

PUBLICATION UPDATE

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California Forms of Jury Instruction

Publication 138 Release 54 October 2010

HIGHLIGHTS

Fiduciary Duty Practice Tips

- Ch. 41 has been revised and updated with expert practice tips by Susan Azad of Latham & Watkins, Los Angeles.

Recent Cases

- Recent cases have been added throughout the publication.

New and Revised CACI

- June 2010 CACI changes are incorporated, including six new instructions, 23 revised instructions, two revoked instructions, and 27 instructions with revised sources and authority.

Fraud. Ch. 19A, *Matthew Bender Fraud and Deceit Instructions*, has been edited and improved with practice tips, expanded discussion, and recent cases.

Construction Contracts. Recovery authorized by Bus. & Prof. Code § 7031(b) may not be reduced by an unlicensed contractor’s claim of offset for materials and

services provided in connection with the unlicensed work or for work performed during a period that it held a license [*Alariste v. Cesar’s Exterior Designs Inc.* (2010) 183 Cal. App. 4th 656]. See Ch. 3I, *Matthew Bender Construction Contract Instructions*, MB 300I.59[3][e].

Conversion. In a change from the past, recent cases allow a conversion cause of action for certain types of intangible personal property [*Hernandez v. Lopez* (2009) 180 Cal.App.4th 932; see, e.g., *CRS Recovery, Inc. v. Laxton* (9th Cir. 2010) 600 F.3d 1138]. See Ch. 21A, *Matthew Bender Conversion Instructions*, MB 2100A.05[3][a].

Employment Law. A California appellate court has held that the public policy in favor of an employer’s duty to pay overtime wages protects an employee from termination in retaliation for making a good-faith but mistaken claim to overtime pay. See *Barbosa v. IMPCO Techs., Inc.* (2009) 179 Cal. App. 4th 1116, discussed in Ch. 24A, *Matthew Bender Employment Contract Instructions*, MB 2400A.11[3][e].

Insurance. Self-insurance retentions are somewhat equivalent to primary liability insurance, and policies that are subject to SIRs are “excess policies” that have no duty to indemnify until the SIR is exhausted [see *Forecast Homes, Inc. v. Steadfast Ins. Co.* (2010) 181 Cal.App.4th 1466]. The analogy between “primary” and “excess” insurance should not be carried too far; an SIR is not the same as primary insurance for all purposes [Forecast Homes, Inc. v. Steadfast Ins. Co. (2010) 181 Cal.App.4th 1466]. See Ch. 23A, *Matthew Bender Insurance Contract Instructions*, MB 2300A.06[3].

Fiduciary Duties. Ch. 41, *California Judicial Council Breach of Fiduciary Duty Instructions*, has been revised and updated with expert practice tips by Susan Azad, a litigation partner in the Los Angeles office of Latham & Watkins, LLP.

Cases Citing CACI. The table of cases citing CACI has updated in this release.

New and Revised CACI. Release 54 of California Forms of Jury Instruction includes the following CACI changes, approved at the June 24, 2010, Judicial Council of California meeting:

- 6 new instructions
- 23 revised instructions
- 2 revoked instructions
- 27 instructions with sources and authority

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

PRETRIAL

CACI No. 101. Overview of Trial (*Revised*)

CACI No. 113. Bias (*New*)

EVIDENCE

CACI No. 204. Willful Suppression of Evidence (*Sources and Authority*)

NEGLIGENCE

CACI No. 450. Good Samaritan (*Revoked*)

CACI No. 456. Defendant Estopped From Asserting Statute of Limitations Defense (*Sources and Authority*)

MEDICAL NEGLIGENCE

CACI No. 504. Standard of Care for Nurses (*Revised*)

PROFESSIONAL NEGLIGENCE

CACI No. 606. Legal Malpractice Causing Criminal Conviction — Actual Innocence (*Sources and Authority*)

CACI No. 610. Affirmative Defense — Statute of Limitations — Attorney Malpractice — One-Year Limit (Code Civ. Proc., § 340.6) (*Sources and Authority*)

CACI No. 611. Affirmative Defense — Statute of Limitations — Attorney Malpractice — Four-Year Limit (Code Civ. Proc., § 340.6) (*Sources and Authority*)

PREMISES LIABILITY

CACI No. 1001. Basic Duty of Care (*Revised*)

CACI No. 1006. Landlord’s Duty (*Revised*)

DANGEROUS CONDITION OF PUBLIC PROPERTY

CACI No.1102. Definition of “Dangerous Condition” (Gov. Code, § 830(a)) (*Revised*)

CACI No. 1123. Loss of Design Immunity (*Cornette*) (*Revised*)

CACI No. VF-1101. Dangerous Condition of Public Property — Affirmative Defense — Reasonable Act or Omission (Gov. Code, § 835.4(a)) (*Revised*)

PRODUCTS LIABILITY

CACI No. 1205. Strict Liability — Failure to Warn — Essential Factual Elements (*Sources and Authority*)

CACI No. 1222. Negligence — Manufacturer or Supplier — Duty to Warn — Essential Factual Elements (*Sources and Authority*)

