

## **6 California Procedure (5th), Provisional Remedies**

### **I. INTRODUCTION**

#### **A. Nature of Provisional Remedies.**

- 1. [§1] In General.**
- 2. [§2] Use of Affidavit.**
- 3. [§3] Use of Declaration.**
- 4. [§4] Fees.**
- 5. [§5] Abolition of Civil Arrest.**

#### **B. Bond or Undertaking.**

##### **1. Evolution of Law.**

- (a) [§6] Former Law.**
- (b) [§7] Law Revision Commission Recommendation.**
- (c) [§8] Enactment of Revised Statute.**

##### **2. Overview of Current Law.**

- (a) [§9] Scope of Bond and Undertaking Law.**
- (b) [§10] Purpose of Bond or Undertaking.**
- (c) [§11] Definitions of Bond and Undertaking.**
- (d) [§12] Other Definitions.**
- (e) [§13] Reduction, Waiver, or Exemption.**
- (f) [§14] Bonds to State of California.**
- (g) [§15] Practice and Procedure.**

##### **3. Creation and Duration.**

- (a) [§16] Content, Form, and Execution.**
- (b) [§17] Approval.**
- (c) [§18] Filing and Service.**
- (d) [§19] Effective Date and Duration.**

##### **4. Sureties.**

###### **(a) Personal Sureties.**

- (1) [§20] Qualification.**
- (2) [§21] Affidavit.**

###### **(b) Admitted Surety Insurers.**

- (1) [§22] In Lieu of Personal Sureties.**
- (2) [§23] Authentication of Bond.**
- (3) [§24] Certificate of Authority.**
- (4) [§25] Objection to Sufficiency of Surety.**
- (5) [§26] Determination of Sufficiency.**

##### **5. Objection to Bond.**

- (a) [§27] Basis for Objection.**
- (b) [§28] Procedure.**

##### **6. Alteration After Issuance.**

- (a) [§29] Insufficient Bond in Action or Proceeding.**
- (b) [§30] Insufficient Bond Not in Action or Proceeding.**
- (c) [§31] Excessive Bond.**
- (d) [§32] New, Additional, or Supplemental Bond.**
- (e) [§33] Release or Substitution of Surety.**

- (f) [§34] Cancellation or Withdrawal.
- 7. Liability of Principal and Surety.
  - (a) Nature of Liability.
    - (1) [§35] Joint and Several Liability.
    - (2) [§36] Limitation on Liability.
  - (b) Enforcement by Beneficiary.
    - (1) [§37] Enforcement by Civil Action.
    - (2) Enforcement by Motion in Pending Action.
      - (aa) [§38] Nature of Motion.
      - (bb) [§39] Procedure.
    - (3) [§40] Statute of Limitations.
    - (4) [§41] Judgment.
    - (5) [§42] Payment by Surety.
    - (6) [§43] Bonds to State of California.
- 8. Deposit in Lieu of Bond.
  - (a) [§44] In General.
  - (b) [§45] Enforcement Against Deposit.

## **II. ATTACHMENT**

### **A. In General.**

- 1. Nature of Attachment.
  - (a) [§46] Ancillary Remedy.
  - (b) [§47] Main Action.
  - (c) [§48] Strict Construction.
  - (d) [§49] Nonexclusive Remedy.
- 2. [§50] Former Statute Unconstitutional.
- 3. [§51] Requisites of Valid Statute.
- 4. Revised Statute.
  - (a) [§52] Enactment.
  - (b) [§53] Nature and Scope.
  - (c) [§54] Constitutionality.
  - (d) [§55] General Definitions.
  - (e) [§56] Commercial Code Definitions.

### **B. Conditions Required for Attachment.**

- 1. [§57] In General.
- 2. Contract Claim for Money.
  - (a) [§58] In General.
  - (b) [§59] Express and Implied in Fact Contracts.
  - (c) Quasi-Contractual Obligations.
    - (1) [§60] In General.
    - (2) [§61] Waiver of Tort.
  - (d) [§62] Judgments.
  - (e) [§63] Statutory Obligations.
  - (f) [§64] Where Other Relief Is Also Sought.
- 3. [§65] Minimum Amount Claimed.
- 4. Claim Not Secured.
  - (a) What Constitutes Secured Claim.

