Table of Contents

Volume BUS1

CHAPTER 1. ACTIONS BY AND AGAINST CORPORATIONS

I. LEGAL PRINCIPLES

A. MATTERS APPLICABLE TO ALL CORPORATIONS

§ 1:1 Capacity to sue and be sued
§ 1:2 Pleading requirements
§ 1:3 Representation
§ 1:4 Effect of dissolution or merger
§ 1:5 Designation of agent for service of process
§ 1:6 Service on officers and agents on behalf of corporation
§ 1:7 Service on secretary of state
§ 1:8 Service on corporation that has dissolved or forfeited its charter
§ 1:9 Service on foreign corporation that has withdrawn, surrendered or forfeited right to transact business

B. MATTERS APPLICABLE TO FOREIGN CORPORATIONS ONLY

1. Overview

§ 1:10 Definitions
§ 1:11 Corporations earning income in California

2. Corporations Transacting Business in California

§ 1:12 Test for transaction of intrastate business
§ 1:13 Application for certificate of qualification
§ 1:14 Issuance of certificate of qualification
§ 1:15 Failure to obtain certificate of qualification

§ 1:16 Conflicting and assumed names

C. ANNUAL STATEMENT REQUIREMENTS

§ 1:17 Annual statement requirements for domestic corporations
§ 1:18 Annual statement requirements for foreign corporations

D. CONSEQUENCES OF NONCOMPLIANCE

1. Noncompliance with Annual Statement Requirements

§ 1:19 Procedure following failure to file annual statement
§ 1:20 Relief from or waiver of penalty
§ 1:21 Suspension for repeated violations

2. Failure to Comply with Tax Laws

§ 1:22 Suspension or forfeiture
§ 1:23 Procedure for suspension or forfeiture
§ 1:24 Effect of suspension on limitation of actions
§ 1:25 Relief from suspension or forfeiture
§ 1:26 Doctrine of substantial compliance
§ 1:27 Issuance of certificate of revivor
§ 1:28 Effect of suspension and revival
§ 1:29 Voidability of contracts
§ 1:30 Limitations on voidability of contracts
§ 1:31 Application for relief from voidability
§ 1:32 Relief from voidability of contract made in 1990
§ 1:33 Issuance of certificate of relief from voidability

3. Noncompliance with Law of Foreign State of Incorporation

§ 1:34 Effect of suspension or forfeiture

II. PROCEDURAL CHECKLISTS

§ 1:35 Matters to be considered by domestic corporations
§ 1:36 Matters to be considered by foreign corporations

III. FORMS

§ 1:37 Availability of forms on line

§ 1:38 Victims of Corporate Fraud Compensation Fund
§ 1:39 Allegation in complaint of capacity of domestic corporation
§ 1:40 Allegation in complaint of capacity of foreign corporation
§ 1:41 Defense of lack of capacity to maintain cause of action based on failure to obtain certificate of qualification
§ 1:42 Defense of lack of capacity to maintain action based on forfeiture or suspension of corporate powers
§ 1:43 Notice of motion for summary judgment based on lack of capacity to maintain or defend action because of suspension or forfeiture of corporate powers for violation of corporate tax statutes
§ 1:44 Notice of motion for order for continuance of trial to obtain certificate of revivor
§ 1:45 Statement of information (domestic) [Form S1-200C; Corp. Code, § 1502]
§ 1:46 Annual statement to be filed when there is no change of information [Form S1-200NC; Corp. Code, § 1502, subd. (c)]
§ 1:47 Statement and designation by foreign corporation to do business in California [Form /Nonprofit; Corp. Code, § 2105]
§ 1:48 Statement of information (foreign corporation) [Form S1-350; Corp. Code § 2117]
§ 1:49 Corporate disclosure statement for publicly traded corporations (domestic and foreign) supplement to statement of information [Form S1-PTSUPP; Corp. Code, §§ 1502, 2117]
§ 1:50 Attachment to corporate disclosure statement for publicly traded corporations domestic and foreign) [Form S1-PTSUPPA; Corp. Code, §§ 1502, 2117]
§ 1:51 Certificate of Designation of agent for service of process [Form 1505; Corp. Code, § 1505]

Bibliography

CHAPTER 2. SHAREHOLDERS' DERIVATIVE SUITS

I. LEGAL PRINCIPLES

A. BACKGROUND

§ 2:1 Derivative suit defined
§ 2:2 Individual shareholder suit distinguished
§ 2:3 Derivative suits exempt from statutory requirements
§ 2:4 Derivative suits against nonprofit public or mutual benefit corporations or savings and loan associations

B. PREREQUISITES TO MAINTAINING DERIVATIVE SUIT

1. Share Ownership

§ 2:5 Contemporaneous and continuous ownership of shares
§ 2:6 Exception to contemporaneous ownership requirement

2. Demand to Directors

§ 2:7 Demand requirement
§ 2:8 Exception to demand requirement

C. SECURITY FOR EXPENSES AND ATTORNEY'S FEES

§ 2:9 Motion to require plaintiff to furnish bond
§ 2:10 Hearing on motion
§ 2:11 Fixing amount of bond
§ 2:12 Effect of failure to post bond
§ 2:13 Plaintiff's voluntary compliance with security requirements

D. DEFENSE ASPECTS

§ 2:14 Business judgment of board or special committee
§ 2:15 Equitable defenses

E. RECOVERY OF ATTORNEY'S FEES

§ 2:16 Plaintiff's fees

§ 2:17 Defendant's or corporation's fees and expenses

II. PROCEDURAL CHECKLISTS

§ 2:18 Matters to be considered by plaintiff bringing derivative suit
§ 2:19 Matters to be considered on motion for security

III. FORMS

A. COMPLAINT

§ 2:20 Complaint against officers and directors based on wrongful distribution of bonus

B. ANSWER

§ 2:21 Allegations of affirmative defense based on decision not to pursue claim

C. MOTIONS

§ 2:22 Notice of motion for order requiring plaintiff to furnish bond
§ 2:23 Notice of motion for order excusing plaintiff from contemporaneous share ownership requirement
§ 2:24 Declaration in support of motion for order excusing plaintiff from contemporaneous share ownership requirement

Bibliography

CHAPTER 3. ACTIONS INVOLVING PROMOTERS

I. LEGAL PRINCIPLES

§ 3:1 Nature
§ 3:2 Duty to disclose
§ 3:3 Who may bring action for fraud against future subscribers
§ 3:4 Promoters' liability on contracts
§ 3:5 Corporation's liability on promoters' contracts

II. FORMS

A. BREACH OF FIDUCIARY DUTY

§ 3:6 Shareholder's complaint for promoter's fraud

§ 3:7 Defense that full disclosure was made
§ 3:8 Defense that failure to make disclosure was waived

B. LIABILITY ON CONTRACT

§ 3:9 Complaint against promoter and corporation for breach of preincorporation contract
§ 3:10 Allegation of acceptance of benefits by corporation

Bibliography

CHAPTER 4. ACTIONS INVOLVING DIRECTORS AND OFFICERS

I. DIRECTORS

A. SELECTION OF DIRECTORS

1. Initial Directors

§ 4:1 General considerations
§ 4:2 Power of incorporators in absence of initial directors

2. Election of Directors

§ 4:3 In general; bylaw provisions as to number of directors
§ 4:4 Where board of directors is divided into classes
§ 4:5 Number of directors; manner of election
§ 4:6 Women and minorities

3. Appointment of Directors

§ 4:7 Appointment of directors by superior court

4. Provisional Directors

§ 4:8 Appointment where directors are deadlocked as to management of affairs
§ 4:9 Appointment where shareholders are deadlocked in election of successor board
§ 4:10 Qualifications
§ 4:11 Rights and powers; compensation
§ 4:12 Corporations subject to Public Utilities Act

5. Qualifications of Directors

§ 4:13 Bylaw provisions

B. REMOVAL OF DIRECTORS

§ 4:14 By shareholders
§ 4:15 By Superior Court
§ 4:16 By board of directors

C. RESIGNATION

§ 4:17 Resignation of directors

D. VACANCIES ON BOARD OF DIRECTORS

§ 4:18 Filling vacancies

E. DUTIES OF DIRECTORS AND CONTROLLING SHAREHOLDERS

1. Directors

§ 4:19 Management of corporation
§ 4:20 Delegation of management authority to committees
§ 4:21 Fiduciary duty; overview
§ 4:22 Duty to disclose
§ 4:23 Statutory standard of care and performance
§ 4:24 Business-judgment rule
§ 4:25 Application to executive compensation; golden parachute provisions
§ 4:26 Statute of limitations

2. Controlling Shareholders

§ 4:27 Duty of good faith and inherent fairness
§ 4:28 Application

F. MEETINGS OF DIRECTORS

§ 4:29 Who may call
§ 4:30 Notice requirements; Waiver of notice
§ 4:31 Location
§ 4:32 Meetings by telephone conference or similar communications equipment
§ 4:33 Quorum requirements
§ 4:34 What constitutes act of board
§ 4:35 Adjournment
§ 4:36 Action without meeting
§ 4:37 Applications to committees and incorporators

G. LIABILITIES OF DIRECTORS

1. General Considerations

§ 4:38 Personal liability for torts of corporation
§ 4:39 Personal liability for contracts signed on behalf of corporation

2. Liability for Approval of Distributions, Loans, or Guaranties

§ 4:40 Overview
§ 4:41 Approval of action
§ 4:42 Who may sue
§ 4:43 Damages
§ 4:44 Contribution
§ 4:45 Subrogation

3. Limitations on Liability

§ 4:46 No liability for performance in accordance with Corp Code, § 309
§ 4:47 Limitations on liability of directors in articles of incorporation
§ 4:48 Wording of provisions in articles limited liability of directors

H. CONFLICTS OF INTEREST BETWEEN CORPORATION AND DIRECTOR

§ 4:49 Validity of contract or transaction in which director has material financial interest
§ 4:50 Compensation of directors
§ 4:51 Contract or transaction between corporations with common directors

II. OFFICERS

§ 4:52 Mandatory officers
§ 4:53 General manager and chief executive officer
§ 4:54 Selection; tenure
§ 4:55 Duties of officers
§ 4:56 Resignation
§ 4:57 Validity of written instruments signed by officer
§ 4:58 Personal liability of officers

III. DE FACTO DIRECTORS AND OFFICERS

§ 4:59 Definition; Power to bind corporation

IV. AUTHORITY OF DIRECTORS AND OFFICERS AS TO THIRD PERSONS

§ 4:60 Limitations on business, purposes, or powers of directors and officers

§ 4:61 Power of directors and officers to bind corporation

V. CONFLICTS OF INTEREST BETWEEN CORPORATION AND DIRECTOR AND OFFICER

A. LOANS TO OR GUARANTIES OF OBLIGATIONS OF DIRECTORS OR OFFICERS

1. In General

§ 4:62 Statement of rule

§ 4:63 Payment of life insurance premiums

§ 4:64 Advances for expenses

2. On Security of Corporate Shares

§ 4:65 Statement of rule

3. Definitions

§ 4:66 Meaning of "approval of majority of the shareholders entitled to act"

4. Exceptions

§ 4:67 Transactions and institutions to which Corp. Code § 315 does not apply

B. CORPORATE OPPORTUNITIES

§ 4:68 Doctrine of corporate opportunity

§ 4:69 Trade secrets; Raid on corporate employees

§ 4:70 Purchase of indebtedness of corporation

C. INSIDER TRADING

1. Overview

§ 4:71 Under California corporate securities law

2. Liability and Damages

A. Purchaser or Seller

§ 4:72 Liability to purchaser or seller; damages

B. Issuer

§ 4:73 Liability to issuer; damages
§ 4:74 Reduction in damages
§ 4:75 Action by board of directors

3. Indemnification and Contribution

§ 4:76 Indemnification of corporation
§ 4:77 Contribution

VI. INDEMNIFICATION OF DIRECTORS, OFFICERS, AND OTHER CORPORATE AGENTS

§ 4:78 Permissive indemnification in action by or in right of corporation to procure judgment in favor of corporation; exceptions
§ 4:79 Permissive indemnification in any proceeding other than action by or in right of corporation to procure judgment in favor of corporation
§ 4:80 Mandatory indemnification
§ 4:81 Definitions
§ 4:82 Methods of authorizing permissive indemnification
§ 4:83 Advancing expenses
§ 4:84 Circumstances under which indemnification is prohibited
§ 4:85 Indemnification in articles
§ 4:86 Effect of insurance
§ 4:87 Fiduciaries of employee benefit plan

VII. FORMS

§ 4:88 Complaint by shareholder to remove director for fraudulent or dishonest acts [Corp. Code, § 304]
§ 4:89 Petition by director for appointment of provisional director where directors are deadlocked as to management of corporate affairs [Corp. Code, § 308, subd. (a)]
§ 4:90 Petition by shareholder for appointment of

provisional director where shareholders are deadlocked as to election of successor board [Corp. Code, § 308, subd. (b)]
§ 4:91 Complaint by shareholder against directors for breach of fiduciary duty in approval of executive compensation; "Golden parachutes" [Corp. Code, § 309]
§ 4:92 Complaint by shareholder against directors for making illegal loan [Corp. Code, §§ 315, 316]
§ 4:93 Complaint by purchaser of security against seller who was "insider" [Corp. Code, §§ 25402, 25502]
§ 4:94 Notice of motion for indemnification [Corp. Code, § 317]

Bibliography

CHAPTER 5. ALTER EGO LIABILITY

I. LEGAL PRINCIPLES

A. NATURE OF ALTER EGO DOCTRINE

§ 5:1 Corporation as separate entity; alter ego exception
§ 5:2 Statement of two-prong test
§ 5:3 Equitable doctrine to prevent fraud or injustice
§ 5:4 Disregard of corporate entity; Province of trial court
§ 5:5 Alter ego finding limited to particular case and purpose
§ 5:6 Procedural use of doctrine
§ 5:7 Other bases for liability distinguished

B. THE TWO-PRONG TEST

1. Required Elements

§ 5:8 Unity-of-ownership prong
§ 5:9 Fraud or injustice prong

2. Factors Considered

§ 5:10 Overview of factors
§ 5:11 Capitalization inadequate
§ 5:12 Assets commingled or diverted
§ 5:13 Assets and liabilities manipulated
§ 5:14 Representations to plaintiff
§ 5:15 Corporate formalities disregarded

C. POTENTIAL PLAINTIFFS

§ 5:16 Contract claimants
§ 5:17 Tort claimants

D. POTENTIAL DEFENDANTS

§ 5:18 Shareholders of close corporation
§ 5:19 Multiple alter egos
§ 5:20 Nonshareholders in control of corporation
§ 5:21 Parent corporations
§ 5:22 Sister corporations: Single enterprise theory

E. LITIGATING ALTER EGO ISSUE

§ 5:23 Raising alter ego issue
§ 5:24 Pleading alter ego liability
§ 5:25 Defenses
§ 5:26 Statute of limitations
§ 5:27 Discovery
§ 5:28 Motion to amend judgment under Code Civ. Proc. § 187
§ 5:29 Joint-debtor proceedings under Code Civ. Proc. §§ 989 et seq
§ 5:30 Effect of settlement with corporation on alter ego

II. FORMS

§ 5:31 Complaint by individual against corporation and sole shareholder alter ego on contract claim
§ 5:32 Allegations against individual and Doe alter ego defendants
§ 5:33 Allegations that parent corporation is alter ego of subsidiary
§ 5:34 Allegations of undercapitalization by sole shareholder
§ 5:35 Allegations of commingling and diversion of assets by sole shareholder
§ 5:36 Allegations of manipulation of assets and liabilities between sister corporations
§ 5:37 Allegations based on representations by sole shareholder
§ 5:38 Answer of alter ego defendant to complaint with affirmative defense of estoppel
§ 5:39 Demurrer to complaint against alter ego

defendant on grounds of failure to allege fraud or injustice
§ 5:40 Demurrer that complaint fails to state cause of action because defendant is not party to contract
§ 5:41 Amendment to complaint to substitute alter ego for Doe defendant
§ 5:42 Notice of motion to amend judgment to add alter ego as judgment debtor [Code Civ. Proc. § 187]
§ 5:43 Declaration of plaintiff's attorney in support of motion to amend judgment to add sole shareholder and related corporation as judgment debtor under alter ego doctrine [Code Civ. Proc. § 187]
§ 5:44 Declaration of sole shareholder and chief executive officer of defendant corporation in opposition to motion to amend judgment to add declarant as judgment debtor under alter ego doctrine [Code Civ. Proc., § 187]

Bibliography

CHAPTER 6. ISSUANCE OF SHARES

I. LEGAL PRINCIPLES

A. OVERVIEW

§ 6:1 Definitions
§ 6:2 Corporate powers regarding issuance of shares generally
§ 6:3 Authorization
§ 6:4 Overissuance of shares; remedy

B. CONSIDERATION FOR SHARES

1. General Principles

§ 6:5 Permissible types of consideration; instances in which shares may be issued
§ 6:6 Determination of consideration

2. Liability for Fraudulent Overvaluation or Insufficient Consideration

§ 6:7 Overview
§ 6:8 Director fraud
§ 6:9 Purchaser fraud

§ 6:10 Criminal penalties

3. Liability for Payment of Consideration

§ 6:11 Liability of subscriber or original issuee
§ 6:12 Liability for partly paid shares
§ 6:13 Liability of representatives and fiduciaries
§ 6:14 Shareholder defenses to suit for payment of consideration
§ 6:15 Liability of shareholder to corporate creditor
§ 6:16 Shareholder defenses in creditor actions

C. SUBSCRIPTION AGREEMENTS

§ 6:17 Overview
§ 6:18 Enforceability of preincorporation subscription agreements by corporation
§ 6:19 Enforceability of preincorporation subscription agreements by subscriber
§ 6:20 Defenses

D. SHARE CERTIFICATES

§ 6:21 Right to certificate
§ 6:22 Exception to shareholder's right to certificate
§ 6:23 Action to compel issuance of share certificate
§ 6:24 Lost, stolen or destroyed certificates; conditional right to replacement certificates
§ 6:25 Action to require issuance of new certificate to replace lost, stolen or destroyed certificate
§ 6:26 Defenses in action to require issuance of new certificate to replace lost, stolen or destroyed certificate
§ 6:27 Statements required to appear on certificates, initial transaction statements and written statements
§ 6:28 Effect of omission of required statements

E. CANCELLATION AND REISSUANCE OF SHARE CERTIFICATES AND INITIAL TRANSACTION STATEMENTS

§ 6:29 Corporation's right to cancel and reissue; enforceability of right
§ 6:30 Corporation's right to reissue initial transaction statements or written statements

§ 6:31 Shareholder's right to require corporation to reissue certificates

II. FORMS

§ 6:32 Shareholders' derivative complaint against directors for fraud in overvaluation of nonmonetary consideration received for shares [Corp. Code, § 409, subd. (b)]

§ 6:33 Allegation of directors' breach of fiduciary duty and fraud in fixing consideration received for shares [Corp. Code, § 409, subd. (b)]

§ 6:34 Complaint by corporation against subscriber for collection of full agreed consideration under preincorporation subscription agreement [Corp. Code, § 410, subd. (a)]

§ 6:35 Allegation of postincorporation subscription agreement

§ 6:36 Complaint by corporation against estate of deceased subscriber for collection of full agreed consideration under preincorporation subscription agreement [Corp. Code, § 413]

§ 6:37 Allegation of post incorporation subscription agreement in complaint against estate of deceased subscriber

§ 6:38 Complaint by subscriber against corporation for specific performance of preincorporation subscription agreement [Civ. Code § 3384]

§ 6:39 Complaint of corporate creditor against corporate shareholder to reach and apply liability of shareholder to corporation to pay amount due on shareholder's shares [Corp. Code, § 414, subd. (a)]

§ 6:40 Complaint by shareholder for order compelling corporation to issue and deliver new certificate to replace lost, stolen or destroyed certificate [Corp. Code, § 419, subd. (b)]

§ 6:41 Order compelling corporation to issue and deliver new certificate to replace lost, stolen or destroyed certificate [Corp. Code,§ 419, subd

CHAPTER 7. SECURITIES REGULATIONS AND LIABILITIES

I. OVERVIEW OF CORPORATE SECURITIES LAW OF 1968

§ 7:1 Corporate securities law of 1968
§ 7:2 Security
§ 7:3 Determination of whether instrument is security
§ 7:4 Applicability of Corporate Securities Law

II. QUALIFICATION OF OFFERS AND SALES OF SECURITIES

A. ISSUER TRANSACTIONS NOT RELATED TO RECAPITALIZATIONS OR REORGANIZATIONS

§ 7:5 Qualification requirement [Corp. Code § 25110]
§ 7:6 Qualification by coordination where applicant is other than previously qualified open-end investment company or unit investment trust [Corp. Code § 25111, subd. (a) to (c)]
§ 7:7 Qualification by coordination where applicant is previously qualified open-end investment company or unit investment trust [Corp. Code, § 25111, subd. (d)]
§ 7:8 Qualification by notification [Corp. Code § 25112]
§ 7:9 Qualification by permit [Corp. Code, § 25113]
§ 7:10 Effective period of qualification [Corp. Code, § 25114]
§ 7:11 Exemption from usury provisions

B. ISSUER TRANSACTIONS RELATED TO RECAPITALIZATIONS OR REORGANIZATIONS

§ 7:12 Qualification requirement [Corp. Code, § 25120]
§ 7:13 Qualification by permit [Corp. Code, § 25121]

C. NONISSUER TRANSACTIONS

§ 7:14 Qualification requirement [Corp. Code, § 25130]
§ 7:15 Qualification by coordination
§ 7:16 Qualification by notification [Corp. Code, § 25131]

§ 7:17 Qualification by permit [Corp. Code, § 25131, subd. (a)]
§ 7:18 Effective period of qualification [Corp. Code, § 25132]

D. APPLICATIONS FOR QUALIFICATION; CONSENT TO SERVICE OF PROCESS

§ 7:19 Applications for qualification; authorization for examination of financial records
§ 7:20 Qualification not deemed to be recommendation or approval by commissioner of corporations [Corp. Code, § 25164]
§ 7:21 Consent to service of process; method of service [Corp. Code, § 25165]

III. CIVIL LIABILITY UNDER CORPORATE SECURITIES LAW OF 1968

A. OVERVIEW

§ 7:22 Bases of liability
§ 7:23 Liability by implication [Corp. Code, § 25510]
§ 7:24 Survival of actions [Corp. Code, § 25509]
§ 7:25 Constructive appointment of commissioner of corporations as agent for service; method of service [Corp. Code, § 25550]
§ 7:26 Good faith defense [Corp. Code, § 25700]
§ 7:27 Waiver of provisions of Corporate Securities Law of 1968 [Corp. Code, § 25701]

B. LIABILITY FOR MARKET MANIPULATION

1. Principles of Liability

§ 7:28 Overview of prohibited conduct
§ 7:29 Wash sales [Corp. Code, § 25400, subd. (a)]
§ 7:30 Illusory market [Corp. Code, § 25400, subd. (b)]
§ 7:31 Tipster sheets; tipster hirelings [Corp. Code, § 25400, subds. (c), (e)]
§ 7:32 False or misleading statements of material fact [Corp. Code, § 25400, subd. (d)]
§ 7:33 Statutory liability for violation of Corp. Code § 25400; damages [Corp. Code, § 25500]
§ 7:34 Limitation of actions [Corp. Code, § 25506]

2. Forms

a. Complaint

§ 7:35 Complaint by purchaser or seller for damages resulting from market manipulation [Corp. Code, §§ 25400, 25500]

b. Allegations

§ 7:36 Allegation that defendant engaged in prohibited wash sale [Corp. Code, § 25400, subd. (a)]

§ 7:37 Allegation that defendant engaged in conduct which created illusory market in security [Corp. Code, § 25400, subd. (b)]

§ 7:38 Allegation that defendant disseminated tipster information [Corp. Code § 25400, subds. (c) and (e)]

§ 7:39 Allegation that defendant induced transaction by false or misleading statements or omission of material facts [Corp. Code, § 25400, subd. (d)]

C. LIABILITY FOR MISREPRESENTATION OR OMISSION OF MATERIAL FACT

1. Overview

a. Principles of Liability

§ 7:40 Prohibited conduct [Corp. Code, § 25401]

§ 7:41 Statutory liability for violation of Corp. Code § 25401; remedies [Corp. Code, § 25501]

§ 7:42 Joint and several liability of controlling persons and persons who materially assist violation [Corp. Code, §§ 25504, 25504.1]

§ 7:43 Joint and several liability of experts [Corp. Code, § 25504.2, subds. (a), (c)]

b. Limitation of Actions

§ 7:44 Statute of limitation for misrepresentation [Corp. Code § 25506]

§ 7:45 Statute of limitation in actions against experts [Corp. Code, § 25506.1]

c. Defenses

§ 7:46 Defenses to action alleging liability for violation of Corp. Code § 25401 [Corp. Code, § 25501]

§ 7:47 Defense to action alleging joint and several

liability under Corp. Code § 25504 [Corp. Code, § 25504]
§ 7:48 Defenses to action alleging joint and several liability of expert under Corp. Code § 25504.2, subd. (a) [Corp. Code, § 25504.2, subd. (b)]

2. Forms

a. Complaints and Allegations

§ 7:49 Complaint by seller to rescind sale of security induced by purchaser's misrepresentation or omission of material fact [Corp. Code, §§ 25401, 25501]
§ 7:50 Complaint by purchaser to rescind sale of security induced by seller's misrepresentation or omission of material fact [Corp. Code, §§ 25401, 25501]
§ 7:51 Complaint by seller for damages resulting from sale of security induced by purchaser's misrepresentation or omission of material fact [Corp. Code,§§ 25401, 25501]
§ 7:52 Complaint by purchaser for damages resulting from sale of security induced by seller's misrepresentation or omission of material fact [Corp. Code, §§ 25401, 25501]
§ 7:53 Allegation of joint and several liability of controlling person [Corp. Code, § 25504]
§ 7:54 Allegation of joint and several liability of person who materially aided violation [Corp. Code, § 25504.1]
§ 7:55 Allegation of joint and several liability of expert [Corp. Code, § 25504.2]

b. Defenses

§ 7:56 Plaintiff had knowledge of untruth or omission [Corp. Code, § 25501]
§ 7:57 Defendant exercised reasonable care and had no knowledge of untruth or omission [Corp. Code, § 25501]
§ 7:58 Defendant would not have known of untruth or omission even if he or she had exercised reasonable care [Corp. Code, § 25501]
§ 7:59 Defendant had no knowledge of facts on which joint and several liability is based [Corp. Code, § 25504]
§ 7:60 Expert reasonably believed statements were true [Corp. Code, § 25504.2, subd. (b)(1)]

§ 7:61 Document did not fairly represent statement of expert [Corp. Code, § 25504.2, subd. (b)(2)]
§ 7:62 Disclaimer by expert [Corp. Code, § 25504.2, subd. (b)(3)]

D. LIABILITY FOR INSIDER TRADING

1. Principles of Liability

§ 7:63 Prohibited conduct [Corp. Code, § 25402]
§ 7:64 Liability to purchaser or seller [Corp. Code, § 25502]
§ 7:65 Liability to issuer [Corp. Code, § 25502.5]
§ 7:66 Limitation of actions [Corp. Code, § 25506]
§ 7:67 Defenses to action alleging liability for violation of Corp. Code § 25402

2. Forms

a. Complaints

§ 7:68 Complaint by purchaser or seller for damages resulting from insider transaction [Corp. Code §§ 25402, 25502]
§ 7:69 Complaint by issuer of security or other person on behalf of issuer for damages resulting from insider transaction [Corp. Code, §§ 25402, 25502.5]

b. Defenses

§ 7:70 Defendant believed plaintiff was in possession of inside information [Corp. Code § 25402]
§ 7:71 Plaintiff had knowledge of inside information [Corp. Code § 25502]
§ 7:72 Plaintiff would have purchased or sold at same price even if inside information had been revealed [Corp. Code § 25502]
§ 7:73 Limitation on liability to issuer [Corp. Code § 25502.5]

E. LIABILITY FOR REGULATORY VIOLATION

1. Overview

a. Principles of Liability

§ 7:74 Prohibited conduct
§ 7:75 Liability for regulatory violations not related to

recapitalizations or reorganizations; rescission or damages [Corp. Code, § 25503]
§ 7:76 Liability for regulatory violations relating to recapitalizations or reorganizations; damages [Corp. Code, § 25503]
§ 7:77 Joint and several liability of persons on whose behalf offering is made and underwriters [Corp. Code, § 25503]
§ 7:78 Joint and several liability of controlling persons and persons who materially assist violation [Corp. Code, §§ 25504, 25504.1]
§ 7:79 Limitation of actions [Corp. Code, § 25507, subd. (a)]

b. Defenses

§ 7:80 Sale of security qualified prior to payment or receipt of consideration [Corp. Code, § 25503]
§ 7:81 Prior offer to repurchase security, pay damages, or rescind transaction; offeror's consent to service of process and method of service [Corp. Code, § 25507, subds. (b), (c), (d)]
§ 7:82 Defendant had no knowledge of facts on which joint and several liability of controlling person is based [Corp. Code, § 25504]
§ 7:83 Securities or transactions exempt from or not subject to qualification requirements; private placement exemption [Corp. Code, § 25102, subd. (f)]

2. Forms

a. Complaints and Allegations

§ 7:84 Complaint by purchaser for rescission of sale of security sold in nonissuer transaction or issuer transaction not related to recapitalization or reorganization [Corp. Code, § 25503]
§ 7:85 Complaint by purchaser for damages resulting from sale of security sold in nonissuer transaction or issuer transaction not related to recapitalization or reorganization [Corp. Code, § 25503]
§ 7:86 Complaint for damages resulting from sale of security sold in issuer transaction related to recapitalization or reorganization [Corp. Code § 25503]
§ 7:87 Allegation of joint and several liability of person

on whose behalf offering was made [Corp. Code, § 25503]
§ 7:88 Allegation of joint and several liability of underwriter of security [Corp. Code, § 25503]

b. Defenses

§ 7:89 Sale of security qualified prior to payment or receipt of consideration [Corp. Code, § 25503]
§ 7:90 Prior offer to repurchase security [Corp. Code, § 25507, subd. (b)]
§ 7:91 Limitation on joint and several liability of underwriter [Corp. Code, § 25503]

F. INDEMNIFICATION AND CONTRIBUTION

1. Principles of Liability

§ 7:92 Corporation's right to indemnification [Corp. Code, § 25505]
§ 7:93 Right to contribution; limits [Corp. Code, § 25505]
§ 7:94 Limitation of actions [Corp. Code § 25508]

2. Forms

a. Complaints and Motion

§ 7:95 Complaint by corporation for indemnification by principal executive officer, director, or controlling person who willfully violated securities act [Corp. Code, § 25505]
§ 7:96 Complaint for contribution from person not made party to prior action [Corp. Code, § 25505]
§ 7:97 Notice of motion for order determining liability for contribution from codefendant [Corp. Code, § 25505]

b. Defenses to Action for Contribution

§ 7:98 Party not entitled to contribution because party's liability based on willful violation [Corp. Code, § 25505]
§ 7:99 Party not entitled to contribution because party was principal executive officer, director, or controlling person of corporation [Corp. Code, § 25505]

G. LIABILITY ON SECURITY ISSUER'S BOND

1. Principles of Liability

§ 7:100 Regulation of broker-dealers and agents

§ 7:101 Prohibited conduct
§ 7:102 Securities issuer's bond; deposit in lieu of bond
§ 7:103 Enforcing liability on bond
§ 7:104 Limitation of actions [Corp. Code, § 25216, subd. (e)]

2. Complaint

§ 7:105 Complaint to enforce liability on securities issuer's bond [Code Civ. Proc., § 996.430; Corp. Code, § 25216, subd. (e)]

CHAPTER 8. DIVIDENDS AND OTHER DISTRIBUTIONS

I. LEGAL PRINCIPLES

A. DISTRIBUTIONS TO SHAREHOLDERS

1. Types of Distributions

§ 8:1 Dividends and reacquisitions of shares
§ 8:2 Exclusions from distributions

2. Declaration of Dividends

§ 8:3 Declaration by board of directors; discretion
§ 8:4 Ownership of distributions; record date

3. Redemptions and Repurchases

§ 8:5 Provisions for redeemable shares
§ 8:6 Notice of redemption and redemption
§ 8:7 Redemption through bank or trust company
§ 8:8 Repurchase of shares
§ 8:9 Reacquired shares

B. ACTIONS FOR IMPROPER DISTRIBUTIONS

§ 8:10 Liability of directors and shareholders
§ 8:11 Actions by creditors
§ 8:12 Actions by preferred shareholders
§ 8:13 Responsive actions by directors and shareholders

C. PROPRIETY OF DISTRIBUTIONS

1. Limitations and Tests

§ 8:14 Retained earnings test

§ 8:15 Alternative assets to liabilities tests
§ 8:16 Inability to meet maturing liabilities
§ 8:17 Impairing liquidation preference of senior shares
§ 8:18 Impairing dividend preference of senior shares
§ 8:19 Additional restrictions

2. Application of Tests

§ 8:20 Financial information
§ 8:21 Time of distributions
§ 8:22 Computing assets and liabilities
§ 8:23 Distributions of property
§ 8:24 Distributions in payment of share-purchase obligations
§ 8:25 Applicability of test to licensed broker-dealers
§ 8:26 Applicability of test to life-insurance redemption contracts
§ 8:27 Applicability of test to disability-insurance redemption contracts

II. FORMS

A. COMPLAINTS AND ALLEGATIONS

§ 8:28 Complaint by creditor of corporation in name of debtor corporation against directors for approving corporation's making of distribution contrary to Corp. Code § 500 [Corp. Code, §§ 316, 506, subd. (b)]
§ 8:29 Allegation that director was present at meeting and abstained from voting on distribution alleged to be improper [Corp. Code, § 316, subd. (b)]
§ 8:30 Complaint by creditor in name of debtor corporation against shareholders who received prohibited dividend [Corp. Code, § 506, subd. (b)]
§ 8:31 Allegation that distribution is contrary to Corp. Code § 501 because of corporation's inability to meet maturing assets
§ 8:32 Complaint by preferred shareholder in name of corporation against directors and junior shareholders alleging distribution impaired liquidation preference [Corp. Code, §§ 316, 502, 506, subd. (b)]
§ 8:33 Complaint by preferred shareholder in name of corporation against directors and junior

shareholders alleging distribution impaired dividend preference [Corp. Code, §§ 316, 503, 506, subd. (b)]

B. AFFIRMATIVE DEFENSES

§ 8:34 Affirmative defense of good faith and reasonable care in taking action in answer to complaint by creditor alleging improper distribution
§ 8:35 Affirmative defense by director alleging absence from meeting
§ 8:36 Affirmative defense by director that dividend was lawful when declared

C. CROSS-COMPLAINTS

§ 8:37 Cross-complaint by director for indemnification against director who has not been sued in underlying action alleging improper distribution
§ 8:38 Cross-complaint against recipient shareholders by director sued in underlying action for approving allegedly improper distribution for subrogation to rights of corporation

Bibliography

CHAPTER 9. CORPORATE RECORDS AND REPORTS

I. LEGAL PRINCIPLES

A. RECORDS

1. Duty to Keep Records Required by Law

§ 9:1 Overview
§ 9:2 Minutes
§ 9:3 Books of account
§ 9:4 Bylaws
§ 9:5 Share register
§ 9:6 Tax records
§ 9:7 Securities transactions

2. Inspection by Shareholders

a. Right to Inspect

§ 9:8 Absolute right of certain parties to inspect share register

§ 9:9 Limited-purpose right to inspect share register
§ 9:10 Corporations subject to share register inspection statute; inspection by shareholder or representative
§ 9:11 Accounting records; minutes; bylaws

b. Enforcement of Inspection Rights

§ 9:12 Postponement of shareholder meeting if absolute right to share register inspection is denied
§ 9:13 Mandamus petition to compel inspection
§ 9:14 Court-ordered investigation and audit
§ 9:15 Attorney fees and expenses
§ 9:16 Common law inspection right
§ 9:17 Enforcement of record-keeping, reporting, and inspection statutes by Attorney General

