

PUBLICATION UPDATE

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California Forms of Jury Instruction

Publication 138 Release 55

May 2011

HIGHLIGHTS

2010 California Legislation

- Changes from the 2010 California legislative session are incorporated throughout.

Recent Cases

- Recent cases are added throughout the publication.

New and Revised CACI

- December 2010 CACI changes are incorporated, including a new Construction Law series.

Conversion. Code Civ. Proc. § 338 has been amended to provide for a six-year statute of limitations on an action for specific recovery of a work of fine art against a museum, gallery, auctioneer, or dealer based on an unlawful taking or theft. This applies to actions commenced on or before December 31, 2017. See Ch. 21A, *Matthew Bender Conversion Instructions*, MB 21A.58[3].

Insurance. An insurer was entitled to rescission of a policy covering employment

practices liability issued to a restaurant business, based on the insured's failure to disclose facts concerning one employee's resignation because she had been sexually harassed [Carolina Cas. Ins. Co. v. RDD, Inc. (N.D. Cal. 2010) 685 F.Supp.2d 1052]. See Ch. 23A, *Matthew Bender Insurance Contract Instructions*, MB 23A.51[3][b].

The California Supreme Court held that the reasoning of *Foster-Gardner, Inc. v. National Union Fire Ins. Co.* (1998) 18 Cal. 4th 857, is inapplicable to a particular administrative law hearing that closely resembled a civil trial, with regard to insurance policies that did not define the term "suit" [Ameron Int'l Corp. v. Insurance Co. of Pa. (2010) 50 Cal.4th 1370]. See Ch. 23A, *Matthew Bender Insurance Contract Instructions*, MB 23A.171[3][a].

Employment Law. A California court of appeal has held that the discharge of an employee violates public policy if it is done to honor a noncompetition agreement that a previous employer required the employee to sign. Noncompetition agreements violate the public policy in favor of open compe-

tition and employee mobility [*see* Cal. Bus. & Prof. Code § 16600], and a discharge of the employee by a subsequent employer based on such an agreement also violates public policy. See *Silguero v. Creteguard, Inc.* (2010) 187 Cal. App. 4th 60, now covered in Ch. 24A, *Matthew Bender Employment Contract Instructions*, MB 2400A.11[3][b].

Unfair Competition. The presumption under Bus. & Prof. § 17071 (presumption of injurious intent under Unfair Practices Act) affects the burden of proof rather than the burden of persuasion [Bay Guardian Co. v. New Times Media LLC (2010) 187 Cal.App.4th 438]. See Ch. 33A, *Matthew Bender Unfair Competition Instructions*, MB 33A.07[3][a].

Construction Law. With the adoption of the CACI 4500 series on construction law (new Ch. 45), former Ch. 3I has been revised, edited, and renumbered to new Ch. 45A, *Matthew Bender Construction Contract Instructions*.

Mechanics' Lien Law. SB 189, which was enacted as part of the 2009–2010 legislative session, comprehensively revises the law governing mechanics' liens and associated construction remedies. The legislation is operative July 1, 2012, and will be fully incorporated into the text in a future release to coincide with the delayed operative date [*see* Special Alert preceding Ch. 45A, *Matthew Bender Construction Law Instructions*].

Publisher's Notes. Beginning with this release, the Publisher's Notes in each CACI chapter are being moved to a new appendix at the end of each chapter.

Finding Aids. The index and table of cases citing CACI are updated in this release.

New and Revised CACI. Release 55 of

California Forms of Jury Instruction includes these CACI changes, approved at the December 15, 2010, Judicial Council of California meeting:

- 29 new instructions
- 32 revised instructions
- 2 derived instructions
- 3 renumbered instructions
- 1 restored instruction
- 32 instructions with changed sources and authority
- All verdict forms updated with text and Direction for Use changes

A complete list of all affected instructions included in this release can be found below.

PRETRIAL

CACI No. 106. Evidence (*Revised*)

CACI No. 114. Bench Conferences and Conferences in Chambers (*New*)

CONTRACTS

CACI No. 303. Breach of Contract — Essential Factual Elements (*Revised*)

CACI No. 350. Introduction to Contract Damages (*Revised*)

CACI No. 359. Present Cash Value of Future Damages (*Revised*)

CACI No. 361. Plaintiff May Not Recover Duplicate Contract and Tort Damages (*Revised*)

NEGLIGENCE

CACI No. 406. Apportionment of Responsibility (*Sources and Authority*)

CACI No. 430. Causation: Substantial Factor (*Sources and Authority*)

CACI No. 435. Causation for Asbestos-Related Cancer Claims (*Sources and Authority*)

CACI No. 450A. Good Samaritan — Nonemergency (*Derived*)