- (1) [§66] Former Statute and Decisions.
      - (2) [§67] Current Attachment Law.
    - (b) Exceptions.
      - (1) [§68] Security Without Value or Decreased in Value.
      - (2) [§69] Mechanic's Lien.
  - 5. Claim Arising Out of Commercial Transaction.
    - (a) [§70] Statutory Development.
    - (b) [§71] Persons and Entities Subject to Attachment.
  - 6. Action Against Surety, Guarantor, or Accommodation Maker.
    - (a) [§72] Exhaustion of Security.
    - (b) [§73] Trade or Business Requirement.
  - 7. [§74] Attachment Despite Arbitration Provision.
- C. Property Subject to Attachment.**
- 1. Attachable Property.
    - (a) [§75] In General.
    - (b) [§76] Property of Corporation.
    - (c) [§77] Property of Partnership or Other Unincorporated Association.
    - (d) Property of Natural Person.
      - (1) [§78] In General.
      - (2) [§79] Community Property.
      - (3) [§80] Individual Liability as Partner or Member of Association.
    - (e) [§81] Fraudulently Transferred Property.
  - 2. Exempt Property.
    - (a) [§82] Property Exempt From Enforcement of Money Judgment.
    - (b) [§83] Property Necessary for Support.
    - (c) [§84] Earnings.
    - (d) [§85] Property Not Made Subject to Attachment.
  - 3. [§86] Homestead.
  - 4. [§87] Claim of Real Property Exemption.
- D. General Procedural Provisions.**
- 1. [§88] Service.
  - 2. [§89] Affidavits.
  - 3. [§90] Discovery.
  - 4. [§91] Undertakings.
  - 5. [§92] Judicial Council Forms.
  - 6. [§93] Courts and Court Commissioners.
  - 7. [§94] Request for Secrecy.
- E. Noticed Hearing To Obtain Writ.**
- 1. Application for Order and Writ.
    - (a) [§95] In General.
    - (b) [§96] Affidavit.
    - (c) [§97] Specific Description of Property.
    - (d) Amount To Be Secured.
      - (1) [§98] In General.
      - (2) [§99] Costs and Attorneys' Fees.

- (3) [§100] Unlawful Detainer.
  - 2. Service of Notice on Defendant.
    - (a) [§101] Statutory Requirement.
    - (b) [§102] Contents of Notice.
  - 3. Defendant's Response.
    - (a) [§103] Notice of Opposition.
    - (b) [§104] Defendant's Claim of Exemption.
    - (c) [§105] Plaintiff's Opposition to Claim.
  - 4. Hearing.
    - (a) [§106] In General.
    - (b) [§107] Evidence.
    - (c) [§108] Burden of Proof.
    - (d) [§109] Effect of Determinations.
  - 5. [§110] Renewed Application.
  - 6. [§111] Right To Attach Order.
  - 7. Writ of Attachment.
    - (a) [§112] In General.
    - (b) [§113] Writ Restricting Amount of Levy.
  - 8. [§114] Turnover Order.
  - 9. Undertaking.
    - (a) [§115] Necessity.
    - (b) [§116] Amount.
  - 10. [§117] Multiple Writs.
  - 11. Additional Writs.
    - (a) [§118] Nature and Purpose.
    - (b) Noticed Hearing Procedure.
      - (1) [§119] Application.
      - (2) [§120] Notice to Defendant.
      - (3) [§121] Defendant's Claim of Exemption.
      - (4) [§122] Plaintiff's Opposition to Claim.
      - (5) [§123] Hearing and Issuance of Writ.
    - (c) Ex Parte Procedure.
      - (1) [§124] In General.
      - (2) [§125] Application and Supporting Affidavit.
      - (3) [§126] Ex Parte Hearing and Issuance of Writ.
      - (4) [§127] Defendant's Claim of Exemption.
- F. Ex Parte Procedure To Obtain Writ.**
- 1. Great or Irreparable Injury.
    - (a) [§128] Requirement.
    - (b) [§129] Sufficient Showing.
  - 2. [§130] Application and Affidavit.
  - 3. [§131] Order and Writ.
  - 4. Motion To Set Aside and Quash.
    - (a) Former Law.
      - (1) [§132] Motion To Discharge or Dissolve.
      - (2) [§133] Amendment of Writ, Affidavit, or Undertaking.





