

CAL. JUR. 2d

D 971.2
14

8692622

外文书库

CALIFORNIA JURISPRUDENCE

SECOND EDITION

A COMPLETE AND MODERN
STATEMENT OF THE LAW
AND PRACTICE OF THE
STATE OF CALIFORNIA

Volume 14

COVENANTS, CONDITIONS, AND RESTRICTIONS
TO
DAMAGES §§ 1-200



By the Editorial Staff of the Publisher

BANCROFT-WHITNEY COMPANY
San Francisco
1954



Copyright 1954

by

BANCROFT-WHITNEY COMPANY

CALIFORNIA JURISPRUDENCE
SECOND EDITION

8055008

CITE BY TITLE AND SECTION

e. g., 14 Cal. Jur. 2d, COVENANTS, ETC.

§ _____

TABLE OF ABBREVIATIONS

AC	Advance California Reports
ACA	Advance California Appellate Reports
Adm C	Administrative Code
Ag C	Agricultural Code
ALR	American Law Reports Annotated
ALR2d	American Law Reports Annotated, Second Series
Am Jur	American Jurisprudence
Am Jur Forms	American Jurisprudence Legal Forms, Annotated
Anno	Annotation
Bank C	Banking Code
B & P C	Business and Professions Code
C	California Reports
C2d	California Reports, Second Series
CA	California Appellate Reports
CA2d	California Appellate Reports, Second Series
CC	Civil Code
CCP	Code of Civil Procedure
ch	Chapter
CLR	California Law Review
Cof	Coffey
Const Art I § 1	Article and section California Constitution
Corp C	Corporations Code
CU	California Unreported
Deering's Gen Laws	Deering's California General Laws
Ed C	Education Code
Elec C	Elections Code
F	Federal Reporter
F2d	Federal Reporter, Second Series
F Supp	Federal Supplement
FRD	Federal Rules Decisions
F & G C	Fish and Game Code
Fin C	Financial Code
Gov C	Government Code
H & N C	Harbors and Navigation Code
H & S C	Health and Safety Code
Hast L J	Hastings Law Journal
Ins C	Insurance Code
Lab C	Labor Code
L ed	Lawyers' Edition U.S. Supreme Court Reports
Mil & Vet C	Military and Veterans Code

Ops Atty Gen	Opinions of the Attorney General
p	Page
P	Pacific Reporter
P2d	Pacific Reporter, Second Series
Pen C	Penal Code
Pol C	Political Code
Prob C	Probate Code
Pub Res C	Public Resources Code
Pub U C	Public Utilities Code
Rev & Tax C	Revenue and Taxation Code
SCLR	Southern California Law Review
S Ct	Supreme Court Reporter
Stan LR	Stanford Law Review
St B J	State Bar Journal
Sts & H C	Streets and Highways Code
subd	Subdivision
Unempl Ins C	Unemployment Insurance Code
US	United States Reports
US Const	United States Constitution
Veh C	Vehicle Code
W & I C	Welfare and Institutions Code
Wat C	Water Code

TABLE OF PARALLEL REFERENCES

This table shows where the subject-matter of the various sections in CALIFORNIA JURISPRUDENCE is treated in CALIFORNIA JURISPRUDENCE, 2d. The figures in parenthesis are page numbers of CALIFORNIA JURISPRUDENCE. Transfers of subject-matter to other articles are so indicated.

The reader should consult the indexes of CALIFORNIA JURISPRUDENCE, 2d, for detail and for new matter not appearing in CALIFORNIA JURISPRUDENCE.

COVENANTS, CONDITIONS, AND RESTRICTIONS

(vol. 7, pp. 708-786)

CAL JUR §§	CAL JUR 2d §§	CAL JUR §§	CAL JUR 2d §§
1 (710)	1	20 (734)	11
2, 3 (711)	2	21 (735)	18
4 (713)	4	22 (737)	12, 13
4a (TYS 525) ...	3	23 (738)	24
5 (715)	5	24-28 (739-747) ..	CONTRACTS
6 (716)	6	29, 30 (748)	11
7 (717)	7	31 (750)	28
8 (719)	8	32 (752)	29-31
10 (720)	9	33 (755)	32-35
11 (721)	11	34 (756)	36
12 (721)	14	35 (757)	38
13 (724)	16, 17	36 (757)	37
14 (727)	CONTRACTS	37-39 (758-761) ..	39-42
15, 16 (728, 729) ..	12, 13	40-49 (762-773) ..	31-43
17 (730)	22, 23	50-52 (774-777) ..	44, 45, 47
18 (731)	31	53-59 (778-785) ..	46-55
19 (732)	88, 89		

CREDITORS' SUITS

(vol. 7, pp. 787-808)