CACI No. 450B. Affirmative Defense — Good Samaritan — Scene of Emergency (<i>Derived</i>)	gain” (<i>Revised and Restored</i>)
CACI No. 451. Express Assumption of Risk (<i>Sources and Authority</i>)	CACI No. 1245. Affirmative Defense — Product Misuse or Modification (<i>Sources and Authority</i>)
MEDICAL NEGLIGENCE	CACI No. 1246. Affirmative Defense — Design Defect — Governmental Contractor (<i>Revised</i>)
CACI No. 501. Standard of Care for Health Care Professionals (<i>Revised</i>)	CACI No. 1247. Affirmative Defense — Failure to Warn — Governmental Contractor (<i>New</i>)
PROFESSIONAL NEGLIGENCE	FALSE IMPRISONMENT
CACI No. 610. Affirmative Defense — Statute of Limitations — Attorney Malpractice — One-Year Limit (Code Civ. Proc., § 340.6) (<i>Sources and Authority</i>)	CACI No. 1400. Essential Factual Elements — No Arrest Involved (<i>Revised</i>)
CACI No. 611. Affirmative Defense — Statute of Limitations — Attorney Malpractice — Four-Year Limit (Code Civ. Proc., § 340.6) (<i>Sources and Authority</i>)	MALICIOUS PROSECUTION
PREMISES LIABILITY	CACI No. 1501. Wrongful Use of Civil Proceedings (<i>Sources and Authority</i>)
CACI No. 1009B. Liability to Employees of Independent Contractors for Unsafe Conditions — Retained Control (<i>Revised</i>)	TRESPASS
CACI No. 1009C. Liability to Employees of Independent Contractors for Unsafe Conditions — Nondelegable Duty (<i>Revised</i>)	CACI No. 2003. Damages to Timber — Willful and Malicious Misconduct (<i>Revised</i>)
CACI No. 1010. Affirmative Defense — Recreation Immunity (Civ. Code, § 846) (<i>Sources and Authority</i>)	CACI No. 2031. Damages for Annoyance and Discomfort — Trespass or Nuisance (<i>New</i>)
DANGEROUS CONDITION OF PUBLIC PROPERTY	CACI No. VF-2004. Trespass to Timber — Willful and Malicious Misconduct (Civ. Code, § 3346; Code Civ. Proc., § 733) (<i>Revised</i>)
CACI No. 1102. Definition of “Dangerous Condition” (Gov. Code, § 830(a)) (<i>Sources and Authority</i>)	CONVERSION
PRODUCTS LIABILITY	CACI No. 2100. Conversion — Essential Factual Elements (<i>Revised</i>)
CACI No. 1204. Strict Liability — Design Defect — Risk-Benefit Test — Essential Factual Elements — Shifting Burden of Proof (<i>Revised</i>)	INSURANCE LITIGATION
CACI No. 1240. Affirmative Defense to Express Warranty — Not “Basis of Bar-	CACI No. 2307. Insurance Agency Relationship Disputed (<i>Sources and Authority</i>)
	FAIR EMPLOYMENT AND HOUSING ACT
	CACI No. 2500. Disparate Treatment — Essential Factual Elements (Gov. Code, § 12940(a)) (<i>Sources and Authority</i>)

CACI No. VF-2514. Failure to Prevent Harassment, Discrimination, or Retaliation (*Revised*)

FEDERAL EMPLOYERS' LIABILITY ACT

CACI No. 2923. Borrowed Servant/Dual Employee (*Sources and Authority*)

CACI No. 2924. Status as Defendant's Employee — Subservant Company (*Sources and Authority*)

CIVIL RIGHTS

CACI No. 3001. Excessive Use of Force — Unreasonable Arrest or Other Seizure — Essential Factual Elements (42 U.S.C. § 1983) (*Sources and Authority*)

CACI No. 3007. Local Government Liability — Policy or Custom — Essential Factual Elements (*Revised*)

CACI No. 3009. Local Government Liability — Failure to Train — Essential Factual Elements (*Revised*)

CACI No. 3010. Local Government Liability — Act or Ratification by Official With Final Policy-Making Authority — Essential Factual Elements (*New*)

CACI No. 3011. Violation of Prisoner's Federal Rights — Eighth Amendment — General Conditions of Confinement Claim (42 U.S.C. § 1983) (*Revised*)

CACI No. 3012. Violation of Prisoner's Federal Rights — Eighth Amendment — Medical Care (42 U.S.C. § 1983) (*Revised*)

CACI No. 3013. Violation of Prisoner's Federal Civil Rights — Eighth Amendment — Excessive Force (*Renumbered*)

CACI No. 3015. Arrest by Peace Officer Without a Warrant — Probable Cause to Arrest (*Sources and Authority*)

CACI No. 3016. Retaliation — Essential Factual Elements (42 U.S.C. § 1983) (*Revised*)

CACI No. 3017. Supervisor Liability (*Renumbered*)

CARTWRIGHT ACT

CACI No. 3400. Horizontal and Vertical Restraints (Use for Direct Competitors) — Price Fixing — Essential Factual Elements (*Sources and Authority*)

EMINENT DOMAIN

CACI No. 3513. Goodwill (*Sources and Authority*)

VICARIOUS RESPONSIBILITY

CACI No. 3700. Introduction (*Sources and Authority*)

CACI No. 3704. Existence of "Employee" Status Disputed (*Revised*)

CACI No. 3708. Peculiar-Risk Doctrine (*Sources and Authority*)