3. Inspection by Directors and Local Assessor

§ 9:18 Director's right to inspect
§ 9:19 Enforcement of director's right
§ 9:20 Inspection by County Assessor

4. Records as Evidence

§ 9:21 Hearsay exception
§ 9:22 Rebuttable presumption

B. REPORTS

1. Annual Financial Report to Shareholders

§ 9:23 Contents
§ 9:24 Shareholder's written request for annual report
§ 9:25 Enforcement of shareholder's right to annual report

2. Annual Information Statement Filed with Secretary of State

§ 9:26 Procedure
§ 9:27 Contents and revisions

C. PENALTIES AND LIABILITIES

§ 9:28 Failure to maintain records or prepare reports
§ 9:29 Falsification
§ 9:30 Failure to notify governmental agency and shareholders of false or misleading reports

D. ENFORCEMENT OF JUDGMENT PENDING APPEAL

§ 9:31 Exception to stay-of-enforcement rule

§ 9:32 Writ of supersedeas to stay enforcement

II. PROCEDURAL CHECKLISTS

§ 9:33 Shareholder's checklist

§ 9:34 Director's checklist

§ 9:35 Corporation's checklist

III. FORMS

§ 9:36 Demand to inspect share register by shareholders asserting absolute inspection right [Corp. Code, § 1600, subd. (a)]

§ 9:37 Demand to inspect share register by shareholder asserting limited-purpose inspection right [Corp. Code, § 1600, subd. (c)]

§ 9:38 Petition for writ of mandamus by shareholder asserting limited-purpose inspection right to compel corporation to permit inspection of share register [Code Civ. Proc., §§ 1085, 1086; Corp. Code, §§ 1600, 1603]

§ 9:39 Petition for writ of mandamus by shareholder asserting absolute inspection right to compel corporation to permit inspection of share register [Code Civ. Proc., §§ 1085, 1086; Corp. Code, §§ 1600, 1603]

§ 9:40 Corporation's return by answer to alternative writ of mandamus to compel corporation to permit inspection of share register [Code Civ. Proc., § 1089; Corp. Code, § 1600]

§ 9:41 Request for annual financial report to shareholders [Corp. Code, § 1501]

§ 9:42 Petition for writ of mandamus by shareholder to compel corporation to prepare and deliver financial report [Code Civ. Proc., §§ 1085, 1086; Corp. Code, § 1501]

Bibliography

CHAPTER 10. SHAREHOLDER MEETINGS AND VOTING

I. LEGAL PRINCIPLES

A. LITIGATION OF ISSUES INVOLVING MEETINGS

1. Requirements for Meetings

§ 10:1 Annual and special meetings
§ 10:2 Quorum
§ 10:3 Minutes of meeting

2. Notice of Meetings

§ 10:4 Form and contents of written notice
§ 10:5 Method of service
§ 10:6 Notice of special meeting
§ 10:7 Notice of adjourned meeting
§ 10:8 Waiver of notice; consent and approval

3. Challenging Failure to Call Meeting

§ 10:9 Failure to hold annual meeting
§ 10:10 Failure to call special meeting
§ 10:11 Actions taken without meeting

B. CHALLENGING VOTING IRREGULARITIES

1. Persons Having Right to Vote

§ 10:12 Record date for determining shareholders
§ 10:13 Shares held in fiduciary capacity
§ 10:14 Shares held under security agreement
§ 10:15 Jointly held shares
§ 10:16 Shares held by minor
§ 10:17 Shares held by corporations

2. Shareholders' Voting Rights

§ 10:18 One vote per share
§ 10:19 Majority vote required for approval of action
§ 10:20 Requirement of supermajority vote
§ 10:21 Cumulative voting for directors
§ 10:22 Report of election results

3. Proxies

§ 10:23 Use of proxies; definitions

§ 10:24 Form of proxy
§ 10:25 Revocation of proxy
§ 10:26 Irrevocable proxies

4. Voting Trust Agreements

§ 10:27 Purpose and validity

5. Obligation to Maintain and Disclose Records of Shares Voted on Behalf of Others

§ 10:28 Purpose of requirement
§ 10:29 "Person on whose behalf shares are voted"
§ 10:30 Maintenance and disclosure of voting record
§ 10:31 Compliance with federal ERISA requirements as alternative method of disclosure
§ 10:32 Enforcement

C. DETERMINING VALIDITY OF ELECTION

§ 10:33 Inspectors of election
§ 10:34 Action to determine validity of election
§ 10:35 Equitable nature of action
§ 10:36 Relief available

D. ACTION BY ATTORNEY GENERAL

§ 10:37 Action on complaint

II. PROCEDURAL CHECKLIST

§ 10:38 Checklist of matters to be considered in action involving meeting of or voting by shareholders

III. FORMS

A. NOTICES RELATED TO SHAREHOLDER MEETINGS

§ 10:39 Notice of meeting of shareholders [Corp. Code § 601]
§ 10:40 Waiver of notice of meeting of shareholders [Corp. Code, § 601, subd. (e)]

B. COMPLAINTS AND RELATED PLEADINGS

§ 10:41 Application for order directing corporation to

hold annual meeting of shareholders [Corp. Code, § 600, subd. (c)]
§ 10:42 Application by shareholders for order that corporation give notice of special meeting of shareholders [Corp. Code, §§ 601, subd. (c), 305, subd. (c)]
§ 10:43 Notice of application for order that corporation give notice of special meeting of shareholders [Corp. Code, §§ 601, subd. (c), 305, subd. (c)]
§ 10:44 Complaint by shareholder for declaratory and injunctive relief on ground that articles of incorporation were amended without proper notice of meeting [Corp. Code, § 601, subd. (f)]
§ 10:45 Complaint by shareholder challenging validity of election of directors and seeking injunctive relief on ground of improper notice of special meeting [Corp. Code § 709; Code Civ. Proc. §§ 526, 527, subd. (a)]
§ 10:46 Complaint by proxyholder to determine validity of election of directors [Corp. Code, § 709]
§ 10:47 Complaint by shareholder to uphold validity of election as director [Corp. Code, § 709]
§ 10:48 Complaint for specific performance of voting trust agreement and to determine validity of election of directors [Corp. Code, §§ 706, subd. (b), 709; Civ. Code, § 3384]
§ 10:49 Petition for writ of mandamus to compel maintenance and disclosure of voting record [Corp. Code, § 711, subd. (j); Code Civ. Proc., § 1085]

C. ALLEGATIONS IN COMPLAINTS

§ 10:50 Allegation that shares were improperly issued and allowed to vote in election of directors [Corp. Code, § 709]
§ 10:51 Allegation that foreign corporation held election of directors in California [Corp. Code, § 709, subd. (a)]

D. DEFENSIVE PLEADINGS

§ 10:52 Notice of opposition to application for order that corporation give notice of special meeting of shareholders [Corp. Code, §§ 601, subd. (c), 305, subd. (c)]

§ 10:53 Defense that complaint challenging corporate action is barred by laches
§ 10:54 Defense that plaintiff has "unclean hands"
§ 10:55 Defense of waiver of notice by attendance at meeting of shareholders
§ 10:56 Defense to action for disclosure of voting record that issues are moot because respondent has complied with statute [Corp. Code § 711]
§ 10:57 Defense to action for disclosure of voting record that petitioner has failed to pay charge for disclosure [Corp. Code, § 711, subd. (i)]

E. ORDERS AND JUDGMENTS

§ 10:58 Order directing corporation to hold annual meeting of shareholders [Corp. Code, § 600, subd. (c)]
§ 10:59 Order fixing date for hearing of action to determine validity of election of directors [Corp. Code, § 709]
§ 10:60 Judgment determining validity of election of directors [Corp. Code, § 709, subd. (c)]
§ 10:61 Judgment granting peremptory writ of mandamus to compel maintenance and disclosure of voting record [Corp. Code, § 711, subd. (j);, Code Civ. Proc., § 1085]

Bibliography

CHAPTER 11. REORGANIZATION

I. LEGAL PRINCIPLES

A. OVERVIEW OF REORGANIZATION

§ 11:1 Types of reorganizations; definitions
§ 11:2 Other corporate restructuring distinguished

B. REQUIREMENTS FOR REORGANIZATION, SHORT-FORM MERGERS, AND SHARE EXCHANGE TENDER OFFERS

§ 11:3 Board of directors' approval in reorganization and share exchange tender offers
§ 11:4 Shareholder approval and voting in reorganization

§ 11:5 Interested party proposal and fairness opinion
§ 11:6 Short-form mergers
§ 11:7 Share exchange tender offers

C. DISSENTING SHAREHOLDERS' RIGHTS

§ 11:8 "Dissenting shares" and "dissenting shareholder" defined
§ 11:9 Notice to dissenting shares
§ 11:10 Demand by dissenting shareholders and submission of shares for endorsement
§ 11:11 Determination of dissenting share status and fair market value; appraisal procedures
§ 11:12 Dividend rights and withdrawal of dissenting shares
§ 11:13 Exclusivity of remedies available to dissenting shareholders
§ 11:14 Remedies available to shareholders in short-form mergers and certain reorganizations
§ 11:15 Loss of status of dissenting shares

D. CORPORATE LIABILITIES AFTER REORGANIZATION

§ 11:16 Debt and tort liability

II. PROCEDURAL CHECKLIST

§ 11:17 Checklist of matters to be considered by corporation and shareholders regarding dissenters' rights

III. FORMS

§ 11:18 Corporation's notice to shareholders of reorganization approval and fair market value of shares [Corp. Code § 1301, subd. (a)]
§ 11:19 Shareholder's demand for purchase of dissenting shares [Corp. Code, § 1301, subd. (b), (c)]
§ 11:20 Shareholder's complaint for determination of fair market value and appointment of appraiser after reorganization [Corp. Code §§ 1304, 1305]
§ 11:21 Affirmative defense to shareholder's claim of dissenting share status based on untimely demand for purchase [Corp. Code, §§ 1304, 1305]

§ 11:22 Corporation's notice of motion for determination of dissenting share status and fair market value by court or appraiser [Corp. Code, §§ 1304, 1305]
§ 11:23 Shareholder's notice of motion to confirm appraiser's report [Corp. Code, § 1305]
§ 11:24 Order determining dissenting share status and appointing appraiser to determine fair market value [Corp. Code, §§ 1304, 1305]
§ 11:25 Order after court's determination of fair market value [Corp. Code, § 1305]
§ 11:26 Judgment against corporation for payment of fair market value of dissenting shares and apportionment of costs [Corp. Code, § 1305]

Bibliography

CHAPTER 12. RECEIVERSHIP

I. LEGAL PRINCIPLES

A. NATURE OF REMEDY

§ 12:1 Practical considerations in use of receivership as remedy
§ 12:2 Provisional director as alternative to receivership

B. CORPORATIONS CODE PROCEEDINGS

§ 12:3 Involuntary dissolution
§ 12:4 Voluntary winding up
§ 12:5 Action by Attorney General

C. PROCEEDINGS UNDER CODE OF CIVIL PROCEDURE AND OTHER CODES

§ 12:6 Code of Civil Procedure authorization, generally
§ 12:7 Statutory authorization in corporate context
§ 12:8 Statutory authorization in non-corporate context
§ 12:9 Proceedings authorized by other codes

D. PROCEDURE

1. Appointment

§ 12:10 Ex parte appointment
§ 12:11 Appointment on noticed motion

§ 12:12 Selection of receiver
§ 12:13 Order of appointment; bond or undertaking; oath

2. Powers and Duties; Termination

§ 12:14 Inventory and accounting
§ 12:15 Court-supervised powers
§ 12:16 Employment of agents and attorneys
§ 12:17 Final account; claim for compensation
§ 12:18 Discharge, winding up, and unclaimed funds

II. FORMS

§ 12:19 Petition for appointment of provisional director [Corp. Code § 308]
§ 12:20 Complaint for involuntary dissolution of corporation seeking appointment of receiver [Corp. Code §§ 1800, 1803]
§ 12:21 Complaint for foreclosure of deed of trust and appointment of receiver for assignment of rents, issues, and profits [Code Civ. Proc., §§ 564, subd. (b)(11), (12)]
§ 12:22 Complaint for dissolution of partnership and for ex parte appointment of receiver based on partner's misappropriation of partnership funds
§ 12:23 Application for ex parte appointment of receiver, temporary restraining order, and order to show cause
§ 12:24 Declaration supporting application for ex parte order appointing receiver [Cal. Rules of Court, Rule 1900]
§ 12:25 Order appointing receiver ex parte and order to show cause why appointment should not be confirmed [Cal. Rules of Court, Rule 1901]
§ 12:26 Order confirming appointment of receiver [Cal. Rules of Court, Rule 1901]
§ 12:27 Notice of motion and motion for order appointing receiver
§ 12:28 Notice of motion and motion for discharge of receiver and substitution of another receiver
§ 12:29 Declaration supporting motion for discharge of receiver
§ 12:30 Ex Parte order appointing receiver and order to show cause and temporary restraining order—

Rents, issues, and profits [Judicial Council Form RC-200]
§ 12:31 Order confirming appointing receiver and order to show cause and temporary restraining order—Rents, issues, and profits [Judicial Council Form RC-210]
§ 12:32 Order to show cause and temporary restraining order—Rents, issues, and profits [Judicial Council Form RC-300]
§ 12:33 Order appointing receiver after hearing and preliminary injunction—Rents, issues and profits [Judicial Council Form RC-310]

Bibliography

CHAPTER 13. DISSOLUTION

I. INITIATING VOLUNTARY DISSOLUTION

A. WHO MAY ELECT TO DISSOLVE

§ 13:1 Shareholders
§ 13:2 Board of directors

B. PROCEDURE

§ 13:3 Certificate of election
§ 13:4 Dissolution by vote of all outstanding shares
§ 13:5 Notice to shareholders and creditors
§ 13:6 Court supervision of voluntary dissolution
§ 13:7 Revocation of election

II. INITIATING INVOLUNTARY DISSOLUTION

A. BRINGING ACTION

1. Complaint by Directors or Shareholders

§ 13:8 Grounds
§ 13:9 Who may file complaint
§ 13:10 Venue
§ 13:11 Notice to shareholders and creditors
§ 13:12 Intervention by shareholders and creditors

2. Complaint by Attorney General

§ 13:13 Grounds
§ 13:14 Notice and correction

§ 13:15 Service of process
§ 13:16 Remedies

B. AVOIDING DISSOLUTION BY BUYING OUT SHARES

§ 13:17 Authority for buyout
§ 13:18 Determining fair value of purchased shares
§ 13:19 Where parties cannot agree on value
§ 13:20 Sale as going concern
§ 13:21 Shares of closely held corporations
§ 13:22 Payment for shares

C. METHODS OF RELIEF

§ 13:23 Appointment of provisional director
§ 13:24 Appointment of receivers

III. COMPLETING WINDING UP AND DISSOLUTION

A. POWERS OF COURT AND DIRECTORS

§ 13:25 Powers of court
§ 13:26 Filling vacancy on board of directors
§ 13:27 Powers of board of directors
§ 13:28 Validity of instruments executed during dissolution

B. PAYING CORPORATE DEBTS

§ 13:29 Time set by court to present claims
§ 13:30 Unknown creditors
§ 13:31 Liability of directors for corporate debt
§ 13:32 Assumption of liability by third party
§ 13:33 Authority for distribution to shareholders
§ 13:34 Methods of distribution to shareholders
§ 13:35 Liability of shareholders for creditors' claims

C. PROCEDURAL REQUIREMENTS TO COMPLETE WINDING UP

§ 13:36 Certificate of dissolution
§ 13:37 Court order for involuntary dissolution
§ 13:38 Court order for voluntary dissolution

D. WINDING UP AFTER DISSOLUTION

1. Liability of Corporation

§ 13:39 Corporate existence after dissolution
§ 13:40 Suits against corporations
§ 13:41 Service of process
§ 13:42 Foreign corporations
§ 13:43 Quiet title actions
§ 13:44 Federal tax consequences

2. Liability of Shareholders

§ 13:45 Corporate dissolution after 1991
§ 13:46 Corporate dissolution before 1991

IV. PROCEDURAL CHECKLISTS

§ 13:47 Commencing voluntary dissolution
§ 13:48 Commencing involuntary dissolution
§ 13:49 Completing winding up and dissolution

V. FORMS

§ 13:50 Shareholders' written consent to voluntary dissolution [Corp. Code, § 1900, subd. (a)]
§ 13:51 Directors' resolution electing to wind up and dissolve the corporation [Corp. Code, § 1900, subd. (b)]
§ 13:52 Certificate of election to wind up and dissolve [Corp. Code, § 1901]
§ 13:53 Notice of commencement of proceedings for voluntary winding up and dissolution [Corp. Code, § 1903, subd. (c)]
§ 13:54 Petition by shareholders for court supervision of voluntary winding up and dissolution [Corp. Code, § 1904]
§ 13:55 Certificate of revocation [Corp. Code, § 1902]
§ 13:56 Complaint for involuntary dissolution [Corp. Code, § 1800]
§ 13:57 Notice of motion to stay winding up and dissolution and determine value of moving parties' shares in involuntary proceedings [Corp. Code, § 2000]
§ 13:58 Notice to creditors to present claims [Corp. Code, § 1807]
§ 13:59 Certificate of dissolution [Corp. Code, § 1905]

§ 13:60 Petition for order that corporation has been wound up and dissolved [Corp. Code, § 1907]
§ 13:61 Order declaring corporation wound up and dissolved [Corp. Code, § 1907]

Bibliography

Volume BUS2

CHAPTER 14. CLOSE CORPORATIONS

I. LEGAL PRINCIPLES

A. CLOSE CORPORATION CHARACTERISTICS

§ 14:1 Background and purpose of statutory provisions
§ 14:2 Statutory requirements for close corporation status
§ 14:3 Required share certificate legend
§ 14:4 Determining the number of shareholders
§ 14:5 Involuntary loss of close corporation status
§ 14:6 Effect of close corporation status

B. SHAREHOLDERS' AGREEMENTS

§ 14:7 Definition and permissible scope
§ 14:8 Effect of agreement on transferee of shares
§ 14:9 Liability of shareholders
§ 14:10 Standard of care of managerial shareholders
§ 14:11 Termination of agreement
§ 14:12 Validity of shareholders' agreements in closely held corporations

C. VOTING AGREEMENTS, IRREVOCABLE PROXIES, AND VOTING TRUSTS

§ 14:13 Statutory authorization and permissible scope of voting agreements
§ 14:14 Irrevocable proxies
§ 14:15 Required share certificate legend
§ 14:16 Effect of voting agreement, irrevocable proxy, or voting restrictions on transferee of shares
§ 14:17 Enforcement of voting agreements
§ 14:18 Termination of voting agreements

§ 14:19 Validity of voting agreements in closely held corporations
§ 14:20 Voting trusts

D. MERGER AND REORGANIZATION

§ 14:21 Merger
§ 14:22 Reorganization

E. DISSOLUTION

§ 14:23 Voluntary dissolution
§ 14:24 Involuntary dissolution

II. FORMS

§ 14:25 Verified complaint for declaratory judgment and injunctive relief to compel board to amend articles by deleting special provisions relating to close corporations for exceeding authorized number of shareholders [Corp. Code, § 158]
§ 14:26 Complaint for damages for breach of fiduciary duty of managing shareholder under close corporation shareholders' agreement [Corp. Code, § 300, subd. (d)]
§ 14:27 Complaint for specific performance of voting agreement [Civ. Code, § 3384; Corp. Code, § 706, subd. (a)], and determination of validity of election of directors [Corp. Code, § 709]
§ 14:28 Petition by shareholder of close corporation for court supervision of voluntary winding up and dissolution [Corp. Code, § 1904]
§ 14:29 Verified complaint by shareholder for involuntary dissolution of close corporation [Corp. Code, § 1800, subd. (b)(5)]

Bibliography

CHAPTER 15. PROFESSIONAL CORPORATIONS

I. LEGAL PRINCIPLES

A. OVERVIEW

§ 15:1 Definitions

§ 15:2 Applicable law

B. QUALIFICATION

§ 15:3 Formation and certification
§ 15:4 Articles of incorporation
§ 15:5 Adoption of name
§ 15:6 Suspension or revocation of certificate of qualification

C. OFFICERS, DIRECTORS, AND SHAREHOLDERS

§ 15:7 Licensing requirements
§ 15:8 Professional law corporations
§ 15:9 Professional medical corporations
§ 15:10 Corporations with one or two shareholders

D. REGULATION; LIABILITY

§ 15:11 Disciplinary rules
§ 15:12 Liability of shareholders

II. FORMS

§ 15:13 Allegation of party's status as professional corporation

Bibliography

CHAPTER 16. ACTIONS BY AND AGAINST PARTNERS AND PARTNERSHIPS

I. LEGAL PRINCIPLES

A. GOVERNING LAW

§ 16:1 Uniform Partnership Act of 1994
§ 16:2 Changes in Partnership Law
§ 16:3 Fictitious business name statutes

B. EXISTENCE OF PARTNERSHIP

§ 16:4 Partnership defined
§ 16:5 Formation and essential elements

C. AUTHORITY OF PARTNER TO BIND PARTNERSHIP

§ 16:6 Partner as agent of partnership
§ 16:7 Limitations on authority

D. LIABILITY OF PARTNERSHIP FOR ACTS OF PARTNER

§ 16:8 Partnership by estoppel, purported partnership
§ 16:9 Effect of partner's admissions
§ 16:10 Imputed knowledge and notice
§ 16:11 Contracts, generally
§ 16:12 Conveyances of real property; effect of recordation of statement of partnership
§ 16:13 Wrongful acts and breach of trust
§ 16:14 Liability for fraud

E. ACTIONS

1. Procedure; Jurisdiction and Venue

§ 16:15 Capacity to sue and be sued
§ 16:16 Jurisdiction and venue; service of process

2. Actions by Partnerships

§ 16:17 Overview of partnership actions against third parties
§ 16:18 Invasion of privacy
§ 16:19 Interference with contractual relationship and prospective economic advantage
§ 16:20 Defamation

3. Actions by Third Parties

§ 16:21 Overview of third party actions against partnership and partners
§ 16:22 Joinder of partners and partnership

F. DEFENSES

§ 16:23 By partnership or individual partner defendant
§ 16:24 By third party defendant

G. CREDITOR REMEDIES

§ 16:25 Partner's interest in partnership

§ 16:26 Enforcing judgments
§ 16:27 Assignment of interest

II. FORMS

A. COMPLAINTS AND ALLEGATIONS

§ 16:28 Complaint by partnership for breach of contract
§ 16:29 Allegation for joinder of unwilling partner as party defendant
§ 16:30 Complaint by partnership for damages for intentional interference with contractual relationships by third parties
§ 16:31 Complaint by third party against partnership for breach of contract
§ 16:32 Complaint by third party against partnership, partners, and apparent partner for money lent [Corp. Code, § 16308, subd. (a)]
§ 16:33 Allegation of liability of partnership for acts of ostensible agent [Civ. Code § 2300]
§ 16:34 Complaint for damages by third party for property damage and injuries caused by act of partner [Corp. Code, §§ 16305, 16306]
§ 16:35 Complaint by third party against partnership and individual partners for misapplication of money or property [Corp. Code, §§ 16305, 16306]

B. ANSWERS

§ 16:36 Third party answer to partnership complaint for breach of contract
§ 16:37 Allegation in answer of defect of parties based on nonjoinder of plaintiff partners
§ 16:38 Partnership answer to third party complaint for damages for negligence of partner or partnership employee
§ 16:39 Statement of Partnership Authority (Secretary of State Form GP-1)
§ 16:40 Statement of Denial (Secretary of State Form GP-2)

Bibliography

CHAPTER 17. ACTIONS BETWEEN PARTNERS

I. LEGAL PRINCIPLES

A. OVERVIEW

§ 17:1 Governing law; Revised Uniform Partnership Act
§ 17:2 Definition and nature of partnership
§ 17:3 Fiduciary nature of relationship
§ 17:4 Effect of partnership agreement on fiduciary duties

B. RIGHTS OF PARTNERS

1. Property

§ 17:5 Partnership property
§ 17:6 Interest in partnership; transferability
§ 17:7 Real property

2. Capital

§ 17:8 Contributions to partnership; indemnification
§ 17:9 Distributions in kind
§ 17:10 Profits

3. Other Rights

§ 17:11 Compensation
§ 17:12 Access to partnership books and information
§ 17:13 Management of partnership business; partnership decisions

C. DUTIES OF PARTNERS/PARTNERSHIP

§ 17:14 Duty to maintain books and disclose information
§ 17:15 Duty to account for profits
§ 17:16 Duty not to compete
§ 17:17 Sharing of losses

D. LIABILITIES OF PARTNERS

§ 17:18 To other partners
§ 17:19 To third parties; registered limited liability partnerships

E. ACTIONS BETWEEN PARTNERS

§ 17:20 Actions by partnership against partner

§ 17:21 Actions by partner against partnership or co-partner
§ 17:22 Actions at law seeking rescission of partnership agreement
§ 17:23 Defenses available to partnership or individual partner defendants
§ 17:24 Resolution of disputes through arbitration

II. FORMS

A. COMPLAINTS

§ 17:25 Complaint by partner for breach of partnership agreement
§ 17:26 Complaint for restitution based on rescission of partnership agreement due to fraud and misrepresentation
§ 17:27 Complaint for damages based on conversion of partnership assets
§ 17:28 Allegation of misappropriation of partnership funds and refusal to allow inspection of partnership books

B. ANSWER

§ 17:29 Answer to complaint for breach of partnership contract

Bibliography

CHAPTER 18. DISSOLUTION AND ACCOUNTING

I. DISSOLUTION OF PARTNERSHIP

A. OVERVIEW

1. Legal Principles

§ 18:1 Dissolution generally; waiver
§ 18:2 Statement of dissolution

2. Forms

§ 18:3 Statement of Dissolution - California Secretary of State Form GP-4 [Corp. Code § 16805]

§ 18:4 Statement of amendment/cancellation California Secretary of State Form GP-7

B. GROUNDS FOR DISSOLUTION

1. Legal Principles

§ 18:5 Dissolution by operation of law in absence of judicial decree
§ 18:6 Dissolution by judicial decree

2. Forms

§ 18:7 Complaint for dissolution of partnership, accounting, appointment of receiver, and injunctive relief
§ 18:8 Allegation of failure of copartner to fulfill partnership duties
§ 18:9 Allegation of copartner's failure to assist in conduct of partnership affairs
§ 18:10 Allegation of exclusion of copartner from partnership affairs
§ 18:11 Allegation of injury to partnership business due to arrest of copartner
§ 18:12 Allegation of copartner's conversion of partnership assets
§ 18:13 Allegation of mental disability of copartner
§ 18:14 Allegation of physical incapacity of copartner
§ 18:15 Allegation of copartner's alcoholism as detrimental to conduct and operation of partnership
§ 18:16 Allegation of misappropriation of funds and refusal to account
§ 18:17 Allegation of copartner's unauthorized withdrawal of partnership funds
§ 18:18 Allegation of copartner's misrepresentation of partnership loss
§ 18:19 Allegation of copartner's refusal to contribute capital to offset partnership losses
§ 18:20 Allegation of dispute regarding management of partnership property
§ 18:21 Allegation of anticipated continued loss of partnership business
§ 18:22 Interlocutory judgment dissolving partnership, ordering partners to account, and appointing referee

§ 18:23 Interlocutory judgment dissolving partnership with accounting rendered in court

C. EFFECT OF DISSOLUTION

1. Legal Principles

§ 18:24 Authority of partners to transact partnership business
§ 18:25 Binding acts of partners
§ 18:26 Liability of partners
§ 18:27 Creditor's rights
§ 18:28 Covenants not to compete

2. Form

§ 18:29 Complaint by continuing partnership to restrain withdrawing partner from violating agreement not to compete and for damages [Bus. & Prof. Code § 16602]

II. WINDING UP AND LIQUIDATION OF PARTNERSHIP BUSINESS

A. LEGAL PRINCIPLES

§ 18:30 In general
§ 18:31 Persons entitled to wind up; powers
§ 18:32 Winding up after death of partner
§ 18:33 Distribution of partnership assets

B. FORM

§ 18:34 Complaint to obtain winding up of partnership affairs by receiver

III. ACCOUNTING

A. LEGAL PRINCIPLES

§ 18:35 Partner's duty to account; right to accounting
§ 18:36 Nature of action
§ 18:37 Accounting as prerequisite to legal action
§ 18:38 Elements of cause of action
§ 18:39 Appointment of referee
§ 18:40 Appointment of receiver
§ 18:41 Injunctions

§ 18:42 Statute of limitations
§ 18:43 Jurisdiction and venue
§ 18:44 Items of account

B. FORMS

§ 18:45 Complaint for partnership accounting by retired partner [Corp. Code, § 16405, subd. (b)]
§ 18:46 Defense alleging existence of partnership agreement settling accounts between partners
§ 18:47 Allegation in complaint requesting that receiver be appointed in action for accounting and dissolution of partnership [Code Civ. Proc., § 564, subd. (b)(1)]
§ 18:48 Notice of motion for order directing reference when taking account is necessary in action for accounting and dissolution of partnership [Code Civ. Proc., § 639, subd. (a)]
§ 18:49 Allegation in complaint in action for accounting and dissolution of partnership requesting that partner be enjoined from selling partnership assets
§ 18:50 Ex parte application for temporary restraining order and order to show cause in action for accounting and dissolution of partnership [Code Civ. Proc., §§ 526, 527, subd. (a)]
§ 18:51 Declaration supporting application for temporary restraining order in action for accounting and dissolution of partnership
§ 18:52 Declaration regarding notice of application for temporary restraining order in action for accounting and dissolution of partnership [Code Civ. Proc., § 527, subd. (a)]
§ 18:53 Temporary restraining order and order to show cause why injunction should not issue in action for accounting and dissolution of partnership

Bibliography

CHAPTER 19. LIMITED PARTNERSHIPS

I. OVERVIEW

A. LEGAL PRINCIPLES

§ 19:1 Authority

§ 19:2 Limited partnerships in existence before July 1, 1984
§ 19:3 Definition and nature of limited partnership
§ 19:4 Formation under Revised Limited Partnership Act
§ 19:5 Formation under Uniform Limited Partnership Act
§ 19:6 Name requirements
§ 19:7 Office and required records; agent
§ 19:8 Foreign limited partnerships

B. FORMS

§ 19:9 Certificate of Limited Partnership (Secretary of State FORM LP-1) LP Tax Info (Rev. January, 2003)
§ 19:10 Certificate of Limited Partnership Conversion (Secretary of State Form)
§ 19:11 Amendment to Certificate of Limited Partnership (Secretary of State FORM LP-2)
§ 19:12 Foreign Limited Partnership Application for Registration (Secretary of State Form LP-5)
§ 19:13 Foreign Limited Partnership Amendment to Application for Registration (Secretary of State Form LP-6)
§ 19:14 Limited Partnership Certificate of Continuation (Secretary of State Form LP-8)
§ 19:15 Limited Partnership Certificate of Merger (Secretary of State Form LP-9)
§ 19:16 Restated Certificate of Limited Partnership (Secretary of State Form LP-10)
§ 19:17 Resignation of Agent (Secretary of State Form RA-100)
§ 19:18 Name Reservation Request Form (Secretary of State Form)
§ 19:19 Records Order Form (Secretary of State Form)

II. RIGHTS AND DUTIES AS BETWEEN PARTNERS

A. LEGAL PRINCIPLES

§ 19:20 Rights of limited partners under Uniform Limited Partnership Act
§ 19:21 Classes of limited partners

§ 19:22 Evidence of limited partnership interest
§ 19:23 Admission of additional limited partners
§ 19:24 General partners
§ 19:25 Person as both general partner and limited partner
§ 19:26 Admission of additional general partners
§ 19:27 Cessation of status as general partner
§ 19:28 Contributions; capital account
§ 19:29 Division of profits and losses; distributions
§ 19:30 Management of business
§ 19:31 Information rights of limited partners
§ 19:32 Right to vote
§ 19:33 Meetings; quorum
§ 19:34 Action by consent without meeting
§ 19:35 Withdrawal of limited partner
§ 19:36 Withdrawal of general partner
§ 19:37 Death or incompetence of limited partner
§ 19:38 Assignment of limited partnership interests
§ 19:39 Right of assignee to become limited partner

B. ACTIONS BETWEEN PARTNERS

1. Direct Actions to Enforce Rights

a. Legal Principles

§ 19:40 Failure to file required certificates
§ 19:41 Failure to furnish financial information
§ 19:42 Action by Attorney General
§ 19:43 Enforcement of specific consequences for breach of partnership agreement

b. Forms

§ 19:44 Petition to compel execution and filing of certificate of amendment, dissolution, cancellation, or continuation [Corp. Code § 15625]
§ 19:45 Petition to compel delivery of partnership tax records [Corp. Code, § 15634, subd. (f)]
§ 19:46 Allegation in petition to compel delivery of amendment of partnership agreement [Corp. Code, § 15634, subd. (f)]
§ 19:47 Petition to compel sending of annual report and income statement [Corp. Code, § 15634, subd. (c)]

§ 19:48 Complaint for wrongful withdrawal by general partner [Corp. Code, § 15662, subd. (a)]
§ 19:49 Answer in action for wrongful withdrawal by general partner [Corp. Code, § 15662, subd. (a)]

2. Class and Derivative Actions

a. Legal Principles

§ 19:50 Class actions by limited partners
§ 19:51 Required allegations in derivative actions
§ 19:52 Defendant's motion to furnish security

b. Forms

§ 19:53 Complaint in limited partner derivative action [Corp. Code, § 15702, subd. (a)]
§ 19:54 Notice of motion to allow limited partner derivative action in absence of statutory conditions [Corp. Code, § 15702, subd. (a)(1)]
§ 19:55 Declaration supporting motion to allow limited partner derivative action in absence of statutory conditions [Corp. Code, § 15702, subd. (a)(1)]
§ 19:56 Notice of motion to require security for costs [Corp. Code, § 15702, subd. (b)]
§ 19:57 Order requiring security for costs [Corp. Code, § 15702, subd. (b)]

III. ACTIONS BY THIRD PARTIES AGAINST LIMITED PARTNERSHIP OR PARTNERS

A. ACTIONS AGAINST LIMITED PARTNERSHIP

1. Legal Principles

§ 19:58 Liability of limited partnership
§ 19:59 Naming partnership as defendant
§ 19:60 Service of process
§ 19:61 Discovery rights

2. Procedural Checklist

§ 19:62 Matters to be considered in maintaining action against limited partnership

3. Form

§ 19:63 Complaint against limited partnership for act or omission of general partner

B. ACTIONS AGAINST PARTNERS

1. Actions to Enforce Obligations of Partnership

a. Legal Principles

§ 19:64 Liabilities of limited partners under Revised Limited Partnership Act

§ 19:65 Liabilities of limited partners under Uniform Limited Partnership Act

§ 19:66 Use of limited partner's name in name of partnership

§ 19:67 Erroneous belief in one's status as limited partner under Revised Limited Partnership Act

§ 19:68 Erroneous belief in one's status as limited partner under Uniform Limited Partnership Act

§ 19:69 Liabilities of general partners

b. Procedural Checklist

§ 19:70 Matters to be considered in drafting complaint by creditor of partnership against limited partner

c. Forms

§ 19:71 Complaint against limited partner based on limited partner's participation in control of business [Corp. Code, §§ 15507, subd. (a), 15632, subd. (a)]

§ 19:72 Allegation against limited partner for material misstatements in certificate of limited partnership [Corp. Code, § 15622, subd. (e)]

§ 19:73 Affirmative defense of mistaken belief in status as limited partner (Revised Limited Partnership Act) [Corp. Code, § 15633, subd. (a)]

§ 19:74 Affirmative defense of mistaken belief in status as limited partner (Uniform Limited Partnership Act) [Corp. Code, § 15511]