- (a) [§203] Nature of Lien.
- (b) [§204] Plaintiff's Application.
- (c) [§205] Notice.
- (d) Defendant's Claim of Exemption.
  - (1) [§206] Before Creation of Lien.
  - (2) [§207] After Creation of Lien.
- (e) [§208] Effect on Judgment in Action.
- (f) [§209] Enforcement of Lien.

#### **I. Postlevy Procedure.**

##### **1. Release of Attachment.**

- (a) **By Plaintiff's Direction or Order Discharging Attachment.**
  - (1) [§210] Right to Release.
  - (2) [§211] Redelivery or Sale of Property in Custody.
  - (3) [§212] Written Release of Property Not in Custody.
- (b) **By Defendant's Undertaking.**
  - (1) [§213] Application and Undertaking.
  - (2) [§214] Action Against Sureties.
- (c) **By Judgment for Defendant.**
  - (1) [§215] Final Judgment for Defendant.
  - (2) [§216] Plaintiff's Appeal Without Undertaking.
  - (3) [§217] Plaintiff's Motion Without Undertaking.
- (d) **By Judgment for Plaintiff.**
  - (1) [§218] No Appeal by Defendant.
  - (2) [§219] Defendant's Appeal With Undertaking.
- (e) **Motion To Release Excessive Attachment.**
  - (1) [§220] Nature of Remedy.
  - (2) [§221] Procedure.

##### **2. [§222] Claim of Exemption.**

##### **3. [§223] Review of Orders.**

##### **4. Proceedings Against Sureties After Judgment.**

- (a) [§224] In General.
- (b) [§225] Amount of Recovery.
- (c) **Damages.**
  - (1) [§226] Particular Property.
  - (2) [§227] Punitive Damages.
- (d) **Attorneys' Fees.**
  - (1) [§228] In General.
  - (2) [§229] Segregation of Allowable Fees.
  - (3) [§230] Segregation of Fees Is Not Required.

#### **J. Liability of Plaintiff for Wrongful Attachment.**

- 1. [§231] Tort Action.
- 2. [§232] Statutory Remedy.
- 3. [§233] Acts Constituting Wrongful Attachment.
- 4. [§234] Measure of Plaintiff's Liability.

#### **K. Nonresident Attachment.**

- 1. In General.

- (a) [§235] Purpose.
  - (b) [§236] Constitutionality.
  - (c) [§237] Action for Money.
  - (d) [§238] Property Subject to Attachment.
2. Nonresident Defendants.
- (a) [§239] Natural Person Not Residing in State.
  - (b) [§240] Foreign Corporation or Partnership.
3. Procedure.
- (a) [§241] Application and Affidavit.
  - (b) [§242] Hearing, Order, and Writ.
  - (c) [§243] Additional Writs.
  - (d) [§244] Motion To Set Aside and Quash.

### **III. CLAIM AND DELIVERY**

#### **A. In General.**

- 1. [§245] Nature of Remedy.
- 2. Constitutional Requirements.
  - (a) [§246] Blair Case.
  - (b) [§247] Fuentes Case.
  - (c) [§248] Later Cases.
  - (d) [§249] Requisites of Valid Statute.

#### **B. Revised Statute.**

- 1. [§250] In General.
- 2. [§251] Definitions.
- 3. [§252] Judicial Council Forms.
- 4. [§253] Affidavits.
- 5. [§254] Undertakings.

#### **C. Writ of Possession.**

- 1. Application.
  - (a) [§255] In General.
  - (b) [§256] Content.
- 2. Hearing.
  - (a) [§257] Noticed Motion.
  - (b) [§258] Determination.
- 3. Issuance of Writ Ex Parte.
  - (a) [§259] Conditions.
  - (b) [§260] Procedure.
- 4. Writ and Order.
  - (a) [§261] Issuance of Writ.
  - (b) [§262] Form and Content of Writ.
  - (c) [§263] Turnover Order.
- 5. [§264] Undertaking.

#### **D. Temporary Restraining Order.**

- 1. [§265] Nature of Remedy.
- 2. [§266] Provisions of Order.
- 3. [§267] Procedure After Hearing on Writ.

