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# California Forms of Jury Instruction

Publication 138

Release 76

September 2021

## HIGHLIGHTS

### Jury Instructions

- A court of appeal has held that an appellate court generally does not expect its opinions' language to be used verbatim as jury instructions. See Ch. 1A.

**Caution Required in Drafting Jury Instructions Based on Judicial Decisions.** In *People v. Southard* (2021) 62 Cal.App.5th 424, 436, 276 Cal.Rptr.3d 656, the court of appeal held that a reviewing court generally does not contemplate a subsequent transmutation of its words into jury instructions and, therefore, does not choose its words with that end in mind. See Ch. 1A, *Introduction to California Jury Instructions*, § 100A.04[5].

### Automatic Objection to Jury In-

**structions.** In *Martinez v. Rite Aid Corp.* (2021) 63 Cal.App.5th 958, 970 n.3, 2021 Cal. App. LEXIS 370, the court of appeal held that a party is deemed to have excepted to the instructions the party did not request or agree to. See Ch. 1A, *Introduction to California Jury Instructions*, § 100A.12.

**Unincorporated Associations—Right to Sue.** In *Vosburg v. County of Fresno* (2020) 54 Cal.App.5th 439, the court of appeal found that an unincorporated association was a de facto intervener in an election contest, and qualified as a successful “party” for purposes of attorney fees under Code Civ. Proc. § 1021.5. See Ch. 3C, *Matthew Bender Contract Party Instructions*, § 300C.09[3][a].

**Minors—Disaffirmance of Contract.** In *Coughenour v. Del Taco, LLC* (2020) 57 Cal.App.5th 740, the

court of appeal held that plaintiff, who signed an employment and arbitration agreement at age 16, disaffirmed the agreement within a “reasonable time” under Fam. Code § 6710 by filing a lawsuit against her employer eight months after reaching the age of majority. See Ch. 3C, *Matthew Bender Contract Party Instructions*, § 300C.71.

**Breach of Contract—Emotional Distress Damages.** In *Levy v. Only Cremations for Pets, Inc.* (2020) 57 Cal.App.5th 203, the court of appeal held that to the extent plaintiffs could allege they were third party beneficiaries of a contract between the veterinarian who arranged their pets’ private cremation and defendant, emotional distress damages were available under the exception to the general rule excluding such damages because their emotional tranquility was the contract’s essence. See Ch. 3E, *Matthew Bender Contract Damages Instructions*, § 300E.02[3][e].

**Property Subject to Conversion.** In *Holistic Supplements, LLC v. Stark* (2021) 61 Cal.App.5th 530, the court held that a city business tax registration certificate (BTRC) issued to a medical-marijuana dispensary was not property for purposes of conversion. See Ch. 21A, *Matthew Bender Conversion Instructions*, MB 2100A.70[3].

**Nature of Insurance Contract.** In *Chu v. Old Republic Home Protection Co., Inc.* (2021) 60 Cal.App.5th 346, the court held that home-protection contracts are not sufficiently analogous to insurance to sup-

port the imposition of tort liability. See Ch. 23A, *Matthew Bender Insurance Contract Instructions*, MB2300A.02[3].

**Insurer’s Duty to Settle.** In *Pinto v. Farmers Ins. Exch.* (2021) 61 Cal.App.5th 676, the court held that a plaintiff that brings a cause of action for bad-faith failure to settle must prove the element of the insurer’s unreasonableness; failure to accept a reasonable settlement is not per se unreasonable (disapproving CACI 2334). See Ch. 23A, *Matthew Bender Insurance Contract Instructions*, MB2300A.180, MB2300A.183.

**Post-Termination Earnings.** In *Martinez v. Rite Aid Corp.* (2021) 63 Cal.App.5th 958, the appellate court modified the judgment for the plaintiff to reflect a reduction of the amount of lost-earnings awarded by the amount earned following his termination, despite the dissimilarity of the subsequent employment to the prior position. See Ch. 24A, *Matthew Bender Employment Contract Instructions*, MB2400A.52[3][b].

**UVTA—Definition of Transfer.** In *Nagel v. Westen* (2021) 59 Cal.App.5th 740, the court held that the defendants’ use of proceeds from the sale of a California home to buy and improve foreign real estate may constitute a transfer under the UVTA and subject them to liability for fraudulent transfer, when the buyers of the California home had sued them for failing to disclose defects and alleged that the foreign transactions were designed to avoid collection. See Ch. 42A, *Matthew Bender Void-*

able Transfer Act Instructions, MB4200A.03[3].

**Elements of Trade Libel.** In *Muddy Waters, LLC v. Superior Court* (2021) 62 Cal.App.5th 905, the court held that the plaintiff could not state a cause of action for trade libel by alleging that the defendant was part of a conspiracy to inflate artificially the sales of a foreign company when it did not provide evidence that the defendant's actions caused any specific customers to refrain from doing business with the plaintiff. See Ch. 70A, *Matthew Bender Trade Libel or Disparagement Instructions*, MB7000A.01[3].

**New and Revised CACI.** This edition includes all the new and revised California Civil Jury Instructions approved by the Judicial Council at its May 2021 meeting, and by the Council's Rules Committee at its April 2021 meeting.

- 5 new instructions
- 2 revoked instruction
- 2 renumbered instructions
- 25 revised instructions
- 16 instructions with updated sources and authority

**Finding Aids.** The Index is updated in this release.

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# CALIFORNIA FORMS OF JURY INSTRUCTION

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Publication 138    Release 76

September 2021

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