2. Actions by Judgment Creditors of Limited Partner

a. Legal Principles

§ 19:75 Judgment creditor's charging order
§ 19:76 Charging order under Uniform Limited Partnership Act
§ 19:77 Charging order under Revised Limited Partnership Act
§ 19:78 Sale of debtor partner's interest

b. Procedural Checklist

§ 19:79 Matters to consider in obtaining charging order against interest of debtor limited partner

c. Forms

§ 19:80 Notice of motion for charging order [Corp. Code § 15673]
§ 19:81 Declaration in support of motion for charging order [Corp. Code, § 15673]
§ 19:82 Charging order [Corp. Code, § 15673]

IV. MERGER AND REORGANIZATION

A. LEGAL PRINCIPLES

1. Merger

§ 19:83 Merger agreement
§ 19:84 Rights of creditors; pending actions by or against disappearing limited partnership
§ 19:85 Real property

2. Rights of Dissenting Partners

§ 19:86 Definitions; applicability of provisions
§ 19:87 Rights of limited partners
§ 19:88 Loss of status as dissenting interest
§ 19:89 Notice of approval of reorganization
§ 19:90 Attack on validity of reorganization
§ 19:91 Demand by dissenting limited partner
§ 19:92 Agreement on fair market value; payment
§ 19:93 Action to determine dissenting interest or fair market value; suspension of proceedings
§ 19:94 Appointment of appraisers to determine fair market value

§ 19:95 Judgment; costs and fees
§ 19:96 Dissenting limited partners as creditors

B. PROCEDURAL CHECKLIST

§ 19:97 Matters to consider in action to determine dissenting interest status and fair market value

C. FORM

§ 19:98 Complaint for determination of dissenting interest status and fair market value

V. DISSOLUTION

A. LEGAL PRINCIPLES

§ 19:99 Nonjudicial dissolution under Revised Limited Partnership Act
§ 19:100 Nonjudicial dissolution under Uniform Limited Partnership Act
§ 19:101 Judicial dissolution under Revised Limited Partnership Act
§ 19:102 Judicial dissolution under Uniform Limited Partnership Act
§ 19:103 Winding up
§ 19:104 Distribution of assets under Revised Limited Partnership Act
§ 19:105 Distribution of assets Under Uniform Limited Partnership Act
§ 19:106 Certificate of dissolution
§ 19:107 Certificate of continuation
§ 19:108 Certificate of cancellation
§ 19:109 Restated certificate of limited partnership
§ 19:110 Postdissolution rights

B. FORMS

§ 19:111 Complaint under Revised Limited Partnership Act for judicial dissolution of limited partnership based on general partners' conduct [Corp. Code, § 15682, subd. (b)]
§ 19:112 Allegation in complaint for dissolution of limited partnership based on not being reasonably practicable to carry on business [Corp. Code, § 15682, subd. (a)]

§ 19:113 Allegation in complaint for dissolution of limited partnership based on reasonable necessity for protection of rights or interests of partners [Corp. Code, § 15682, subd. (c)]
§ 19:114 Petition by limited partners for winding up of limited partnership affairs after nonjudicial dissolution [Corp. Code, § 15683]
§ 19:115 Petition by limited partner for order directing execution and filing of certificate of dissolution [Corp. Code, § 15625]

Bibliography

CHAPTER 20. JOINT VENTURES

I. LEGAL PRINCIPLES

A. NATURE OF RELATIONSHIP

§ 20:1 Essential elements
§ 20:2 Governing law
§ 20:3 Mutual rights and duties of members

B. EXISTENCE AND DISSOLUTION OF JOINT VENTURE

§ 20:4 Formation
§ 20:5 Duration and dissolution

C. ACTIONS

1. Between or Among Joint Venturers

§ 20:6 Remedies available
§ 20:7 Affirmative defenses

2. Among Joint Venturers and Third Parties

§ 20:8 Capacity to sue and be sued
§ 20:9 Contract liability
§ 20:10 Tort liability
§ 20:11 Affirmative defenses

II. FORMS

A. COMPLAINTS

§ 20:12 Complaint by joint venturer for dissolution and accounting

§ 20:13 Complaint by joint venturer against coventurer for damages based on breach of implied covenant of good faith and fair dealing
§ 20:14 Allegation of breach of fiduciary duty for destruction of venture assets
§ 20:15 Allegation of breach of fiduciary duty not to compete for business opportunity
§ 20:16 Complaint for damages by third party for property damage and injuries caused by act of joint venture, venturers individually, and unknown defendants
§ 20:17 Allegation by third party of breach of contract by joint venturer

B. ANSWERS

§ 20:18 Answer to complaint between joint venturers
§ 20:19 Allegation in answer that joint venture was dissolved by subsequent agreement
§ 20:20 Allegation of comparative negligence in answer to third-party complaint against joint venture and venturers individually

Bibliography

CHAPTER 21. NONPROFIT ORGANIZATIONS

I. LEGAL PRINCIPLES

A. PUBLIC BENEFIT, MUTUAL BENEFIT, AND RELIGIOUS CORPORATIONS

1. Overview

§ 21:1 Legal organization and tax status
§ 21:2 Types of nonprofit corporations
§ 21:3 Benefit corporations
§ 21:4 Characteristics of common nonprofit corporations

2. Powers, Duties, and Liabilities

a. Corporation

§ 21:5 Powers
§ 21:6 Duties and liabilities, generally
§ 21:7 Protection from limits on powers

b. Directors

§ 21:8 Powers
§ 21:9 General standard of care
§ 21:10 Investment standards
§ 21:11 Special standard for volunteers
§ 21:12 Liability, generally
§ 21:13 Liability for self-dealing
§ 21:14 Other civil statutory liability
§ 21:15 Tort liability to third parties
§ 21:16 Criminal liability
§ 21:17 Indemnification

c. Members

§ 21:18 Rights and powers
§ 21:19 Liability to corporation
§ 21:20 Liability to third parties or each other
§ 21:21 Statutory liability for fraud and deception

3. Actions and Supervision

§ 21:22 Capacity to bring suit
§ 21:23 Venue
§ 21:24 Notices to attorney general
§ 21:25 Acts by attorney general regarding public benefit corporation
§ 21:26 Acts by attorney general regarding mutual benefit corporation
§ 21:27 Acts by attorney general regarding religious corporation

B. ASSOCIATIONS AND CLUBS

1. Overview

§ 21:28 Definitions
§ 21:29 Characteristics

2. Powers, Duties, and Liabilities

a. Association

§ 21:30 Rights and powers
§ 21:31 Liability to members
§ 21:32 Liability to third parties

b. Leaders

§ 21:33 Rights and liabilities

c. Members

§ 21:34 Rights
§ 21:35 Liability to organization and members
§ 21:36 Liability to third parties

3. Actions

§ 21:37 Judicial intervention and arbitration
§ 21:38 Capacity to sue and be sued
§ 21:39 Joinder and intervention of parties
§ 21:40 Venue
§ 21:41 Summons and service
§ 21:42 Enforcement of judgment

C. CHARITABLE ORGANIZATIONS

1. Overview

§ 21:43 Definitions
§ 21:44 Characteristics

2. Powers, Rights, and Liabilities

a. Organization

§ 21:45 Rights and regulation
§ 21:46 Liability to third parties

b. Leaders

§ 21:47 Rights and liabilities
§ 21:48 Liability to third parties

3. Actions

§ 21:49 Judicial intervention; cy pres
§ 21:50 Standing to sue; Attorney General as party

D. ISSUES GIVING RISE TO ACTIONS

§ 21:51 Right to membership in nonprofit corporation
§ 21:52 Right To membership in nonprofit association
§ 21:53 Access to premises to exercise profession
§ 21:54 Access to premises of business establishment
§ 21:55 Enforcement of dues payment

§ 21:56 Records, reports, and general rights of inspection
§ 21:57 Inspection of membership list
§ 21:58 Meetings and elections
§ 21:59 Amendment of articles
§ 21:60 Voluntary dissolution
§ 21:61 Involuntary dissolution
§ 21:62 Derivative actions
§ 21:63 Misuse of corporate membership list
§ 21:64 Enforcement of condition on gift
§ 21:65 Recovery of improper distribution
§ 21:66 Unauthorized use of name
§ 21:67 Violation of establishment or free exercise clause

E. DEFENSES

§ 21:68 Internal affairs of organization
§ 21:69 Failure to exhaust remedies
§ 21:70 Canon or religious law controls
§ 21:71 Protected religious practices

II. FORMS

A. PLAINTIFF'S PLEADINGS

§ 21:72 Complaint by members to remove director of nonprofit corporation for malfeasance [Corp. Code §§ 5223, 7223, 9223]
§ 21:73 Petition for appointment of provisional director of nonprofit corporation to break deadlock [Corp. Code, §§ 5225, 7225, 9225]
§ 21:74 Application by member to compel nonprofit corporation to hold regular meeting [Corp. Code, §§ 5510, 7510]
§ 21:75 Petition for order setting meeting of membership of nonprofit corporation [Corp. Code, §§ 5515, 7515, 9414]
§ 21:76 Petition of public or mutual benefit corporation for order to show cause re inspection of membership list [Corp. Code, §§ 6331, 8331]
§ 21:77 Verified complaint for disclosure of membership list and postponement of meeting of membership of public or mutual benefit corporation [Corp. Code, §§ 6330, 6335, 8330, 8335]

§ 21:78 Complaint by public or mutual benefit corporation for damages and injunctive relief re unauthorized use of membership list [Corp. Code §§ 6338, 8338]
§ 21:79 Petition for writ of mandate to compel reinstatement of member of public or mutual benefit corporation [Code Civ. Proc., § 1085]
§ 21:80 Complaint for declaration of membership rights and for new election of directors of nonprofit corporation [Corp. Code, §§ 5617, 7616, 9418]
§ 21:81 Complaint in derivative action by member of nonprofit corporation [Corp. Code, §§ 5710, 7710]
§ 21:82 Complaint for involuntary dissolution of public or mutual benefit corporation [Corp. Code §§ 6510, 8510]
§ 21:83 Complaint by nonprofit association for injunction and damages re unauthorized use of name [Corp. Code §§ 21308, 21309]
§ 21:84 Complaint by nonprofit association to recover possession of property taken by former members [Code Civ. Proc. § 667]

B. DEFENSE PLEADINGS

§ 21:85 Affirmative defense of reasonable alternative to demand for inspection of membership list [Corp. Code, §§ 6330, subd. (c), 8330, subd. (c)]
§ 21:86 "True church" allegation in cross-complaint by parent church in suit to determine ownership of church property

III. BENEFIT CORPORATIONS

§ 21:87 History
§ 21:88 Scope
§ 21:89 Formation of a benefit corporation
§ 21:90 Specific public benefit
§ 21:91 Amendment to become a benefit corporation
§ 21:92 Amendment to terminate benefit corporation status
§ 21:93 Accountability of public benefit corporations
§ 21:94 Liability of directors
§ 21:95 Protection for directors of foreign corporation with similar characteristics

§ 21:96 Annual benefit report: general
§ 21:97 Annual benefit report: ownership
§ 21:98 Annual benefit report: board's report
§ 21:99 Annual benefit report: availability
§ 21:100 Officer's responsibilities
§ 21:101 Officer's liability
§ 21:102 Benefit enforcement proceeding
§ 21:103 History
§ 21:104 Scope and varieties of permitted activities
§ 21:105 Formation of flexible purpose corporations
§ 21:106 Articles of incorporation; required provisions
§ 21:107 Articles of incorporation; required provisions re: agent for service and shares
§ 21:108 Articles of incorporation; optional provisions
§ 21:109 Permitted business activities
§ 21:110 Powers
§ 21:111 Directors; performance and discharge of duties
§ 21:112 Liability of directors
§ 21:113 Indemnification of agents
§ 21:114 Shares and share certificates
§ 21:115 Shareholder derivative actions
§ 21:116 Proposed amendments to articles
§ 21:117 Conversion to nonprofit or cooperative corporation
§ 21:118 Conversion to domestic corporation
§ 21:119 Sale of assets
§ 21:120 Mergers/Definitions
§ 21:121 Conversions
§ 21:122 Reorganizations
§ 21:123 Annual reports
§ 21:124 Special purpose current report
§ 21:125 False reports or entries

Bibliography

CHAPTER 22. FRATERNAL BENEFIT SOCIETIES

I. LEGAL PRINCIPLES

A. OVERVIEW

§ 22:1 Nature of fraternal benefit society
§ 22:2 Regulation and organization

§ 22:3 Relation between society and subsidiary lodges

B. MEMBERSHIP

§ 22:4 Solicitation of members to complete organization
§ 22:5 Benefit, social and child members
§ 22:6 Dues and assessments
§ 22:7 Expulsion and suspension
§ 22:8 Reinstatement

C. BENEFITS

§ 22:9 Benefit certificates
§ 22:10 Life insurance
§ 22:11 Disability insurance
§ 22:12 Designation, eligibility and change of beneficiary
§ 22:13 Payment of benefits; exemption from levy
§ 22:14 Loss or forfeiture of benefits
§ 22:15 Reinstatement of benefits

D. ACTIONS INVOLVING FRATERNAL BENEFIT SOCIETIES

§ 22:16 Actions against fraternal benefit society
§ 22:17 Defense considerations; interpleader

II. FORMS

A. PLAINTIFF'S PLEADINGS

§ 22:18 Petition for writ of mandate to compel reinstatement in fraternal benefit society, and for damages for wrongful expulsion
§ 22:19 Complaint by member of fraternal benefit society for recovery of benefits

B. DEFENDANT'S PLEADINGS

§ 22:20 Affirmative defense to action for benefits based on misrepresentation on application
§ 22:21 Affirmative defense to action for reinstatement based on statute of limitations

Bibliography

CHAPTER 23. PRIVATE FRANCHISES

I. PRINCIPLES APPLICABLE TO PRIVATE FRANCHISES IN GENERAL

A. LEGAL PRINCIPLES

1. Governing Laws and Definitions

§ 23:1 Federal and California statutes governing private franchises
§ 23:2 Statutory definitions
§ 23:3 Types of private franchises

2. Offer and Sale

a. Sellers and Buyers of Franchises

§ 23:4 Qualified sellers
§ 23:5 Qualified buyers

b. Disclosure of Information to Potential Franchisee

§ 23:6 Registration of offer
§ 23:7 Contents, filing, and delivery of offering circular
§ 23:8 Prohibition against earnings claims
§ 23:9 Amendments and modifications to registration
§ 23:10 Negotiation of terms of franchise agreement [10 Cal Code Regs § 310.100.2]
§ 23:11 Renewal of registration
§ 23:12 Exemptions from registration requirement

c. Actions Against Franchisor for Violations of Disclosure and Registration Laws

§ 23:13 Causes of action and remedies available to franchisee
§ 23:14 Potential defendants
§ 23:15 Service of process
§ 23:16 Statute of limitations and other defenses available to franchisor

3. Ongoing Relationship Between Franchisor and Franchisee

§ 23:17 Governed by franchise agreement

§ 23:18 Interference with right of association
§ 23:19 Causes of action in disputes arising during ongoing relationship

4. Termination, Nonrenewal, and Transfer of Franchise

a. Termination and Nonrenewal

§ 23:20 Grounds for termination
§ 23:21 Grounds for nonrenewal
§ 23:22 Procedure for termination or nonrenewal
§ 23:23 Post-termination covenant not to compete

b. Transfer

§ 23:24 Objections by franchisor to transfer of franchisee's interest in franchise
§ 23:25 Franchisor's right of first refusal
§ 23:26 Transfer to franchisee's successor in interest

c. Actions Against Franchisor

§ 23:27 Causes of action and remedies available to franchisee
§ 23:28 Arbitration
§ 23:29 Defenses available to franchisor

d. Actions Against Franchisee

§ 23:30 Unlawful detainer action
§ 23:31 Defenses available to franchisee

B. PROCEDURAL CHECKLIST

§ 23:32 Procedural checklist for service of process on California Commissioner of Corporations in civil action against franchisor under Franchise Investment Law [Corp. Code §§ 31000 et seq.]

C. FORMS

1. Complaints and Allegations Against Franchisor

§ 23:33 Complaint against grantor of dealership alleging discrimination in granting of dealership [Civ. Code, § 83]
§ 23:34 Complaint for rescission and damages for

franchisor's failure to register franchise [Corp. Code, §§ 31300, 31110]
§ 23:35 Allegation of franchisor's failure to deliver offering circular [Corp. Code §§ 31300, 31119]
§ 23:36 Allegation that franchisor failed to disclose material facts in registration and disclosure documents [Corp. Code, §§ 31300, 31200]
§ 23:37 Allegation that franchisor made untrue statement of material facts in registration and disclosure documents [Corp. Code §§ 31300, 31200]
§ 23:38 Allegation that franchisor failed to notify California Commissioner of Corporations of a material change in registration application [Corp. Code, §§ 31300, 31200, 31123]
§ 23:39 Complaint for damages for franchisor's sale of franchise by means of untrue statement in communications with franchisee [Corp. Code, §§ 31301, 31201] and for fraud
§ 23:40 Verified complaint for injunctive relief and damages against franchisor who has interfered with franchisee's right to join trade association [Corp. Code, §§ 31302.5, subd. (a), 31220]
§ 23:41 Complaint for damages alleging that franchisor unlawfully terminated franchise [Bus. & Prof. Code, § 20035]

2. Franchisor's Affirmative Defenses

§ 23:42 Affirmative defense that plaintiff's action is barred by the statute of limitations in Corp. Code § 31303
§ 23:43 Affirmative defense to cause of action based on franchisor's making of untrue statement in communication with franchisee [Corp. Code, §§ 31301, 31201]
§ 23:44 Affirmative defense that franchisor was exempt from registration and disclosure pursuant to Corp. Code § 31101
§ 23:45 Affirmative defense that defendant is not jointly and severally liable with person who is liable under Corp. Code §§ 31300 or 31301
§ 23:46 Affirmative defense by franchisor who is sued for repurchase remedy for wrongful termination of franchisee [Bus. & Prof. Code, § 20036]

II. PRINCIPLES APPLICABLE TO PARTICULAR PRIVATE FRANCHISES

A. LEGAL PRINCIPLES

1. New Motor Vehicle Dealerships

a. Governing Laws and Definitions

§ 23:47 Federal and state statutes governing new motor vehicle franchises
§ 23:48 Statutory definitions
§ 23:49 Authority of New Motor Vehicle Board

b. Establishing and Relocating Dealerships

§ 23:50 Offer and sale
§ 23:51 Notification to existing franchises
§ 23:52 Good cause for not permitting franchisor to establish or relocate additional dealership

c. Ongoing Relationship Between Franchisor and Franchisee

§ 23:53 Franchisee's delivery and preparation obligations [Veh. Code, § 3064]
§ 23:54 Franchisor's warranty reimbursement obligations [Veh. Code, § 3065]
§ 23:55 Modification of franchise agreement

d. Transfer or Termination of Franchise

§ 23:56 Transfer of franchisee's interest in franchise
§ 23:57 Procedure for termination
§ 23:58 Board's finding of good cause for termination or modification of franchise

e. Actions Against Franchisor

§ 23:59 Protest hearings before New Motor Vehicle Board
§ 23:60 Action for damages or injunction [Veh. Code, § 11726]
§ 23:61 Action for damages pursuant to federal Automobile Dealers Franchise Act

2. Petroleum Franchises

a. Definitions and Governing Laws

§ 23:62 Federal and state statutes governing petroleum franchises

§ 23:63 Statutory definitions

b. Establishing Franchise

§ 23:64 Offer and sale
§ 23:65 Negotiation of terms of agreement

c. Ongoing Relationship Between Franchisor and Franchisee

§ 23:66 Franchisee's hours of operation [Bus. & Prof. Code, § 21150.1]
§ 23:67 Franchisee's purchase of fuel and accessories

d. Termination or Nonrenewal of Franchise

§ 23:68 Reasons for termination
§ 23:69 Reasons for nonrenewal
§ 23:70 Notification of termination or nonrenewal

e. Transfer of Franchise

§ 23:71 Transfer of franchisee's interests in franchise
§ 23:72 Transfer of franchisor's interests in marketing premises

f. Actions

§ 23:73 Unlawful termination action for damages and injunction
§ 23:74 Other actions against franchisor
§ 23:75 Statutes of limitations
§ 23:76 Unlawful detainer action against franchisee

B. FORMS

1. Complaints

§ 23:77 Complaint against franchisor for unlawful termination of petroleum franchise [15 U.S.C.A. §§ 2805(a), 2802(b)]
§ 23:78 Complaint for treble damages against franchisor for unlawfully withholding consent to transfer of petroleum franchise [Bus. & Prof. Code, §§ 21140.4, 21148]

2. Affirmative Defenses

§ 23:79 Affirmative defense that petroleum franchisee's action is barred by the statute of limitations in 15 U.S.C.A. § 2805(a)

§ 23:80 Affirmative defense that franchisor's termination of petroleum franchise was permitted under 15 U.S.C.A. § 2802(b)

§ 23:81 Affirmative defense that franchisor's refusal to consent to transfer of petroleum franchise was permitted by Bus. & Prof. Code, § 21148, subd. (a)

III. SELLER ASSISTED MARKETING PLANS

A. LEGAL PRINCIPLES

1. Governing Law and Definitions

§ 23:82 Governing law

§ 23:83 Definitions

2. Offer and Sale of Plan

§ 23:84 Required disclosures to purchaser

§ 23:85 Prohibitions and restrictions on earnings claims and "buy-back" representations

§ 23:86 Contract provisions

3. Actions Against Seller

§ 23:87 Purchaser's causes of action and remedies

§ 23:88 Service of process

B. FORMS

1. Complaint

§ 23:89 Complaint for damages and rescission against seller of seller assisted marketing plan for failure to comply with disclosure requirements regarding "buy-back" provision in contract [Civ. Code, §§ 1812.215, subd. (a), 1812.218, 1812.205, subd. (g)]

2. Affirmative Defense

§ 23:90 Affirmative defense that seller of seller assisted marketing plan cured inadvertent disclosure defect and gave purchaser opportunity to cancel contract

Bibliography

Volume BUS3

CHAPTER 24. FORMATION, CONSTRUCTION, AND BREACH OF CONTRACT

I. DEFINITIONS

§ 24:1 Introduction
§ 24:2 Nature of contract
§ 24:3 Elements of contract
§ 24:4 Express, implied, and quasi contracts
§ 24:5 Executed and executory contracts
§ 24:6 Unilateral and bilateral contracts
§ 24:7 Voidable and void contracts

II. CONSTRUCTION OF CONTRACT

§ 24:8 Function of the court
§ 24:9 Intent of parties
§ 24:10 Forfeiture
§ 24:11 Language used
§ 24:12 Joint and several
§ 24:13 Interpreting the whole of a contract
§ 24:14 Surrounding circumstances
§ 24:15 Parol evidence
§ 24:16 Implications and uncertainties
§ 24:17 Usage and custom
§ 24:18 Choice of law

III. CLAIMS RELATING TO CONTRACT ELEMENTS

A. LACK OF CAPACITY OF PARTIES

§ 24:19 Parties who may contract
§ 24:20 Minors in general
§ 24:21 Minors' void contracts
§ 24:22 Minors' voidable contracts
§ 24:23 Contracts enforceable against minors
§ 24:24 Mental incompetence, generally
§ 24:25 Persons without understanding
§ 24:26 Persons of unsound mind

§ 24:27 Persons adjudicated incompetent
§ 24:28 Persons deprived of civil rights

B. LACK OF MUTUAL ASSENT

1. Imperfect State of Mind or Information

§ 24:29 Imperfect consent
§ 24:30 Communication of consent
§ 24:31 Fraud
§ 24:32 Duress and menace
§ 24:33 Undue influence
§ 24:34 Mistake

2. Inadequate Offer or Acceptance

§ 24:35 Requirement of offer
§ 24:36 Certainty of terms
§ 24:37 Revocation of offer
§ 24:38 Rejection of offer
§ 24:39 Acceptance
§ 24:40 Withdrawal of acceptance

C. LACK OF CONSIDERATION

§ 24:41 Definition of consideration
§ 24:42 Ascertainment of consideration
§ 24:43 Sufficiency of consideration
§ 24:44 Mutuality of consideration
§ 24:45 Promissory estoppel as consideration

D. VIOLATION OF STATUTE OF FRAUDS

§ 24:46 Requirement of writing
§ 24:47 Effect of lack of writing

E. ILLEGALITY OR UNCONSCIONABILITY

§ 24:48 Illegality
§ 24:49 Examples of illegal contracts
§ 24:50 Effect of illegality
§ 24:51 Unconscionability

IV. CLAIMS RELATING TO PERFORMANCE

A. UNEXCUSED FAILURE TO PERFORM

§ 24:52 Types of performance

§ 24:53 Demand for performance
§ 24:54 Time and place of performance
§ 24:55 Effect of performance
§ 24:56 Effect of offer of performance
§ 24:57 Requirements for tender of performance
§ 24:58 Objections to tender
§ 24:59 Failure to perform conditions and covenants
§ 24:60 Implied conditions and covenants
§ 24:61 Implied covenant of good faith and fair dealing
§ 24:62 Failure of consideration

B. EXCUSES FOR NONPERFORMANCE

§ 24:63 Prevention of tender or performance
§ 24:64 Impossibility or impracticality of performance
§ 24:65 Changes in contract
§ 24:66 Waiver and release

V. BREACH OF CONTRACT

A. NATURE OF BREACH

§ 24:67 Definition of breach
§ 24:68 Anticipatory breach
§ 24:69 Extent of breach
§ 24:70 Time of breach
§ 24:71 Effect of breach
§ 24:72 Remedies for breach
§ 24:73 Waiver of breach

B. DAMAGES FOR BREACH

1. Nature of Remedy

§ 24:74 Overview
§ 24:75 Liquidated damages provision in contract
§ 24:76 Punitive damages
§ 24:77 Nominal damages

2. Measure of Recovery

§ 24:78 Reasonable compensation for foreseeable injury
§ 24:79 Lost profits or benefits
§ 24:80 Time period covered by damages
§ 24:81 Mental or physical suffering
§ 24:82 Interest

§ 24:83 Attorney's fees

C. TORTS ARISING FROM BREACH OF CONTRACT

§ 24:84 Breach of covenant of good faith and fair dealing
§ 24:85 Intentional interference with contract
§ 24:86 Other torts

VI. ACTION FOR BREACH OF CONTRACT

A. BRINGING ACTION

§ 24:87 Applicable statutes of limitations
§ 24:88 When cause of action accrues
§ 24:89 Elements of complaint
§ 24:90 Pleading express and implied contracts
§ 24:91 Combining contract and tort causes of action
§ 24:92 Parties
§ 24:93 Right to jury trial
§ 24:94 Proof issues

B. DEFENSE OF ACTION

§ 24:95 Response strategy
§ 24:96 Defenses relating to contract
§ 24:97 Defenses relating to damages

VII. FORMS

A. COMPLAINTS AND ALLEGATIONS

§ 24:98 Complaint for damages for breach of written contract [Civ. Code, § 3300]
§ 24:99 [Judicial Council Form 982.1(20)]
§ 24:100 Third-party beneficiary complaint for damages for breach of contract [Civ. Code, §§ 3300, 1559]
§ 24:101 Complaint for damages for anticipatory breach of contract [Civ. Code, §§ 3300, 1440]
§ 24:102 Complaint re breach of implied cohabitation agreement [Civ. Code, § 1621]
§ 24:103 Complaint re breach of implied partnership agreement [Civ. Code, § 1621]
§ 24:104 Allegation of implied employment contract [Civ. Code, § 1621]

§ 24:105 Allegation of oral contract [Civ. Code, §§ 3300, 1622]
§ 24:106 Allegation that, due to defendant's fraud, oral contract may be enforced [Civ. Code, § 1623]
§ 24:107 Allegation of waiver of condition
§ 24:108 Allegation of tender of performance [Civ. Code, § 1485]
§ 24:109 Allegation of breach of implied covenant of good faith and fair dealing
§ 24:110 Allegation of promissory estoppel as substitute for consideration

B. RESPONSIVE PLEADINGS

1. Demurrers

§ 24:111 Demurrer to complaint with allegation of illegal contract [Code Civ. Proc., § 430.10, Civ. Code, §§ 1441, 1667, 1668, 1670.5]
§ 24:112 Ground for demurrer: statute of frauds [Civ. Code, § 1624; Code Civ. Proc., § 430.10, subd. (e)]
§ 24:113 Ground for demurrer: failure to show existence or terms of contract
§ 24:114 Ground for demurrer: lack of consideration
§ 24:115 Ground for demurrer: unable to tell whether alleged contract is oral, written, or implied [Code Civ. Proc., § 430.10, subd. (g)]

2. Answers

§ 24:116 Answer to verified complaint with allegation of illegal contract [Code Civ. Proc., §§ 431.30, 446, Civ. Code, §§ 1441, 1667, 1668, 1670.5]
§ 24:117 Judicial Council form answer [Judicial Council Form PLD-C-010]
§ 24:118 Defense of minor's lack of capacity to contract [Fam. Code, § 6701]
§ 24:119 Defense that contract of minor was disaffirmed [Fam. Code, § 6710]
§ 24:120 Defense of complete lack of capacity to contract [Civ. Code, § 38]
§ 24:121 Defense of rescission by person subsequently adjudicated of unsound mind [Civ. Code, § 39]
§ 24:122 Defense of lack of capacity to contract based on prior adjudication of incompetency [Civ. Code, § 40]

§ 24:123 Defense of lack of consideration [Code Civ. Proc., § 1550, subd. (4)]
§ 24:124 Defense of statute of frauds [Civ. Code, § 1624]
§ 24:125 Defense of modification of contract [Civ. Code, §§ 1697, 1698]
§ 24:126 Defense of alteration of written contract without consent [Civ. Code, § 1700]
§ 24:127 Defense that contract was executed as result of mistake, fraud, duress, or undue influence [Civ. Code, §§ 1566 to 1579]
§ 24:128 Defense that defendant already performed
§ 24:129 Defense of tender of performance and plaintiff's refusal [Civ. Code, §§ 1478, 1485, 1500]
§ 24:130 Defense of failure of consideration [Civ. Code, §§ 1605 to 1613]
§ 24:131 Defense that plaintiff waived defendant's breach
§ 24:132 Defense that plaintiff prevented performance [Civ. Code, § 1511, subd. (1)]
§ 24:133 Defense that performance was impossible [Civ. Code, §§ 1441, 1511, subd. (2), 1596, 1597]
§ 24:134 Defense that plaintiff breached contract
§ 24:135 Defense of rescission [Civ. Code, §§ 1688 to 1693]
§ 24:136 Defense of novation [Civ. Code, §§ 1530 to 1533]
§ 24:137 Defense of account stated
§ 24:138 Defense of accord and satisfaction [Civ. Code, §§ 1521 to 1526]
§ 24:139 Defense of plaintiff's failure to mitigate damages

Bibliography

CHAPTER 25. THIRD-PARTY BENEFICIARY CONTRACTS

I. LEGAL PRINCIPLES

A. OVERVIEW OF THIRD-PARTY BENEFICIARY CONTRACTS

§ 25:1 Definition of third-party beneficiaries
§ 25:2 Donee and creditor beneficiaries

§ 25:3 Intended and incidental beneficiaries

B. REQUIREMENTS FOR ENFORCEMENT OF THIRD-PARTY BENEFICIARY CONTRACTS

§ 25:4 Intention to benefit third party
§ 25:5 Exclusion of incidental beneficiaries
§ 25:6 Identification of third-party beneficiary

C. RIGHTS AND DUTIES OF PARTIES TO THIRD-PARTY BENEFICIARY CONTRACTS

§ 25:7 Promisor's rights and duties in third-party beneficiary contracts
§ 25:8 Third-party beneficiaries' rights and remedies
§ 25:9 Enforcement of particular third-party contracts
§ 25:10 Promisor's defenses to enforcement of third-party beneficiary contracts
§ 25:11 Effect of rescission or modification on enforcement
§ 25:12 Rights and remedies of third-party beneficiaries and trust beneficiaries distinguished
§ 25:13 Tort recovery for breach of duty arising from third-party beneficiary contract

II. FORMS

A. COMPLAINTS

§ 25:14 Third-party beneficiary's complaint for breach of contract [Civ. Code, § 1559]
§ 25:15 Third-party beneficiary's complaint for declaratory relief [Civ. Code, § 1559, Code Civ. Proc., § 1060]

B. AFFIRMATIVE DEFENSES TO ENFORCEMENT OF THIRD-PARTY CONTRACT

§ 25:16 Affirmative defense based on rescission of contract [Civ. Code, § 1559]
§ 25:17 Affirmative defense based on promisee's breach
§ 25:18 Affirmative defense based on waiver
§ 25:19 Affirmative defense based on statute of limitations

Bibliography

CHAPTER 26. ASSIGNMENT

I. LEGAL PRINCIPLES

A. DEFINITIONS

§ 26:1 Definition of assignment
§ 26:2 Proof of assignment
§ 26:3 Subject matter of assignment
§ 26:4 Distinction from novation

B. ASSIGNMENT OF CONTRACTS

§ 26:5 Assignable contracts
§ 26:6 Contractual provisions against assignment
§ 26:7 Assignment of money due or to become due
§ 26:8 Contracts personal in character

C. ASSIGNMENT OF THINGS IN ACTION

§ 26:9 Rights assignable
§ 26:10 Assignment of future rights
§ 26:11 Assignment of wages
§ 26:12 Nonassignable rights

D. EFFECT OF ASSIGNMENT

§ 26:13 Rights and liabilities of assignor
§ 26:14 Rights and liabilities of assignee
§ 26:15 Notice by assignee
§ 26:16 Standing of assignee
§ 26:17 Burden of proof
§ 26:18 Priorities among successive assignees

II. FORMS

A. PLAINTIFF'S FORMS

§ 26:19 Assignee's complaint for breach of duty to pay money [Code Civ. Proc., § 425.10, Civ. Code, § 3302]
§ 26:20 Assignee's complaint for breach of contract [Civ. Code, § 3300]
§ 26:21 Ex parte application to substitute assignee of contract for plaintiff [Code Civ. Proc., § 368.5]
§ 26:22 Notice of motion and motion to compel joinder of

partial assignee [Code Civ. Proc., § 389, subd. (a)]
§ 26:23 Allegation of notice to obligor through written consent to assignment
§ 26:24 Allegation of notice to obligor of assignment
§ 26:25 Allegation that assignment was without consent of party entitled to benefit of obligation

B. DEFENDANT'S FORMS

§ 26:26 Denial of assignment
§ 26:27 Affirmative defense that thing in action is not assignable
§ 26:28 Affirmative defense that assignment terminated assignor's rights

Bibliography

CHAPTER 27. NOVATION AND MODIFICATION

I. NOVATION

A. GENERAL PRINCIPLES

§ 27:1 Overview
§ 27:2 Modification distinguished
§ 27:3 Accord and satisfaction distinguished
§ 27:4 Assumption of preexisting obligation distinguished
§ 27:5 Assignment distinguished
§ 27:6 Reinsurance distinguished
§ 27:7 Effect
§ 27:8 Form
§ 27:9 Requisites
§ 27:10 Consideration
§ 27:11 Intent of parties
§ 27:12 Consent of parties
§ 27:13 Enforcement of new agreement
§ 27:14 Rescission of novation

B. PROCEDURE

§ 27:15 Pleading
§ 27:16 Burden of proof; appellate review

§ 27:17 Evidence; admissibility of parol evidence

C. FORMS

§ 27:18 Complaint for damages for breach of written novation resulting from substitution of new debtor
§ 27:19 Complaint for damages to enforce novation resulting from substitution of new creditor
§ 27:20 Complaint by creditor to enforce original obligation after rescission of acceptance of novation by creditor
§ 27:21 Affirmative defense of discharge of existing obligation by novation substituting new debtor
§ 27:22 Affirmative defense of discharge of existing obligation by novation substituting new creditor
§ 27:23 Affirmative defense of discharge of existing obligation by novation substituting new obligation between same parties
§ 27:24 Affirmative defense of novation contract barred by Statute of Frauds

II. MODIFICATION

A. GENERAL PRINCIPLES

§ 27:25 Definition
§ 27:26 Consideration
§ 27:27 Modification of contract not in writing
§ 27:28 Modification of written contract
§ 27:29 Modification by oral representations and conduct

