

STUDENT EDITION

ENFORCING JUDGMENTS & DEBTS

Judge Alan M. Ahart

Chapter 6
Tables & Index

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California Practice Guide

ENFORCING JUDGMENTS AND DEBTS

Chapter 6
Tables & Index

JUDGE ALAN M. AHART
U.S. Bankruptcy Court
Central Dist., Calif.

1995

CONTINUING LEGAL EDUCATION



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TABLE OF CONTENTS

See front of each chapter for detailed summaries of contents

1. Preliminary Considerations	1-1
2. Liability for Unfair Debt Collection Practices	2-1
3. Prejudgment Collection	3-1
4. Provisional Remedies	4-1
5. Bankruptcy Considerations.....	5-1
6. Enforcement of Judgments	6-1
Tables: Cases, Statutes and Court Rules	Tables-1
Index	Index-1

CHAPTER 6

ENFORCEMENT OF JUDGMENTS

CONTENTS

See front of each chapter for detailed summaries of contents

	Page
A. PRELIMINARY CONSIDERATIONS.....	6A-1
B. JUDGMENT LIENS ON REAL PROPERTY	6B-1
C. JUDGMENT LIENS ON PERSONAL PROPERTY ("JLPP")	6C-1
D. ENFORCEMENT OF JUDGMENT BY WRIT OF EXECUTION	6D-1
E. PROPERTY EXEMPT FROM ENFORCEMENT OF MONEY JUDGMENTS	6E-1
F. WAGE GARNISHMENT	6F-1
G. SPECIAL ENFORCEMENT PROCEDURES	6G-1
H. THIRD PARTY CLAIMS	6H-1
I. ENFORCEMENT OF NONMONEY JUDGMENTS	6I-1
J. ENFORCEMENT OF SISTER STATE AND FOREIGN JUDGMENTS	6J-1
K. SATISFACTION OF JUDGMENT	6K-1
ENFORCEMENT OF JUDGMENT FORMS	FORMS-1

CHAPTER 6A

PRELIMINARY CONSIDERATIONS

CONTENTS

	Page
1. Enforcement of Judgments Law (“EJL”)—	
Background	6A-1
a. EJL statutes	6A-1
(1) California Law Revision Commission	
comments	6A-1
(2) Compare—enforcing federal court judgments	6A-1
(a) Money judgments	6A-1
1) Exception—bankruptcy trustee not	
subject to garnishment	6A-2
2) Comment—nondischargeable	
judgments against bankruptcy debtor ...	6A-2
(b) Nonmoney judgments	6A-2
b. Transitional provisions	6A-2
c. Severability	6A-3
2. “Entry” of Judgment	6A-3
3. Amount Recoverable Under Judgment	6A-4
a. Principal amount	6A-4
b. Interest	6A-4
(1) Rate	6A-4
(a) State judgments exception	6A-4
(b) Problem as to effective date	6A-4
(c) 10% rate not retroactive	6A-5
(d) Compare—federal court judgments	6A-5
(2) Computation of interest on judgment	6A-5
(a) When interest commences	6A-5
1) Generally, no compounded interest	6A-6
2) Compare—renewal of judgment	6A-6
(b) When interest ceases	6A-6
1) Judgment satisfied pursuant to	
execution	6A-6
a) Lump sum	6A-6
b) Earnings withholding order	6A-6
c) Other collection methods	6A-7
d) Compare—minimal interest	
uncollected	6A-7

2) Judgment otherwise satisfied	6A-7
3) Judgment partially satisfied	6A-7
a) Payments applied to accrued interest first	6A-7
(c) Levying officer must compute	6A-7
1) Comment	6A-8
2) Collection	6A-8
(3) Judgments rendered in other states	6A-8
(4) Compare—prejudgment interest	6A-8
(a) Liquidated contract claims	6A-8
(b) Personal injury claims (rejected 998 offers)	6A-9
1) Duplicative 10% postjudgment interest not recoverable	6A-9
c. Costs of suit and enforcement of judgment	6A-9
(1) Recoverable enforcement costs	6A-9
(a) As a matter of right	6A-9
(b) Other “reasonable and necessary” enforcement expenses—discretionary	6A-10
(c) Enforcement of unlawful detainer judgment—eviction costs	6A-10
(d) Attorney fees generally not recoverable	6A-11
1) Recovery under EJI	6A-11
2) Recovery under other statutes	6A-12
a) Family Code	6A-12
b) Debtor’s “improper” or “frivolous” litigation tactics	6A-12
3) Compare—recovery of attorney fees incurred to obtain judgment	6A-12
(2) Procedure for claiming enforcement costs	6A-13
(a) Memorandum of Costs for §685.070 costs	6A-13
1) Contents	6A-13
2) Memorandum of Costs filed simultaneously with execution writ application (levy up to \$100)	6A-13
3) Judgment debtor may contest by motion to tax	6A-14
4) Otherwise costs automatically allowed	6A-14
(b) Motion for court order allowing “reasonable and necessary” costs	6A-14
(c) Supplemental Costs Memorandum for postjudgment eviction costs	6A-15
(3) Interest on costs	6A-15
(4) Adding costs to outstanding writ or earnings withholding order	6A-15
(a) Added to subsequent writ	6A-16
(b) Compare—maximum \$100 costs “as of right” initially included in writ	6A-16