CAL JUR §§	CAL JUR 2d §§	CAL JUR §§	CAL JUR 2d §§
1, 2 (788)	1, 2	7, 8 (795, 797) ..	6
3, 4 (789, 790) ...	3	9 (798)	7
5 (791)	4	10 (800)	8
6 (793)	5	11 (802)	9

CREDITORS' SUITS—Continued

(vol. 7, pp. 787-808)—Continued

CAL JUR §§	CAL JUR 2d §§	CAL JUR §§	CAL JUR 2d §§
12 (803)	10	14 (804)	12
13 (803)	11	15 (807)	13

CRIMINAL LAW

(vol. 7, pp. 809-1004; vol. 8, pp. 1-678)

CAL JUR §§	CAL JUR 2d §§	CAL JUR §§	CAL JUR 2d §§
1, 2 (835, 837)	1, 2	69-72 (922-925)	202
3 (838)	3	73 (926)	130
4 (840)	15	74 (927)	133-136
5-10 (841-848)	13, 14, 100	75 (928)	142-145
11-19 (850-860)	53-60, 85-90, 101-103, 210- 213, 217-223	76 (930)	139, 140
20 (861)	61	77 (931)	141
21 (862)	65	78, 79 (932, 934)	130
22 (863)	68	80-82 (936-938)	121-124
23 (864)	66, 67	83 (939)	142-145
24 (866)	73	84 (940)	146-166
25 (867)	74	85, 86 (941, 942)	173
26 (868)	75	87 (943)	183
27, 28 (870, 872)	16-19	88, 89 (944, 945)	193
29 (873)	20	90 (946)	191
30, 31 (874, 875)	26	91, 92 (947, 948)	186, 187
32 (877)	27-32	94 (951)	188
33 (879)	34	95 (952)	189
34, 35 (881, 883)	200-204, 214- 216	96 (954)	190
36 (884)	205-209	97-102 (955-962)	179-182
37 (886)	233-238	103-124 (963-989) ARREST	
38 (886)	40	125-128 (989-991)	239-241
39 (888)	42-44	129 (993)	242
40, 41 (891, 892)	46	130 (993)	243
42, 43 (893, 894)	130	131 (994)	244
45-49 (897-903)	97	132 (995)	195-197
50 (904)	99	133, 134 (997, 998)	245, 248
51-56 (906-910)	97	135 (999)	258-264
57-59 (911-913)	98	135a-135m (TYS	
61 (915)	51	603-616)	249-257
63-68 (916-921)	51, 248; VENUE	138-141 (21)	EVIDENCE
		142 (23)	167-172
		143 (24)	70-72
		144 (25)	86

CRIMINAL LAW—Continued

(vol. 7, pp. 809-1004; vol. 8, pp. 1-678)—Continued

CAL JUR §§	CAL JUR 2d §§	CAL JUR §§	CAL JUR 2d §§
151 (33)	87, 88	468-470 (448-451)	265
152 (35)	89	471-474 (453-456)	JUDGMENTS
153-157 (36-42) ..	85-90	475-493 (457-477)	265-282
161 (49)	200, 201	494, 495 (478, 479)	JUDGMENTS
162 (50)	71	496 (480), 496a- 137, 141, 166;	
163-197 (53-103) ..	EVIDENCE	496g (TYS 889- 896)	CORAM NOBIS
199-207 (106-118) ..	131	497, 498 (482, 483)	265-269
208-262 (119-187) ..	EVIDENCE	499-504 (484-488)	270
263 (188)	71	505-613 (489-639)	APPEAL AND ER- ROR
264-266 (190, 191) ..	EVIDENCE	614-617 (641-646)	HABITUAL CRIMINALS AND SUBSEQUENT OFFENDERS
267-269 (192-194) ..	TRIAL	618 (649)	265
270-273 (195-199) ..	250-257	619 (650)	267
274-280 (199-207) ..	125-129	620-624 (652-657)	271-275
281-284 (209-212) ..	TRIAL	626 (659)	224-232
285-290 (213-220) ..	WITNESSES		
291-298 (221-228) ..	TRIAL		
299 (229)	117		
300-329 (229-268) ..	EVIDENCE; TRIAL		
330 (268)	115		
331-467 (270-447) ..	EVIDENCE; JURY; TRIAL; WITNESSES		

CROPS

(vol. 8, pp. 679-724)

CAL JUR §§	CAL JUR 2d §§	CAL JUR §§	CAL JUR 2d §§
1 (680)	1	22 (705)	19, 20
2 (682)	2	23, 24 (706, 708) ..	31
3 (682)	3	25, 26 (709, 710) ..	32
4, 5 (685)	4	27 (711)	33
6 (686)	6-8	28 (713)	34
7, 8 (688, 691) ..	17, 18	29 (714)	31
9-13 (691-696) ..	9-11	30 (715)	38-41
14-18 (697-701) ..	12-16	31 (716)	42
19 (702)	5	32 (717)	43-46
19.1 (TYS 5)	19	33, 34 (719, 721) ..	47
20 (703)	23	35 (722)	48
21 (704)	24	36 (723)	37