#### **E. Levy and Custody.**

1. [§268] Search and Seizure.
2. [§269] Service of Writ and Undertaking.
3. [§270] Custody, Delivery, Redelivery, or Sale of Property.
4. [§271] Defendant's Undertaking To Protect Possession.
5. [§272] Return of Writ.

F. [§273] Effect of Judgment in Main Action.

**IV. INJUNCTION**

**A. In General.**

**1. Nature of Injunction.**

- (a) [§274] In General.
- (b) [§275] Purpose.
- (c) [§276] Jurisdiction.
- (d) [§277] Extraordinary Writs Compared.

**2. Classification by Type of Relief.**

- (a) Prohibitory Injunction.
  - (1) [§278] In General.
  - (2) [§279] Prohibitory Despite Incidental Mandatory Aspect.
- (b) Mandatory Injunction.
  - (1) [§280] In General.
  - (2) Mandatory Though Prohibitory in Form.
    - (aa) [§281] Compelling Surrender of Property or Office.
    - (bb) [§282] Compelling Performance of Services.
    - (cc) [§283] Changing Relative Positions or Rights.

**3. Procedural Classification.**

- (a) [§284] Temporary Restraining Order.
- (b) Preliminary Injunction.
  - (1) [§285] In General.
  - (2) [§286] Duration.
  - (3) [§287] Granting Permanent Relief at Hearing.
- (c) [§288] Permanent Injunction.

**B. Right to Injunction.**

**1. Factors Determining Right.**

- (a) Statutory Framework.
  - (1) [§289] Conditions.
  - (2) [§290] Nature and Scope.
  - (3) [§291] Special Statutes.
- (b) [§292] Torts Restatement Analysis.
- (c) [§293] Probable Success and Relative Harm.
- (d) [§294] Inadequacy of Other Remedies.
- (e) [§295] Irreparable Injury.
- (f) [§296] Multiplicity of Actions.
- (g) Act Rendering Judgment Ineffective.
  - (1) [§297] In General.
  - (2) [§298] Injunction in Lieu of Attachment Is Prohibited.

**2. Right in Particular Situations.**

- (a) Injuries Involving Land.

- (1) [§299] Waste.
  - (2) [§300] Taking From Realty.
  - (3) [§301] Interference With Water Rights.
  - (4) [§302] Repeated Acts of Trespass.
  - (5) [§303] Withholding Possession.
  - (6) [§304] Private Nuisance.
- (b) **Contract Rights.**
  - (1) [§305] In General.
  - (2) [§306] Unique Personal Services.
  - (3) [§307] Covenant Not To Compete.
  - (4) [§308] Other Contracts.
- (c) [§309] Business and Personal Property Interests.
- (d) [§310] Consumer Protection Action.
- (e) [§311] Action or Cross-Complaint by Victim of Identity Theft.
- (f) [§312] Taxpayer's Action.
- (g) [§313] Labor Dispute.
- (h) [§314] Invasion of Personal Rights.
- (i) [§315] Domestic Violence.
- (i-1) [§315A] Abuse of Elder or Dependent Adult.
- (j) **Harassment.**
  - (1) [§316] Nature and Scope of Statute.
  - (2) [§317] Definitions.
  - (3) [§318] Constitutionally Protected Activity.
  - (4) [§319] Restriction on Possession of Firearms.
  - (5) [§320] Judicial Council Forms.
  - (6) [§321] Petition, Service, and Response.
  - (7) [§322] Hearing, Determination, and Enforcement Response.
- (k) **Transitional Housing Participant Misconduct.**
  - (1) [§323] In General.
  - (2) [§324] Temporary Restraining Order and Order To Show Cause.
  - (3) [§325] Hearing and Order.
- (l) **Workplace Violence and Threats.**
  - (1) [§326] Nature and Scope of Statute.
  - (2) [§327] Definitions.
  - (3) [§328] Judicial Council Forms.
  - (4) [§329] Petition, Service, and Response.
  - (5) [§330] Hearing, Determination, and Enforcement.
- (l-1) **Private Postsecondary Educational Institution Violence and Threats.**
  - (1) [§330A] Nature and Scope of Statute.
  - (2) [§330B] Definitions.
  - (3) [§330C] Judicial Council Forms.
  - (4) [§330D] Petition, Service, and Response.
  - (5) [§330E] Hearing, Determination, and Enforcement.
- (m) **Invalid Statute or Ordinance.**