d.	Crediting amount recovered under judgment	6A-16
(1)	Compare—support judgments	6A-16
4.	Period During Which Judgment Enforceable;	
	Renewal Procedures	6A-17
a.	Commencement of enforcement period	6A-17
(1)	Municipal and superior court judgments	6A-17
(2)	Small claims judgments	6A-17
(3)	Bail bond forfeiture judgments	6A-17
b.	Ten-year enforcement period	6A-18
(1)	No extensions	6A-18
(2)	Exceptions	6A-18
c.	Renewal of judgment	6A-18
(1)	Renewal application procedure	6A-19
(a)	Time for filing application	6A-19
1)	Judgments generally	6A-19
2)	Nonsupport installment judgments	6A-19
a)	Not previously renewed	6A-19
b)	Previously renewed	6A-19
(b)	Contents of application for renewal	6A-21
1)	Names and addresses	6A-21
2)	Case number, etc.	6A-21
3)	Money judgment as renewed	6A-21
a)	Multiple debtors	6A-21
4)	Judgment for possession or sale	6A-21
(2)	Renewal entered when application filed	6A-22
(3)	Notice to judgment debtor required	6A-22
(a)	Contents of notice—mandatory form	6A-22
(b)	Effect of failure to serve debtor	6A-22
(4)	Vacating renewed judgment	6A-22
(a)	Grounds	6A-23
(b)	Service of motion	6A-23
(5)	Effect of renewed judgment	6A-23
(a)	Amount due	6A-23
(b)	Enforcement period	6A-23
1)	Judgments generally	6A-23
2)	Installment judgments	6A-23
(c)	As extending judgment liens	6A-23
1)	As to real property interests transferred before judgment renewed	6A-23
2)	Judgment liens for certain installment judgments	6A-24
(d)	As extending other liens	6A-25
(e)	As extending other enforcement procedures	6A-25
(6)	Effect of stay of enforcement	6A-25
(a)	Bankruptcy stays	6A-25
d.	Independent action on judgment	6A-25
(1)	Personal service required	6A-26
(2)	Ten-year statute of limitations	6A-26

(a) Calculating 10-year period	6A-26
1) Commences only when judgment final	6A-26
2) Tolloed when debtor outside California	6A-26
a) Constitutional limitation— defendants engaged in interstate commerce	6A-27
(b) Compare—10-year enforcement period	6A-27
(c) Laches no defense	6A-28
5. Federal FDCEA Venue Restrictions; Consumer Debts	6A-28
6. Service of Writs, Notices and Other Papers in Enforcement Proceedings	6A-28
a. On whom service to be made	6A-28
(1) Judgment creditor's attorney	6A-28
(2) Judgment debtor	6A-28
(a) Exception where request and consent filed	6A-29
b. Manner of service	6A-29
(1) Upon attorney	6A-29
(a) Requirements for service by mail	6A-29
(b) Service by mail extends time for responsive acts	6A-30
(c) Notation of date and place of mailing	6A-30
(2) Upon party	6A-30
(a) Exception—levy on third person	6A-31
(b) Exception—service on financial institutions, etc.	6A-31
1) "Other person in charge"	6A-31
(c) Where levying officer required to effect service	6A-31
c. Proof of service of motions, etc.	6A-32
(1) Proof of personal service	6A-32
(2) Proof of mail service	6A-32
(3) Proof of other methods of service	6A-32
(4) Other means of proving service	6A-32
7. Property Subject to Enforcement Procedures	6A-32
a. Exempt property	6A-32
b. Community property	6A-33
c. Nonassignable interests	6A-26
(1) Ordinarily exempt from enforcement	6A-26
(a) Personal injury claims	6A-33
(b) Legal malpractice claims	6A-33
(c) Licenses	6A-33
(d) Leasehold interests	6A-34
1) Compare—assignable interests	6A-34

A. PRELIMINARY CONSIDERATIONS

1. [6:1] **Enforcement of Judgments Law (“EJL”)—Background:** The manner and extent to which civil judgments are enforceable are subject to detailed statutory provisions. Until recently, the statutes were rather disorganized, and were scattered throughout the Code of Civil Procedure as well as other Codes. Many of the statutes dated back to 1872, when the Code of Civil Procedure was first enacted. Piecemeal amendments over the years resulted in complex, duplicative and sometimes inconsistent provisions.