DAMAGES

(vol. 8, pp. 725-918)

CAL JUR §§	CAL JUR 2d §§	CAL JUR §§	CAL JUR 2d §§
1 (730)	2	47 (788)	114
2 (731)	3, 4	48 (789)	76-78
3 (732)	1	49 (791)	79
4 (734)	5	50 (792)	80, 81
5 (735)	6	51, 52 (794, 795) ..	86
6 (735)	8	53 (796)	88
7 (736)	9	54 (797)	89
8 (737)	10	55 (798)	94
9 (738)	12	56 (800)	99, 100
10, 11 (738, 739) ..	11	57 (801)	103
12 (740)	12	58-64 (801-806);	
13 (742)	13	64.1 (TYS 27) ..	104-110
14 (743)	16	65 (808)	150
15, 16 (744, 745) ..	17, 18	66 (809)	124
17 (746)	17	67 (810)	150
18 (748)	21	68 (810)	151
19-21 (748-751) ..	23-27	69 (811)	153, 154
22 (754)	62, 73, 74	70 (813)	152
23 (755)	71, 72	71, 72 (813, 814) ..	156
24 (757)	68, 69, 75	73 (816)	159
25 (759)	30	74 (817)	168
26 (760)	31	75 (818)	167
27 (761)	28, 29	76 (819)	165
28 (762)	32	77, 78 (820, 821) ..	131
29 (764)	33	79, 80 (823, 824) ..	126-129
30 (765)	34	81 (825)	135
31 (766)	45	82 (826)	132
32 (767)	46	83 (828)	133, 134
33 (769)	43, 44	84 (829)	147
34 (770)	47	85 (830)	148
35 (772)	41	86 (831)	144
36 (773)	39, 40, 55-57	87-105 (833-860) Volume 15	
37 (775)	57	106 (861)	173
38 (777)	39, 55	107 (864)	175
39 (778)	37	108 (865)	176-178
40 (778)	40, 57	109 (866)	182
41 (779)	111, 114	110 (867)	187, 188
42 (781)	115	111 (868)	193
43, 44 (782, 783) ..	112	112 (870)	190
45 (785)	117	113 (871)	200
46 (787)	118	114 (873)	180

DAMAGES—Continued
(vol. 8, pp. 725-918)—Continued

CAL JUR §§	CAL JUR 2d §§	CAL JUR §§	CAL JUR 2d §§
117 (875)	196	118-122 (76-881) .	TRIAL
115 (873)	WRONGFUL	123-130 (882-894)	PLEADING
	DEATH	131-146 (895-915)	EVIDENCE
116, 117 (874, 875)	196		

(TABLE CONTINUED IN VOLUME 15)

•

TITLES IN THIS VOLUME

(Italics indicate cross-reference titles)

	PAGE
COVENANTS, CONDITIONS, AND RESTRICTIONS	1
<i>Covenant to Stand Seised</i>	152
<i>Coverture</i>	152
<i>Credit Insurance</i>	152
<i>Creditors' Bill</i>	152
CREDITORS' SUITS	153
<i>Credit Unions</i>	169
<i>Cremation</i>	169
<i>Crime against Nature</i>	169
<i>Criminal Conspiracy</i>	169
<i>Criminal Contempt</i>	169
<i>Criminal Conversation</i>	169
<i>Criminal Identification and Investigation</i>	169
CRIMINAL LAW	170
<i>Crimination</i>	559
CROPS	560
<i>Cross Action</i>	623
<i>Cross Complaint</i>	623
<i>Cross Demand</i>	623
<i>Cross-Examination</i>	623
<i>Crossings</i>	623
<i>Cruel and Unusual Punishment</i>	623
<i>Cruelty</i>	623
<i>Culverts</i>	624
<i>Cumulative Remedies</i>	624
<i>Curative Acts</i>	624
<i>Currency</i>	624
<i>Cursing</i>	624
<i>Curtesy</i>	624
<i>Custodia Legis</i>	625
<i>Custody</i>	625
<i>Custom</i>	625

	PAGE
<i>Cy Pres</i>	625
<i>Dairies</i>	625
<i>Damage Feasant</i>	625
DAMAGES (§§ 1-200)	626

COVENANTS, CONDITIONS, AND RESTRICTIONS

I. IN GENERAL (§§ 1, 2).

II. COVENANTS (§§ 3-55).

A. GENERALLY (§§ 3-10).

B. COVENANTS RUNNING WITH THE LAND (§§ 11-27).

C. COVENANTS OF TITLE (§§ 28-45).

D. REMEDIES (§§ 46-55).

III. CONDITIONS (§§ 56-78).

A. GENERALLY (§§ 56-73).

B. ENFORCEMENT (§§ 74-78).

IV. RESTRICTIVE COVENANTS AND CONDITIONS (§§ 79-131).

A. CONSTRUCTION AND VALIDITY (§§ 79-97).

B. BY AND AGAINST WHOM ENFORCEABLE (§§ 98-111).

C. SUBSTANTIAL COMPLIANCE (§ 112).

D. EFFECT OF CHANGED CONDITIONS (§§ 113-119).

E. WAIVER AND LACHES (§§ 120-125).

F. REMEDIES (§§ 126-131).

I. IN GENERAL.

§ 1. Scope.