CACI No. 3713. Nondelegable Duty (*Sources and Authority*)

CACI No. 3724. Going-and-Coming Rule (*Sources and Authority*)

EQUITABLE INDEMNITY

CACI No. 3800. Comparative Fault Between and Among Tortfeasors (*Sources and Authority*)

DAMAGES

CACI No. 3904A. Present Cash Value (*Revised and Renumbered*)

CACI No. 3904B. Use of Present-Value Tables (*New*)

CACI No. 3920. Loss of Consortium (Noneconomic Damages) (*Revised*)

CACI No. 3926. Settlement Deduction (*Revised*)

CACI No. 3933. Damages From Multiple Defendants (*New*)

CACI No. 3934. Damages on Multiple Legal Theories (*New*)

CACI No. VF-3920. Damages on Mul-

- tiple Legal Theories (*New*)
- BREACH OF FIDUCIARY DUTY**
- CACI No. 4100. “Fiduciary Duty” Explained (*Revised*)
- UNLAWFUL DETAINER**
- CACI No. 4303. Sufficiency and Service of Notice of Termination for Failure to Pay Rent (*Revised*)
- CACI No. 4304. Termination for Violation of Terms of Lease/Agreement — Essential Factual Elements (*Revised*)
- CACI No. 4305. Sufficiency and Service of Notice of Termination for Violation of Terms of Agreement (*Revised*)
- CACI No. 4307. Sufficiency and Service of Notice of Termination of Month-to-Month Tenancy (*Revised*)
- CACI No. 4308. Termination for Nuisance or Unlawful Use — Essential Factual Elements (*New*)
- CACI No. 4309. Sufficiency and Service of Notice of Termination for Nuisance or Unlawful Use (*New*)
- TRADE SECRETS**
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- CACI No. 4401. Misappropriation of Trade Secrets — Essential Factual Elements (*Revised*)
- CACI No. 4402. “Trade Secret” Defined (*Sources and Authority*)
- CACI No. 4405. Misappropriation by Acquisition (*Sources and Authority*)
- CACI No. 4406. Misappropriation by Disclosure (*Revised*)
- CACI No. 4407. Misappropriation by Use (*Revised*)
- CACI No. 4409. Remedies for Misappropriation of Trade Secrets (*Sources and Authority*)
- CACI No. 4410. Unjust Enrichment (*Sources and Authority*)
- CONSTRUCTION LAW**
- CACI No. 4500. Breach of Implied Warranty of Correctness of Plans and Specifications — Essential Factual Elements (*New*)
- CACI No. 4501. Owner’s Liability for Failing to Disclose Important Information Regarding a Construction Project — Essential Factual Elements (*New*)
- CACI No. 4502. Breach of Implied Covenant to Provide Necessary Items Within Owner’s Control — Essential Factual Elements (*New*)
- CACI No. 4510. Breach of Implied Covenant to Perform Work in a Good and Competent Manner — Essential Factual Elements (*New*)
- CACI No. 4511. Affirmative Defense — Contractor Followed Plans and Specifications (*New*)
- CACI No. 4520. Contractor’s Claim for Changed or Extra Work (*New*)
- CACI No. 4521. Owner’s Claim That Contract Procedures Regarding Change Orders Were Not Followed (*New*)
- CACI No. 4522. Waiver of Written Approval or Notice Requirements for Changed or Additional Work (*New*)
- CACI No. 4523. Contractor’s Claim for Additional Compensation — Abandonment of Contract (*New*)
- CACI No. 4524. Contractor’s Claim for Compensation Due Under Contract — Substantial Performance (*New*)
- CACI No. 4530. Owner’s Damages for Breach of Construction Contract — Work Does Not Conform to Contract (*New*)
- CACI No. 4531. Owner’s Damages for Breach of Construction Contract — Failure

to Complete Work (*New*)

CACI No. 4532. Owner's Damages for Breach of Construction Contract — Liquidated Damages Under Contract for Delay (*New*)

CACI No. 4540. Contractor's Damages for Breach of Construction Contract — Change Orders/Extra Work (*New*)

CACI No. 4541. Contractor's Damages for Breach of Construction Contract — Change Orders/Extra Work — Total Cost Recovery (*New*)

CACI No. 4542. Contractor's Damages for Abandoned Construction Contract — Quantum Meruit Recovery (*New*)

CACI No. 4543. Contractor's Damages for Breach of Construction Contract — Owner-Caused Delay or Acceleration (*New*)

CACI No. 4544. Contractor's Damages for Abandoned Construction Contract — Inefficiency Because of Owner Conduct (*New*)

CONCLUDING

CACI No. 5018. Audio or Video Recording and Transcript (*New*)

VERDICT FORMS

All verdict forms: Change to final paragraph of instruction regarding notifying court of verdict.

All verdict forms except VF-410, VF-3500–VF-3502, VF-3900–VF-3907, VF-4000, VF-4300–VF-4302, VF-5000, VF-5001: Change to Directions for Use paragraph on use of verdict form when there are multiple causes of action.

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Publication 138 Release 55

May 2011

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