CACI No. 1240. Affirmative Defense to

Express Warranty — Not “Basis of Bargain” (*Revoked*)

CACI No. 1244. Affirmative Defense — Sophisticated User (*Sources and Authority*)

CACI No. 1246. Affirmative Defense — Design Defect — Governmental Contractor (*New*)

MALICIOUS PROSECUTION

CACI No. 1501. Wrongful Use of Civil Proceedings (*Sources and Authority*)

EMOTIONAL DISTRESS

CACI No. 1621. Negligent Infliction of Emotional Distress — Bystander — Essential Factual Elements (*Sources and Authority*)

RIGHT OF PRIVACY

CACI No. 1800. Intrusion Into Private Affairs (*Revised*)

CACI No. 1801. Public Disclosure of Private Facts (*Sources and Authority*)

CACI No. 1805. Affirmative Defense to Use or Appropriation of Name or Likeness — First Amendment (*Comedy III*) (*Sources and Authority*)

CACI No. 1807. Affirmative Defense — Invasion of Privacy Justified (*Revised*)

FRAUD OR DECEIT

CACI No. 1901. Concealment (*Sources and Authority*)

CACI No. VF-1903. Negligent Misrepresentation (*Revised*)

TRESPASS

CACI No. 2003. Treble Damages — Timber (*Sources and Authority*)

CACI No. 2020. Public Nuisance — Essential Factual Elements (*Sources and Authority*)

CACI No. 2030. Affirmative Defense — Statute of Limitations — Trespass or Private Nuisance (*Sources and Authority*)

INSURANCE LITIGATION

CACI No. 2336. Bad Faith (Third Party) — Unreasonable Failure to Defend — Essen-

tial Factual Elements (*Sources and Authority*)

FAIR EMPLOYMENT AND HOUSING ACT

CACI No. 2505. Retaliation (Gov. Code, § 12940(h)) (*Revised*)

CACI No. 2508. Failure to File Timely Administrative Complaint (Gov. Code, § 12960(d)) — Plaintiff Alleges Continuing Violation (*New*)

CACI No. 2523. “Harassing Conduct” Explained (*Sources and Authority*)

CACI No. 2540. Disability Discrimination — Disparate Treatment — Essential Factual Element (*Revised*)

CACI No. 2541. Disability Discrimination — Reasonable Accommodation — Essential Factual Element (Gov. Code, § 12960(m)) (*Revised*)

CACI No. 2546. Disability Discrimination — Reasonable Accommodation — Failure to Engage in Interactive Process (Gov. Code, § 12960(n)) (*Sources and Authority*)

CACI No. VF-2508. Disability Discrimination — Disparate Treatment (*Revised*)

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

CIVIL RIGHTS

CACI No. 3000. Violation of Federal Civil Rights — In General — Essential Factual Elements (42 U.S.C. § 1983) (*Sources and Authority*)

CACI No. 3010. Violation of Prisoner’s Federal Civil Rights — Eighth Amendment — Excessive Force (42 U.S.C. § 1983) (*Revised*)

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

ELDER ABUSE AND DEPENDENT ADULT CIVIL PROTECTION ACT

CACI No. 3100. Financial Abuse — Essential Factual Elements (Welf. & Inst. Code,

§ 15610.30) (*Revised*)

**SONG-BEVERLY CONSUMER
WARRANTY ACT**

CACI No. 3201. Failure to Promptly Purchase or Replace New Motor Vehicle After Reasonable Number of Repair Opportunities — Essential Factual Elements (Civ. Code, § 1793.2(d)) (*Sources and Authority*)

CACI No. 3212. Duration of Implied Warranty (*Sources and Authority*)

CACI No. 3213. Affirmative Defense — Statute of Limitations (U. Com. Code, § 2725) (*New*)

CACI No. 3221. Affirmative Defense — Disclaimer of Implied Warranties (*Revised*)

CACI No. 3241. Restitution From Manufacturer — New Motor Vehicle (*Sources and Authority*)

CACI No. 3244. Civil Penalty — Willful Violation (Civ. Code, § 1794(c)) (*Sources and Authority*)

VICARIOUS LIABILITY

CACI No. 3713. Nondelegable Duty (*Revised*)

CACI No. 3721. Scope of Employment —

Peace Officer's Misuse of Authority (*Sources and Authority*)

DAMAGES

CACI No. 3903F. Damage to Real Property (Economic Damage) (*Sources and Authority*)

CACI No. 3930. Mitigation of Damages (Personal Injury) (*Sources and Authority*)

BREACH OF FIDUCIARY DUTY

CACI No. 4102. Duty of Undivided Loyalty — Essential Factual Elements (*Revised*)

UNLAWFUL DETAINER

CACI No. 4304. Termination for Violation of Terms of Lease/Agreement — Essential Factual Elements (*Revised*)

CACI No. 4320. Affirmative Defense — Implied Warranty of Habitability (*Revised*)

CACI No. 4321. Affirmative Defense — Retaliatory Eviction — Tenant's Complaint (Civ. Code, § 1942.5) (*Revised*)

CACI No. 4324. Affirmative Defense — Waiver by Acceptance of Rent (*Revised*)

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Publication 138 Release 54

October 2010

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