Recognizing these shortcomings, the California Law Revision Commission, in 1980, published tentative recommendations for a proposed Enforcement of Judgments Law (see 15 Cal. L.Rev. Comm’n Rep. 2001 (1980)). After numerous legislative revisions, the Enforcement of Judgments Law (“EJL”) was finally adopted in 1982, and took effect *July 1, 1983* (see CCP §694.010). [See *Evans v. Paye* (1995) 32 CA4th 265, 37 CR2d 915, 921 (citing text)]

- a. [6:2] **EJL statutes:** The EJL, appears in CCP §680.010 through §724.260. It is a comprehensive statutory scheme governing the enforcement of all civil judgments in California.

- (1) [6:3] **California Law Revision Commission comments:** The California Law Revision Commission published official comments on the EJL (see “1982 Creditors’ Remedies Legislation,” 16 Cal. L.Rev. Comm’n Rep. 1000 (1982)). Some of these comments do not accurately reflect the code statutes ultimately adopted; nevertheless, the official comments provide valuable insight necessary to a full understanding of the EJL. (They are reprinted after the applicable Code sections in West’s Annotated Code of Civil Procedure.)

- (2) **Compare—enforcing federal court judgments**

- (a) [6:3.1] **Money judgments:** A federal district or bankruptcy court *money* judgment is enforced by writ of execution unless the court directs otherwise. [FRCP 69(a); Bank. Rule 7069; see also *Shuffler v. Heritage Bank* (9th Cir. 1983) 720 F2d 1141, 1148—money judgments should be enforced by writ of execution except as otherwise warranted under established principles]

State EJL procedures are followed when enforcing a money judgment rendered by a federal court sit-

ting in California (except to the extent a federal statute applies or enforcement is stayed under FRCP 62). Judgment creditors and their successors of record also may proceed under FRCP 26-37 to obtain discovery in aid of the judgment and/or execution. [FRCP 62, 69(A); Bank. Rules 7062, 7069; *United States v. McWhirter* (5th Cir. 1967) 376 F2d 102, 106; but see U.S. Dist.Ct. Cent. Dist. Local Rule 19.4—examination of persons pursuant to FRCP 69 and 64 must be before district court judge or magistrate]

1) [6:3.1a] **Exception—bankruptcy trustee not subject to garnishment:** A trustee in bankruptcy is *not* subject to garnishment by the holder of a federal judgment against a creditor of the bankruptcy estate. Instead, the judgment creditor must substitute its claim for the creditor's claim against the bankruptcy estate pursuant to FRBP 3001. [*In re Ocean Downs Racing Ass'n, Inc.* (BC D MD 1993) 164 BR 249, 253-255]

2) [6:3.1b] **Comment—nondischargeable judgments against bankruptcy debtor:** A creditor who obtains a nondischargeable judgment against a debtor in the bankruptcy court should *not* be allowed to utilize state EJP procedures to enforce the judgment *against property of the bankruptcy estate*. Reason: The creditor is treated like any other estate creditor who must file a *claim* and wait for distribution according to his or her priority.

(b) [6:3.2] **Nonmoney judgments:** *Nonmoney* judgments rendered in actions where federal jurisdiction is *not* based on diversity of citizenship are not enforceable under state EJP procedures. [See *Hamilton v. MacDonald* (9th Cir. 1974) 503 F2d 1138, 1149; *NLRB v. Trans Ocean Export Pckg., Inc.* (9th Cir. 1973) 473 F2d 612] Instead, FRCP 70 governs district court judgments (or bankruptcy court judgments rendered in adversary proceedings) Ordering performance of specific acts—including directing a party to execute a document or to deliver a deed, and judgments for delivering possession of property. [See FRCP 70; Bank. Rule 7070; *Hamilton v. MacDonald*, *supra*, 503 F2d 1138 at 1148]

b. [6:4] **Transitional provisions:** The EJP contains transitional provisions governing which rules apply to judgments

in effect or enforcement procedures that were pending when the Law took effect July 1, 1983. The following are of particular importance:

- (1) [6:5] The E JL generally applies to all proceedings commenced before, on or after July 1, 1983, unless the court determines that application of a particular provision would “substantially interfere with the effective conduct of the proceedings or the rights of the parties or other interested persons.” [CCP §694.020]
- (2) [6:6] The procedures for sale and delivery of possession of property *levied upon* before July 1, 1983 are governed by prior law. [CCP §694.040] (Exception: The manner of payment at an execution sale held after July 1, 1983 is governed by the E JL; see CCP §701.590, ¶6:694 ff.)
- (3) [6:7] The law in effect at time of levy determines whether there is a statutory right of *redemption* from execution sale of *real property* interests, unless the judgment creditor and judgment debtor otherwise agree in writing. [CCP §694.050] (The statutory right of redemption is repealed for execution sales of real property where the levy occurs after July 1, 1983; ¶6:716.)
- (4) [6:8] Likewise, where property is levied upon or otherwise subjected to an enforcement lien before July 1, 1983, the law in effect at the time of levy or enforcement governs which *exemptions* can be claimed. [CCP §694.080]
- (5) [6:9] *Declared homesteads* executed prior to July 1, 1983, are effective, but only to the extent provided under the E JL (CCP §§704.910, 704.990; ¶6:1036 ff.). [CCP §694.090]
- (6) [6:10] Demands for *third party claims* served before July 1, 1983 and third party claims *filed* before July 1, 1983 are governed by prior law. [CCP §694.070]
- c. [6:11] **Severability:** The E JL generally provides that if any part or provision of the Law is held invalid, the balance shall remain in effect. [CCP §681.050]

[6:11.1-11.4] *Reserved.*

2. [6:11.5] **“Entry” of Judgment:** Judgments are enforceable under the E JL generally upon “entry.” [CCP §683.010]

In counties that maintain judgment books, judgments are entered when noted in the judgment book. In counties that do *not* maintain judgments books, judgments are deemed entered when filed with the clerk; no subsequent action is required. [See CCP §668, 668.5; *Verdier v. Verdier* (1953) 118 CA2d 279, 280,

257 P2d 723, 724; *County of Los Angeles v. Ranger Ins. Co.* (1994) 26 CA4th 61, 65, 31 CR2d 257, 259]

3. [6:12] **Amount Recoverable Under Judgment:** The amount required to satisfy a money judgment is the total amount of the judgment as entered or renewed, *plus* costs added after judgment and accrued interest on the judgment, *minus* any payments or partial satisfactions or amounts no longer enforceable. [CCP §695.210]
 - a. [6:13] **Principal amount:** The principal amount of the judgment is the amount of the judgment *as entered* or *as last renewed* (§6:60 ff.), together with any costs added to the judgment (§6:33), reduced by any payments or partial satisfactions or amount no longer enforceable. [CCP §680.300]
 - b. [6:14] **Interest:** The judgment creditor is entitled to recover interest on the principal amount of the judgment that remains unsatisfied. [CCP §685.010(a)]
 - (1) [6:15] **Rate:** Effective *January 1, 1983*, the rate of interest on a money judgment is *10%* per annum. [CCP §685.010(a)] (The 10% limit applies to stipulated judgments as well as to judgments rendered by a court; see *John Siebel Associates v. Keele* (1986) 188 CA3d 560, 233 CR 231.)

Ten percent is the maximum interest rate allowed by the State Constitution (Cal. Const. Art. XV, §1). The Legislature expressly reserved the right to reduce this rate regardless of when the judgment was entered or obligation incurred. However, any reduction operated *only prospectively*. [CCP §685.010(b)]

- (a) [6:15.1] **State judgments exception:** Most courts agree that the interest rate on a judgment against the State of California (or any agency thereof) is 7% per annum . . . as set forth in Article XV, §1 of the California Constitution. [*San Francisco Unified School Dist. v. San Francisco Classroom Teachers Ass'n, CTA/NEA* (1990) 222 CA3d 146, 272 CR 38, 41; *Pacific Coast Med. Enterprises v. Department of Benefit Payments* (1983) 140 CA3d 197, 216, 189 CR 558, 569-570; but see *Morris v. Department of Real Estate* (1988) 203 CA3d 1109, 1112, 250 CR 432, 434—no postjudgment interest maximum award from Real Estate Fund recovery account]
- (b) [6:16] **Problem as to effective date:** CCP §685.010 was originally enacted in 1982 separately from the E.J.L. It expired on June 30, 1983 and was replaced by current §685.010, adopted as part of the E.J.L.