B. PROCEDURE

§ 27:30 General considerations; evidentiary requirements

C. FORMS

§ 27:31 Complaint for breach of contract as modified by executed oral agreement
§ 27:32 Allegation of breach of contract as modified by oral agreement supported by new consideration
§ 27:33 Allegation of breach of contract as modified by written agreement

§ 27:34 Affirmative defense of modification of oral contract
§ 27:35 Affirmative defense of modification of written contract by written agreement
§ 27:36 Affirmative defense of modification of written contract by executed oral agreement
§ 27:37 Affirmative defense of modification of written contract by oral agreement supported by new consideration
§ 27:38 Affirmative defense of contract as modified orally being within Statute of Frauds

III. UNAUTHORIZED ALTERATION

A. GENERAL PRINCIPLES

§ 27:39 Extinction by unauthorized alteration

B. ALTERATIONS WITHOUT EFFECT

§ 27:40 Alteration of copy
§ 27:41 Alteration by third party
§ 27:42 Ratification of altered instrument

C. PROCEDURE

§ 27:43 Introduction of altered contract into evidence

D. FORM

§ 27:44 Affirmative defense of unauthorized alteration of written contract

Bibliography

CHAPTER 28. REFORMATION

I. OVERVIEW

§ 28:1 Nature and purpose
§ 28:2 Equitable remedy; no right to jury trial
§ 28:3 Rescission distinguished
§ 28:4 Who may seek reformation
§ 28:5 Rights of third parties
§ 28:6 Effect of acceptance of performance

II. GROUNDS FOR REFORMATION

A. MISTAKE

§ 28:7 Mutual mistake of fact
§ 28:8 Unilateral mistake of fact
§ 28:9 Mistake of drafter
§ 28:10 Mistake of law

B. FRAUD

§ 28:11 General considerations

C. INSURANCE CONTRACTS

§ 28:12 General considerations

III. PLEADING AND PROCEDURAL REQUIREMENTS

§ 28:13 Jurisdiction
§ 28:14 Venue
§ 28:15 Elements of cause of action
§ 28:16 Pleading mistake
§ 28:17 Pleading fraud

IV. EVIDENTIARY REQUIREMENTS

§ 28:18 Presumption as to intent of parties; burden of proof
§ 28:19 Evidence required
§ 28:20 Parol evidence

V. DEFENSES

§ 28:21 Statute of limitations
§ 28:22 Unclean hands
§ 28:23 Res judicata
§ 28:24 Laches
§ 28:25 Negligence; failure to read contract

VI. DUTY OF COURT

§ 28:26 Inquiry as to intent of parties
§ 28:27 Limitation on power of court

VII. RELIEF AVAILABLE

§ 28:28 Overview

§ 28:29 Specific performance

VIII. FORMS

A. COMPLAINTS AND ALLEGATIONS

§ 28:30 Complaint for reformation based on fraud
§ 28:31 Complaint for reformation based on mutual mistake of fact
§ 28:32 Allegation of unilateral mistake of one party which was known or suspected by other party

B. DEFENSE ALLEGATIONS

§ 28:33 Statute of limitations
§ 28:34 Unclean hands
§ 28:35 Laches

Bibliography

CHAPTER 29. TERMINATION AND CANCELLATION

I. LEGAL PRINCIPLES

§ 29:1 Definitions
§ 29:2 Grounds; time and manner, generally
§ 29:3 Contract provision for termination or cancellation
§ 29:4 Requirement of good faith or good cause
§ 29:5 Effect
§ 29:6 Rescission distinguished
§ 29:7 Cancellation of instrument distinguished

II. FORMS

§ 29:8 Complaint for breach of contract based on termination without proper notice
§ 29:9 Affirmative defense of termination under contractual provision before alleged breach
§ 29:10 Affirmative defense of termination by mutual agreement before alleged breach

Bibliography

CHAPTER 30. RESCISSION AND RESTITUTION

I. LEGAL PRINCIPLES

A. OVERVIEW

§ 30:1 Definitions and distinctions
§ 30:2 Necessity of enforceable contract
§ 30:3 Partial rescission
§ 30:4 Effect of rescission on third party beneficiaries
§ 30:5 Rescission of gift

B. MUTUAL RESCISSION

§ 30:6 By agreement
§ 30:7 By implication

C. UNILATERAL RESCISSION

1. Grounds

a. Negation of Consent

§ 30:8 Statutory authority
§ 30:9 Mistake or innocent misrepresentation
§ 30:10 Fraud
§ 30:11 Constructive fraud
§ 30:12 Undue influence
§ 30:13 Duress and menace
§ 30:14 Mental incapacity

b. Failure of Consideration

§ 30:15 Statutory authority
§ 30:16 Materiality
§ 30:17 Impossibility or frustration of purpose

c. Violation of Law or Public Policy

§ 30:18 Contract unlawful
§ 30:19 Contract prejudicial to public interest

d. Statutes Permitting Rescission in Certain Circumstances

§ 30:20 Statutes referenced by Civ. Code, § 1689
§ 30:21 Other statutes

2. Defenses

§ 30:22 Contract fully performed
§ 30:23 Default by party seeking rescission
§ 30:24 Intervening rights of third party
§ 30:25 Prejudicial delay
§ 30:26 Waiver

D. PROCEDURE

§ 30:27 Notice of rescission
§ 30:28 Restoration or offer of restoration
§ 30:29 Action for restitution after rescission
§ 30:30 Availability of jury trial
§ 30:31 Alternative remedies

E. DAMAGES

§ 30:32 Consequential damages
§ 30:33 Offset for value of rescinding buyer's use
§ 30:34 Emotional distress
§ 30:35 Punitive damages
§ 30:36 Prejudgment interest
§ 30:37 Attorney's fees

II. FORMS

A. NOTICE OF RESCISSION AND OFFER OF RESTORATION

§ 30:38 Notice of rescission and offer of restoration [Civ. Code, § 1691]

B. COMPLAINTS FOR RELIEF BASED ON RESCISSION

§ 30:39 Complaint for relief based on rescission of lease for fraud or mistake [Civ. Code, §§ 1689, subd. (b)(1), 1692]
§ 30:40 Complaint for relief based on rescission of contract for failure of consideration [Civ. Code, §§ 1689, subd. (b)(2), 1692]

C. AFFIRMATIVE DEFENSES BASED ON RESCISSION

§ 30:41 Affirmative defense based on written mutual rescission of contract [Civ. Code, § 1691]

§ 30:42 Affirmative defense based on implied mutual rescission of contract [Civ. Code, § 1691]

D. AFFIRMATIVE DEFENSES TO ACTION SEEKING RELIEF BASED ON RESCISSION

§ 30:43 Affirmative defense of plaintiff's default
§ 30:44 Affirmative defense of waiver of right to rescind

Bibliography

CHAPTER 31. ACCORD AND SATISFACTION

I. LEGAL PRINCIPLES

A. NATURE AND ELEMENTS

§ 31:1 Definition and character of agreement
§ 31:2 Effect of agreement; distinctions
§ 31:3 Subject matter
§ 31:4 Mutual consent
§ 31:5 Consideration
§ 31:6 Payment of undisputed portion of disputed claim
§ 31:7 Acceptance of check or draft

B. PROCEDURE

§ 31:8 Action on accord or underlying obligation
§ 31:9 Raising accord and satisfaction as affirmative defense
§ 31:10 Evidence and burden of proof

II. FORMS

§ 31:11 Creditor's complaint to compel satisfaction of accord
§ 31:12 Creditor's complaint to enforce underlying obligation
§ 31:13 Allegation in debtor's answer raising oral accord and satisfaction as affirmative defense
§ 31:14 Allegation in debtor's answer raising written accord and satisfaction as affirmative defense
§ 31:15 Allegation in debtor's answer raising written acceptance of part performance as affirmative defense [Civ. Code, § 1524]

§ 31:16 Debtor's notice that check will be tendered with restrictive endorsement [Civ. Code, § 1526]

Bibliography

CHAPTER 32. ESTOPPEL AND WAIVER

I. DEFINITIONS OF ESTOPPEL AND WAIVER

§ 32:1 Estoppel distinguished from waiver
§ 32:2 Promissory estoppel distinguished from equitable estoppel

II. ESTOPPEL

A. PROMISSORY ESTOPPEL

§ 32:3 Promise
§ 32:4 Reliance
§ 32:5 Causation
§ 32:6 Enforcement of promise; damages

B. EQUITABLE ESTOPPEL

§ 32:7 Summary of elements
§ 32:8 Representation of material fact
§ 32:9 Intent
§ 32:10 Knowledge of party to be estopped
§ 32:11 Ignorance of facts by party asserting equitable estoppel
§ 32:12 Detrimental reliance
§ 32:13 Pleading

III. WAIVER

A. NATURE OF WAIVER

§ 32:14 Intentional relinquishment of right

B. APPLICATIONS OF WAIVER TO CONTRACTS

§ 32:15 Waiver of defect in acceptance
§ 32:16 Illegal contracts
§ 32:17 Waiver of contractual right
§ 32:18 Waiver of statutory right

§ 32:19 Waiver of contractual condition
§ 32:20 Waiver of defect in tendered performance
§ 32:21 Waiver of right to rescind
§ 32:22 Waiver of breach

IV. FORMS

§ 32:23 Complaint alleging promissory estoppel
§ 32:24 Allegation of equitable estoppel

Bibliography

CHAPTER 33. SPECIFIC PERFORMANCE

I. LEGAL PRINCIPLES

A. OVERVIEW

§ 33:1 Nature of remedy
§ 33:2 Applicable law
§ 33:3 Policy against forfeiture

B. AVAILABILITY OF REMEDY

§ 33:4 Essential requirements
§ 33:5 Mutuality
§ 33:6 Obligations that cannot be specifically enforced
§ 33:7 Liquidation of damages not bar to specific performance
§ 33:8 Damages incidental to specific performance
§ 33:9 Damages in lieu of specific performance
§ 33:10 Injunctive relief

C. ACTIONS IN WHICH SPECIFIC PERFORMANCE MAY BE GRANTED

1. Contracts Regarding Real Property

§ 33:11 Action by buyer
§ 33:12 Action by seller

2. Contracts Regarding Personal Property

§ 33:13 Generally
§ 33:14 Uniform Commercial Code, § 2716

3. Contract to Make a Will or Deed

§ 33:15 Quasi-specific performance by constructive trust

§ 33:16 Deeds

4. Arbitration Agreements

§ 33:17 Nature and enforceability

D. PERSONAL SERVICES CONTRACTS

§ 33:18 General rule against specific performance
§ 33:19 Enforcement by injunction

E. DEFENSES

§ 33:20 Inadequacy of consideration
§ 33:21 Contract unjust, unreasonable, or unconscionable
§ 33:22 Misrepresentation, concealment, or unfair practices
§ 33:23 Mistake, misapprehension, or surprise
§ 33:24 Uncertain contract terms
§ 33:25 Unclean hands
§ 33:26 Laches

F. PROCEDURE

§ 33:27 Jurisdiction
§ 33:28 Venue
§ 33:29 Inconsistent theories; one form of action
§ 33:30 Right to jury trial
§ 33:31 Statute of limitations

II. PROCEDURAL CHECKLIST

§ 33:32 Checklist of matters to consider when seeking specific performance
§ 33:33 Checklist of matters to consider when defending action for specific performance

III. FORMS

A. COMPLAINTS AND ALLEGATIONS

§ 33:34 Complaint by buyer for specific performance of contract for purchase of real property and alternative count for damages
§ 33:35 Allegation of loss of use of property justifying damages incidental to specific performance

§ 33:36 Complaint by seller for specific performance of contract for purchase of real property
§ 33:37 Complaint for specific performance where goods are unique [Cal. U. Com. Code, § 2716]
§ 33:38 Complaint for quasi-specific performance of contract to make will

B. AFFIRMATIVE DEFENSES

§ 33:39 Defense of laches
§ 33:40 Defense of unclean hands
§ 33:41 Defense of misrepresentation and concealment

Bibliography

CHAPTER 34. QUASI CONTRACT AND COMMON COUNTS

I. LEGAL PRINCIPLES

A. INTRODUCTION

§ 34:1 Quasi contracts
§ 34:2 Assumpsit and the common counts
§ 34:3 Effect of existence of express contract
§ 34:4 Election to waive tort and sue on implied contract
§ 34:5 Limitations and laches

B. GOODS SOLD AND DELIVERED; MONEY LENT; MONEY PAID

§ 34:6 Goods sold and delivered
§ 34:7 Money lent
§ 34:8 Money paid

C. MONEY HAD AND RECEIVED

1. Nature and Prerequisites

§ 34:9 Nature
§ 34:10 Receipt of money or its equivalent by defendant
§ 34:11 Interest and right of plaintiff
§ 34:12 Demand
§ 34:13 Defenses

2. Situations Where Action Lies

§ 34:14 Where consideration has failed

§ 34:15 Where agreement is void
§ 34:16 Where contract is rescinded or abandoned
§ 34:17 Fraud, compulsion, or mistake
§ 34:18 Receipt of money from third person
§ 34:19 Conversion of personal property
§ 34:20 Voluntary payment

D. WORK, LABOR, SERVICES, AND MATERIALS

1. Nature and Elements

§ 34:21 Implied promise to pay
§ 34:22 Benefit to defendant
§ 34:23 Services to third person
§ 34:24 Request; acceptance or retention of benefits
§ 34:25 Services procured through fraud or misstatement
§ 34:26 Expectation of compensation

2. Effect of Express Contract

§ 34:27 General rule
§ 34:28 Contract modified or abandoned; additional services
§ 34:29 Contract invalid or unenforceable
§ 34:30 Contract illegal or ultra vires
§ 34:31 Defective performance
§ 34:32 Part performance

3. Amount of Recovery

§ 34:33 Reasonable value
§ 34:34 Contract price
§ 34:35 Interest

E. PLEADINGS

§ 34:36 Propriety and sufficiency of common counts
§ 34:37 Joinder or consolidation of counts
§ 34:38 Allegations in complaint, generally
§ 34:39 Allegations respecting consideration and promise
§ 34:40 Allegations respecting indebtedness, receipt of money, or value of services
§ 34:41 Allegations respecting express contract
§ 34:42 Answer

F. EVIDENCE; BURDEN OF PROOF

§ 34:43 Evidence generally
§ 34:44 Burden of proof
§ 34:45 Evidence of value of services
§ 34:46 Special contract as evidence

II. FORMS

§ 34:47 Cause of action—common counts [Judicial Council Form PLD-C-001(2)]
§ 34:48 Complaint for breach of oral contract and for reasonable value of services rendered
§ 34:49 Allegations of common count for work, labor, services, and materials at agreed price
§ 34:50 Allegations of common count for money paid, money lent, or money had and received
§ 34:51 Allegations of common count for goods sold and delivered at agreed price
§ 34:52 Allegations of common count for reasonable value of goods sold and delivered

Bibliography

CHAPTER 35. ACCOUNTS AND ACTIONS FOR ACCOUNTING

I. ACCOUNTS

A. LEGAL PRINCIPLES

1. Types of Accounts

§ 35:1 Book accounts
§ 35:2 Open and closed accounts
§ 35:3 Mutual accounts

2. Nature of Action

§ 35:4 Overview
§ 35:5 Defenses
§ 35:6 Recovery
§ 35:7 Interest

3. Practice and Procedure

§ 35:8 Statute of limitations
§ 35:9 Parties

§ 35:10 Pleading
§ 35:11 Bill of particulars

B. FORMS

1. Complaints

§ 35:12 Complaint for amount due for goods sold and delivered on open book account
§ 35:13 Allegation for work and labor done on open book account
§ 35:14 Allegation that copy of account is attached to complaint
§ 35:15 Allegation of provision for attorney's fees
§ 35:16 Complaint for balance due on mutual, open, and current account
§ 35:17 Complaint for commissions due on a mutual, open, and current account
§ 35:18 Complaint for amount due on open book account
§ 35:19 Complaint to recover overpayment on open book account
§ 35:20 Complaint for balance due on assigned open account

2. Affirmative Defense

§ 35:21 Affirmative defense of statute of limitations

II. ACCOUNT STATED

A. LEGAL PRINCIPLES

1. Nature

§ 35:22 Definition, distinction, and effect
§ 35:23 Essential elements
§ 35:24 Agreement as to sum owing
§ 35:25 Partial account stated
§ 35:26 Defenses
§ 35:27 Interest

2. Practice and Procedure

§ 35:28 Nature of action
§ 35:29 Venue
§ 35:30 Statute of limitations
§ 35:31 Pleading
§ 35:32 Pleading fraud and mistake

§ 35:33 Presumptions and burden of proof

B. FORMS

1. Complaints

§ 35:34 Complaint for amount due on account stated
§ 35:35 Allegation that mutual, open, and current account was stated
§ 35:36 Allegation that account stated should be implied
§ 35:37 Allegation that partial account stated should be implied
§ 35:38 Complaint to set aside account stated

2. Affirmative Defenses and Cross-Complaint

§ 35:39 Affirmative defense of statute of limitations
§ 35:40 Affirmative defense that account stated resulted from mistake, fraud, duress, or undue influence
§ 35:41 Affirmative defense of partial account stated
§ 35:42 Compulsory cross-complaint on account stated [Code Civ. Proc., § 426.30, subd. (a)]

III. ACTION FOR ACCOUNTING

A. LEGAL PRINCIPLES

1. Nature of Action

§ 35:43 Definition
§ 35:44 Elements
§ 35:45 Action available
§ 35:46 Action not available
§ 35:47 Defenses
§ 35:48 Relief available
§ 35:49 Costs
§ 35:50 Interest
§ 35:51 Credits

2. Practice and Procedure

§ 35:52 Venue
§ 35:53 Statute of limitations
§ 35:54 Demand as condition precedent
§ 35:55 Parties
§ 35:56 Pleading
§ 35:57 Joinder and splitting of causes

B. FORMS

1. Complaints

§ 35:58 Complaint for accounting based on fiduciary relationship and for payment of amount due
§ 35:59 Complaint for accounting by sales agent
§ 35:60 Complaint for accounting and for payment of amount due by nonprofit corporation
§ 35:61 Allegation by employee for accounting by employer
§ 35:62 Allegation for accounting for rents by co-owner

2. Affirmative Defense

§ 35:63 Affirmative defense of account stated

Bibliography

CHAPTER 36. AGENCY

I. LEGAL PRINCIPLES

A. CHARACTERISTICS OF AGENCY RELATIONSHIP

§ 36:1 Definition of agent and principal
§ 36:2 Purpose of agency relationship
§ 36:3 Creation and existence of agency relationship

B. SCOPE OF AGENT'S AUTHORITY

1. Characteristics of Agent's Authority

§ 36:4 Definition of authority

2. Actual Authority to Act for Principal

§ 36:5 Express authority
§ 36:6 Written authority and equal dignities rule
§ 36:7 Incidental and reasonably proper implied authority

3. Ostensible Authority

§ 36:8 Definition and creation of ostensible authority
§ 36:9 Effect of estoppel caused by actions of principal

4. Subagents

§ 36:10 Delegation of agent's authority

§ 36:11 Duties and liabilities among agents, subagents, and principals

5. Limitations on Authority

§ 36:12 Examples of limits on agent's authority

6. Ratification

§ 36:13 Definition of and requirements for ratification
§ 36:14 Effect of ratification of otherwise unauthorized acts

C. RELATIONSHIP BETWEEN AGENT AND PRINCIPAL

1. Obligations and Liabilities of Agent

§ 36:15 Fiduciary relationship and duty of loyalty
§ 36:16 Duty of full disclosure
§ 36:17 Duty to exercise skill, care, and diligence
§ 36:18 Duty to account
§ 36:19 Duty not to retain secret profits

2. Obligations and Liabilities of Principal

§ 36:20 Duty of compensation
§ 36:21 Duty of indemnity
§ 36:22 Duty not to prevent agent's performance

D. RELATIONSHIP BETWEEN PRINCIPAL OR AGENT AND THIRD PARTIES

1. Obligations and Liabilities Between Principal and Third Parties

§ 36:23 Authorized acts of agent for disclosed principal
§ 36:24 Unauthorized acts of agent for disclosed principal
§ 36:25 Acts of agent for undisclosed principal

2. Obligations and Liabilities Between Agent and Third Parties

§ 36:26 Agent's warranty of authority
§ 36:27 Agent's receipt of money or property
§ 36:28 Other examples of rights and liabilities of agents

E. DURATION AND TERMINATION OF AGENCY RELATIONSHIP

§ 36:29 Agency not coupled with an interest
§ 36:30 Agency coupled with an interest

II. FORMS

§ 36:31 Complaint by principal for accounting from agent
§ 36:32 Complaint by principal against agent for retention of secret profits
§ 36:33 Complaint by principal for damages for agent's unauthorized execution of contract
§ 36:34 Affirmative defense of ratification
§ 36:35 Agent's common count to recover compensation
§ 36:36 Complaint by third party for damages for agent's breach of warranty of authority [Civ. Code, §§ 2342, 3318]

Bibliography

CHAPTER 37. BAILMENTS

I. LEGAL PRINCIPLES

A. NATURE OF BAILMENTS

§ 37:1 Definition and distinctions
§ 37:2 Elements of bailments

B. TYPES OF BAILMENTS

§ 37:3 Voluntary and involuntary deposits
§ 37:4 Deposit for safekeeping or exchange
§ 37:5 Loan for use or exchange
§ 37:6 Classification based on benefit

C. RIGHTS AND LIABILITIES OF BAILOR

§ 37:7 Right to terminate bailment
§ 37:8 Liability for bailment of defective property
§ 37:9 Liability for expenses

D. DUTIES, RIGHTS, AND LIABILITIES OF BAILEE

1. Duty of Care

§ 37:10 Bailment for benefit of bailor
§ 37:11 Bailment for benefit of bailee
§ 37:12 Bailment for benefit of both parties
§ 37:13 Statutory limit on liability
§ 37:14 Contractual modification of liability

2. Duty to Return Property

§ 37:15 On expiration of bailment
§ 37:16 Property lent for use
§ 37:17 Requirement of demand

3. Rights of Bailee

§ 37:18 Right to terminate
§ 37:19 Bailee's lien

4. Liabilities of Bailee

§ 37:20 Liability for unauthorized use
§ 37:21 Strict liability for loss of property left for alteration or repair
§ 37:22 Liability for failure to return property
§ 37:23 Liability of particular bailees

E. ACTIONS AND PROCEDURE

§ 37:24 Action against bailee for recovery of property
§ 37:25 Action against bailee for conversion
§ 37:26 Action by bailor against third party
§ 37:27 Action by bailee against third party
§ 37:28 Action by third party against bailee
§ 37:29 Burden of proof
§ 37:30 Damages

F. DEFENSES

§ 37:31 Rights of third party in bailed property
§ 37:32 Crime prevention
§ 37:33 Bailee unable to return goods as defense in conversion action
§ 37:34 Statute of limitations

II. FORMS

A. COMPLAINTS

§ 37:35 Complaint by bailor against bailee for damages for failure to return bailed property [Civ. Code, §§ 3300, 3336]

§ 37:36 Notice for demand for return of bailed property

§ 37:37 Complaint by third party against bailee for conversion of bailed property [Civ. Code, § 3336]

§ 37:38 Complaint by bailor against bailee for recovery of bailed property [Civ. Code, §§ 3379, 3380, Code Civ. Proc., § 667]

§ 37:39 Complaint by bailor for damages for bailee's negligence [Civ. Code, § 1714, subd. (a)]

§ 37:40 Allegation that bailment was for mutual benefit of parties

§ 37:41 Allegation that bailment was for sole benefit of bailor

§ 37:42 Allegation that bailee acted without even slight care

§ 37:43 Complaint by bailor for damages for negligence of borrower for use [Civ. Code, § 1714, subd. (a)]

§ 37:44 Complaint for damages for unauthorized use of bailed property [Civ. Code, §§ 1835, 1836, 3300, 3366]

B. AFFIRMATIVE DEFENSES

§ 37:45 Affirmative defense of contractual modification of duty of care

§ 37:46 Affirmative defense of notice of noninsurance and limitation of liability by receipt [Civ. Code, § 1858.1]

§ 37:47 Affirmative defense of lien of depository for hire [Civ. Code, § 1856]

§ 37:48 Affirmative defense of repairer's lien [Civ. Code, § 3051]

Bibliography

CHAPTER 38. SURETYSHIP

I. LEGAL PRINCIPLES

A. NATURE AND SCOPE OF SURETYSHIP RELATIONSHIP

§ 38:1 Definitions and parties
§ 38:2 Kinds of suretyship agreements
§ 38:3 Offer, acceptance, and consideration
§ 38:4 When suretyship agreement must be in writing
§ 38:5 Construction and interpretation of agreement
§ 38:6 Creditor's duty to disclose information to surety
§ 38:7 Bonds and deposits

B. LIABILITY OF SURETY

§ 38:8 Nature and scope of liability
§ 38:9 Effect of enforceability of underlying obligation
§ 38:10 Liability for attorney's fees

C. EXONERATION AND RELEASE OF SURETY

§ 38:11 Nature and scope of exoneration
§ 38:12 Alteration of underlying obligation; impairment of remedies
§ 38:13 Circumstances in which surety not exonerated

D. CREDITOR'S RIGHTS AGAINST SURETY

§ 38:14 Nature and scope of rights
§ 38:15 Cause of action
§ 38:16 Parties
§ 38:17 Creditor's pleading
§ 38:18 Surety's right to benefit of security
§ 38:19 Surety's demand that creditor first proceed against principal
§ 38:20 Surety's defenses

E. SURETY'S RIGHTS AGAINST PRINCIPAL AND CO-SURETY

§ 38:21 Nature and scope of remedies
§ 38:22 Reimbursement from principal
§ 38:23 Contribution from co-surety

II. PROCEDURAL CHECKLISTS

§ 38:24 Rights and remedies of surety
§ 38:25 Contribution among joint debtors

III. FORMS

A. ACTION BY CREDITOR

§ 38:26 Creditor's notice to surety of principal's default [Civ. Code, § 2808]
§ 38:27 Surety's notice to creditor to proceed against principal [Civ. Code, § 2845]
§ 38:28 Surety's notice to creditor to proceed against property of principal [Civ. Code, § 2850]
§ 38:29 Surety's offer of performance [Civ. Code, § 2839]
§ 38:30 Creditor's complaint against principal and surety for breach of contract
§ 38:31 Surety's notice to principal to defend action [Code Civ. Proc., § 1912]
§ 38:32 Surety's defense that underlying obligation has been materially altered [Civ. Code, § 2819]
§ 38:33 Surety's defense that time for performance of underlying obligation has been extended [Civ. Code, § 2819]
§ 38:34 Surety's defense that creditor failed to proceed against principal [Civ. Code, § 2845]
§ 38:35 Surety's notice of motion for order determining liability of principal for repayment [Code Civ. Proc., § 883, subd. (a)]

B. ACTION BY SURETY

§ 38:36 Surety's complaint against principal to compel performance [Civ. Code, § 2846]
§ 38:37 Surety's complaint against principal and creditor to compel performance by principal [Code Civ. Proc., § 1050]
§ 38:38 Surety's complaint against principal for reimbursement [Civ. Code, § 2847]
§ 38:39 Surety's complaint against co-surety for contribution [Civ. Code, § 2848]
§ 38:40 Surety's complaint against co-surety to obtain benefit of collateral [Civ. Code, § 2849]

C. ACTION BY PRINCIPAL

§ 38:41 Principal's petition for withdrawal of security [Civ. Code, § 2811]
§ 38:42 Order for withdrawal of security [Civ. Code, § 2811]

Bibliography

CHAPTER 39. PUBLIC WORKS CONTRACTS

I. ACTIONS INVOLVING BIDS, AWARDS, AND PERFORMANCE OF PUBLIC WORKS CONTRACTS

A. INTRODUCTION

§ 39:1 Overview
§ 39:2 Construction of contract

B. COMPETITIVE BIDDING

§ 39:3 Introduction; definitions
§ 39:4 Solicitation of bids; notice
§ 39:5 Minority, women, and disabled veteran business participation goals for state contracts
§ 39:6 Duty to pay prevailing wages
§ 39:7 Exceptions to requirements; day labor
§ 39:8 Failure to comply with bidding requirements
§ 39:9 Procedure for submitting bids
§ 39:10 Withdrawal of bids
§ 39:11 Duty to award contract to lowest responsible bidder; successful bidder's obligations
§ 39:12 Rejection of bids; right to notice
§ 39:13 Debarment and suspension of contractor
§ 39:14 Misaward
§ 39:15 Misrepresentations by public entity
§ 39:16 Relief from bid mistakes
§ 39:17 Notice of mistake
§ 39:18 Action for relief from bid mistake
§ 39:19 Requirements for relief

C. SUBLETTING AND SUBCONTRACTING

§ 39:20 Subletting and Subcontracting Fair Practices Act

§ 39:21 Listing in bid
§ 39:22 Subletting or subcontracting in cases of public emergency or necessity
§ 39:23 Substitutions
§ 39:24 Bonds
§ 39:25 Notice of request for substitution of subcontractor
§ 39:26 Substitution of subcontractor based on clerical error
§ 39:27 Remedies for violation of Subletting and Subcontracting Fair Practices Act

D. CLAIMS AGAINST PUBLIC AGENCIES

§ 39:28 Arbitration
§ 39:29 Costs and attorney's fees
§ 39:30 Presentation of claim
§ 39:31 Pleading

E. PROCEDURAL CHECKLIST

§ 39:32 Checklist of matters to consider when drafting complaint for breach of public works contract

F. FORMS

1. Competitive Bidding and Award of Contract

§ 39:33 Request for withdrawal of bid [Pub. Contract Code, § 10169]
§ 39:34 Complaint to recover bidder's security due to mistake in computing bid [Pub. Contract Code, § 5101]
§ 39:35 Complaint by unsuccessful bidder to compel award of public works contract
§ 39:36 Allegation of award of municipal contract without competitive bids

2. Arbitration

§ 39:37 Petition for arbitration

3. Breach of Contract Actions

§ 39:38 Complaint by contractor against public entity for damages for breach of contract
§ 39:39 Complaint by contractor against public entity for

damages for breach of contract on refusal of public entity to accept completed work and to pay for extra work demanded
§ 39:40 Complaint by subcontractor against general contractor for breach of contract on public work
§ 39:41 Defense of defective performance of subcontractor
§ 39:42 Affirmative defense of modification of written contract by oral agreement

II. CLAIMANTS' REMEDIES

A. STOP NOTICES

1. Legal Principles

§ 39:43 Public works contracts remedies versus private works contracts remedies
§ 39:44 Definition of stop notice
§ 39:45 Persons who may serve stop notice
§ 39:46 Duty to withhold
§ 39:47 Priorities

2. Initial Stop Notice Procedures

§ 39:48 Preliminary 20-day notice
§ 39:49 Service of stop notice
§ 39:50 Duty on receipt of notice

3. Procedures for Releasing Stop Notice Funds

§ 39:51 Stop notice release bond
§ 39:52 Summary stop notice proceedings
§ 39:53 Release on affidavit
§ 39:54 Action for declaration of parties' respective rights
§ 39:55 Action on stop notice
§ 39:56 Interpleader and consolidation

4. Procedural Checklists

§ 39:57 Service of preliminary 20-day notice [Civ. Code, § 3098, subd. (a)]
§ 39:58 Service of stop notice
§ 39:59 Release of withheld funds by bond [Civ. Code, § 3196]
§ 39:60 Release of withheld funds on affidavit

§ 39:61 Action for declaration of rights
§ 39:62 Enforcement of rights

5. Forms

§ 39:63 Preliminary 20-day notice [Civ. Code, § 3098]
§ 39:64 Stop notice [Civ. Code, § 3103]
§ 39:65 Release of stop notice
§ 39:66 Declaration under penalty of perjury of improper withholding and demand for release [Civ. Code, § 3198]
§ 39:67 Notice to claimant of filing of contractor's affidavit [Civ. Code, § 3199]
§ 39:68 Counteraffidavit (declaration) by claimant [Civ. Code, § 3200]
§ 39:69 Complaint by original contractor for declaration of rights to withheld funds [Civ. Code, § 3201]
§ 39:70 Notice of hearing on determination of rights to withheld funds [Civ. Code, § 3201]
§ 39:71 Order determining rights to withheld funds [Civ. Code, § 3203]
§ 39:72 Complaint to enforce payment of claim in stop notice [Civ. Code, § 3210]
§ 39:73 Notice of commencement of action on stop notice claim [Civ. Code, § 3211]

B. ACTIONS ON PAYMENT BONDS

1. Legal Principles

§ 39:74 Payment bonds; exoneration of surety
§ 39:75 Filing and approval of payment bonds
§ 39:76 20-day public works preliminary bond notice
§ 39:77 Action on payment bond

2. Procedural Checklist

§ 39:78 Checklist of matters to consider in actions on contractors' payment bonds

3. Forms

§ 39:79 20-day public works preliminary bond notice [Civ. Code, § 3252]
§ 39:80 Complaint against surety on payment bond [Civ. Code, §§ 3096, 3249, 3250]

Bibliography

Volume BUS4

CHAPTER 40. SALES

I. OVERVIEW OF CALIFORNIA COMMERCIAL CODE DIVISION 2

A. LEGAL PRINCIPLES

1. Policies and Definitions

§ 40:1 Purpose and policy of California Commercial Code
§ 40:2 Supplementary general principles of law applicable
§ 40:3 Applicability to sales
§ 40:4 Basic terms and definitions
§ 40:5 Course of dealing and usage of trade; course of performance or practical construction

2. Contract Formation

§ 40:6 Contract formation in general
§ 40:7 Firm offers
§ 40:8 Offer and acceptance
§ 40:9 Additional terms in acceptance or confirmation
§ 40:10 Modification, rescission, and waiver
§ 40:11 Delegation of performance and assignment of rights

3. Obligations and Construction of Contract

§ 40:12 Variation by agreement
§ 40:13 Unconscionability
§ 40:14 Open price term
§ 40:15 Output, requirements, and exclusive dealings
§ 40:16 Delivery in single lot
§ 40:17 Absence of specified place for delivery
§ 40:18 Absence of time provisions; notice of termination
§ 40:19 Open time for payment or running of credit
§ 40:20 Options and cooperation respecting performance
§ 40:21 "No arrival, no sale" term
§ 40:22 Letter of credit term and confirmed credit
§ 40:23 Sale on approval and sale or return

4. Title, Interests, and Risk of Loss

§ 40:24 Passing of title; reservation for security

§ 40:25 Rights of the seller's creditors against sold goods
§ 40:26 Power to transfer
§ 40:27 Insurable interest in goods; manner of identification
§ 40:28 Allocation of risk of loss

5. Performance

§ 40:29 General obligations
§ 40:30 Tender of delivery
§ 40:31 Payment by buyer
§ 40:32 Anticipatory repudiation; assurance of performance
§ 40:33 Casualty to goods, substituted performance, and excuse

6. Remedies, Generally

§ 40:34 Remedies to be liberally administered
§ 40:35 Contractual modification or limitation of remedy
§ 40:36 Liquidation or limitation of damages; deposits
§ 40:37 Remedies for fraud

7. Procedural Issues

§ 40:38 Notices
§ 40:39 Limitation of actions for breach; indemnification
§ 40:40 Statute of Frauds
§ 40:41 Proof of market price

B. PROCEDURAL CHECKLIST

§ 40:42 Checklist of time limits and matters requiring notice prior to actions by buyer or seller

C. FORMS

1. Complaints and Allegations

§ 40:43 Complaint to recover liquidated damages [Cal. Com. Code, § 2718, Civ. Code, § 1671]
§ 40:44 Demand by buyer for adequate assurance of performance [Cal. Com. Code, § 2609]
§ 40:45 Allegation of anticipatory repudiation [Cal. Com. Code, § 2610]
§ 40:46 Notice to offer evidence of substitute market price [Cal. Com. Code § 2723, subds. (2) and (3)]