- (1) [§331] Injunction Against Enforcement.
    - (2) [§332] Injunction Against Enactment.
    - (n) [§333] Judicial Proceeding.
    - (o) [§334] Arbitration Proceeding.
    - (p) [§335] Crime That Is Enjoinable Tort.
    - (q) [§336] Criminal Investigation or Prosecution.
  - 3. Reasons for Denying Injunction.**
    - (a) **Other Remedies Are Adequate.**
      - (1) [§337] Damages.
      - (2) [§338] Judicial Remedy.
      - (3) [§339] Administrative Remedy.
      - (4) [§340] Federal Executive Remedy.
    - (b) [§341] Plaintiff's Unclean Hands.
    - (c) [§342] Laches.
    - (d) [§343] Change in Circumstances.
    - (e) [§344] Public Interest.
    - (f) **Relative Hardship.**
      - (1) [§345] In General.
      - (2) [§346] Doctrine Applied.
      - (3) [§347] Defense Rejected.
    - (g) [§348] Bad Faith.
    - (h) [§349] Success on Merits Is Improbable.
    - (i) **Completed Acts.**
      - (1) [§350] General Rule.
      - (2) [§351] Mandatory Injunction.
    - (j) [§352] Constitutionally Protected Activity.
    - (k) [§353] Burden on Interstate Commerce.
  - 4. Discretion To Grant or Deny Preliminary Injunction.**
    - (a) [§354] In General.
    - (b) **Discretion To Deny.**
      - (1) [§355] Denial Upheld.
      - (2) [§356] Denial Reversed.
    - (c) **Discretion To Grant.**
      - (1) **Prohibitory Injunction.**
        - (aa) [§357] Grant Upheld.
        - (bb) [§358] Grant Reversed.
        - (cc) [§359] Injunction Against Violation of Zoning Ordinance.
      - (2) [§360] Mandatory Injunction.
      - (3) [§361] Limited Injunctive Relief.
  - 5. [§362] Questions of Law.**
- C. Procedure for Obtaining Provisional Remedy.**
- 1. Temporary Restraining Order.**
    - (a) [§363] Ex Parte Issuance.
    - (b) [§364] Order To Show Cause and Restraining Order.
    - (c) [§365] Return Date.

- (d) [§366] Undertaking.
- (e) [§367] Duration of Restraining Order.

**2. Preliminary Injunction.**

- (a) Application and Notice.
  - (1) [§368] In General.
  - (2) [§369] Waiver of Notice.
- (b) Service of Supporting Papers.
  - (1) [§370] In General.
  - (2) [§371] Waiver of Service.
- (c) Hearing.
  - (1) [§372] Time.
  - (2) Continuance.
    - (aa) [§373] To Defendant.
    - (bb) [§374] To Plaintiff.
    - (cc) [§375] On Court's Own Motion.
  - (3) Showing by Plaintiff.
    - (aa) [§376] Necessity for Showing.
    - (bb) [§377] Showing by Verified Complaint.
    - (cc) [§378] Showing by Affidavit.
  - (4) Opposition by Defendant.
    - (aa) [§379] Showing by Verified Answer.
    - (bb) [§380] Showing by Affidavit.
  - (5) [§381] Testimony.
- (d) Undertaking.
  - (1) [§382] In General.
  - (2) [§383] Exemptions.
  - (2a) [§383A] (New) Waiver or Forfeiture.
  - (3) [§384] Amount and Form.
  - (4) [§385] Time of Filing.
  - (5) [§386] Insufficient Undertaking.
- (e) Order.
  - (1) [§387] In General.
  - (2) [§388] Definite Order Is Required.

**D. Enforcement of Injunction.**

- 1. [§389] Service of Writ.
- 2. [§390] Notice Without Service.
- 3. Persons Subject to Decree.
  - (a) [§391] In General.
  - (b) [§392] Corporations and Associations.
  - (c) [§393] Local Board of Supervisors.
  - (d) [§394] Successors in Interest.
  - (e) [§395] Persons Able To Comply.
- 4. [§396] Punishment of Violation as Contempt.
- 5. [§397] Civil Damages for Violation.
- 6. [§398] Sister State Injunction.