On its face, the original §685.010 was effective as of January 1, 1982. However, it is now settled that this was a legislative oversight, and the actual intended effective date was *January 1, 1983*. [*American Nat'l Bank v. Peacock* (1985) 165 CA3d 1206, 212 CR 97; *Hersch v. Citizens Savings & Loan Ass'n* (1985) 173 CA3d 373, 218 CR 646; *Hill v. Pacific Telephone & Telegraph Co.* (1985) 174 CA3d 1076, 220 CR 144; but see *Gutierrez v. State Ranch Services* (1983) 150 CA3d 83, 198 CR 16—*dictum* that interest rate change took effect 1/1/82]

(Text cont'd on p. 6A-5)

The current CCP §685.010 continues the 10% annual interest rate on judgments.

- (c) [6:17] **10% rate not retroactive:** The increase to 10% postjudgment interest per year under both the current CCP §685.010 and its predecessor is *not retroactive*. [*American Nat'l Bank v. Peacock*, *supra*, 165 CA3d at 1211-1212, 212 CR at 100; *Hersch v. Citizens Sav. & Loan Ass'n*, *supra*, 173 CA3d at 378, 218 CR at 649]

This means that interest *accrued prior* to the January 1, 1983 effective date of the original CCP §685.010 (above) must be computed at the rate previously allowed (7% per annum). But the increase to 10% on and after January 1, 1983 applies to judgments entered before that date. [*Norman Peterson Co. v. Container Corp. of America* (1985) 172 CA3d 628, 651, 218 CR 592, 605]

- 1) [6:18] **Example:** If a judgment was entered in October, 1981, postjudgment interest would be computed at 7% per year through December 31, 1982, and 10% per year thereafter. [*Norman Peterson Co. v. Container Corp. of America*, *supra*]

- (d) [6:18.1] **Compare—federal court judgments:** Postjudgment interest on federal court judgments (including bankruptcy court and diversity case judgments) entered on or after October 1, 1982, accrues at the rate of the coupon issue yield equivalent of the average accepted auction price on one-year treasury bills for the last auction immediately before the date the judgment was entered. This interest is compounded annually. [See 28 USC §1961; *Kaiser Aluminum & Chemical Corp. v. Bonjorno* (1990) 494 US 827, 110 S.Ct. 1570, 1574; *Northrop Corp. v. Triad Int'l Marketing, SA* (9th Cir. 1988) 842 F2d 1154, 1155-1156]

(Federal court judgments entered before October 1, 1982 accrue interest at the rate allowed by state law; see ¶6:17.)

- (2) [6:19] **Computation of interest on judgment:** The amount recoverable as interest on a judgment is computed as follows:
- (a) [6:20] **When interest commences:** Interest accrues from the day the judgment is entered. Where the judgment is payable in *installments* (e.g., support judgments), interest accrues

from the date each installment becomes due unless the judgment provides otherwise. [CCP §685.020]

- 1) [6:21] **Generally, no compounded interest:** Postjudgment interest is not compounded (i.e., interest is not paid on the accrued interest) unless the judgment is renewed (below). [See *Big Bear Properties, Inc. v. Gherman* (1979) 95 CA3d 908, 914-915, 157 CR 443, 447; *Mendez v. Kurten* (1985) 170 CA3d 481, 487, 215 CR 924, 928; *Westbrook v. Fairchild* (1992) 7 CA4th 889, 894-895, 9 CR2d 277, 281]

(The rule is otherwise as to federal court judgments; see ¶6:18.1, above.)

- 2) [6:22] **Compare—renewal of judgment:** When a judgment is *renewed* (¶6:60), whatever interest has accrued on the original judgment is *added to* and *becomes part of* the *principal* amount of the judgment. [See Comment to CCP §683.110]

Thereafter, interest accrues on the *total* amount of the renewed judgment (i.e., including the amount added as interest). In effect, the judgment creditor recovers “interest on interest” (¶6:68).

- (b) [6:23] **When interest ceases:** The date on which interest ceases to accrue is more complicated:

- 1) [6:24] **Judgment satisfied pursuant to execution:** The date interest ceases to accrue on a money judgment satisfied by levying writ of execution depends upon the manner in which the proceeds are collected:

- a) [6:24a] **Lump sum:** If the full amount due under the judgment is collected in a *lump sum*, interest ceases on the date of levy. [CCP §685.030(a)(1)]

- b) [6:24b] **Earnings withholding order:** If the judgment is satisfied pursuant to an *earnings withholding order*, interest ceases (i) on the date the full amount required to satisfy the order is withheld from the judgment debtor’s earnings (¶6:1260.3); or (ii) on the date a CCP §706.028 final order for costs and interest is issued (¶6:1164). [CCP §685.030(a)(2)]