2. Affirmative Defenses

§ 40:47 Affirmative defense alleging remedy limited to liquidated damages
§ 40:48 Affirmative defense alleging action barred by statute of limitations [Cal. Com. Code, § 2725]
§ 40:49 Affirmative defense of failure to comply with Statute of Frauds [Cal. Com. Code, § 2201, subd. (1)]
§ 40:50 Affirmative defense based on impracticability of performance [Cal. Com. Code, § 2615]

II. BUYER'S RIGHTS AND REMEDIES

A. LEGAL PRINCIPLES

§ 40:51 Buyer's right to goods on seller's repudiation, failure to deliver, or insolvency
§ 40:52 Buyer's right to inspection of goods
§ 40:53 Buyer's rights on improper delivery
§ 40:54 Manner and effect of rightful rejection
§ 40:55 Merchant buyer's duties as to rightfully rejected goods
§ 40:56 Seller's right to cure nonconformance
§ 40:57 Buyer's options as to salvage of rightfully rejected goods
§ 40:58 Waiver of the buyer's objections by failure to particularize
§ 40:59 What constitutes acceptance of goods
§ 40:60 Effect of acceptance
§ 40:61 Notice of litigation to person answerable over
§ 40:62 Revocation of acceptance in whole or in part
§ 40:63 Installment contracts
§ 40:64 Preserving evidence of goods in dispute

B. FORMS

§ 40:65 Notice of the buyer's rejection of delivery [Cal. Com. Code, § 2602, subd. (1)]
§ 40:66 Notice of breach after acceptance [Cal. Com. Code, § 2607, subd. (3)(a)]
§ 40:67 Notice of acceptance of nonconforming goods with reservation of right to damages [Cal. Com. Code, §§ 1207, 2612, subd. (3)]
§ 40:68 Buyer's notice of litigation to person answerable

over ("vouching in") [Cal. Com. Code, § 2607, subd. (5)(A)]

C. ACTIONS FOR DAMAGES

1. Legal Principles

§ 40:69 Remedies, generally
§ 40:70 Cover and procurement of substitute goods
§ 40:71 Buyer's damages for nondelivery or repudiation
§ 40:72 Buyer's damages for breach in regard to accepted goods
§ 40:73 Buyer's incidental and consequential damages
§ 40:74 Buyer's right to specific performance or replevin
§ 40:75 Deduction of damages from price

2. Forms

a. Complaints

§ 40:76 Complaint for damages for buyer's cover by procurement of substitute goods [Cal. Com. Code, §§ 2711, subd. (1)(a), 2712]
§ 40:77 Complaint for damages for seller's nondelivery of goods sold [Cal. Com. Code, §§ 2711, subd. (1)(b), 2713]
§ 40:78 Complaint for specific performance where the goods are unique [Cal. Com. Code, §§ 2711, subd. (2)(b), 2716]

b. Affirmative Defenses

§ 40:79 Affirmative defense in answer based on unreasonable cover by buyer
§ 40:80 Affirmative defense in answer based on goods not unique

D. BREACH OF WARRANTY

1. Legal Principles

§ 40:81 Warranty of title and against infringement
§ 40:82 Express warranties by affirmation, promise, description, or sample
§ 40:83 Implied warranty of merchantability
§ 40:84 Implied warranty of fitness for particular use
§ 40:85 Exclusion or modification of warranties
§ 40:86 Cumulation and conflict of warranties

§ 40:87 Retail sales warranty; proof of purchase form

2. Forms

a. Complaints and Allegations

§ 40:88 Complaint for damages for breach of express warranty [Cal. Com. Code, §§ 2313, 2714, subd. (2)]

§ 40:89 Allegation of breach of express warranty based on goods not conforming to sample [Cal. Com. Code, § 2313, subd. (1)(c)]

§ 40:90 Complaint for damages for breach of implied warranty of merchantability [Cal. Com. Code, § 2314]

§ 40:91 Allegation for breach of implied warranty of fitness for particular purpose [Cal. Com. Code, § 2315]

b. Affirmative Defenses

§ 40:92 Affirmative defense in answer based on modification of warranty [Cal. Com. Code, § 2316]

§ 40:93 Affirmative defense in answer based on no implied warranty of merchantability because seller not merchant [Cal. Com. Code, § 2314]

§ 40:94 Affirmative defense in answer based on no implied warranty due to an "as is" sale [Cal. Com. Code, § 2316, subd. (3)(a)]

§ 40:95 Affirmative defense in answer based on no implied warranty due to buyer examining goods before entering into contract [Cal. Com. Code, § 2316, subd. (3)(b)]

III. SELLER'S RIGHTS AND REMEDIES

A. LEGAL PRINCIPLES

§ 40:96 Seller's remedies on discovery of the buyer's insolvency

§ 40:97 Seller's remedies in general

§ 40:98 Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods

§ 40:99 Seller's stoppage of delivery in transit

§ 40:100 Seller's resale

§ 40:101 Person in position as seller

§ 40:102 Seller's damages for nonacceptance or repudiation
§ 40:103 Action for the price
§ 40:104 Seller's incidental damages

B. PROCEDURAL CHECKLIST

§ 40:105 Checklist of limitations and notices regarding seller's remedies

C. FORMS

1. Complaints and Allegations

§ 40:106 Complaint for damages by seller following private resale of goods [Cal. Com. Code, §§ 2703, subd. (d), 2706, subd. (1)]
§ 40:107 Complaint for damages based on nonacceptance of goods [Cal. Com. Code, §§ 2703, subd. (e), 2708]
§ 40:108 Complaint for recovery of price of goods following buyer's failure to pay after acceptance [Cal. Com. Code, § 2709]

2. Affirmative Defenses

§ 40:109 Affirmative defense in answer based on goods not delivered
§ 40:110 Affirmative defense in answer based on nonconforming goods

IV. SUITS AGAINST THIRD PARTIES

A. LEGAL PRINCIPLES

§ 40:111 Right of action in either party to contract
§ 40:112 Effect of risk of loss at time of injury

B. FORMS

§ 40:113 Complaint by buyer against third party for conversion of goods [Cal. Com. Code, § 2722, subd. (a), Civ. Code, § 3336]
§ 40:114 Complaint by seller on own behalf and as fiduciary for buyer against third party for damage to goods [Cal. Com. Code, § 2722, subd. (b)]

Bibliography

CHAPTER 41. AUCTION SALES

I. LEGAL PRINCIPLES

A. CONDUCT OF AUCTION SALES

1. Overview

§ 41:1 General principles

2. Completion of Sale

§ 41:2 Terminology
§ 41:3 Bids as offers to contract
§ 41:4 Nature of acceptance
§ 41:5 Last-minute bids
§ 41:6 Passage of title

3. Goods Subject to Sale

§ 41:7 Sales by lot
§ 41:8 Withdrawal of goods from sale
§ 41:9 Condition reserved by seller

4. Bidding by Seller

§ 41:10 Prohibition on secret bidding [Cal. Com. Code, § 2328, subd. (4)]
§ 41:11 Forced sale exception
§ 41:12 Buyer's remedies for violations of Cal. Com. Code § 2328, subd. (4)

B. RIGHTS AND DUTIES OF PARTIES TO AUCTION SALES

1. Auctioneer

§ 41:13 Licensing requirements
§ 41:14 Relationship with seller and buyer
§ 41:15 Liability for conversion
§ 41:16 Warranty liability

2. Seller-Owner

§ 41:17 Relationship with auctioneer

3. Bidders and Buyers

§ 41:18 Rights of bidders and buyers

C. REMEDIES

1. Seller's Remedies

§ 41:19 Remedies against buyer
§ 41:20 Remedies against auctioneer for conversion
§ 41:21 Injunctions and restitution against auctioneer

2. Auctioneer's Remedies

§ 41:22 Remedies against buyer and seller

3. Buyer's Remedies

§ 41:23 Remedies against seller
§ 41:24 Remedies against auctioneer

II. FORMS

A. COMPLAINTS

§ 41:25 Complaint by seller against auctioneer for breach of contract for unauthorized sale on credit [Civ. Code, § 3300]
§ 41:26 Complaint by owner against auctioneer for conversion [Civ. Code, § 3336]
§ 41:27 Complaint by auctioneer against buyer for price of goods sold [Cal. Com. Code, §§ 2328, 2709]
§ 41:28 Complaint for breach of contract by auctioneer against seller [Civ. Code, § 3302]
§ 41:29 Complaint to avoid sale by buyer against owner or seller and auctioneer [Cal. Com. Code, § 2328, subd. (4)]

B. DEFENSES

§ 41:30 Affirmative defense by buyer that contract of sale is unenforceable because of noncompliance with statute of frauds [Cal. Com. Code, § 2201]
§ 41:31 Affirmative defense by seller that plaintiff is not entitled to remedy under Cal. Com. Code § 2328, subd. (4) because auction was forced sale
§ 41:32 Affirmative defense by auctioneer that owner of goods is estopped to assert title to goods sold at auction
§ 41:33 Affirmative defense by buyer that payment due under contract of sale can be avoided because

of seller's secret bidding [Cal. Com. Code, § 2328, subd. (4)]

CHAPTER 42. NEGOTIABLE INSTRUMENTS

I. LEGAL PRINCIPLES

A. GOVERNING LAW AND DEFINITIONS

§ 42:1 Applicability of California Commercial Code Division 3
§ 42:2 Definitions applicable to negotiable instruments

B. NEGOTIABILITY OF INSTRUMENTS

1. Significance of Negotiability; Types of Negotiable Instruments

§ 42:3 Significance of negotiability
§ 42:4 Types of negotiable instruments

2. Requirements for Negotiability

§ 42:5 Required elements, generally
§ 42:6 Unconditional promise or order
§ 42:7 Fixed amount; effect of interest provisions
§ 42:8 Payable on demand or at definite time
§ 42:9 Payable to order or to bearer
§ 42:10 Elements that do not affect negotiability
§ 42:11 Negotiability of incomplete instruments

C. TRANSFER AND NEGOTIATION OF NEGOTIABLE INSTRUMENTS

1. Negotiation As Form of Transfer

§ 42:12 Significance of negotiation
§ 42:13 Methods of negotiation

2. Method and Types of Indorsement

§ 42:14 Methods of indorsement
§ 42:15 Special, blank, and anomalous indorsements
§ 42:16 Restrictive indorsements

D. RIGHTS AND LIABILITIES OF PARTIES TO NEGOTIABLE INSTRUMENTS

1. Persons Entitled to Enforce Instruments

a. Holders and Holders in Due Course

§ 42:17 Who may be holder
§ 42:18 Distinction between holder in due course and other holders
§ 42:19 Requirements for holder in due course
§ 42:20 Value
§ 42:21 Notice

b. Others Entitled to Enforce Instruments

§ 42:22 Nonholders in possession of instrument
§ 42:23 Persons not in possession of instrument

2. Persons Liable on Instrument

§ 42:24 Signer
§ 42:25 Issuer of note, cashier's check, or draft drawn on drawer
§ 42:26 Acceptor of draft
§ 42:27 Drawer of draft
§ 42:28 Indorser
§ 42:29 Accommodation party
§ 42:30 Presenter's liability to drawee
§ 42:31 Presenter's liability to drawer or indorser
§ 42:32 Person who converts instrument

3. Prerequisites for Liability

a. Acceptance

§ 42:33 Significance of acceptance
§ 42:34 Manner of acceptance

b. Prerequisites for Secondary Liability

§ 42:35 Overview
§ 42:36 Presentment
§ 42:37 Dishonor
§ 42:38 Notice of dishonor
§ 42:39 Excuse or waiver of presentment and notice of dishonor

E. DEFENSES AGAINST ENFORCEMENT OF INSTRUMENT

1. Discharge of Liability

§ 42:40 By payment
§ 42:41 By tender of payment
§ 42:42 By cancellation
§ 42:43 By impairment of right of recourse or collateral
§ 42:44 By delay in presentment or notice of dishonor
§ 42:45 By other methods
§ 42:46 Discharge of underlying obligation

2. Other Defenses

§ 42:47 Defenses available against holders in due course
§ 42:48 Defenses available against other holders
§ 42:49 Defenses available to accommodated party

F. ADDITIONAL CONSIDERATIONS IN ACTIONS TO ENFORCE COLLECTION

§ 42:50 Statutes of limitations
§ 42:51 Forms of relief
§ 42:52 Joint and several liability; contribution
§ 42:53 Notifying other parties in action
§ 42:54 Burden of proof

II. FORMS

A. COMPLAINTS AGAINST PRIMARILY LIABLE PARTIES

§ 42:55 Complaint by payee against maker seeking payment of note [Cal. Com. Code, § 3412, subd. (a)]
§ 42:56 Complaint by holder other than payee against maker seeking payment of note [Cal. Com. Code, § 3412, subd. (a)]
§ 42:57 Complaint by holder against acceptor seeking payment of draft [Cal. Com. Code, § 3413, subd. (a)]
§ 42:58 Complaint by holder against bank seeking payment of certificate of deposit [Cal. Com. Code, § 3412, subd. (a)]

B. COMPLAINTS AND ALLEGATIONS AGAINST SECONDARILY LIABLE PARTIES

1. Complaints

§ 42:59 Complaint by holder against drawer seeking payment of unaccepted draft [Cal. Com. Code, § 3414, subd. (b)]
§ 42:60 Complaint by holder against indorser seeking payment of note [Cal. Com. Code, § 3415, subd. (a)]
§ 42:61 Complaint by holder against accommodation party seeking payment of note [Cal. Com. Code, § 3419, subd. (b)]
§ 42:62 Complaint by accommodation party against accommodated party seeking reimbursement for payment of note [Cal. Com. Code, § 3419, subd. (e)]
§ 42:63 Complaint by transferee against indorser for breach of transfer warranty [Cal. Com. Code, § 3416, subd. (a)]

2. Allegations

§ 42:64 Allegation that drawer of accepted draft was given notice of dishonor [Cal. Com. Code, § 3503, subd. (a)(1)]
§ 42:65 Allegation that presentment was expressly waived by secondarily liable party [Cal. Com. Code, § 3504, subd. (a)(4)]
§ 42:66 Allegation that presentment was excused [Cal. Com. Code, § 3504, subd. (a)]
§ 42:67 Allegation that delay in giving notice of dishonor was excused [Cal. Com. Code, § 3504, subd. (c)]
§ 42:68 Allegation for use in action by holder of note against guarantor who guaranteed collection of note [Cal. Com. Code, § 3419, subd. (d)]

C. AFFIRMATIVE DEFENSES

1. Allegations Involving Discharge of Liability on Instrument

§ 42:69 Discharge by payment [Cal. Com. Code, § 3602, subd. (a)]
§ 42:70 Discharge of indorser due to refusal, of person entitled to enforce instrument, to accept tender of payment [Cal. Com. Code, § 3603, subd. (b)]

§ 42:71 Discharge by impairment of indorser's right of recourse [Cal. Com. Code, § 3605, subd. (d)]
§ 42:72 Discharge of indorser of check due to holder's delay in presentment for payment [Cal. Com. Code, § 3415, subd. (e)]

2. Allegations That Can Be Asserted Against Holder in Due Course

§ 42:73 Indorser indorsed instrument without recourse [Cal. Com. Code, § 3415, subd. (b)]
§ 42:74 Incapacity of maker of note [Cal. Com. Code, § 3305, subd. (a)(1)(B)]
§ 42:75 Illegality of transaction for which note was given [Cal. Com. Code, § 3305, subd. (a)(1)(B)]
§ 42:76 Misrepresentation of character or essential terms of note [Cal. Com. Code, § 3305, subd. (a)(1)(C)]

3. Allegation That Can Be Asserted Only if Holder Is Not Holder in Due Course

§ 42:77 Want or failure of consideration [Cal. Com. Code, § 3305, subd. (a)(2)]

Bibliography

CHAPTER 43. LETTERS OF CREDIT

I. LEGAL PRINCIPLES

A. GENERALLY; APPLICABLE LAW

§ 43:1 How letters of credit work
§ 43:2 Scope of applicable law
§ 43:3 Independence of letter of credit from underlying transaction
§ 43:4 Definitions, generally
§ 43:5 Parties defined
§ 43:6 Advisers and confirmers defined
§ 43:7 Limitations period
§ 43:8 Choice of law and conflicts of law

B. FORMATION, DURATION, AND MODIFICATION

§ 43:9 Generally

§ 43:10 Variation of Division 5 provisions by agreement
§ 43:11 Effective date of credit
§ 43:12 Duration of credit
§ 43:13 Modification or cancellation of credit

C. TRANSFER OR ASSIGNMENT OF BENEFICIARY'S INTEREST

§ 43:14 Transfer of letter of credit
§ 43:15 Assignment of proceeds of a letter of credit

D. PRESENTATION AND HONOR OF LETTER OF CREDIT

§ 43:16 Generally
§ 43:17 Matters issuer not responsible for
§ 43:18 Fraud or forgery
§ 43:19 Time for honor

E. EFFECT OF HONOR OR DISHONOR

§ 43:20 Issuer
§ 43:21 Security interest
§ 43:22 Warranties upon honor
§ 43:23 Subrogation
§ 43:24 Improper dishonor or repudiation

II. FORMS

A. COMPLAINTS BY CUSTOMER

§ 43:25 Complaint alleging error by bank in advice of credit
§ 43:26 Complaint alleging lack of care in honoring falsified draft or demand for payment not regular on its face
§ 43:27 Complaint alleging that documents accompanying draft not regular on face and not in conformity with letter of credit
§ 43:28 Complaint alleging wrongful dishonor of draft or demand

B. COMPLAINT BY BANKS

§ 43:29 Complaint by issuing bank for reimbursement where draft honored in good faith

C. COMPLAINT BY TRANSFEREE

§ 43:30 Complaint by transferee of documentary draft against beneficiary for breach of warranty of compliance with necessary conditions of credit

D. AFFIRMATIVE DEFENSES

§ 43:31 Allegation that dishonor was justified because of a noncomplying draft

§ 43:32 Allegation that dishonor was not improper based on permissible deferral period

Bibliography

CHAPTER 44. DOCUMENTS OF TITLE

I. LEGAL PRINCIPLES

A. GENERAL RIGHTS AND LIABILITIES UNDER DOCUMENTS OF TITLE

1. Overview; Division 7 and Other Governing Law

§ 44:1 Documents of title defined; Division 7 of California Commercial Code as governing

§ 44:2 Relation of Division 7 to other state or federal statutes or regulations

§ 44:3 Other applicable definitions

§ 44:4 Statute of limitations

2. Bailee's Liability for Failure to Deliver Goods

§ 44:5 Bailee's duty to deliver goods

§ 44:6 Defenses applicable in action based on nondelivery of goods

§ 44:7 Stoppage of delivery by seller; bailee's right to indemnification

§ 44:8 Excuse for nondelivery based on conflicting claims; interpleader action

§ 44:9 Invalid defenses to bailee's general obligations under Division 7

3. Rights and Liabilities as to Negotiation and Transfer of Documents of Title

§ 44:10 Negotiable and nonnegotiable documents

§ 44:11 Negotiation of document by indorsement and delivery or by delivery alone
§ 44:12 Rights acquired by due negotiation
§ 44:13 Document of title to goods defeated by legal or perfected security interest in goods
§ 44:14 Rights acquired where there is transfer without due negotiation
§ 44:15 Rights and liabilities where goods covered by nonnegotiable bill of lading are diverted
§ 44:16 Indorser not guarantor for other parties; right to compel indorsement
§ 44:17 Warranties on negotiation or transfer of document of title; intermediaries' warranties

B. RIGHTS AND LIABILITIES APPLICABLE TO WAREHOUSE RECEIPTS

1. Issuance; Buyer in Ordinary Course of Business

§ 44:18 Issuer
§ 44:19 Rights of buyer in ordinary course of business

2. Warehouseman's Liability

§ 44:20 Liability for failure to include essential terms in receipt
§ 44:21 Liability for nonreceipt or misdescription of goods
§ 44:22 Liability for breach of duty of care
§ 44:23 Liability for failure to conduct sale properly under Cal. Com. Code § 7210; conversion
§ 44:24 Contractual limitation of liability

3. Warehouseman's Lien

§ 44:25 Overview
§ 44:26 Procedure for enforcement of lien on goods stored by merchants
§ 44:27 Procedure for enforcement of lien on goods stored by persons other than merchants
§ 44:28 Satisfaction of lien before sale or from sales proceeds
§ 44:29 Who may purchase goods; rights of purchasers in good faith

C. RIGHTS AND LIABILITIES APPLICABLE TO BILLS OF LADING

1. Carrier's Liability

§ 44:30 Liability for nonreceipt, misdescription, or misdating of bill of lading
§ 44:31 Liability for breach of duty of care
§ 44:32 Liability for failure to conduct sale properly under Cal. Com. Code § 7308; conversion
§ 44:33 Contractual limitation of liability

2. Delivery or Disposition of Goods Varying From Bill of Lading

§ 44:34 Diversion or reconsignment of goods; change of instructions

3. Carrier's Lien

§ 44:35 Overview
§ 44:36 Procedure for enforcement of carrier's lien
§ 44:37 Satisfaction of lien before sale or from sales proceeds
§ 44:38 Who may purchase goods; rights of purchasers in good faith

II. FORMS

A. COMPLAINTS AND NOTICES

§ 44:39 Complaint for damages against warehouseman based on failure to include essential term in warehouse receipt [Cal. Com. Code, § 7202, subd. (2)]
§ 44:40 Complaint for damages by holder of bill of lading against carrier for failure to deliver goods [Cal. Com. Code, § 7403]
§ 44:41 Complaint by bailee to compel interpleader to determine claims to goods in bailee's possession [Cal. Com. Code, § 7603; Code Civ. Proc., §§ 386, 386.6]
§ 44:42 Notice of auction sale to enforce lien of warehouseman or carrier on goods [Cal. Com. Code, §§ 7210, 7308]
§ 44:43 Allegation in complaint by person entitled to goods against carrier or warehouseman for damages for failure to give proper notice of

intention to sell goods [Cal. Com. Code, §§ 7210, 7308]

B. AFFIRMATIVE DEFENSES

§ 44:44 Affirmative defense by bailee that nondelivery of goods was due to previous sale enforcing lien [Cal. Com. Code, § 7403, subd. (1)(c)]
§ 44:45 Affirmative defense by bailee that goods were damaged without fault on bailee's part [Cal. Com. Code, § 7403, subd. (1)(b)]
§ 44:46 Affirmative defense by bailee that plaintiff failed to file claim within period prescribed by document of title
§ 44:47 Affirmative defense by carrier that document of title indicated goods were loaded by shipper [Cal. Com. Code, § 7301, subd. (4)]

CHAPTER 45. TRANSFER OF SECURITIES

I. LEGAL PRINCIPLES

A. INTRODUCTION

§ 45:1 Generally
§ 45:2 Definitions
§ 45:3 —Security
§ 45:4 —Financial asset
§ 45:5 Acquisition of security or financial asset

B. ISSUER AND ISSUE

1. In General

§ 45:6 Definition of an "issuer"
§ 45:7 Warranties of authenticating trustee, registrar, or transfer agent
§ 45:8 Overissue

2. Issuer's Responsibility and Defenses

§ 45:9 Issuer's responsibility—Terms, incorporation by reference
§ 45:10 —As to defects and defenses
§ 45:11 —Cancellation of "when issued or distributed" contracts

§ 45:12 Staleness as notice of defect or defenses

3. Unauthorized Signature; Completion and Alteration of Instrument

§ 45:13 Unauthorized signature
§ 45:14 Completion of instruments
§ 45:15 Effect of alteration

4. Rights of, and Restrictions or Liens Imposed by, Issuer

§ 45:16 Rights of issuer with respect to registered owners
§ 45:17 Restrictions on transfer
§ 45:18 Issuer's lien

C. TRANSFER

1. In General

§ 45:19 Definitions
§ 45:20 Clearing corporation rules
§ 45:21 Purchaser's right to demand requisites for registration of transfer
§ 45:22 Creditor's legal process
§ 45:23 Protection of securities intermediary
§ 45:24 Effect of Statute of Frauds

2. Protected Purchaser

§ 45:25 Protected purchaser
§ 45:26 Rights of a purchaser
§ 45:27 Purchaser with notice of adverse claims

3. Warranties

§ 45:28 Warranties in direct holding
§ 45:29 —By agent
§ 45:30 —By broker
§ 45:31 Warranties in indirect holding

4. Endorsements, Instructions and Entitlement Orders; Delivery; Guaranty

§ 45:32 Generally
§ 45:33 Kinds of endorsements
§ 45:34 Effect of endorsement
§ 45:35 Endorsement and delivery

§ 45:36 When delivery occurs
§ 45:37 Guarantees of signature
§ 45:38 Special guarantees
§ 45:39 Effect of guarantees

D. REGISTRATION

§ 45:40 Duty to register
§ 45:41 Failure to register
§ 45:42 Sanctions for failure to register
§ 45:43 Demand that issuer not register transfer
§ 45:44 Right to require assurances
§ 45:45 Issuer's duty of notice upon request not to register transfer
§ 45:46 Liability for wrongful registration
§ 45:47 Liability for issuer's agents
§ 45:48 Duty to replace lost or destroyed shares

E. SECURITY ENTITLEMENTS

§ 45:49 Generally
§ 45:50 Definitions
§ 45:51 Duty of security intermediary to maintain financial asset
§ 45:52 Duty of security intermediary with respect to payments and distributions
§ 45:53 Duty of security intermediary to exercise rights as directed by entitlement holder
§ 45:54 Duty of security intermediary to comply with entitlement holder
§ 45:55 Duty of security intermediary to change entitlement holders position to other form of security holding
§ 45:56 Duty of security intermediary, generally
§ 45:57 Property interests of entitlement holders
§ 45:58 Warranties
§ 45:59 Rights of purchaser of security entitlement
§ 45:60 Priorities

F. ACTIONS

§ 45:61 Evidentiary rules for signatures
§ 45:62 What law governs; conflict of laws

II. FORMS

A. COMPLAINTS AND ALLEGATIONS

§ 45:63 Complaint to enforce restrictions on transfer of shares by stockholder [Cal. Com. Code, § 8204]
§ 45:64 Complaint—For conversion—Certificate acquired on forged endorsement [Cal. Com. Code, § 8107]
§ 45:65 Complaint to compel endorsement of security [Cal. Com. Code, § 8304]
§ 45:66 Complaint to compel registration of stock transfer or for damages [Cal. Com. Code, § 8401]
§ 45:67 Complaint to recover new security issued as replacement of lost, destroyed, or stolen instrument
§ 45:68 Complaint to compel endorsement and delivery of stolen stock certificate to owner, to enjoin its transfer to third person, and to impound certificate pending litigation
§ 45:69 Complaint to enjoin transfer of stolen stock certificates and to have stock certificates returned for cancellation
§ 45:70 Complaint—Damages for breach of warranty by presenter
§ 45:71 Complaint—Guarantee of signature not that of endorser
§ 45:72 Action to compel entry of book entry crediting security entitlement of financial asset plaintiff's account
§ 45:73 Demand for reestablishment of security entitlement after ineffectual transfer of financial asset by entitlement order

Bibliography

CHAPTER 46. SECURED TRANSACTIONS

I. DIVISION 9 OF THE CALIFORNIA COMMERCIAL CODE

A. 2001 REVISION: GOVERNING LAW

1. Overview of Significant Changes

§ 46:1 History

§ 46:2 Expanded scope
§ 46:3 Expanded duties of secured parties
§ 46:4 Transition provisions
§ 46:5 Changes affecting choice-of-law-rules
§ 46:6 Changes affecting perfection rules
§ 46:7 Special priority rules for banks and deposit accounts
§ 46:8 Expanded definition of proceeds of collateral
§ 46:9 Additional provisions relating to third-party rights
§ 46:10 Filing
§ 46:11 Rights and duties of parties with regard to default and enforcement
§ 46:12 Special rules regarding consumer goods, consumer goods transactions, and consumer transactions
§ 46:13 New definition of good faith

B. NATURE AND SCOPE

§ 46:14 Overview
§ 46:15 Transactions and interests within scope of Division 9
§ 46:16 Transactions and interests outside scope of Division 9
§ 46:17 Applicability of other statutes to transactions within the scope of Division 9
§ 46:18 Security interests arising under other California Commercial Code divisions
§ 46:19 Multi-state transactions
§ 46:20 Transition provisions

C. DEFINITIONS

§ 46:21 Definitions pertaining to creation of security interest
§ 46:22 Definitions pertaining to goods
§ 46:23 Definitions pertaining to receivables
§ 46:24 Definitions pertaining to parties to secured transactions
§ 46:25 Definitions pertaining to proceeds
§ 46:26 Definitions pertaining to consignment

D. THE SECURITY INTEREST

1. Security Agreement

§ 46:27 Effectiveness of security agreement

2. Attachment of Security Interest

§ 46:28 Requirements for attachment of security interest
§ 46:29 Sufficiency of description
§ 46:30 After-acquired property and future advances
§ 46:31 Effect of debtor's use or disposition of collateral on security interest
§ 46:32 Security interest arising in purchase or delivery of financial asset; broker's lien

E. PERFECTION OF SECURITY INTEREST

1. Choice-of-Law Rules

§ 46:33 Law governing perfection and priority of security interests
§ 46:34 Law governing perfection and priority of agricultural liens
§ 46:35 Law governing perfection and priority of security interests in goods covered by a certificate of title
§ 46:36 Law governing perfection and priority of security interests in deposit accounts
§ 46:37 Law governing perfection and priority of security interests in investment property
§ 46:38 Law governing perfection and priority of security interests in letter-of-credit rights
§ 46:39 Rules governing debtor's location for choice of law purposes

2. Perfection

§ 46:40 Overview
§ 46:41 When security interest is perfected
§ 46:42 When agricultural lien is perfected
§ 46:43 Continuity of perfection
§ 46:44 Automatic perfection of security interests
§ 46:45 Necessity of filing financing statement
§ 46:46 Methods of perfection for specific security interests
§ 46:47 Perfection by possession or delivery

§ 46:48 Perfection by control
§ 46:49 Continued perfection of security interests following change in governing law

3. Filing of Financing Statement and Related Records

§ 46:50 What constitutes filing
§ 46:51 Where to file
§ 46:52 Filing fees
§ 46:53 Required contents; time for filing
§ 46:54 Names of debtor and secured party
§ 46:55 Indication of collateral
§ 46:56 Effect of errors or omissions
§ 46:57 Consignments, leases, other bailments and transactions
§ 46:58 Effect of certain events on effectiveness of financing statement
§ 46:59 Persons entitled to file; authorization
§ 46:60 Amendment of financing statement
§ 46:61 Termination of financing statement
§ 46:62 Correction statement
§ 46:63 Effectiveness of filed financing statements
§ 46:64 Continuation statements; lapse
§ 46:65 Determining secured party of record
§ 46:66 Assignment of secured party's powers

F. PRIORITIES

1. Persons and Parties

§ 46:67 Persons whose rights take priority over unperfected security interest or agricultural lien
§ 46:68 Rights and title of debtors and consignees with respect to creditors and purchasers
§ 46:69 Priority and protection for buyers of goods; licensees and lessees
§ 46:70 Priority of purchaser of chattel paper or instrument
§ 46:71 Priority of rights of purchasers of instruments, documents, and securities under other California Commercial Code divisions; priority of interests in financial assets and security entitlements under California Commercial Code Division 8

§ 46:72 Transferees of money or funds from deposit accounts
§ 46:73 Effectiveness of right of recoupment or set-off against deposit account; banks rights and duties

2. Interests

§ 46:74 Priorities among conflicting security interests in and agricultural liens on same collateral
§ 46:75 Future advances
§ 46:76 Priority of purchase-money security interests
§ 46:77 Priority of security interests in transferred collateral
§ 46:78 Priority of security interests created by new debtor
§ 46:79 Priority of security interests in deposit accounts
§ 46:80 Priority of security interests in investment property
§ 46:81 Priority of security interests in letter-of-credit rights
§ 46:82 Priority of possessory liens
§ 46:83 Priority of security interests in fixtures and crops
§ 46:84 Accessions and commingled goods
§ 46:85 Priority of security interests in goods covered by certificate of title
§ 46:86 Priority of security interest or agricultural lien perfected by incorrect filed financing statement

G. RIGHTS AND DUTIES OF SECURED PARTY

§ 46:87 Rights and duties of secured party with possession or control of collateral
§ 46:88 Additional duties of secured party with control of collateral
§ 46:89 Secured party's rights on disposition of collateral and in proceeds
§ 46:90 Duties of secured party if account debtor has been notified of assignment
§ 46:91 Request for accounting; request regarding list of collateral or statement of account

H. RIGHTS OF THIRD PARTIES

§ 46:92 Alienability of debtor's rights

§ 46:93 Liability of secured party for debtor's acts or omissions
§ 46:94 Agreement not to assert defenses against assignee
§ 46:95 Rights acquired by assignee; claims and defenses against assignee
§ 46:96 Modification of assigned contract
§ 46:97 Discharge of account debtor; notification; proof of assignment; ineffective terms
§ 46:98 Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest
§ 46:99 Restrictions on assignment of promissory notes, health care insurance receivables, and certain general intangibles ineffective
§ 46:100 Restrictions on assignment of letter of credit; effectiveness

I. DEFAULT

§ 46:101 Rights of secured party, debtor and obligor after default
§ 46:102 Secured party's rights and remedies when security agreement covers real property or fixtures
§ 46:103 Secured party's duty to unknown debtor or secondary obligor
§ 46:104 Waiver and variance of debtor/obligor's rights and duties; agreement on standards
§ 46:105 Time of default for agricultural lien
§ 46:106 Collection and enforcement by secured party
§ 46:107 Application of proceeds of collection or enforcement; liability for deficiency and right to surplus
§ 46:108 Secured party's right to take possession after default
§ 46:109 Disposition of collateral after default
§ 46:110 Notification before disposition of collateral; timeliness
§ 46:111 Contents of notification before disposition of collateral in nonconsumer-goods transactions
§ 46:112 Contents of notification before disposition of collateral in consumer-goods transactions
§ 46:113 Application of proceeds of disposition; debtor's liability for deficiency and right to surplus

§ 46:114 Explanation of calculation of surplus or deficiency
§ 46:115 Rights of transferee of collateral
§ 46:116 Rights and duties of certain secondary obligors
§ 46:117 Transfer of record or legal title; transfer statement
§ 46:118 Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral
§ 46:119 Notification of proposal to accept collateral
§ 46:120 Effect of acceptance of collateral
§ 46:121 Right to redeem collateral
§ 46:122 Waiver of rights regarding collateral
§ 46:123 Remedies for secured party's noncompliance
§ 46:124 Action in which deficiency or surplus is in issue
§ 46:125 Determination of whether conduct was commercially reasonable
§ 46:126 Nonliability and limitation on liability of secured party; liability of secondary obligor
§ 46:127 Validity of renunciation or modification of rights by debtor

II. FORMS

A. FORMS ADOPTED BY CALIFORNIA SECRETARY OF STATE

§ 46:128 National Financing Statement (Form UCC1) and Addendum (Form UCC1Ad)
§ 46:129 National U.C.C., Financing Statement Amendment (Form UCC3) and Addendum
§ 46:130 National Financing Statement Additional Party (UCC1APP)
§ 46:131 National Financing Statement Amendment Additional Party (UCC3APP)
§ 46:132 National Correction Statement (UCC-5)
§ 46:133 Notice of Judgment Lien (Form JL1) and Judgment Lien Addendum
§ 46:134 Notice of Judgment Lien Release or Subordination (Form JL-3)
§ 46:135 Notice of Attachment Lien (AT-1 & 3)
§ 46:136 National Information Request (Form UCC-11)

B. PRELITIGATION FORMS

§ 46:137 Sample uniform form of written financing

statement and amendment addendum [Cal. Com. Code, § 9521]
§ 46:138 Demand by debtor that secured party furnish termination statement [Cal. Com. Code, § 9513]
§ 46:139 Debtor's or secondary obligor's waiver of rights following default [Cal. Com. Code § 9624]
§ 46:140 Secured party's demand for possession of collateral on debtor's default [Cal. Com. Code, § 9609, subd. (a)(1)]
§ 46:141 Notice of secured party's intent to retain collateral in satisfaction of debt [Cal. Com. Code, §§ 9620, 9621]
§ 46:142 Notice of objection to secured party's acceptance of collateral [Cal. Com. Code, § 9620]
§ 46:143 Notification before disposition of collateral in nonconsumer-goods transactions [Cal. Com. Code, § 9613, subd. (5)]
§ 46:144 Notification before disposition of collateral in consumer-goods transactions [Cal. Com. Code, § 9614, subd. (3)]

