Issue	22:1–22:11
Illegality	37:1–37:32
Illegal Consideration	37:23, 39:42, 56:5
Illusory Promise	56:6
Immunity	38:1–38:143
Impossibility	30:20, 60:1–60:19
In Pari Delicto	45:23
Inadequacy of Consideration	56:1–56:18
Incontestability	25:85
Indemnity	42:1, 42:14, 67:8
Infancy	18:2–18:8, 52:2–52:20
Insanity	18:9–18:10, 52:21– 52:34
Invited Error	34:20
Joinder Defects	20:1–20:12, 21:1– 21:10
Judgmental Immunity	38:145
Judgment	43:12
Judicial Abstention	22:12
Judicial Admission	34:19
Judicial Estoppel	34:18
Justification	41:14–41:20
Laches	26:1–26:24
Lack of Capacity to Contract	52:1–52:38
Lack of Capacity to Be Sued	18:41
Lack of Capacity to Sue	17:40, 18:1–18:42
Lack of Consideration	56:1–56:18
Lack of Personal Jurisdiction	4:1–4:38
Lack of Proper or Effective Service	2:1–2:30
Lack of Prosecution	29:1–29:13
Lack of Required Certificate, Notice, Claim or Demand	12:1–12:39
Lack of Required License, Permit, Payment or Filing	39:1–39:41
Lack of Standing or Status as the Real Party in Interest	19:1–19:3
Lack of Subject Matter Jurisdiction	7:1–7:19
Lack of Venue	5:1–5:46
Last Clear Chance	48:26, 49:5
Law of the Case	14:60

Manager’s Privilege	41:19
Material Alteration of Contract	66:1–66:10
Mediation, Failure to Participate in	12:37, 68:22
Menace	33:1–33:13
Minority	18:2–18:8, 52:2–52:20
Misjoinder of Causes of Action	20:12
Misjoinder of Parties	20:1–20:12
Mistake	40:1–40:14, 62:3
Mitigate, Failure to	36:1–36:10
Modification of Contract	65:1–65:12
Moot, Hypothetical, Abstract Issue, Advisory Opinion	22:1–22:11
Mutual Rescission of Contract	61:1–61:13
Necessity	49:8
Nonjoinder of Parties	21:1–21:10
Novation	64:1–64:15
Parol Evidence Rule	53:42
Payment	69:1–69:15
Performance of Contract	69:14
Pleas in Abatement	1:2
Preclusion of Issues	15:1–15:15
Preemption	7:19, 58:6
Prematurity	27:1–27:8
Prevention of Performance	59:1–59:11
Primary Jurisdiction	8:1–8:5, 16:16
Privilege	38:144, 41:1–41:33
Promissory Estoppel	34:16, 56:18
Quasi-Collateral Estoppel	15:16
Ratification	34:17, 54:5, 62:20
Real Party in Interest Requirement	19:1–19:13
Recoupment	44:1–44:10
Reformation of Contract	5:30, 62:39
Release	42:1–42:18
Repudiation of the Contract	68:21
Res Judicata	14:1–14:61
Rescission	62:1–62:39
Rescue Doctrine	49:7
Restitution	62:40
Retraxit	14:61, 42:17
Ripeness	16:16, 19:13, 27:1– 27:8
<i>Rooker–Feldman</i> Doctrine	14:64
Satisfaction of Judgment	42:18

ALPHABETICAL LIST OF AFFIRMATIVE DEFENSES

Self-Defense	50:1-50:11
Settlement	43:1-43:11
Setoff and Recoupment	44:1-44:10
Sham Transaction	56:19
SLAPP Motions	12:37
Sophisticated User Defense	48:29
Splitting a Cause of Action	23:10
Stale Claims	26:22
Standing	19:1-19:13
Stare Decisis	14:62
Statute of Frauds	53:1-53:42
Statute of Limitations	25:1-25:85
Statutory Equal Dignities	54:11
Stipulation	43:11
Superior Equities	35:6
Superseding Cause	48:27
Termination of Contract	62:37
Three-Year Service Rule	3:1-3:33
Three-Year Trial Rule	28:1-28:36
Tort Claims Act	12:20-12:30, 38:56 et seq.
Trivial Defect Defense	48:28
Truth	51:1-51:11
Unavoidable Accident	30:19
Uncertainty of the Pleading	10:1-10:19
Unclean Hands	45:1-45:25
Unconscionability	55:1-55:9
Unconstitutionality	37:32
Undue Influence	46:1-46:18, 52:29, 62:6
Unsound Mind	52:21-52:33
Usury	37:13
Vagueness	10:19
Venue	5:1-5:46
Verification, Failure or Defect	11:1-11:30
Vexatious Litigation	13:3, 14:63
Vis Major	30:18
Waiver	47:1-47:19
Willful Misconduct	48:22





THOMSON REUTERS
WESTLAW™

MOST PREFERRED ONLINE LEGAL RESEARCH SERVICE

Thomson Reuters Westlaw has been voted the #1 Best Online Legal Research vendor year-after-year by industry professionals. That's because we continually invest more than any other online legal research provider in our people and technology where it matters most. As a result, you find exactly what you need quickly and confidently.

- Build the strongest argument with the most comprehensive collection of legal content
- Deliver better results confidently with WestSearch®, the only search engine designed specifically for the law
- Rely on the most current version of the law with proprietary editorial enhancements
- Access your legal research anytime, anywhere with the free Westlaw apps

LEARN MORE: legal.thomsonreuters.com

SIGN ON: westlaw.com

24/7 REFERENCE ATTORNEYS: 1-800-REF-ATTY (733-2889)

THOMSON REUTERS PROVIEW™

This title is one of many now available on your tablet as an eBook.

Take your research mobile. Powered by the Thomson Reuters ProView™ app, our eBooks deliver the same trusted content as your print resources, but in a compact, on-the-go format.

ProView eBooks are designed for the way you work. You can add your own notes and highlights to the text, and all of your annotations will transfer electronically to every new edition of your eBook.

You can also instantly verify primary authority with built-in links to WestlawNext® and KeyCite®, so you can be confident that you're accessing the most current and accurate information.

To find out more about ProView eBooks and available discounts, call 1-800-328-9352.

RELATED PRODUCTS

Thomson Reuters thanks you for subscribing to this product. Should you have any questions regarding this product please contact Customer Service at 1-800-328-4880 or by fax at 1-800-340-9378. If you would like to inquire about related publications or place an order, please contact us at 1-800-328-9352.



Thomson Reuters
610 Opperman Drive
Eagan, MN 55123

legal.thomsonreuters.com