**E. Modification by Trial Court.**

1. [§399] Statutory Authority and Inherent Power.
2. [§400] Who May Seek Modification.
3. [§401] Service of Motion To Modify Permanent Injunction.

#### **F. Appeal.**

1. [§402] In General.
2. [§403] Stay of Injunction Pending Appeal.
3. [§404] Preliminary Injunction Pending Appeal.
4. [§405] Effect of Reversal on Appeal.

#### **G. Remedies of Defendant.**

1. Dissolution of Injunction.
  - (a) [§406] In General.
  - (b) [§407] Service of Motion To Dissolve Permanent Injunction.
2. [§408] Review of Injunction Order.
3. Review of Contempt Order.
  - (a) [§409] Extraordinary Writs.
  - (b) Deliberate Violation as Basis for Review.
    - (1) [§410] Effect of Violation of Void Injunction.
    - (2) [§411] Advantages of Deliberate Violation.
    - (3) [§412] Illustration: Injunction Is Void.
    - (4) [§413] Distinction: Injunction Is Not Wholly Unenforceable.
4. Proceeding Against Surety on Undertaking.
  - (a) [§414] Nature of Liability.
  - (b) [§415] Final Termination of Main Action.
  - (c) [§416] Measure of Damages.
  - (d) Attorneys' Fees.
    - (1) [§417] Services in Attacking Injunction.
    - (2) [§418] Services in Defending Main Action.

### **V. RECEIVERS**

#### **A. In General.**

1. [§419] Nature of Receivership.
2. [§420] Discretion To Deny Receiver.
3. Discretion To Grant Receiver.
  - (a) [§421] Appointment Upheld.
  - (b) [§422] Appointment Reversed.

#### **B. When Receivers May Be Appointed.**

1. In General.
  - (a) [§423] Specific Statutory Enumeration.
  - (b) [§424] Other Bases.
2. [§425] Action by Vendor or Creditor.
3. [§426] Action by Secured Lender.
4. [§427] Action by Office of Statewide Health Planning and Development.
5. [§428] Action Between Partners or Joint Owners.
6. Foreclosure of Deed of Trust or Mortgage.
  - (a) [§429] Statutory Authorization.
  - (b) [§430] Clause Authorizing Appointment.
7. [§431] Specific Performance of Assignment of Rents.

**8. [§432] Action by Assignee Under Assignment of Rents, Issues, or Profits.**

**9. [§433] Unlawful Detainer.**

**10. [§434] Operation of Water or Sewer System.**

**11. [§435] Abandonment of Stored Household Property.**

**12. Action Involving Corporation.**

(a) [§436] Insolvency.

(b) [§437] Fraud or Mismanagement.

(c) [§438] Dissolution or Forfeiture.

**13. [§439] Family Law Action.**

**14. [§440] Other Actions or Proceedings.**

**C. Appointment Procedure.**

**1. Application on Notice.**

(a) [§441] Motion.

(b) [§442] Showing of Grounds.

**2. Appointment and Qualification of Receiver.**

(a) [§443] Appointment.

(b) [§444] Qualification and Undertaking.

**3. Ex Parte Order and Confirmation.**

(a) [§445] Nature of Power.

(b) [§446] Showing Required.

(c) [§447] Undertaking.

(d) [§448] Confirmation of Appointment.

**4. Review of Order.**

(a) [§449] Motion, Appeal, and Prohibition.

(b) [§450] Collateral Attack.

**D. Administration of Receivership.**

**1. Powers and Duties of Receiver.**

(a) [§451] In General.

(b) [§452] Right To Sue and Be Sued.

(c) [§453] Liability.

(d) [§454] Possession and Control of Property.

(e) [§455] Sale of Property.

(f) [§456] Distinction: Rents and Profits Receiver.

(g) [§457] Contracts.

**2. [§458] Accounts.**

**3. [§459] Compensation.**

**4. [§460] Discharge.**

**VI. DEPOSIT IN COURT**

**A. [§461] Nature of Remedy.**

**B. [§462] Limitations.**

**C. [§463] Procedure.**