C. ACTIONS BY SECURED CREDITOR

1. Plaintiff's Pleadings

§ 46:145 Complaint for declaratory judgment as to extent, validity, and priority of security interest
§ 46:146 Complaint for injunction to prevent removal of collateral from state
§ 46:147 Complaint to recover possession of collateral [Cal. Com. Code, § 9609]
§ 46:148 Complaint to foreclose security interest [Cal. Com. Code, § 9601]
§ 46:149 Complaint to recover deficiency following disposition of collateral [Cal. Com. Code, § 9615]

2. Responsive Pleadings

§ 46:150 Allegation that transaction was not secured transaction under California Commercial Code
§ 46:151 Allegation that security agreement was invalid
§ 46:152 Allegation that secured party failed to perfect security interest

§ 46:153 Allegation that after-acquired property was not subject to security interest [Cal. Com. Code, § 9204, subd. (b)]
§ 46:154 Allegation that debtor's waiver of rights was void
§ 46:155 Allegation that secured party failed to dispose of collateral in commercially reasonable manner [Cal. Com. Code §§ 9507, subd. (a), 9627, subd. (b)]
§ 46:156 Allegation that secured party failed to give adequate notice of sale [Cal. Com. Code, §§ 9611 et seq.]
§ 46:157 Allegation that third party was bona fide purchaser for value in ordinary course of business [Cal. Com. Code, § 9320]

D. ACTIONS BY DEBTOR

1. Plaintiff's Pleadings

§ 46:158 Complaint for declaratory relief as to existence of default and to enjoin unlawful disposition of collateral [Cal. Com. Code, § 9625, subd. (a)]
§ 46:159 Complaint to enjoin secured party's improper disposition of collateral after default [Cal. Com. Code, § 9625, subd. (a)]
§ 46:160 Complaint for accounting and damages after failure of seller to act in commercially reasonable manner in attempted sale of goods [Cal. Com. Code, § 9610]
§ 46:161 Allegation based on secured party's failure to preserve collateral [Cal. Com. Code, § 9207]
§ 46:162 Allegations in complaint to require secured party to dispose of collateral [Cal. Com. Code, § 9620]
§ 46:163 Allegation to recover damages for market value of collateral disposed of by secured party without notice
§ 46:164 Allegation for damages for secured party's failure to allow debtor to redeem collateral [Cal. Com. Code, § 9623]

2. Responsive Pleadings

§ 46:165 Allegation in action for redemption that collateral was already sold by secured party [Cal. Com. Code, § 9610]

§ 46:166 Allegation that secured party was entitled to dispose of collateral as stated in complaint

E. ACTIONS BY THIRD PARTIES

1. Plaintiff's Pleadings

§ 46:167 Complaint that plaintiff had priority interest in fixtures

§ 46:168 Allegation that purchaser had priority over holder of prior perfected security interest in instrument [Cal. Com. Code, § 9331]

2. Responsive Pleadings

§ 46:169 Allegation that continuation statement was filed [Cal. Com. Code, § 9515]

§ 46:170 Allegation that sale was not in ordinary course of business [Cal. Com. Code, § 1201, subd. (9)]

Bibliography

CHAPTER 47. FRAUDULENT TRANSFERS AND BULK SALES

I. BULK SALES

A. LEGAL PRINCIPLES

1. Overview

§ 47:1 Applicable law

§ 47:2 Purpose of bulk sales law

§ 47:3 Relationship of bulk sales law and federal bankruptcy law

§ 47:4 Effective date of new Division 6 and transitional provisions

2. Transactions Affected by Bulk Sales Law

§ 47:5 Businesses subject to Division 6

§ 47:6 Transactions subject to bulk sales law

§ 47:7 Transactions excluded from coverage under bulk sales law

3. Compliance Requirements

§ 47:8 Notice to creditors

§ 47:9 Duties of buyer

§ 47:10 Claims handled through escrow
§ 47:11 Auction sales

4. Rights and Remedies Arising from Noncompliance

§ 47:12 Liability of transferee-buyer
§ 47:13 Parties entitled to remedy
§ 47:14 Rights between transferor-seller and transferee-buyer
§ 47:15 Statute of limitations

B. PROCEDURAL CHECKLIST

§ 47:16 Matters to be considered in bulk sales litigation

C. FORMS

1. Complaints

§ 47:17 Complaint by creditor seeking to impose personal liability on buyer for noncompliance with Division 6 [Cal. Com. Code, § 6107, subd. (a)]
§ 47:18 Complaint to impose personal liability on auctioneer for noncompliance with bulk sales law [Cal. Com. Code, § 6107]
§ 47:19 Complaint in interpleader by buyer against creditors of seller to determine amounts owed to creditors [Cal. Com. Code, § 6106.2, subd. (e)]

2. Affirmative Defenses

§ 47:20 Affirmative defense by buyer against complaint seeking damages for noncompliance with bulk sales law that transaction was statutorily excluded from coverage [Cal. Com. Code, § 6103, subd. (c)]
§ 47:21 Affirmative defense by buyer against complaint seeking damages for noncompliance with bulk sales law that complaint barred by statute of limitations [Cal. Com. Code, § 6110]
§ 47:22 Affirmative defense by auctioneer against complaint seeking damages for noncompliance with bulk sales law that auctioneer made good-faith effort to comply with Division 6 [Cal. Com. Code, § 6107, subd. (c)]

§ 47:23 Affirmative defense by buyer against complaint seeking damages for noncompliance with bulk sales law that transaction not covered as bulk sale [Cal. Com. Code, § 6102, subd. (a)(3)]

II. FRAUDULENT TRANSFERS

A. LEGAL PRINCIPLES

1. Overview

§ 47:24 Applicable law

2. Uniform Fraudulent Transfer Act

a. Identifying a Fraudulent Transfer

§ 47:25 General basis of defining fraudulent transfer
§ 47:26 Transfer made with actual intent to defraud creditor
§ 47:27 Transfer made without receipt by debtor of reasonably equivalent value while remaining assets unreasonably small
§ 47:28 Transfers made without receipt of reasonably equivalent value and with debtor's intent or belief of inability to pay debts
§ 47:29 Transfers made without receipt of reasonably equivalent value when debtor was insolvent or became insolvent as result
§ 47:30 Exempt transactions
§ 47:31 When transfers are made or obligations incurred

b. Setting Aside Fraudulent Transfers

§ 47:32 Persons entitled to remedies under UFTA
§ 47:33 Creditors' remedies
§ 47:34 Defenses of good faith transferee
§ 47:35 Statute of limitations

c. Undertakings in Fraudulent Transfer Actions

§ 47:36 Conditions and effect of undertaking

3. Voidable Transfers of Personal Property Made Without Delivery or Change of Possession

§ 47:37 Transfers voidable by creditors

§ 47:38 Exempt transactions
§ 47:39 Rights and remedies of parties to transfer
§ 47:40 Statute of limitations

B. PROCEDURAL CHECKLISTS

§ 47:41 Matters to be considered in pursuing action under UFTA
§ 47:42 Matters to be considered in pursuing action under Civ. Code §§ 3440 et seq.

C. FORMS

1. Forms Relating to Actions Under UFTA

§ 47:43 Complaint by creditor to set aside transfer on grounds that transferor was insolvent and failed to receive reasonably equivalent value for property [Civ. Code, §§ 3439.05, 3439.07]
§ 47:44 Complaint by creditor to set aside transfer because of transferor's intent to hinder, delay, and defraud [Civ. Code § 3439.04, subd. (a)]
§ 47:45 Undertaking by transferee [Civ. Code, §§ 3445 to 3449]
§ 47:46 Affirmative defense by defendant transferee that transfer not voidable because he or she took in good faith and for reasonably equivalent value [Civ. Code, § 3439.08, subds. (a), (d)]

2. Forms Relating to Actions Involving Void Transfers Without Delivery or Change of Possession

§ 47:47 Complaint by creditor to set aside void transfer [Civ. Code, § 3440]
§ 47:48 Affirmative defense by transferor that transfer was exempt from Civ. Code §§ 3440 et seq
§ 47:49 Affirmative defense by transferor that statute of limitations bars action to set aside transfer [Civ. Code, § 3440.6]

Bibliography

CHAPTER 48. PERSONAL PROPERTY LEASES

I. LEGAL PRINCIPLES

A. OVERVIEW OF PERSONAL PROPERTY LEASES

§ 48:1 Scope and application of California Commercial Code Division 10
§ 48:2 Bailments for hire and personal property leases prior to adoption of Division 10
§ 48:3 General definitions governing personal property leases
§ 48:4 Types of leases and lease contracts defined
§ 48:5 Applicability of other laws
§ 48:6 Choice of law and judicial forum in consumer leases

B. FORMATION AND CONSTRUCTION OF LEASE CONTRACT

1. Lease Formation and Construction

§ 48:7 Statute of Frauds in personal property leases
§ 48:8 Form, offer, and acceptance of agreement
§ 48:9 Effect of parties' performance; modification, rescission, and waiver of agreement

2. Warranties

§ 48:10 Lessee's rights under supplier's warranties in finance lease; lessee's obligations in finance lease; related definitions
§ 48:11 Lessor's express warranties for lessee's benefit
§ 48:12 Implied warranties for lessee's benefit
§ 48:13 Exclusion and construction of warranties

3. Loss

§ 48:14 Identification of goods and insurable interest
§ 48:15 Liability for risk of loss, failure of goods to conform, and casualty to goods without lessee's fault

C. ENFORCEABILITY AND EFFECT OF LEASE CONTRACT

§ 48:16 Enforceability and title

§ 48:17 Transferability and related provisions
§ 48:18 Creditor's rights and remedies
§ 48:19 Priorities governing fixtures and accessions

D. RIGHTS AND REMEDIES IN PERFORMANCE OF LEASE CONTRACT

§ 48:20 Rights and remedies on repudiation and retraction
§ 48:21 Substituted, delayed, and failed delivery

E. OVERVIEW OF REMEDIES APPLICABLE TO DEFAULT UNDER LEASE

§ 48:22 General rights and remedies on default
§ 48:23 Liquidated damages, restitution, and cancellation
§ 48:24 Statute of limitations for default actions
§ 48:25 Damages based on rent

F. DEFAULT BY LESSOR

§ 48:26 Lessee's rights on lessor's default
§ 48:27 Lessee's remedies for nonconforming goods and impairment of value
§ 48:28 Lessee's obligations for disposition, care, and storage of nonconforming goods
§ 48:29 Lessor's right to cure defect; lessee's failure to state particular defect
§ 48:30 Lessee's acceptance, duties on acceptance, and revocation
§ 48:31 Lessee's cover for default and applicable measure of damages
§ 48:32 Lessee's general right to and measure of damages; other remedies

G. DEFAULT BY LESSEE

§ 48:33 Lessor's rights on lessee's default
§ 48:34 Disposition of goods intended for particular lease
§ 48:35 Lessor's rights on lessee's insolvency
§ 48:36 Lessor's right to stop delivery of goods
§ 48:37 Lessor's damages following disposition of goods under substantially similar lease
§ 48:38 Lessor's damages where goods are retained or

disposed of under lease not substantially similar
§ 48:39 Lessor's right to and measure of damages in other circumstances
§ 48:40 Actions against third parties

II. PROCEDURAL CHECKLIST

§ 48:41 Checklist of procedures required for actions on personal property leases

III. FORMS

A. COMPLAINTS

§ 48:42 Lessee's complaint for damages after rejection of nonconforming goods [Cal. Com. Code, §§ 10508, 10509, 10518 to 10520]
§ 48:43 Lessee's complaint for damages on justifiable revocation of acceptance of goods [Cal. Com. Code, §§ 10508, 10509, 10516, 10517, 10520]
§ 48:44 Lessee's complaint for breach of express and implied warranties [Cal. Com. Code, §§ 10210, 10212, 10213, 10519, subd. (c)]
§ 48:45 Lessor's complaint for default of lease agreement [Cal. Com. Code, §§ 10523, 10525, 10527, 10530, 10532]

B. AFFIRMATIVE DEFENSES

§ 48:46 Affirmative defense by lessor that goods conformed to lease contract [Cal. Com. Code, § 10509]
§ 48:47 Affirmative defense by lessor based on untimely rejection of goods [Cal. Com. Code, § 10509]
§ 48:48 Affirmative defense by lessor based on lessee's failure to provide notice of particular defect [Cal. Com. Code, § 10514, subd. (a)(1)]
§ 48:49 Affirmative defense by lessor based on "as is" exclusion of implied warranty [Cal. Com. Code, § 10214, subd. (c)]
§ 48:50 Affirmative defense by lessee for failure to deliver conforming goods [Cal. Com. Code, § 10509]

Bibliography

CHAPTER 49. BANKS

I. NATURE AND ORGANIZATION OF BANKS

§ 49:1 Meaning of "bank"
§ 49:2 Formation of California banks

II. DEPOSITS

A. RELATION OF BANK TO DEPOSITOR

§ 49:3 Definitions
§ 49:4 Rights and duties of bank and depositor; arbitration
§ 49:5 Bank's obligations regarding deposits
§ 49:6 Bank not liable as fiduciary
§ 49:7 Effect of nature of deposit on bank's duty
§ 49:8 Accrual of action against bank
§ 49:9 Statute of limitations on actions by depositor
§ 49:10 Bank's lien and offset rights
§ 49:11 Adverse claims
§ 49:12 Escheat

B. WITHDRAWAL OF FUNDS

1. Applicable Law

§ 49:13 Partial supersedure by federal law
§ 49:14 Subject institutions and accounts under state law
§ 49:15 Regulations to define reasonable time
§ 49:16 Examples of applicable California law
§ 49:17 Disclosure of policy on withdrawal of funds
§ 49:18 Interest to run from date of provisional credit

2. Actions

§ 49:19 Sanctions for failure to comply
§ 49:20 Defenses

III. CHECK COLLECTION

A. RIGHTS AND DUTIES OF COLLECTING BANK

§ 49:21 Law governing bank's liability; statute of limitations

§ 49:22 Agency status of collecting bank
§ 49:23 Standard of care for collecting bank
§ 49:24 Time for acting on item
§ 49:25 Bank's security interest in check and proceeds
§ 49:26 Medium and time of settlement
§ 49:27 Bank's right of charge-back or refund
§ 49:28 Final payment of item by payor bank
§ 49:29 Insolvency and preference
§ 49:30 Bank's right to deferred posting

B. RIGHTS AND DUTIES OF PAYOR BANK

§ 49:31 Warranties
§ 49:32 Bank's rights regarding overdrafts and post-dated checks
§ 49:33 Liability for forgeries, alterations, and conversion
§ 49:34 Statute of limitations for payment on forged check
§ 49:35 Liability for fraud by signature in name of payee
§ 49:36 Liability for wrongful dishonor
§ 49:37 Customer's right to stop payment or close account
§ 49:38 Bank's duties following notice, setoff, or stop order

C. RIGHTS AND DUTIES OF CUSTOMER

§ 49:39 Right of action based on warranty
§ 49:40 Right of action based on negligence or misrepresentation

D. BANK ACTING AS ESCROW AGENT

§ 49:41 Existence of Contract Between Lender and Escrow Bank

IV. FUNDS TRANSFERS

A. OVERVIEW

§ 49:42 Nature of funds transfers
§ 49:43 Applicable law
§ 49:44 Definitions
§ 49:45 Determination of time payment order received

§ 49:46 Security measures and amendments of payment orders

B. RIGHTS AND DUTIES OF RECEIVING BANK

§ 49:47 Liability for acceptance of unauthorized or unenforceable payment order
§ 49:48 Liability for erroneous payment instruction following security procedure
§ 49:49 Acceptance of payment order by bank other than beneficiary's bank
§ 49:50 Receiving bank's right to reject payment order
§ 49:51 Liability of receiving bank for failure to accept payment
§ 49:52 Obligations of receiving bank in executing payment order
§ 49:53 Right to recovery of overpayment
§ 49:54 Duty of sender on erroneous execution of payment order
§ 49:55 Liability of receiving bank on delay in payment to beneficiary
§ 49:56 Liability for acceptance of payment order by beneficiary's bank
§ 49:57 Sender's obligation to pay receiving bank
§ 49:58 Duty of beneficiary's bank to pay beneficiary
§ 49:59 Rights arising out of payment to beneficiary
§ 49:60 Payment by originator of funds transfer

V. FORMS

§ 49:61 Verified complaint to recover bank deposit [Civ. Code, § 3302]
§ 49:62 Affidavit of adverse claim [Fin. Code, § 952]
§ 49:63 Complaint by drawer against drawee bank for payment on forged endorsement [Cal. Com. Code, §§ 3403, 4401]
§ 49:64 Complaint by drawer against drawee bank for payment in violation of stop-payment order [Cal. Com. Code, § 4403]
§ 49:65 Notice to bank from customer of damage caused by wrongful dishonor
§ 49:66 Complaint by drawer against drawee bank for wrongful dishonor [Cal. Com. Code, § 4402]
§ 49:67 Allegation of affirmative defense based on failure to report forgery

§ 49:68 Complaint by bank against depositor for reimbursement of overdraft [Cal. Com. Code, § 4401]
§ 49:69 Complaint for payment of payment order by beneficiary of order [Cal. Com. Code, § 11404]

Bibliography

CHAPTER 50. SAVINGS AND LOANS

I. LEGAL PRINCIPLES

A. GOVERNING LAWS AND DEFINITIONS

§ 50:1 Governing law
§ 50:2 Definitions

B. POWERS OF SAVINGS ASSOCIATIONS

§ 50:3 General powers
§ 50:4 Branch and agency powers
§ 50:5 Transactions requiring consent or approval of commissioner

C. CORPORATE ORGANIZATION AND STRUCTURE

§ 50:6 Formation
§ 50:7 Name
§ 50:8 Issuance of stock
§ 50:9 Reorganization and other changes
§ 50:10 Dissolution

D. RIGHTS OF STOCKHOLDERS AND MEMBERS; CORPORATE ADMINISTRATION

§ 50:11 Meetings of mutual associations; voting
§ 50:12 Financial information; access to books and records
§ 50:13 Communications to members or stockholders
§ 50:14 Payment of dividends; stock splits
§ 50:15 Bond requirements for directors, officers, and employees
§ 50:16 Shareholder derivative actions

E. RIGHTS OF SAVINGS ACCOUNT HOLDERS

§ 50:17 General rules and requirements
§ 50:18 Types of accounts; status of account holders
§ 50:19 Interest and charges; actions for failure to disclose
§ 50:20 Setoff
§ 50:21 Adverse claims
§ 50:22 Withdrawal
§ 50:23 Redemption

F. INVESTMENTS

§ 50:24 Bonds and securities
§ 50:25 Real and personal property
§ 50:26 Leases; rental of personal property

G. SAVINGS ASSOCIATIONS' OBLIGATIONS REGARDING LOANS

§ 50:27 Investment in loans; general requirements
§ 50:28 Restrictions on loan amounts; asset requirements
§ 50:29 Real estate loans; general rules and requirements
§ 50:30 Interest on real estate loans
§ 50:31 Enforceability of particular mortgage provisions
§ 50:32 Action against borrower for fraud

II. FORMS

A. COMPLAINTS

§ 50:33 Verified complaint against association officers and directors in shareholder derivative action [Fin. Code, § 6052]
§ 50:34 Notice of motion for order requiring plaintiff in derivative action to furnish bond [Corp. Code, § 800, subd. (c); Fin. Code, § 6052, subd. (c)]
§ 50:35 Defendant's declaration in support of motion for order requiring plaintiff in derivative action to furnish bond [Corp. Code, § 800, subd. (c); Fin. Code, § 6052, subd. (c)]
§ 50:36 Complaint by account holder alleging unlawful exercise of setoff by association [Fin. Code, § 6660]

§ 50:37 Complaint against borrower for intentional misrepresentation in loan application [Fin. Code, § 7460, subd. (a); Civ. Code, § 1572]

B. AFFIDAVIT

§ 50:38 Affidavit of adverse claim [Fin. Code, § 6661, subd. (a)]

C. AFFIRMATIVE DEFENSES

§ 50:39 Affirmative defense to cause of action against borrower for intentional misrepresentation in loan application [Fin. Code, § 7460, subd. (b)]

Bibliography

Volume BUS5

CHAPTER 51. CONSUMER LEGAL REMEDIES

I. LEGAL PRINCIPLES

A. OVERVIEW OF CONSUMER LEGAL REMEDIES ACT

§ 51:1 Purposes of Consumer Legal Remedies Act
§ 51:2 Remedies not exclusive; waiver prohibited
§ 51:3 General definitions
§ 51:4 Prohibited deceptive methods, acts, and practices
§ 51:5 Excluded transactions; restriction on applicability to advertising media

B. REMEDIES AND PROCEDURES TO ENFORCE RIGHTS UNDER CLRA

1. Right to Action for Damages and Other Relief

§ 51:6 Action for damages, injunctive, and other relief
§ 51:7 Proper venue and required affidavit
§ 51:8 Entitlement to attorney's fees and costs

2. Right to and Procedures in Class Actions

§ 51:9 Conditions required for class actions

§ 51:10 Motion and hearing pursuant to Civ. Code § 1781, subd. (c)
§ 51:11 Notification to class
§ 51:12 Court approval of dismissal, settlement, and compromise; notice of judgment

3. General Provisions Concerning Enforcement Actions

§ 51:13 Notice and demand required prior to filing damages action
§ 51:14 Exemption from notice requirement in action for injunctive relief
§ 51:15 Evidentiary uses of compliance attempts
§ 51:16 Statute of limitations and "good faith" defenses

C. THE FAIR DEBT SETTLEMENT PRACTICES ACTS

§ 51:17 Definitions and application of Fair Debt Settlement Practices Acts
§ 51:18 Prohibited practices under Fair Debt Settlement Practices Acts
§ 51:19 Enforcement of Fair Debt Settlement Practices Acts; limitation of actions

II. PROCEDURAL CHECKLISTS

§ 51:20 Checklist of matters to be considered prior to commencement of action for damages
§ 51:21 Checklist of matters to be considered in action for injunctive relief
§ 51:22 Checklist of matters to be considered in defense of action under CLRA
§ 51:23 Checklist of matters to be considered in requesting court determination of particular issues

III. FORMS

A. CONSUMER'S NOTICE, COMPLAINT, AND DECLARATION

§ 51:24 Consumer's notice and demand [Civ. Code, § 1782, subd. (a)]
§ 51:25 Consumer's complaint for damages [Civ. Code, §§ 1770, 1780]

§ 51:26 Declaration regarding proper venue [Civ. Code, § 1780, subd. (c)]

B. CLASS ACTION COMPLAINT, NOTICE OF MOTION, AND OTHER NOTICES

§ 51:27 Consumer class action complaint including senior citizens and disabled persons [Civ. Code, §§ 1770, 1780, 1781, 3345]
§ 51:28 Plaintiff's notice of motion for determination of class issues [Civ. Code, § 1781, subd. (c)]
§ 51:29 Defendant's notice of motion for determination of issues pursuant to Civ. Code §§ 1781, subd. (c)(3) and 1782, subd. (c)
§ 51:30 Notice to consumer class of pendency of action [Civ. Code, § 1781, subds. (d), (e)]
§ 51:31 Notice to consumer class of proposed class action settlement [Civ. Code, § 1781, subd. (f)]

C. AFFIRMATIVE DEFENSES

§ 51:32 Affirmative defense based on failure to provide notice of violations [Civ. Code, § 1782]
§ 51:33 Affirmative defense based on offer to correct within reasonable time [Civ. Code § 1782, subd. (b)]
§ 51:34 Affirmative defense based on bona fide error [Civ. Code, § 1784]
§ 51:35 Affirmative defense based on statute of limitations [Civ. Code, § 1783]
§ 51:36 Purposes of Consumer Privacy Act; preemption; construction
§ 51:37 Definitions
§ 51:38 Consumer rights regarding personal information collected by businesses
§ 51:39 Consumer rights regarding deletion of personal information
§ 51:40 Consumer rights regarding disclose of categories and uses of personal information by businesses collecting personal information
§ 51:41 Consumer rights regarding disclose of categories and uses of personal information by businesses selling personal information or disclosing for business purpose
§ 51:42 Consumer right to opt out

§ 51:43 Discrimination prohibited; financial incentives
§ 51:44 Compliance requirements for businesses collecting personal information
§ 51:45 Effect of obligations imposed on businesses
§ 51:46 Void and unenforceable provisions of contract or agreement
§ 51:47 Civil actions for violation of duty to implement and maintain reasonable security procedures and practices
§ 51:48 Attorney General guidance; civil action brought by Attorney General

Bibliography

CHAPTER 52. CONSUMER GOODS AND SERVICES

I. DANCE AND HEALTH STUDIO ACTS

A. PURPOSE AND EFFECT OF ACTS

§ 52:1 Prevention of fraud
§ 52:2 Contracts covered by Dance Studio Act
§ 52:3 Contracts covered by Health Studio Act

B. REQUIREMENTS FOR CONTRACTS

§ 52:4 Written contract
§ 52:5 Payment terms
§ 52:6 Performance and hourly rates
§ 52:7 Cancellation
§ 52:8 Bonding requirements
§ 52:9 Exceptions to requirements for contents of dance studio contracts
§ 52:10 Restrictions on notes to be executed by buyer
§ 52:11 Actions arising out of assignment of contract
§ 52:12 Death or disability of buyer
§ 52:13 Fraud
§ 52:14 Actions for violations of the Dance and Health Studio Acts
§ 52:15 Application of Unruh Retail Installment Sales Act
§ 52:16 Statute of limitations

II. DATING SERVICE AND WEIGHT LOSS CONTRACTS

§ 52:17 Definition of dating service contract
§ 52:18 Definition of weight loss contract
§ 52:19 Contract requirements
§ 52:20 Cancellation
§ 52:21 Refunds
§ 52:22 Death or disability of buyer
§ 52:23 Relocation of buyer
§ 52:24 Actions for violations of Civ. Code §§ 1694 to 1694.9

III. HOME AND SEMINAR SOLICITATION CONTRACTS

§ 52:25 Definitions relating to home sales solicitation contract
§ 52:26 Right to cancel
§ 52:27 Requirements of home solicitation contract or offer
§ 52:28 Home solicitation contract providing for lien on real property
§ 52:29 Buyer's rights and duties
§ 52:30 Definitions relating to seminar solicitation sales contract
§ 52:31 Right to cancel seminar sales solicitation contract
§ 52:32 Buyer's agreement to purchase in seminar sales solicitation contract
§ 52:33 Tender by seller to buyer of payments made under seminar sales solicitation contract after cancellation
§ 52:34 Tender by buyer to seller of goods delivered under seminar sales solicitation contract
§ 52:35 Solicitation of sales at residence
§ 52:36 Relief based on rescission

IV. UNSOLICITED GOODS AND SERVICES

§ 52:37 Prohibition against unsolicited providing of goods or services
§ 52:38 Termination of membership in organization selling to its members at retail

V. DISCOUNT BUYING SERVICES

§ 52:39 Purpose and definitions
§ 52:39.50 Automatic purchase renewals; no private right of action
§ 52:40 Surety bond requirement
§ 52:41 Claims against deposits in lieu of bond
§ 52:42 Required disclosures
§ 52:43 Contract for buying service
§ 52:44 Rights and duties which may not be affected by contract
§ 52:45 Refund of payment in event of delayed delivery of goods ordered
§ 52:46 Right to cancel
§ 52:47 Unenforceability of contracts in event of misleading information or false representation
§ 52:48 Change of business place
§ 52:49 Transfer of duty as defense to enforcement under contract
§ 52:50 Treble damage actions for violation

VI. HOME IMPROVEMENT AND SWIMMING POOL CONTRACTS

§ 52:51 Definitions
§ 52:52 Prohibited inducements to enter home improvement contract
§ 52:53 Requirements for home improvement contracts
§ 52:54 Service and repair contracts
§ 52:55 Penalty for fraud
§ 52:56 Enforceability of contract prior to buyer obtaining loan
§ 52:57 Changes in contract in writing
§ 52:58 Conditions under which swimming pool contract financed by third-party lender is enforceable

VII. FORMS

§ 52:59 Complaint for excessive term of contract in violation of Civ. Code § 1812.53 [Civ. Code, § 1812.53]
§ 52:60 Allegation of violation of Health Studio Act [Civ. Code, §§ 1812.80 to 1812.95] by excessive term of contract

§ 52:61 Complaint for damages based on failure to advise of right to cancel [Civ. Code, § 1694.2, subd. (b) (dating service contract), Civ. Code, § 1694.7, subd. (b) (weight loss contract)]
§ 52:62 Cancellation of home solicitation contract [Civ. Code, § 16896]
§ 52:63 Complaint for damages based on contract for home improvements induced by false representation [Bus. & Prof. Code, § 7160]

Bibliography

CHAPTER 53. CONSUMER WARRANTIES

I. LEGAL PRINCIPLES

A. OVERVIEW OF CONSUMER WARRANTIES

§ 53:1 Consumer warranties generally
§ 53:2 Effect of California Commercial Code and Magnuson-Moss Warranty—Federal Trade Commission Improvement Act on Consumer Warranty Act
§ 53:3 Definitions related to parties in consumer warranties
§ 53:4 Definitions related to sales, consumer goods, and other products in consumer warranties

B. IMPLIED WARRANTIES UNDER CONSUMER WARRANTY ACT

§ 53:5 Implied warranties of merchantability and fitness, generally
§ 53:6 Right to implied warranties of merchantability and fitness
§ 53:7 Duration of implied warranties and buyer's remedies for breach
§ 53:8 Effect of sale "as is" or "with all faults" on implied warranties of merchantability and fitness
§ 53:9 Required written notice of implied warranty disclaimer for "as is" or "with all faults" sales

C. EXPRESS WARRANTIES UNDER CONSUMER WARRANTY ACT

1. Express Warranties Generally

§ 53:10 Express warranty defined
§ 53:11 Required form and content of express warranties
§ 53:12 Required written warranty in sales of assistive devices sold at retail; nonexclusiveness of rights and remedies
§ 53:13 Right to replacement of or reimbursement for clothing or consumables accompanied by express warranty

2. Rights and Duties Concerning Service and Repair

§ 53:14 Duty of manufacturer making express warranty to provide service and repair facilities or independent warranty service; time limitations for repairs and liability for noncompliance
§ 53:15 Required form and content of service and repair information
§ 53:16 Required service literature and parts for consumer electronics or appliance manufacturers making express warranties
§ 53:17 Buyer's rights and remedies for manufacturer's failure to provide service facility in conjunction with express warranties; time for compliance
§ 53:18 Manufacturer's liability to retailer for failure to maintain service facilities
§ 53:19 Manufacturer's liability to independent serviceperson performing services or incurring obligations
§ 53:20 Buyer's service contract in lieu of express warranty
§ 53:21 Requirements for sales of service contracts

D. RULES GOVERNING WARRANTIES FOR USED AND LEASED GOODS

§ 53:22 Duties of distributor or retail seller of used consumer goods in making express warranties; duration of implied warranties
§ 53:23 Warranty rights and duties in leases of new and used consumer goods

E. TOLLING OF EXPRESS AND IMPLIED WARRANTIES

§ 53:24 Tolling the warranty period for express and implied warranties
§ 53:25 Effect of tolling on manufacturer's liability

F. MOTOR VEHICLE WARRANTIES

§ 53:26 Right to replacement of or restitution for new motor vehicle
§ 53:27 Presumptions applicable to new motor vehicle purchases
§ 53:28 Qualified third-party dispute resolution
§ 53:29 Prohibition on sale, lease, or transfer of nonconforming new motor vehicle
§ 53:30 Automotive Consumer Notification Act
§ 53:31 Motor vehicle warranty adjustment programs and service bulletins

G. RIGHT TO DAMAGES AND OTHER REMEDIES FOR VIOLATION OF CONSUMER WARRANTY ACT

§ 53:32 Buyer's right to damages, penalties, and attorney's fees; measure of damages
§ 53:33 Retailer or independent serviceperson's right to damages and attorney's fees

H. MOBILE HOME AND MANUFACTURED HOME WARRANTIES

§ 53:34 Scope and application of mobile home and manufactured home warranties; definitions
§ 53:35 Buyer's right to written mobile home or manufactured home warranty; required contents
§ 53:36 Additional duties of manufacturers and dealers of mobile homes and manufactured homes

I. DISCLOSURES REQUIRED FOR GREY MARKET GOODS

§ 53:37 Grey market goods, generally
§ 53:38 Disclosures required by retail seller

§ 53:39 Liability for violation of grey market provisions

J. HOME ROOF WARRANTIES

§ 53:40 Necessity for written contract containing disclosures
§ 53:41 Beneficiaries of warranty

II. PROCEDURAL CHECKLISTS

§ 53:42 Checklist of matters to be considered concerning implied warranties
§ 53:43 Checklist of matters to be considered concerning express warranties for assistive devices
§ 53:44 Checklist of matters to be considered concerning express warranties for clothing or consumables
§ 53:45 Checklist of matters to be considered concerning service and repair
§ 53:46 Checklist of matters to be considered to determine tolling of express or implied warranty periods
§ 53:47 Checklist of matters to be considered for motor vehicle warranties
§ 53:48 Checklist of matters to be considered to obtain damages or other recovery for violation of Consumer Warranty Act
§ 53:49 Checklist of matters to be considered in mobile home and manufactured home warranties

III. FORMS

§ 53:50 Buyer's notice to manufacturer of nonconformity of consumer goods [Civ. Code, § 1793.2]
§ 53:51 Buyer's agreement with manufacturer to extend time for service or repair of nonconforming consumer goods [Civ. Code, § 1793.2]
§ 53:52 Buyer's notice to retail seller of nonconformity of consumer goods [Civ. Code, § 1793.3]
§ 53:53 Buyer's complaint for breach of express warranty and violation of Consumer Warranty Act [Civ. Code, § 1794]
§ 53:54 Complaint for breach of consumer sale warranty [Civ. Code, §§ 1792, 1792.1]
§ 53:55 Buyer's allegation of breach of implied warranty of merchantability [Civ. Code, § 1792]
§ 53:56 Buyer's allegation of breach of implied warranty of fitness [Civ. Code, § 1792]

§ 53:57 Retail seller's complaint against manufacturer for violation of Consumer Warranty Act [Civ. Code, §§ 1793.2, 1793.3, 1793.5, 1794.1]
§ 53:58 Affirmative defense by manufacturer, retailer, or distributor of waiver of implied warranties [Civ. Code, § 1792.5]
§ 53:59 Affirmative defense by manufacturer, retailer, or distributor for unauthorized or unreasonable use of goods [Civ. Code, § 1794.3]
§ 53:60 Affirmative defense by manufacturer, retailer, or distributor for product known to be inherently unsafe [Civ. Code § 1714.45]
§ 53:61 Notice of disclaimer of implied warranties [Civ. Code, § 1792.4]
§ 53:62 Statement on work order for warranty repair [Civ. Code § 1793.1]
§ 53:63 Service Contract on home appliance/home electronic product [Civ. Code, § 1794.4]
§ 53:64 Complaint for failure to install consumer goods in workmanlike manner [Civ. Code, § 1796]
§ 53:65 Mobile home/Manufactured home warranty [Civ. Code, § 1797.3]
§ 53:66 Notice of nonconformity of grey market goods [Civ. Code, § 1797.81]

Bibliography

CHAPTER 54. USURY

I. LEGAL PRINCIPLES

A. OVERVIEW

§ 54:1 Governing law
§ 54:2 Purpose
§ 54:3 Definition of usury
§ 54:4 Constitutionality
§ 54:5 Criminal liability
§ 54:6 Application of federal law
§ 54:7 Conflict of laws