§ 2. Definitions and Distinctions.

II. COVENANTS.

A. GENERALLY.

§ 3. In General.

§ 4. Creation.

§ 5. Express and Implied.

§ 6. Joint and Several.

§ 7. Dependent and Independent.

§ 8. Covenants in Deed Poll.

§ 9. Real and Personal Covenants.

§ 10. Law Governing.

B. COVENANTS RUNNING WITH THE LAND.

§ 11. In General.

§ 12. By and against Whom Enforceable.

§ 13. — Liability of Original Covenantor; Privity of Contract.

II. B.—Continued

- § 14. When Created; Benefit.
- § 15. — Time for Determining Benefit.
- § 16. — Privity of Estate — Covenantor.
- § 17. — — Covenantee.
- § 18. — Estate to Which Annexed.
- § 19. — Lands Affected.
- § 20. — Property Not in Existence; Future Improvements and Construction.
- § 21. Effect of Agreement by Original Parties.
- § 22. Covenants in Leases.
- § 23. — Prohibiting Assignment.
- § 24. Apportionment of Liability.
- § 25. Enforcement in Equity.
- § 26. — When Permitted.
- § 27. As Creating a Charge or Lien.

C. COVENANTS OF TITLE.

- § 28. In General.
- § 29. When Implied.
- § 30. — Against Prior Conveyance.
- § 31. — — Breach.
- § 32. Against Encumbrances.
- § 33. — When Implied.
- § 34. — — Judicial Sales.
- § 35. — What Constitutes Encumbrance.
- § 36. Of Seisin.
- § 37. For Further Assurance.
- § 38. Of Quiet Enjoyment.
- § 39. Of Warranty.
- § 40. Voucher to Warranty.
- § 41. Breach of Covenant of Warranty or of Quiet Enjoyment.
- § 42. Effect of Covenant of Warranty on After-Acquired Title.
- § 43. As Covenants Running with the Land.
- § 44. Damages.
- § 45. — For Breach of Covenant against Encumbrances.

D. REMEDIES.

- § 46. In General.
- § 47. Action for Damages.
- § 48. Existence of Covenants as Affecting Remedy.
- § 49. Relief in Equity.
- § 50. As Affected by Plaintiff's Failure to Perform.
- § 51. As Affected by Assignment — By Lessee.

II. D.—Continued

- § 52. — By Lessor.
- § 53. Statute of Limitations.
- § 54. — As Barring Matter in Amended Complaint.
- § 55. Venue.

III. CONDITIONS.**A. GENERALLY.**

- § 56. In General.
- § 57. Estates on Condition as Distinguished from Future Estates.
- § 58. Rules of Construction.
- § 59. Creation.
- § 60. — Words Used.
- § 61. — Forfeiture and Re-entry Clauses.
- § 62. — As Affected by Consideration.
- § 63. — Conditions Not Contained in Granting Clause.
- § 64. — Conditions Not Contained in Deed.
- § 65. Necessity for Supporting Estate.
- § 66. Conditions Precedent.
- § 67. — Distinguished from Conditions Subsequent.
- § 68. — "Provisos."
- § 69. Conditions Concurrent.
- § 70. Conditions Subsequent.
- § 71. — Successive Grantees.
- § 72. Unlawful Conditions.
- § 73. Conditions Impossible of Performance.

B. ENFORCEMENT.

- § 74. In General; Forfeiture and Re-entry.
- § 75. When Declaration of Forfeiture Must Be Made.
- § 76. Reconveyance and Reversion.
- § 77. — Partial Reversion.
- § 78. Transfer of Right of Re-entry.

IV. RESTRICTIVE COVENANTS AND CONDITIONS.**A. CONSTRUCTION AND VALIDITY.**

- § 79. In General.
- § 80. Construing Grantor's Intent.
- § 81. Requiring Particular Use.
- § 82. Prohibiting Particular Use.
- § 83. Land Granted for Public Purpose.
- § 84. Prohibiting Commercial Use in Residential Area.
- § 85. Private or "Single-Family" Residence Restrictions.
- § 86. Size and Value of Residence.
- § 87. Outbuildings and Other Structures.