B. TRANSACTIONS SUBJECT TO USURY LAWS

§ 54:8 Generally

§ 54:9 Parties' intent
§ 54:10 Loan or forbearance
§ 54:11 Sale or lease of property
§ 54:12 Other transactions
§ 54:13 Modification or renewal of loan

C. EXEMPTIONS FROM USURY LAWS

§ 54:14 Constitutional exemptions
§ 54:15 Statutory exemptions from Usury Laws
§ 54:16 Loans made or arranged by a real estate broker
§ 54:17 Unconscionability as defense to loan from exempt lender

D. MAXIMUM INTEREST RATES

§ 54:18 General limitation
§ 54:19 Consumer loans
§ 54:20 Other loans
§ 54:21 Statutes regulating interest and loan charges
§ 54:22 Interest rate on judgments

E. DETERMINING WHETHER INTEREST RATE IS USURIOUS

§ 54:23 "Interest" defined
§ 54:24 Calculating interest, generally
§ 54:25 Bonuses and prepaid interest
§ 54:26 Points
§ 54:27 Discount
§ 54:28 Fees and commissions
§ 54:29 Variable interest
§ 54:30 Contingent interest and shared appreciation loans
§ 54:31 Compound interest
§ 54:32 Prepayment fees
§ 54:33 Late charges and default charges

F. EFFECT OF USURY

§ 54:34 Generally
§ 54:35 Application of interest to principal
§ 54:36 Effect on right to accelerate

G. REMEDIES

§ 54:37 Borrower's remedies, generally

§ 54:38 Recovery of interest
§ 54:39 Treble interest penalty
§ 54:40 Cancellation of unpaid interest
§ 54:41 Liability of regulated lenders
§ 54:42 Usury as defense
§ 54:43 Rights of lender

H. PROCEDURAL ISSUES

§ 54:44 Parties
§ 54:45 Pleading claim of usury
§ 54:46 Defending claim of usury

II. FORMS

A. COMPLAINTS

§ 54:47 Complaint for violation of general usury law [Civ. Code, § 1916-3]
§ 54:48 Complaint for declaration of existence of usury and as to amount due on usurious loan
§ 54:49 Complaint for reformation of usurious agreement

B. AFFIRMATIVE DEFENSES

1. Borrower's Defenses

§ 54:50 Affirmative defense of usury to complaint for payment of interest on loan [Cal. Const. Art. XV, § 1, Civ. Code, § 1916-2]
§ 54:51 Affirmative defense of usury to claim for payment of unmatured principal [Cal. Const. Art. XV, § 1; Civ. Code, § 1916-2]
§ 54:52 Affirmative defense of usury by borrower
§ 54:53 Affirmative defense of usury by borrower from industrial loan company [Fin. Code, § 18439]
§ 54:54 Affirmative defense of willful usury by borrower from personal property broker or from consumer finance lender [Fin. Code, § 22750, subd. (a)]
§ 54:55 Affirmative defense of unconscionability to claim for interest on loan from exempt lender [Civ. Code, § 1670.5]

2. Lender's or Broker's Defenses

§ 54:56 Affirmative defense of statute of limitations to

claim for recovery of usurious interest [Code Civ. Proc., § 339]
§ 54:57 Affirmative defense of statute of limitations to claim for recovery of penalty for usury [Civ. Code, § 1916-3, subd. (a)]
§ 54:58 Affirmative defense of unclean hands to claim for recovery of penalty for usury
§ 54:59 Affirmative defense of fraud and estoppel
§ 54:60 Affirmative defense of res judicata to claim for recovery of penalty for usury

Bibliography

CHAPTER 55. CREDIT CARDS

I. LEGAL PRINCIPLES

A. INTRODUCTION

§ 55:1 Overview of credit cards
§ 55:2 Definitions
§ 55:3 Credit card law
§ 55:4 Other related law
§ 55:5 Effect of credit agreement

B. ISSUANCE OR DENIAL OF CARD

§ 55:6 Limited issue of credit card
§ 55:7 Required disclosures
§ 55:8 Modification of agreement
§ 55:9 Disclosures regarding secured credit card
§ 55:10 Exemptions from disclosure requirements
§ 55:11 Denial of card
§ 55:12 Discrimination in denial of card
§ 55:13 Choice of name on credit card

C. USE OF CARD

§ 55:14 Discounts and surcharges
§ 55:15 Requiring identification to use credit card
§ 55:16 Requiring card as condition of accepting check
§ 55:17 Credit card crimes
§ 55:18 Obtaining payment without furnishing goods or services
§ 55:19 Violation of civil rights

D. RIGHTS BETWEEN HOLDER AND ISSUER

1. Liability of Cardholder

§ 55:20 Liability for payment
§ 55:21 Excessive fees
§ 55:22 Liability for unauthorized use
§ 55:23 Issuer subject to holder's defenses against retailer

2. Duties and Liability of Issuer

§ 55:24 Overview of liability
§ 55:25 Duty to give statements
§ 55:26 Card issuer's liability for billing error
§ 55:27 Duty to respond to cardholder inquiry
§ 55:28 Retailer's liability for billing error
§ 55:29 Liability for reporting erroneous credit information
§ 55:30 Inappropriate disclosure of information
§ 55:31 Requirements for cancellation

E. ACTIONS

1. Bringing Action

§ 55:32 Applicable statutes of limitations
§ 55:33 Jurisdiction and venue
§ 55:34 Parties
§ 55:35 Class actions by cardholders
§ 55:36 Pleading and damages

2. Defense of Action

§ 55:37 Issuer's response strategy
§ 55:38 Federal preemption

II. FORMS

A. PRE-LITIGATION FORMS

§ 55:39 Report of lost or stolen credit card [Civ. Code, § 1747.10, subd. (e)]
§ 55:40 Notice to issuer of unauthorized use of card [Civ. Code, § 1747.10]
§ 55:41 Inquiry concerning billing error [Civ. Code, §§ 1747.02, subd. (g), 1747.50, subd. (a)]
§ 55:42 Demand on retailer to obtain satisfaction on

disputed credit card transaction [Civ. Code, § 1747.90]

§ 55:43 Notice to issuer regarding cardholder defense against retailer for specific charged purchase [Civ. Code, § 1747.90]

§ 55:44 Notice of intention to cancel credit card [Civ. Code, § 1747.85]

B. ACTIONS AGAINST CARDHOLDERS

§ 55:45 Complaint to recover balance due on credit-card account, alleging common counts and breach of contract [Civ. Code, § 3300]

§ 55:46 Allegation of apparent authority of third person to use credit card

§ 55:47 Answer containing defenses of lack of acceptance and inadequate disclosures

§ 55:48 Defense that credit account was terminated

§ 55:49 Defense of written notice of lost or stolen card

C. ACTIONS AGAINST CREDIT CARD ISSUERS

§ 55:50 Complaint for injunction and damages for discriminatory refusal to issue credit card [Civ. Code, § 1747.80]

§ 55:51 Complaint for damages for wrongful refusal to honor purchase, wrongful cancellation of card, and impairment of credit [Civ. Code, §§ 1747.70, subd. (d), 1747.85, 3300]

§ 55:52 Complaint for damages and injunction to compel card issuer to correct credit card account after billing error [Civ. Code, §§ 1747.50, 1747.70, subd. (b)]

§ 55:53 Complaint for damages for impairment of credit [Civ. Code, §§ 1747.10, 1747.70, subd. (a)]

§ 55:54 Affirmative defense of federal preemption

Bibliography

CHAPTER 56. CREDIT REPORTING AND INFORMATION

I. CONSUMER CREDIT REPORTING AGENCIES ACT ["CCRAA"]

A. LEGAL PRINCIPLES

1. General Provisions

§ 56:1 Purpose and scope of CCRAA
§ 56:2 Invalidity of contract clauses contrary to the CCRAA
§ 56:3 Effect of federal Fair Credit Reporting Act
§ 56:4 Definitions

2. Obligations of Consumer Credit Reporting Agencies

§ 56:5 Consumer's right to inspect files
§ 56:6 When and to whom credit report may be furnished
§ 56:7 Information not permitted in credit report
§ 56:8 Providing consumer with credit score
§ 56:9 Credit scoring model
§ 56:10 Obligations of credit reporting agencies to victims of identity theft
§ 56:11 Procedures required to ensure compliance with CCRAA
§ 56:12 Notice to information providers and report users
§ 56:13 Security alert
§ 56:14 Manner files and information must be disclosed to consumer
§ 56:15 Required response to dispute of information in consumer file; blocked information
§ 56:16 Security freeze on credit report
§ 56:17 Charges to consumer for services
§ 56:18 Information based on public record
§ 56:19 Action for civil penalty and attorney's fees
§ 56:20 Prevention of use of files for marketing purposes

3. Requirements of Users of Consumer Credit Reports

§ 56:21 Disclosure required if user takes adverse action
§ 56:22 Notice required if report used for unsolicited offers

§ 56:23 Notice required if report used for employment purposes
§ 56:24 Request that agency investigate disputed information
§ 56:25 Requirements for resale of report

4. Obligations of Furnishers of Credit Information

§ 56:26 Furnishing inaccurate or disputed information
§ 56:27 Notice of negative information

5. Remedies

§ 56:28 Correction of misinformation
§ 56:29 Blocking information arising from unlawful use of personal identity information
§ 56:30 Action for injunctive relief and damages including attorney's fees and punitive damages
§ 56:31 No action for defamation or similar claims
§ 56:32 Limitation of actions
§ 56:33 Effect of action under federal Fair Credit Reporting Act

B. FORMS

1. Consumer Notices And Demands

§ 56:34 Request for consumer credit reporting agency information [Civ. Code, § 1785.15]
§ 56:35 Request for reinvestigation of disputed information [Civ. Code, § 1785.16]
§ 56:36 Request for information from user of consumer credit report [Civ. Code, § 1785.20]
§ 56:37 Notice to consumer—request for report for employment [Civ. Code, § 1785.20.5]
§ 56:38 Demand for correction of disputed information [Civ. Code, § 1785.30]

2. Consumer Pleadings

§ 56:39 Complaint for damages by consumer against reporting agency for failure to disclose files [Civ. Code, §§ 1785.10, 1785.15, 1785.31]
§ 56:40 Cause of action in complaint by consumer against reporting agency for inadequate response to dispute [Civ. Code, § 1785.16]
§ 56:41 Allegation in complaint by consumer against

reporting agency for false information in credit report [Civ. Code, § 1785.14]
§ 56:42 Allegation in complaint by consumer against reporting agency for prohibited information in credit report [Civ. Code, §§ 1785.13, 1785.14]
§ 56:43 Consumer class action complaint for damages and injunction against reporting agency for excessive charges [Civ. Code, §§ 1785.17, 1785.31]
§ 56:44 Complaint for damages by consumer against credit report user for failure to notify consumer that report was used in adverse action [Civ. Code, §§ 1785.20, 1785.31]
§ 56:45 Complaint for damages by consumer against furnisher of credit information for failure to notify credit reporting agency [Civ. Code, §§ 1785.25, 1785.31]
§ 56:46 Complaint for negligent failure to comply with consumer credit reporting agencies act [Civ. Code, § 1785.31]

3. Defenses in Consumer Actions

§ 56:47 Defense by reporting agency that consumer did not request to be excluded from lists provided by agency [Civ. Code, § 1785.11]
§ 56:48 Defense by reporting agency that consumer's dispute was resolved and plaintiff was timely notified [Civ. Code, § 1785.16]
§ 56:49 Defense by reporting agency that it adopted and followed procedures to furnish consumer with notice [Civ. Code, § 1785.20]
§ 56:50 Defense that action is barred by statute of limitations [Civ. Code, § 1785.33]

II. INVESTIGATIVE CONSUMER REPORTING AGENCIES ACT ICRAA"]

A. LEGAL PRINCIPLES

1. General Provisions

§ 56:51 Purpose and scope of ICRAA
§ 56:52 Effect of federal Fair Credit Reporting Act
§ 56:53 Definitions

2. Obligations of Investigative Consumer Reporting Agencies

§ 56:54 Consumer's right to inspect files

§ 56:55 When and to whom investigative report may be furnished
§ 56:56 When investigative report may be prepared or procured
§ 56:57 Information not permitted in investigative report
§ 56:58 Procedures required to ensure compliance with ICRAA
§ 56:59 Manner files and information must be disclosed to consumer
§ 56:60 Required response to dispute of information in consumer file
§ 56:61 Charges to consumer for services
§ 56:62 Information based on public record
§ 56:63 Notices to be provided by investigative consumer-reporting agency
§ 56:64 Information contained in subsequent investigative reports

3. Requirements on Users of Investigative Consumer Reports

§ 56:65 Disclosure required if user takes adverse action

4. Remedies

§ 56:66 Action for damages including attorney's fees and punitive damages
§ 56:67 Invasion of privacy and defamation actions permitted
§ 56:68 Limitation of actions
§ 56:69 Effect of action under federal Fair Credit Reporting Act

B. FORMS

1. Consumer Notices And Demands

§ 56:70 Notification of request for investigative consumer report [Civ. Code, § 1786.16]
§ 56:71 Request for investigative consumer reporting agency information [Civ. Code, § 1786.22]
§ 56:72 Request for reinvestigation of disputed information [Civ. Code, § 1786.24]
§ 56:73 Request for information from user of investigative consumer report [Civ. Code, § 1786.40]

2. Consumer Pleadings

§ 56:74 Complaint for willful failure to comply with Investigative Consumer Reporting Agencies Act [Civ. Code, § 1786.50]
§ 56:75 Complaint for damages against investigative agency for failure to disclose files [Civ. Code, §§ 1786.10, 1786.22, 1786.50]
§ 56:76 Cause of action in complaint against investigative agency for inadequate response to dispute [Civ. Code, § 1786.24]
§ 56:77 Allegation in complaint against investigative agency for prohibited information in report [Civ. Code, § 1785.18]
§ 56:78 Complaint for damages against user of investigative report for failure to notify consumer [Civ. Code, §§ 1786.16, 1786.40, 1786.50]

3. Defenses in Consumer Actions

§ 56:79 Defense by investigative report user that it was exempted from statutory notice requirements [Civ. Code, § 1786.16]
§ 56:80 Defense that action is barred by statute of limitations [Civ. Code, § 1786.52]
§ 56:81 Defense by investigative agency that item of information in report was excepted from ICRAA prohibition [Civ. Code, § 1786.18]
§ 56:82 Defense by investigative agency that adverse information in initial report was properly included in subsequent report [Civ. Code, § 1786.28]

III. CREDIT SERVICES ACT OF 1984 ["CSA"]

A. LEGAL PRINCIPLES

1. General Provisions

§ 56:83 Purpose and scope of CSA
§ 56:84 Definitions

2. Obligations of Credit Services Organizations

§ 56:85 Prohibited acts
§ 56:86 Required informational statement

§ 56:87 Required contents and form of contract
§ 56:88 Breach of contract as violation of CSA
§ 56:89 Required surety bond
§ 56:90 Waiver of CSA prohibited
§ 56:91 Registration with Department of Justice

3. Remedies

§ 56:92 Action for damages and injunctive relief including attorney's fees and punitive damages
§ 56:93 Provisions of CSA not exclusive

B. FORMS

1. Statements And Contracts

§ 56:94 Information statement by credit services organization [Civ. Code, § 1789.14]
§ 56:95 Contract for credit services [Civ. Code, § 1789.16]

2. Consumer Pleadings Against Service Organizations

§ 56:96 Complaint for charge made before performance [Civ. Code, § 1789.13]
§ 56:97 Allegation in complaint of improper credit referral charges [Civ. Code, § 1789.13]
§ 56:98 Allegation in complaint of improper representations in offer or sale of services [Civ. Code, § 1789.13]
§ 56:99 Allegation in complaint of failure to provide informational statement [Civ. Code, §§ 1789.14, 1789.15]
§ 56:100 Complaint for violation of Credit Services Act [Civ. Code, § 1789.21]

3. Defenses by Credit Services Organization in Consumer Action

§ 56:101 Defense that organization qualified its promise to delete adverse credit history [Civ. Code, § 1789.13, subd. (g)]
§ 56:102 Defense that organization qualified its promise to obtain credit [Civ. Code, § 1789.13, subd. (g)]

Bibliography

CHAPTER 57. INSTALLMENT SALES

I. LEGAL PRINCIPLES

A. NATURE AND SCOPE OF STATUTORY REGULATION

§ 57:1 Governing law
§ 57:2 Transactions covered
§ 57:3 Transactions excluded
§ 57:4 Construction of requirements; waiver

B. RETAIL INSTALLMENT CONTRACTS

1. Required Formalities and Content

§ 57:5 Form of document
§ 57:6 Disclosures to buyer
§ 57:7 Notices to buyer
§ 57:8 Prohibited terms
§ 57:9 Delivery of copy to buyer

2. Restrictions

§ 57:10 Prohibited acts by seller
§ 57:11 Limitations on finance charges

3. Payment of Installments

§ 57:12 Time and effect of payment
§ 57:13 Extension and refinancing agreements

4. Add-On Sales

§ 57:14 Transaction added to existing contract
§ 57:15 Transaction part of series of credit sales

C. RETAIL INSTALLMENT ACCOUNTS

§ 57:16 Initial disclosure statement
§ 57:17 Periodic billing or statement
§ 57:18 Change in terms of account
§ 57:19 Finance and other charges
§ 57:20 Payments on account; refund of credit balance
§ 57:21 Retention of security interest
§ 57:22 Annual statement of finance charges
§ 57:23 Agreement where insurance separately charged
§ 57:24 Prohibition against notes waiving buyer's rights

D. ACTIONS

1. Overview

§ 57:25 State and federal claims
§ 57:26 Venue; jurisdiction
§ 57:27 Limitations
§ 57:28 Recovery of attorney's fees and costs

2. Remedies and Defenses of Buyer

§ 57:29 Noncompliance by seller; recovery of penalties and damages
§ 57:30 Rescission
§ 57:31 Redemption of repossessed goods
§ 57:32 As against assignee of seller

3. Remedies of Seller

§ 57:33 Recovery of balance due
§ 57:34 Repossession and resale

4. Defenses of Seller

§ 57:35 Correction of violation
§ 57:36 Bona fide error
§ 57:37 Good-faith compliance

II. PROCEDURAL CHECKLISTS

§ 57:38 Procedural matters to be considered by buyer respecting installment sales transactions
§ 57:39 Procedural matters to be considered by seller respecting installment sales transactions

III. FORMS

A. ACTIONS UNDER THE UNRUH RETAIL INSTALLMENT SALES ACT

1. Complaints and Allegations

§ 57:40 Complaint by buyer to recover finance and other charges on seller's noncompliance with the Unruh Retail Installment Sales Act [Civ. Code, § 1812.7]
§ 57:41 Complaint by buyer to recover treble damages on seller's willful imposition, computation, or disclosure of finance charges on consolidated

contracts in manner violative of the Unruh Retail Installment Sales Act [Civ. Code, § 1812.9]
§ 57:42 Complaint for restitution based on rescission of installment sales contract by buyer unable to obtain third-party financing [Civ. Code, § 1803.9]
§ 57:43 Complaint by seller for balance owing under installment sale [Civ. Code, § 1812.2]
§ 57:44 Allegation of assignment of installment contract [Civ. Code, § 1804.2]
§ 57:45 Allegation of failure to make required disclosure in installment sales document
§ 57:46 Allegation of inclusion of prohibited provision in installment contract [Civ. Code, §§ 1804.1, 1804.4]
§ 57:47 Allegation of failure to deliver copy of installment sales document [Civ. Code, § 1803.7]
§ 57:48 Allegation of failure to fill in blanks in installment contract before obtaining buyer's signature [Civ. Code, § 1803.4]
§ 57:49 Allegation of failure to timely disclose change in terms of installment account [Civ. Code, § 1810.3, subd. (d)]

2. Declaration As to Proper Venue

§ 57:50 Declaration that action filed in proper place for trial [Civ. Code, § 1812.10]
§ 57:51 Affidavit supporting venue for complaint

3. Affirmative Defenses

§ 57:52 Defense that transaction was outside the coverage of the Unruh Retail Installment Sales Act
§ 57:53 Defense of seller's timely correction of violation of the Unruh Retail Installment Sales Act [Civ. Code, § 1812.8]

B. ACTIONS UNDER THE FEDERAL TRUTH IN LENDING ACT

§ 57:54 Complaint by buyer to recover damages and penalty on seller's noncompliance with the Truth in Lending Act [15 U.S.C.A. § 1640(a)]

§ 57:55 Affirmative defense of seller's timely correction of the violation of the Truth in Lending Act [15 U.S.C.A. § 1640(b)]
§ 57:56 Affirmative defense that violation of the Truth in Lending Act was unintentional and the result of bona fide error [15 U.S.C.A. § 1640(c)]
§ 57:57 Affirmative defense that violation of the Truth in Lending Act was committed in good-faith reliance on interpretation by Federal Reserve System official or employee [15 U.S.C.A. § 1640(f)]

Bibliography

CHAPTER 58. MOTOR VEHICLE SALES, LEASES, AND FINANCING

I. AUTOMOBILE SALES FINANCING ACT

A. APPLICABLE LAW

§ 58:1 Overview
§ 58:2 Definitions
§ 58:3 Application of federal law; Regulation Z
§ 58:4 Application of California Commercial Code
§ 58:5 Loan by certain financial organizations excluded

B. CONDITIONAL SALE CONTRACTS

1. Introduction

§ 58:6 Definitions

2. Form of Contract

§ 58:7 Format and signature requirements
§ 58:8 Exact copy to buyer

3. Acknowledgment Requirements

§ 58:9 Form of acknowledgment
§ 58:10 Evidentiary presumptions

4. Disclosure Requirements

§ 58:11 Overview
§ 58:12 Itemization of amount financed
§ 58:13 Finance charge disclosures and notices; precomputed basis

§ 58:14 Finance charge disclosures and notices; simple-interest basis
§ 58:15 Down payment disclosures
§ 58:16 Statement as to insurance coverage
§ 58:17 Statement as to type of vehicle
§ 58:18 Notice as to complaints
§ 58:19 Document preparation fee
§ 58:20 Disclosure regarding cooling off period
§ 58:21 Disclosure regarding terms of contract

5. Extension of Due Date or Deferral of Payment

§ 58:22 Agreement to extend or defer
§ 58:23 Charge for extension or deferral agreement

6. Prohibited Contractual Provisions

§ 58:24 Rights that buyer cannot relinquish
§ 58:25 Title to or lien on property

7. Prohibited Acts

§ 58:26 Inducement to enter into contract prohibited

C. FINANCE CHARGES; ADDITIONAL COSTS AND FEES

1. Finance Charges

§ 58:27 Definitions and methods
§ 58:28 Limitations on method
§ 58:29 Limitations on amount
§ 58:30 Amounts advanced by holder for insurance
§ 58:31 Amounts advanced for repairs or preservation of security interest

2. Additional Charges and Fees

§ 58:32 Administrative charges
§ 58:33 Delinquency charge
§ 58:34 Fee for returned check

D. ASSISTANCE IN OBTAINING LOAN

§ 58:35 Loan for down payment or any other payment
§ 58:36 Loan for purchase price

E. ACCELERATION OF MATURITY; REPOSSESSION OF VEHICLE

§ 58:37 Overview
§ 58:38 Buyer's right to reinstate contract
§ 58:39 Method of reinstatement
§ 58:40 Notice of intent to sell repossessed vehicle
§ 58:41 Contents of notice of sale
§ 58:42 Liability for deficiency
§ 58:43 Defenses to liability for deficiency
§ 58:44 Accounting requirement

F. RIGHTS AND REMEDIES OF BUYER

1. Legal Principles

§ 58:45 Overview
§ 58:46 Recovery of down payment and value of trade-in
§ 58:47 Rescission
§ 58:48 Buyer's right to pay entire indebtedness before maturity
§ 58:49 Defenses to enforcement of contract
§ 58:50 Buyer's rights under unenforceable contract
§ 58:51 Buyer's rights where contract is sold to holder
§ 58:52 Correction of violation that makes contract unenforceable

2. Actions

§ 58:53 Attorney's fees and costs
§ 58:54 Effect of assignment by seller
§ 58:55 Effect of assignment by seller after July 1, 2006
§ 58:56 Jurisdiction and venue
§ 58:57 Affidavit requirement

G. PROCEDURAL CHECKLISTS

§ 58:58 Matters to be considered in executing and enforcing conditional sale of motor vehicle
§ 58:59 Matters to be considered in action on conditional sale contract

H. FORMS

1. Complaints and Allegations

§ 58:60 Complaint by buyer against seller for return of

payment where conditional sale contract is not executed [Civ. Code, § 2982.7]
§ 58:61 Complaint for rescission by buyer against seller where buyer is unable to obtain financing [Civ. Code, § 2982.9]
§ 58:62 Complaint for rescission and for damages by buyer against seller for violation of disclosure requirements of Rees-Levering Act [Civ. Code, §§ 2982, subd, (a), 2983, 2983.1]
§ 58:63 Allegation of violation of finance charge limitation provisions of Rees-Levering Act [Civ. Code, §§ 2982, subd. (j), 2983, 2983.1]
§ 58:64 Allegation of seller's failure to comply with the requirements for conditional sale contracts [Civ. Code, §§ 2981.9, 2983, 2983.1]

2. Affirmative Defenses

§ 58:65 Affirmative defense of accidental or bona fide error in computation [Civ. Code, § 2983]
§ 58:66 Affirmative defense of correction [Civ. Code, § 2984]

II. VEHICLE LEASING ACT

A. APPLICABLE LAW

§ 58:67 Overview
§ 58:68 Definitions

B. LEASE CONTRACTS

1. Form and Contents

§ 58:69 Format and signature requirements; title of document
§ 58:70 Delivery of exact copy to buyer
§ 58:71 Disclosures required in text
§ 58:72 Good-faith calculation of residual value
§ 58:73 Notice requirements
§ 58:74 Prohibited contract provisions

2. Acknowledgments

§ 58:75 Format requirements
§ 58:76 Evidentiary presumptions

3. Solicitation to Enter into Lease Contract

§ 58:77 Content requirements

§ 58:78 Unlawful rebates, discounts, and commissions

C. DUTIES OF LESSOR

§ 58:79 Duties pertaining to initial lease
§ 58:80 Production of lessor's records
§ 58:81 Notice of intent to sell formerly leased vehicle

D. RIGHTS AND REMEDIES OF LESSEE

§ 58:82 Overview
§ 58:83 Refund of prepayment; recovery of value of trade-in motor vehicle
§ 58:84 Lessee's right to rescind
§ 58:85 Action for damages
§ 58:86 Procedural considerations
§ 58:87 Parties
§ 58:88 Lessor's defenses
§ 58:89 Attorney's fees and costs

E. PROCEDURAL CHECKLIST

§ 58:90 Matters to be considered in lease of motor vehicle

F. FORMS

1. Complaints and Allegations

§ 58:91 Complaint for return of payment where lease contract is not executed [Civ. Code, § 2986.13]
§ 58:92 Complaint to recover value of motor vehicle left with lessor as trade-in down payment [Civ. Code, § 2986.13, subd. (b)]
§ 58:93 Complaint by lessee against lessor for damages for violation of depreciation liability provisions of theVehicle Leasing Act [Civ. Code, §§ 2988, 2988.5]
§ 58:94 Complaint by lessee against lessor for damages for violation of form and content requirements of Vehicle Leasing Act [Civ. Code, §§ 2985.8, 2988.5]
§ 58:95 Complaint by lessee against lessor for rescission for willful violation of form and content requirements of Vehicle Leasing Act [Civ. Code, §§ 2985.8, 2988.5]

§ 58:96 Allegation that correction of violation of Civil Code section 2985.8 will increase amount of contract balance [Civ. Code, § 2988.7]

2. Affirmative Defenses

§ 58:97 Affirmative defense of notice of error and correction [Civ. Code, § 2988.5, subd. (c)]
§ 58:98 Affirmative defense of bona fide error [Civ. Code, § 2988.5, subd. (d)]

Bibliography

CHAPTER 59. DEBT COLLECTION AND SETTLEMENT PRACTICES

I. LEGAL PRINCIPLES

A. GOVERNING LAW

§ 59:1 General principles
§ 59:2 Statutory regulation
§ 59:3 Preemption
§ 59:4 Obligations of attorneys representing creditors

B. APPLICATION OF THE FAIR DEBT COLLECTION PRACTICES ACTS

1. General Provisions

§ 59:5 Persons subject to regulation as debt collectors
§ 59:6 Definitions
§ 59:7 Debt collector's responsibilities
§ 59:8 Debtor's responsibilities
§ 59:9 Remedies under Cal-FDCPA
§ 59:10 Fair Debt Buying Practices Act
§ 59:11 Remedies under Fed-FDCPA

2. Prohibited Acts

§ 59:12 Generally
§ 59:13 Contacts with consumer
§ 59:14 Contacts with third parties
§ 59:15 Written communications
§ 59:16 Telephone contacts
§ 59:17 Harassment, threats, or abuse
§ 59:18 Postdated checks

§ 59:19 Unfair practices
§ 59:20 Jurisdiction and venue of collection actions

C. TORT REMEDIES

§ 59:21 Infliction of emotional distress
§ 59:22 Other tort causes of action

II. FORMS

A. NOTICES

§ 59:23 Notice of attorney's representation [Civ. Code, § 1788.14]

B. COMPLAINTS

§ 59:24 Complaint for violation of California's Rosenthal Fair Debt Collection Act by debt collector [Civ. Code, § 1788.30]
§ 59:25 Complaint for violation of California's Rosenthal Fair Debt Collection Act by debt collector—Alternate complaint [Civ. Code, § 1788.30]
§ 59:26 Complaint for violation of Federal-Fair Debt Collection Practices Act by debt collector [15 U.S.C.A. § 1692k]
§ 59:27 Complaint for intentional infliction of emotional distress based on debt collection practices

C. DEFENSES

§ 59:28 Violation corrected
§ 59:29 Violation resulted from bona fide error
§ 59:30 Debtor's misconduct

Bibliography

Volume BUS6

CHAPTER 60. UNFAIR COMPETITION

I. INTRODUCTION

§ 60:1 Overview
§ 60:2 Common-law unfair competition actions
§ 60:3 Effect of federal law

§ 60:4 Influence of Federal Trade Commission Act

II. ACTIONS UNDER BUSINESS AND PROFESSIONS CODE §§ 17200 TO 17208

A. OVERVIEW

§ 60:5 Actions permitted
§ 60:6 What constitutes unfair competition
§ 60:7 Unlawful business acts or practices
§ 60:8 Unfair business acts or practices
§ 60:9 Fraudulent business acts or practices
§ 60:10 Unfair, deceptive, untrue, or misleading advertising
§ 60:11 Acts prohibited by Bus. & Prof. Code, §§ 17500 et seq

B. PROCEDURE

§ 60:12 Who may bring action
§ 60:13 Who may be liable
§ 60:14 Defenses
§ 60:15 Limitation of actions
§ 60:16 Pleading
§ 60:17 Burden of proof
§ 60:18 Remedies
§ 60:19 Arbitration
§ 60:20 Civil penalty for violations
§ 60:21 Additional civil penalty for acts against senior citizens or disabled persons
§ 60:22 Attorney's fees
§ 60:23 Judgment
§ 60:24 Violation of injunction

C. PROCEDURAL CHECKLISTS

§ 60:25 Contents of complaint In Bus. & Prof. Code, § 17200 action
§ 60:26 Defenses in Bus. & Prof. Code, § 17200 action

D. FORMS

§ 60:27 Complaint for injunctive relief and restitution [Bus. & Prof. Code, § 17200]
§ 60:28 Complaint based on misappropriation of trade

secrets for injunctive relief and restitution [Bus. & Prof. Code, § 17200, Civ. Code, §§ 3246 et seq.]
§ 60:29 Answer to complaint for injunctive relief and restitution
§ 60:30 Defense that conduct was not unlawful
§ 60:31 Defense of business justification
§ 60:32 Defense of federal preemption
§ 60:33 Judgment

III. ACTIONS UNDER UNFAIR PRACTICES ACT [BUS. & PROF. CODE, §§ 17000 ET SEQ.]

A. OVERVIEW

§ 60:34 Purpose of Act
§ 60:35 Civil liability
§ 60:36 Criminal provisions

B. PROHIBITED PRACTICES

§ 60:37 Overview
§ 60:38 Locality discrimination
§ 60:39 Sales or warranty service below cost
§ 60:40 Loss leader practices
§ 60:41 Secret payment of rebates
§ 60:42 Threats, solicitation, and collusion
§ 60:43 Exemptions
§ 60:44 Illegal contracts

C. CIVIL LIABILITY

1. Types of Liability

§ 60:45 Civil actions for injunctive relief
§ 60:46 Civil actions for damages
§ 60:47 Attorney's fees; costs

2. Procedure

§ 60:48 Parties
§ 60:49 Time to sue
§ 60:50 Selecting the forum
§ 60:51 Plaintiff's pleadings
§ 60:52 Defenses

§ 60:53 Preliminary injunction or temporary restraining order
§ 60:54 Discovery
§ 60:55 Evidence
§ 60:56 Presumptions
§ 60:57 References
§ 60:58 Immunity

D. FORMS

§ 60:59 Complaint for injunctive relief and damages [Bus. & Prof. Code, § 17070]
§ 60:60 Complaint for injunctive relief and damages against corporation engaged in loss leader practices [Bus. & Prof. Code, §§ 17044, 17070]
§ 60:61 Complaint for injunctive relief and damages against corporation engaged in locality discrimination [Bus. & Prof. Code, §§ 17040, 17070]
§ 60:62 Allegation that defendant engaged in rebate scheme to destroy competition [Bus. & Prof. Code, § 17045]
§ 60:63 Defense that defendant's loss leaders were utilized to meet competition [Bus. & Prof. Code, § 17050]
§ 60:64 Defense that prohibition against locality discrimination was excepted by closing out stock [Bus. & Prof. Code, § 17050]
§ 60:65 Defense that locality discrimination was justified by the difference in cost of transportation of the manufactured product [Bus. & Prof. Code, § 17050]
§ 60:66 Defense that prohibition against sales below cost was excepted by damaged or deteriorated quality of goods [Bus. & Prof. Code, § 17050]

Bibliography

CHAPTER 61. FALSE AND MISLEADING ADVERTISING

I. RECOVERY UNDER BUS. & PROF. CODE §§ 17500 ET SEQ.

A. LEGAL PRINCIPLES

1. False Advertising In General

§ 61:1 Proscription of false or misleading statements, generally
§ 61:2 Lack of knowledge or participation as defense
§ 61:3 Exemptions

2. Representations Respecting Quantity or Price

§ 61:4 Quantity to be sold to single customer
§ 61:5 Value determinations; former prices
§ 61:6 Price of goods or services sold in multiple units
§ 61:7 Price differentials respecting more than one article of merchandise or type of service within same class
§ 61:8 Purchase of product conditioned on purchase of different product
§ 61:9 Price requiring buyer to send to manufacturer for cash rebate

3. Representations Respecting Particular Products, Services, or Things

§ 61:10 Realty
§ 61:11 Title insurance
§ 61:12 Second-hand, blemished, or rejected merchandise
§ 61:13 Packages of unassembled toys
§ 61:14 Federal surplus materials
§ 61:15 Coal
§ 61:16 Tear gas weapons or devices
§ 61:17 Anabolic steroids
§ 61:18 Television picture tubes
§ 61:19 Energy conservation products or services
§ 61:20 Water treatment devices
§ 61:21 American Indian products
§ 61:22 Products made by the blind

§ 61:23 Homestead filing services
§ 61:24 Homeowner's exemption filing services
§ 61:25 Assessment appeal filing services
§ 61:26 Consumer credit
§ 61:27 Loans utilizing real property as collateral
§ 61:28 Travel sellers
§ 61:29 Motel and motor court rates

4. Advertising and Other Solicitations Involving Contests, Prizes, or Gifts

§ 61:30 Contests
§ 61:31 Conditioning prize-winning on purchase or rental
§ 61:32 Offering prize or gift as inducement to visit location or attend sales presentation
§ 61:33 Deceptive and unfair trade practices with respect to inducement to visit location or attend sales presentation

5. Other Representations

§ 61:34 Nature of business
§ 61:35 Failure to disclose business address and legal name of business conducted primarily by mail or telephone
§ 61:36 Purportedly fact-based or brand-comparison advertisements
§ 61:37 Newspaper or periodical circulation
§ 61:38 Use of "Made in U.S.A." or similar words
§ 61:39 Environmental advertising
§ 61:40 Charitable solicitations
§ 61:41 Telephonic sellers; regulation, generally; definition
§ 61:42 Telephonic sellers; prohibited representations
§ 61:43 Do Not Call Registry
§ 61:44 Restrictions on unsolicited commercial advertisements (Spam)

B. REMEDIES AND PROCEDURE

1. Principles Applicable to All False Advertising

§ 61:45 Remedies or penalties cumulative
§ 61:46 Action for injunction; statutory basis

§ 61:47 Action for injunction; actions by private parties
§ 61:48 Action for injunction; relief available
§ 61:49 Action for injunction; venue
§ 61:50 Action for injunction; arbitration
§ 61:51 Action for injunction; statute of limitations
§ 61:52 Action for injunction; pleading
§ 61:53 Burden of proof
§ 61:54 Civil and criminal penalties
§ 61:55 Availability of damages, generally
§ 61:56 Notice of appellate proceedings

2. Statutes Applicable to Particular Actions

§ 61:57 Advertisements as to quantity to be sold to single customer
§ 61:58 Advertising and other solicitations involving prizes or gifts
§ 61:59 Water treatment devices
§ 61:60 Energy conservation products or services
§ 61:61 Telephonic sales
§ 61:62 Do Not Call Registry
§ 61:63 Unsolicited commercial e-mail (Spam)
§ 61:64 Purportedly fact-based or brand-comparison advertisements

II. OTHER BASES FOR RECOVERY

§ 61:65 Other statutes proscribing false advertising
§ 61:66 Consumer Legal Remedies Act
§ 61:67 False advertising as unfair competition
§ 61:68 Fraud and deceit; availability of action
§ 61:69 Fraud and deceit; defense that advertisement was mere "puffing"
§ 61:70 First Amendment not a defense
§ 61:71 Breach of warranty

III. FORMS

§ 61:72 Complaint in action to enjoin false or misleading advertising [Bus. & Prof. Code, § 17535]
§ 61:73 Complaint for damages for fraudulently false advertising
§ 61:74 Affirmative defense, in fraud and deceit action, that statement was "puffing"
§ 61:75 Notice of pendency of appellate proceedings

involving Bus. & Prof. Code §§ 17500 et seq.
[Bus. & Prof. Code, § 17536.5]

Bibliography

CHAPTER 62. AGREEMENTS NOT TO COMPETE

I. INTRODUCTION

§ 62:1 Overview
§ 62:2 Trade secrets exception
§ 62:3 Exception for sale of goodwill of business
§ 62:4 Exception for sale of corporate shares or assets
§ 62:5 Exception for sale of interest in limited liability company
§ 62:6 Exception for dissolution of partnership
§ 62:7 Exception for dissolution of limited liability company

II. PROCEDURE

§ 62:8 Parties
§ 62:9 Time to sue
§ 62:10 Contents of complaint
§ 62:11 Defenses
§ 62:12 Injunctive relief
§ 62:13 Damages

III. FORMS

§ 62:14 Complaint for injunctive relief and damages
§ 62:15 Complaint for injunctive relief against former partner
§ 62:16 Complaint for injunctive relief and damages against professional practitioner
§ 62:17 Complaint to enjoin use of seller's name in competing business
§ 62:18 Complaint to enjoin anticipatory breach of agreement not to compete and for declaratory judgment declaring validity of covenant
§ 62:19 Notice of motion and motion for preliminary injunction
§ 62:20 Judgment

Bibliography

CHAPTER 63. RESTRAINTS ON TRADE

I. LEGAL PRINCIPLES

A. OVERVIEW OF CARTWRIGHT ACT

§ 63:1 Relationship to federal antitrust law
§ 63:2 Validity of Act
§ 63:3 General prohibition against trusts
§ 63:4 Effect on contracts
§ 63:5 Per se and rule of reason analysis
§ 63:6 "Horizontal" and "vertical" restraints on trade

B. APPLICATION TO PARTICULAR DEFENDANTS

§ 63:7 Labor organizations
§ 63:8 Trade associations
§ 63:9 Providers of services
§ 63:10 Corporate defendants
§ 63:11 Government entities; persons attempting to influence governmental actions
§ 63:12 Religious or nonprofit organizations
§ 63:13 Insurance companies; health care groups

C. REGULATED OR PROHIBITED PRACTICES

1. Price Fixing

§ 63:14 General prohibition
§ 63:15 Noncompetitive bidding
§ 63:16 Health service plans

2. Discrimination

§ 63:17 Exclusion from business transaction
§ 63:18 Provisions in letters of credit, contracts, or other documents

3. Other Practices

§ 63:19 Tying agreements
§ 63:20 Exclusive dealing; refusal to deal
§ 63:21 Mergers
§ 63:22 Monopoly

D. ACTIONS UNDER CARTWRIGHT ACT

1. Enforcement by State

§ 63:23 Action on behalf of state, political subdivision, or public agency
§ 63:24 Parens patriae action
§ 63:25 Dissolution; license revocation of foreign corporation

2. Private Treble Damage Action

§ 63:26 Statutory authority; standing
§ 63:27 Joinder; class actions
§ 63:28 Plaintiff's pleadings
§ 63:29 Summary Judgment
§ 63:30 Statute of limitations and other defenses
§ 63:31 Damages and injunctive relief
§ 63:32 Costs, interest, and attorney's fees
§ 63:33 Notice to Attorney General

II. FORMS

A. COMPLAINTS

§ 63:34 Verified complaint by purchaser for price fixing against competing suppliers [Bus. & Prof. Code, §§ 16720, 16726]
§ 63:35 Verified complaint by manufacturer against supplier for illegal tying arrangement [Bus. & Prof. Code, § 16727]

B. AFFIRMATIVE DEFENSES

§ 63:36 Affirmative defense that plaintiff's action is barred by the statute of limitations [Bus. & Prof. Code, § 16750.1]
§ 63:37 Affirmative defense to allegation of price fixing that defendants were engaged in collective bargaining
§ 63:38 Affirmative defense by trade association [Bus. & Prof. Code, § 16725]

C. MOTION FOR PREJUDGMENT INTEREST

§ 63:39 Notice of motion by plaintiff to recover prejudgment interest [Bus. & Prof. Code, § 16761]

§ 63:40 Plaintiff's declaration in support of motion to recover prejudgment interest [Bus. & Prof. Code, § 16761]

Bibliography

CHAPTER 64. INTERFERENCE WITH ECONOMIC RELATIONSHIPS

I. LEGAL PRINCIPLES

A. OVERVIEW

§ 64:1 Nature of tort
§ 64:2 Distinctions

B. INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

1. Intentional Interference

a. Nature of Tort

§ 64:3 Overview
§ 64:4 Nature of contract or relationship
§ 64:5 Interference with prospective employment

b. Elements

§ 64:6 Overview
§ 64:7 Economic relationship
§ 64:8 Likelihood of economic advantage
§ 64:9 Knowledge and intent
§ 64:10 Wrongfulness of conduct
§ 64:11 Damages

2. Negligent Interference

§ 64:12 Standards for determining liability
§ 64:13 Illustrative cases
§ 64:14 Policy considerations

C. INTERFERENCE WITH CONTRACTUAL RELATIONSHIP

1. Nature of Tort

§ 64:15 Overview

§ 64:16 Liability of party to contract

2. Elements

§ 64:17 Overview
§ 64:18 Valid and existing contract
§ 64:19 Knowledge and intent
§ 64:20 Causation

D. DEFENSES

1. Privilege or Justification

§ 64:21 Overview
§ 64:22 Privilege for communications in official proceeding
§ 64:23 Competitor's privilege
§ 64:24 Privilege of financially interested actor
§ 64:25 Privilege for legally protected interest
§ 64:26 Manager's or advisor's privilege
§ 64:27 Effect of alter ego doctrine on manager's privilege
§ 64:28 Extent to which interference by attorney is privileged
§ 64:29 Privilege of person giving information or advice
§ 64:30 Privilege of persons with separate contracts
§ 64:31 First Amendment privilege

2. Interference Permitted by Public Policy

§ 64:32 Public policy favoring organized activity by workers
§ 64:33 Public policy favoring sports competition
§ 64:34 Public policy favoring comment on matters of public interest
§ 64:35 Public policy favoring professional ethics
§ 64:36 Public policy favoring free access to courts
§ 64:37 Public policy favoring protection of peer review process

E. ACTIONS

§ 64:38 Availability
§ 64:39 Accrual
§ 64:40 Parties
§ 64:41 Pleading
§ 64:42 Remedies

§ 64:43 Measure of damages

II. FORMS

A. COMPLAINTS

§ 64:44 Complaint for damages for intentional interference with contractual relationship
§ 64:45 Complaint for damages for intentional interference with prospective economic advantage
§ 64:46 Complaint for damages for inducing breach of contract
§ 64:47 Complaint for damages against buyer of real property for intentional interference with contract between seller and broker
§ 64:48 Complaint for damages by contractor against supplier of subcontractor for negligent interference with contractual relationship
§ 64:49 Complaint for damages by tenant against holdover tenant for intentional interference with contractual relationship and prospective economic advantage
§ 64:50 Complaint for damages by seller of business against purchaser for interference with economic advantage
§ 64:51 Complaint for damages against husband by wife's attorney for intentional interference with attorney-client relationship

B. DEFENSES

§ 64:52 Affirmative defense of justification
§ 64:53 Affirmative defense of privilege for publication made in official proceeding
§ 64:54 Affirmative defense of competitor's privilege
§ 64:55 Affirmative defense of privilege of financially interested actor
§ 64:56 Affirmative defense of privilege of person asserting legally protected interest
§ 64:57 Affirmative defense of manager's privilege
§ 64:58 Affirmative defense that contract was fraudulently conceived

Bibliography

CHAPTER 65. SLANDER OF TITLE AND TRADE LIBEL

I. SLANDER OF TITLE AND TRADE LIBEL

A. SLANDER OF TITLE

1. Nature and Pleading Requirements

§ 65:1 Summary of elements
§ 65:2 Ownership and description of property
§ 65:3 Disparagement of title
§ 65:4 Falsity
§ 65:5 Publication
§ 65:6 Malice
§ 65:7 Absence of privilege
§ 65:8 Damages
§ 65:9 Distinction between defamation and slander of title

2. Procedural Aspects

§ 65:10 Jurisdiction and venue
§ 65:11 Statute of limitations and survival

B. TRADE LIBEL

§ 65:12 Summary of elements
§ 65:13 Disparaging statement
§ 65:14 Special damages
§ 65:15 Distinctions between trade libel and defamation
§ 65:16 Distinctions between slander of title and trade libel
§ 65:17 Statute of limitations

C. DEFENSES TO SLANDER OF TITLE AND TRADE LIBEL

§ 65:18 Truth
§ 65:19 Absolute privileges
§ 65:20 Qualified privileges
§ 65:21 Constitutional privileges

II. FORMS

§ 65:22 Complaint for slander of title based on instrument clouding title to real property

§ 65:23 Complaint for trade libel
§ 65:24 Allegation in answer raising judicial proceedings privilege as affirmative defense to slander of title [Civ. Code, § 47, subd. (b)]

Bibliography

CHAPTER 66. TRADE SECRETS

I. LEGAL PRINCIPLES

A. OVERVIEW OF TRADE SECRETS LAW

§ 66:1 Protection of trade secrets, generally
§ 66:2 Defend Trade Secrets Act of 2016
§ 66:3 Uniform Trade Secrets Act (UTSA)
§ 66:4 Relationship of UTSA and other statutes protecting trade secrets
§ 66:5 Relationship of UTSA to common law
§ 66:6 Relationship of patent law to trade secret protection
§ 66:7 Relationship of copyright law to trade secret protection

B. ESTABLISHING A TRADE SECRET

§ 66:8 Definition of "trade secret"
§ 66:9 Customer list as trade secret
§ 66:10 Economic advantage requirement
§ 66:11 Secrecy requirement
§ 66:12 Novelty requirement

C. MISAPPROPRIATION OF TRADE SECRET

§ 66:13 UTSA definition
§ 66:14 Misappropriation of property of employer [Lab. Code, § 2860]
§ 66:15 Improper means of obtaining trade secret
§ 66:16 Accrual of cause of action

D. RELIEF AVAILABLE UNDER UTSA

§ 66:17 Injunctive relief
§ 66:18 Damages
§ 66:19 Royalty
§ 66:20 Exemplary damages

§ 66:21 Attorney's fees

E. PROCEDURAL ISSUES

1. Initial Considerations

§ 66:22 Interview with plaintiff
§ 66:23 Statute of limitations
§ 66:24 Parties
§ 66:25 Jurisdiction and venue

2. Plaintiff's Pleadings

§ 66:26 Drafting complaint
§ 66:27 Additional causes of action
§ 66:28 Other filings with complaint

3. Defendant's Pleadings

§ 66:29 Answer
§ 66:30 Defenses

4. Obtaining Injunctive Relief

§ 66:31 Temporary restraining order
§ 66:32 Preliminary injunction
§ 66:33 Undertakings

5. Protecting Trade Secrets in Litigation

§ 66:34 Preventing public access to records and proceedings
§ 66:35 Discovery
§ 66:36 Evidentiary privilege for trade secrets

II. FORMS

A. COMPLAINTS

§ 66:37 Misappropriation of manufacturing process [Civ. Code, § 3426.1, subd. (b)]
§ 66:38 Misappropriation of product [Civ. Code, § 3426.1, subd. (b)]
§ 66:39 Misappropriation of customer list [Civ. Code, § 3426.1, subd. (b)]
§ 66:40 Misappropriation of marketing and production information by executive of plaintiff [Civ. Code, § 3426.1, subd. (b)]

B. DEFENSES

§ 66:41 Statute of limitations [Civ. Code, § 3426.6]

§ 66:42 Independent discovery, including reverse engineering
§ 66:43 Failure to protect secrecy; prior disclosure
§ 66:44 Obviousness
§ 66:45 Identity of plaintiff's customers obvious

C. PROTECTION OF TRADE SECRETS DURING LITIGATION

1. Sealing Court Records

§ 66:46 Application for order to protect trade secrets [Civ. Code, § 3426.5]
§ 66:47 Order sealing file

2. During Discovery

§ 66:48 Application for leave to serve notice of depositions within 20 days of service of summons and order shortening time [Code Civ. Proc. § 2025.210]
§ 66:49 Identification of trade secrets prior to commencing discovery [Code Civ. Proc. § 2019.210]
§ 66:50 Motion for protective order in deposition as to trade secrets or confidential information [Code Civ. Proc. § 2025.420, subd. (b)(13)]

D. OBTAINING INJUNCTIVE RELIEF

§ 66:51 Ex parte application for temporary restraining order and order to show cause [Civ. Code, § 3426.2, subd. (a)]
§ 66:52 Certificate regarding notice of application for temporary restraining order
§ 66:53 Declaration in support of application for order to show cause regarding preliminary injunction and temporary restraining order
§ 66:54 Order to show cause regarding preliminary injunction and temporary restraining order

Bibliography

CHAPTER 67. TRADEMARKS AND TRADE NAMES

I. LEGAL PRINCIPLES

A. TRADEMARKS

1. Governing Law and Definitions

§ 67:1 Governing law
§ 67:2 Statutory definitions of trademark
§ 67:3 Categories of trademarks

2. Registration of Trademark

a. Prerequisites for Registration

§ 67:4 California, Federal, and International Systems
§ 67:5 Ineligible trademarks
§ 67:6 Use of trademark
§ 67:7 Trademark searches

b. Procedure for Registration

§ 67:8 Application
§ 67:9 Review and opposition

c. Postregistration Considerations

§ 67:10 Registration as evidence of ownership
§ 67:11 Use of trademark symbols
§ 67:12 Transferability of trademark
§ 67:13 Duration and renewal of trademark
§ 67:14 Cancellation of trademark

3. Liability for Infringement or Unlawful Use of Trademark

a. Causes of Action

§ 67:15 Statutory causes of action for infringement [Bus. & Prof. Code, § 14320; 15 U.S.C.A. § 1114]
§ 67:16 Common-law cause of action for infringement
§ 67:17 Dilution [Bus. & Prof. Code, §§ 14330, 14335]
§ 67:18 Action based on false designation or description [15 U.S.C.A. § 1125(a)]
§ 67:19 Dilution of famous mark [15 U.S.C.A. § 1125(c)]
§ 67:20 Fraudulent registration

b. Remedies

§ 67:21 Injunction

§ 67:22 Damages
§ 67:23 Seizure of goods
§ 67:24 Destruction of goods
§ 67:25 Attorney's fees
§ 67:26 Criminal penalties

c. Procedural Considerations

§ 67:27 Service of process

d. Defenses

§ 67:28 Laches, estoppel, and acquiescence
§ 67:29 Previously used marks
§ 67:30 Abandonment
§ 67:31 Lack of secondary meaning
§ 67:32 Fraudulent registration
§ 67:33 Other defenses

B. TRADE NAMES

1. Overview

§ 67:34 Definition and governing law
§ 67:35 Distinction between trade names and trademarks

2. Registration

§ 67:36 Filing fictitious business name or articles of incorporation
§ 67:37 Container brands registration
§ 67:38 Farm name registration
§ 67:39 Laundry supply registration
§ 67:40 Names, other than trade names, for organizations

3. Liability for Improper Use of Trade Name

§ 67:41 Civil liability
§ 67:42 Criminal liability

II. PROCEDURAL CHECKLIST

§ 67:43 Procedural checklist of matters to be considered in action for seizure of counterfeit goods

III. FORMS

A. COMPLAINTS AND ALLEGATIONS

§ 67:44 Verified complaint for injunction and damages

based on infringement of registered trademark involving use of copy or imitation of mark [Bus. & Prof. Code, § 14320, subd. (a)(1)]
§ 67:45 Verified complaint for injunction and damages based on infringement of registered trademark involving application of reproduction of mark to labels, signs, and advertisements [Bus. & Prof. Code, § 14320, subd. (a)(2)]
§ 67:46 Allegation of infringement of common-law trademark rights
§ 67:47 Allegation that defendant's use of trademark injures plaintiff's business reputation or dilutes distinctive quality of trademark [Bus. & Prof. Code, § 14330]
§ 67:48 Verified complaint for injunction and damages based on infringement of registered trade name of farm [Bus. & Prof. Code, §§ 14462, 14463]

B. MOTIONS, SUPPORTING DECLARATIONS, AND ORDER

§ 67:49 Motion for seizure of counterfeit goods [Bus. & Prof. Code, § 14340, subd. (b)]
§ 67:50 Plaintiff's declaration in support of motion for order requiring seizure of counterfeit goods [Bus. & Prof. Code, § 14340, subd. (b)]
§ 67:51 Order requiring seizure of counterfeit goods [Bus. & Prof. Code, § 14340, subd. (b)]
§ 67:52 Motion for damages and costs for wrongful seizure of defendant's goods [Bus. & Prof. Code, § 14340, subd. (c)]
§ 67:53 Declaration of defendant in support of motion for damages and costs for wrongful seizure of defendant's goods [Bus. & Prof. Code, § 14340, subd. (c)]

C. AFFIRMATIVE DEFENSES

§ 67:54 Affirmative defense that defendant is innocent infringer [Bus. & Prof. Code, § 14320, subds. (b), (c)]
§ 67:55 Affirmative defense that the plaintiff is estopped by laches from asserting infringement of trademark
§ 67:56 Affirmative defense that defendant used trademark before plaintiff used and registered mark [Bus. & Prof. Code, § 14342]

Bibliography

CHAPTER 68. LITERARY PROPERTY AND IDEAS

I. DEFINITIONS AND PRINCIPLES

§ 68:1 Literary property is interest of author in author's works
§ 68:2 Idea is not property

II. PROTECTION THROUGH COPYRIGHT

A. SCOPE AND COVERAGE OF FEDERAL LAW

§ 68:3 Protection for original works of creation that are fixed in any tangible medium of expression
§ 68:4 Subject matter of federal copyright law
§ 68:5 Type of federal copyright protection
§ 68:6 No protection for ideas

B. SCOPE AND COVERAGE OF STATE COPYRIGHT LAW

§ 68:7 Federal preemption of state law rights
§ 68:8 State law rights with extra elements not preempted
§ 68:9 State statutory copyright protection
§ 68:10 State copyright protection of ideas

III. OTHER THEORIES FOR PROTECTION OF LITERARY PROPERTY AND IDEAS UNDER STATE LAW

§ 68:11 Overview
§ 68:12 Contractual protection
§ 68:13 Defenses to breach of contract
§ 68:14 Nature of breach of confidence
§ 68:15 Elements of actionable breach of confidence
§ 68:16 Proof of elements of breach of confidence
§ 68:17 Statute of limitations for breach of confidence actions
§ 68:18 Conversion or misappropriation

§ 68:19 Statute of limitations for conversion or misappropriation
§ 68:20 Damages for acts of conversion or misappropriation
§ 68:21 Protection of titles

IV. ASSIGNMENT OF RIGHTS

§ 68:22 Nondivisible: assignability of ideas under state law
§ 68:23 Works of authorship, inventions, and designs

V. PROCEDURAL CONSIDERATIONS

§ 68:24 Choice of cause of action
§ 68:25 Requisites of complaint for infringement of right in and to literary property

VI. FORMS

A. COMPLAINTS

§ 68:26 Complaint for damages for conversion and misappropriation of literary property [Civ. Code, § 3336]
§ 68:27 Complaint—Action for infringement—Allegation of impracticality
§ 68:28 Complaint for breach of confidence
§ 68:29 Complaint for breach of implied agreement to pay money for disclosure and use of idea [Civ. Code, § 1610]
§ 68:30 Notice—Action for infringement—Notice of motion for order requiring viewing of artistic production

B. DEFENSES

§ 68:31 Defense that defendant already performed
§ 68:32 Defense that no compensation was expected in exchange for disclosure of idea
§ 68:33 Defense that there is no substantial similarity

Bibliography

CHAPTER 69. ARTISTIC PROPERTY

I. FINE ART

A. LEGAL PRINCIPLES

1. Sale of Fine Art

§ 69:1 Consignment sales
§ 69:2 Artist's royalty rights
§ 69:3 Artist's reproduction rights
§ 69:4 Artist's residual rights

2. Artist's Moral Rights

§ 69:5 Federal preemption
§ 69:6 Rights under California law
§ 69:7 Termination of rights
§ 69:8 Artist's action to enforce rights
§ 69:9 Establishing status as fine art

3. Art Attached to Real Property

§ 69:10 Notice of destruction
§ 69:11 Actions brought by artist
§ 69:12 Actions brought by organizations

B. FORMS

1. Complaints

§ 69:13 Complaint to recover under consignment contract [Civ. Code, §§ 1738.5 to 1738.9]
§ 69:14 Complaint to recover royalty [Civ. Code, § 986, subd. (a)(3)]
§ 69:15 Complaint to recover damages for injury to fine art [Civ. Code, § 987, subd. (c)(2)]
§ 69:16 Complaint for unlawful removal of mural

2. Answers and Other Pleadings

§ 69:17 Answer alleging art dealer's purchase of work of fine art from artist terminated consignment contract [Civ. Code, §§ 1738.5 to 1738.9]
§ 69:18 Claim of exemption from enforcement of judgment against work of fine art [Civ. Code, § 1738.6, subd. (b)]
§ 69:19 Allegation of affirmative defense of statute of limitations

II. FINE ART MULTIPLES

A. LEGAL PRINCIPLES

1. Disclosure Requirements

§ 69:20 Introduction
§ 69:21 Persons required to make disclosures
§ 69:22 Disclosure at time of sale
§ 69:23 Disclosures in advertising material
§ 69:24 Disclosures at place of business
§ 69:25 Certificate of authenticity

2. Actions

§ 69:26 Warranties
§ 69:27 Liability
§ 69:28 Statute of limitations
§ 69:29 Damages; costs and fees
§ 69:30 Injunctions
§ 69:31 Civil penalties

B. FORMS

1. Complaints

§ 69:32 Complaint to recover damages for failure to provide informational detail concerning fine print
§ 69:33 Complaint to recover damages for providing inaccurate and insufficient informational detail concerning fine art multiple sold at auction
§ 69:34 Allegation of failure to accept return of multiple [Civ. Code, § 1742, subd. (b)]
§ 69:35 Allegation of failure to make reasonable inquiries regarding informational detail [Civ. Code, § 1745, subd. (f)]

2. Affirmative Defenses

§ 69:36 Affirmative defense that defendant is exempt charitable organization
§ 69:37 Affirmative defense that action is barred under statute of limitations [Civ. Code, § 1745, subd. (c)]

III. LOANS TO MUSEUMS

A. LEGAL PRINCIPLES

1. Museum's Rights and Duties

§ 69:38 Right to conserve or dispose of loaned property
§ 69:39 Termination of loans

2. Notice Requirements

§ 69:40 Introduction
§ 69:41 Museum's general notice requirements
§ 69:42 Lender's notice of intent to preserve an interest in property
§ 69:43 Museum's notice of injury or loss
§ 69:44 Lender's notice of change of address or ownership
§ 69:45 Museum's notice of intent to terminate loans
§ 69:46 Museum's notice of intent to dispose of property underUnclaimed Property Laws

3. Actions Against Museums

§ 69:47 Liability for injury to or loss of loaned property
§ 69:48 Recovery of loaned property

B. FORMS

1. Complaints

§ 69:49 Complaint for museum's wrongful disposal of loaned property
§ 69:50 Complaint for museum's negligent injury of loaned property
§ 69:51 Complaint to recover property wrongfully deemed donated [Civ. Code, § 1899.10]

2. Affirmative Defenses

§ 69:52 Affirmative defense that loaned property endangered public [Civ. Code, § 1899.6, subd. (b)(2)]
§ 69:53 Affirmative defense that property deemed donated [Civ. Code, § 1899.10, subd. (c)]
§ 69:54 Affirmative defense that lender refused to cooperate in conservation or disposal of loaned property [Civ. Code, § 1899.6, subd. (a)(1)(B)]
§ 69:55 Affirmative defense that suit for injury to or loss of property is time-barred [Civ. Code, § 1899.8]

§ 69:56 Affirmative defense that suit to recover property is time-barred [Civ. Code, § 1899.8]

Bibliography

CHAPTER 70. PATENTS AND INVENTION DEVELOPMENT

I. PATENT LITIGATION

A. LEGAL PRINCIPLES

1. Federal Patent Law

§ 70:1 Overview
§ 70:2 Patents
§ 70:3 Federal preemption in patent matters; when states may regulate
§ 70:4 Federal and state court jurisdiction over patent matters

2. Patent Litigation in State Courts

§ 70:5 Overview; applicability of California contract law
§ 70:6 Assignment of patents and patent rights
§ 70:7 Patent licensing agreements; assignment of licenses
§ 70:8 Determining whether transfer of patent rights is assignment or license
§ 70:9 Actions for breach of patent assignments or patent licensing agreements
§ 70:10 Defenses to actions for breach of patent assignments or patent licensing agreements

B. CHECKLIST

§ 70:11 Procedural matters to be considered in actions for breach of patent assignments or patent licensing agreements

C. FORMS

1. Complaints

§ 70:12 Complaint by patentee to rescind patent assignment agreement
§ 70:13 Complaint by patent licensee to rescind patent license agreement

§ 70:14 Complaint by patent assignee for specific performance of patent assignment agreement and for injunction prohibiting future infringement by patentee
§ 70:15 Complaint by patent licensee for specific performance of patent license agreement
§ 70:16 Complaint for declaration of rights under patent license agreement
§ 70:17 Complaint by patent licensor for accounting and payment of royalties due under license

2. Defenses

§ 70:18 Defense that patent assignment or patent license agreement was induced by fraud
§ 70:19 Defense that plaintiff is not entitled to royalties under licensing agreement because patent is invalid
§ 70:20 Defense that plaintiff is not entitled to royalties under licensing agreement because patent has expired

II. INVENTION RIGHTS OF EMPLOYERS AND EMPLOYEES

A. LEGAL PRINCIPLES

§ 70:21 Overview
§ 70:22 Inventor's rights to inventions
§ 70:23 Employer's rights to inventions conceived by employer and developed by employees
§ 70:24 Employee's rights to inventions conceived and developed by employee during employment
§ 70:25 Employer's shop right to inventions conceived and developed by employee during employment
§ 70:26 Employee's assignment of invention rights to employer
§ 70:27 Contract provisions requiring assignment of invention rights; inventions covered [Lab. Code, § 2870]
§ 70:28 Contract provisions providing for disclosure of inventions, review process, and title in United States [Lab. Code, § 2871]
§ 70:29 Notice as to inventions covered by employment contract provisions [Lab. Code, § 2872]
§ 70:30 Actions to establish and enforce invention rights

§ 70:31 Defenses to employer's action seeking to establish rights to employee's invention
§ 70:32 Defenses to employee's action seeking to establish rights to employer's invention

B. CHECKLIST

§ 70:33 Procedures for establishing and enforcing rights to inventions developed during employment relationship

C. FORMS

1. Complaints and Allegations

§ 70:34 Complaint for declaratory relief to determine employer's shop right to invention and for injunction preventing employee from interfering with shop right
§ 70:35 Complaint for injunction compelling employee to assign invention rights to employer based on agreement implied in law
§ 70:36 Complaint for specific performance of employment contract requiring assignment of employee's inventions and for injunction prohibiting employee from practicing invention
§ 70:37 Allegation that employer is entitled to assignment of invention rights because invention was conceived by employer rather than employee who was employed merely to carry out mechanical details and arrangement of invention

2. Defenses

§ 70:38 Defense that employer is not entitled to any rights in invention because employer rejected invention as impractical
§ 70:39 Defense that employer is not entitled to shop right in employee's invention because invention was not developed during working hours with employer's materials or facilities
§ 70:40 Defense that employer is not entitled to shop right in employee's invention because employer's contribution was trifling
§ 70:41 Defense that employer is not entitled to assignment of employee's invention because employee was not hired to invent

§ 70:42 Defense that employer is not entitled to assignment of employee's invention because invention is excluded by statute from assignment [Lab. Code, § 2870, subd. (a)]
§ 70:43 Defense that contract provision requiring assignment of invention rights is invalid [Lab. Code, 2870, subd. (b)]
§ 70:44 Defense that employee is not entitled to any rights to employer's invention because invention was conceived by employer rather than employee who was employed merely to carry out mechanical details and arrangement of invention

III. INVENTION DEVELOPMENT SERVICES

A. LEGAL PRINCIPLES

1. Overview

§ 70:45 Legislative findings; purpose of Bus. & Prof. Code §§ 22370 to 22395 [Bus. & Prof. Code, § 22370]
§ 70:46 Contract for invention development services defined [Bus. & Prof. Code, § 22371, subd. (a)]
§ 70:47 Customer defined [Bus. & Prof. Code, § 22371, subd. (b)]
§ 70:48 Invention defined [Bus. & Prof. Code, § 22371, subd. (c)]
§ 70:49 Invention developer defined [Bus. & Prof. Code, § 22371, subd. (d)]
§ 70:50 Invention development services defined [Bus. & Prof. Code, § 22371, subd. (e)]
§ 70:51 Prohibition against acquisition of interest or title in invention by developer [Bus. & Prof. Code, § 22375]
§ 70:52 Provisions of Bus. & Prof. Code §§ 22370 to 22395 not exclusive [Bus. & Prof. Code, § 22382]
§ 70:53 Waiver of provisions not allowed [Bus. & Prof. Code, § 22385]

2. Duties of Invention Developers

§ 70:54 Overview
§ 70:55 Bond requirement; deposit in lieu of bond [Bus. & Prof. Code, §§ 22389 to 22391]

§ 70:56 Duty of confidentiality [Bus. & Prof. Code, § 22395]
§ 70:57 Exercise of discretion vested in developer [Bus. & Prof. Code, § 22379, subd. (b)]
§ 70:58 Delivery of quarterly statements of services performed [Bus. & Prof. Code, § 22378]
§ 70:59 Maintenance of records and correspondence after expiration of term of contract [Bus. & Prof. Code, § 22392]

3. Precontract Disclosures

§ 70:60 Disclosures in advertisements [Bus. & Prof. Code, §§ 22380, 22393]
§ 70:61 Disclosures in response to inquiries [Bus. & Prof. Code, § 22381]
§ 70:62 Effect of failure to make required disclosures [Bus. & Prof. Code, § 22388]

4. Development Services Contracts

§ 70:63 Contracts void and unenforceable if not in compliance with Bus. & Prof. Code §§ 22370 to 22395 or if entered into in reliance on fraud or misleading representation [Bus. & Prof. Code, §§ 22383, 22384]
§ 70:64 Contract cover sheet requirement; required contents of cover sheet [Bus. & Prof. Code, § 22374]
§ 70:65 Requirement that contract be in writing; subsequent contracts [Bus. & Prof. Code, § 22372]
§ 70:66 Mandatory contract terms [Bus. & Prof. Code, § 22379]
§ 70:67 Seven-day period for cancellation [Bus. & Prof. Code, § 22373]
§ 70:68 Execution of notes negotiated to cut off as to third parties right of action or defense against developer [Bus. & Prof. Code, § 22376]
§ 70:69 Rights and obligations of developer's assignee [Bus. & Prof. Code, § 22377]

5. Remedies for Violations

§ 70:70 Civil action against invention developer [Bus. & Prof. Code, § 22386]
§ 70:71 Civil action on invention developer's bond
§ 70:72 Claims against deposits in lieu of bond [Bus. & Prof. Code, § 22391]

§ 70:73 Criminal prosecutions; injunctions [Bus. & Prof. Code, § 22387]

6. Defenses

§ 70:74 Defenses to actions against invention developers
§ 70:75 Defenses to actions against inventors

B. CHECKLIST

§ 70:76 Procedures for recovering damages for violations of Bus. & Prof. Code §§ 22370 to 22395

C. FORMS

1. Actions Against Invention Developers

a. Complaints and Allegations

§ 70:77 Complaint for statutory damages based on violation ofBus. & Prof. Code §§ 22370 to 22395 [Bus. & Prof. Code, § 22386]
§ 70:78 Allegation of false or fraudulent statement or representation of invention developer [Bus. & Prof. Code, § 22386]
§ 70:79 Allegation that invention developer omitted material fact [Bus. & Prof. Code, § 22386]
§ 70:80 Allegation that invention developer failed to make disclosures required by Bus. & Prof. Code § 22379 [Bus. & Prof. Code, § 22386]
§ 70:81 Complaint on invention developer's bond [Bus. & Prof. Code, § 22390]
§ 70:82 Complaint to rescind void or voidable invention development services contract

b. Defenses

§ 70:83 Defense that plaintiff is not "customer" as defined in Bus. & Prof. Code § 22371, subd. (b)
§ 70:84 Defense that defendant is not "invention developer" as defined inBus. & Prof. Code, § 22371, subd. (d)
§ 70:85 Defense that invention development services contract is not void because alleged violation was unintentional and resulted from bona fide error [Bus. & Prof. Code, § 22383]

2. Actions Against Inventor

a. Complaint

§ 70:86 Complaint for breach of invention development services contract

b. Defenses

§ 70:87 Defense that contract is voidable by customer due to invention developer's failure to make required fee disclosure in advertisements [Bus. & Prof. Code, §§ 22380, 22388]

§ 70:88 Defense that contract is voidable by customer due to invention developer's failure to make required disclosures in response to inquiries [Bus. & Prof. Code, §§ 22381, 22388]

§ 70:89 Defense that contract is void and unenforceable because it is not in compliance with Bus. & Prof. Code §§ 22370 to 22395 [Bus. & Prof. Code, § 22383]

§ 70:90 Defense that contract is void and unenforceable because it was entered into in reliance on willful and false, fraudulent, or misleading representation of invention developer [Bus. & Prof. Code, § 22384]

Bibliography

Volume 7 Index Tables

Table of Laws and Rules

Table of Cases

Index