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Civil Justice for Victims of Crime in California

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I. Purpose of This Booklet

Every crime victim has the right to file a civil lawsuit seeking financial compensation from the perpetrator or from other parties whose unreasonable conduct gave rise to conditions which allowed the crime to occur. The purpose of this handbook is to provide victims and service providers with a basic understanding of the civil justice system so that victims might consider this important option and know where to turn for help.

II. Victims' Financial Losses and Potential Sources of Compensation

More than twenty-three million Americans are victimized by crime each year. The consequences of crime frequently extend far beyond the criminal act. All too often, victims are left with expenses for medical procedures, physical rehabilitation, counseling, lost wages, and property damage. It has been estimated that crime costs society \$450 billion annually.

Restitution

California victims have the right to restitution under the Victims' Bill of Rights Act in the California Constitution. Restitution is monetary compensation owed to you by the offender. In California, there are a few types of restitution. The one relevant to victims is called a Restitution Order, which is an offender's payment to the victim for medical expenses, counseling expenses, property damage or loss, loss of wages, and other economic loss suffered by the victim as a result of the crime. It is important to note that a Restitution Order does not guarantee payment of the ordered amount from the offenders. The other types of restitution are restitution fines and parole revocation fines – which are often paid before the victim is paid.

The amount of the Restitution Order is determined by the judge. Thus, you should keep documentation of your loss and provide such information to your victim advocate, the deputy district attorney, and/or your county probation office before the sentencing phase. The Restitution Order must have a definite amount set to be collectable.

A Restitution Order is enforceable as a civil judgment by obtaining an Order for Restitution and Abstract of Judgment (CR-110/JV-790) which is filed with the County Recorder where the offender may have property.

Victims are entitled to financial information about the defendant and may obtain a signed "Defendant's Statement of Assets" (form CR-115) and written answers to questions about assets (form CR-200). If restitution is ordered, victims can garnish the wages of the defendant (forms CR-118 and 119).

For more information about victim restitution in California, contact Victim Services at victimservices@cdcr.ca.gov or (877) 256-6877 and read the following guide http://www.cdcr.ca.gov/victim_services/docs/Restitution_Guide.pdf

California Crime Victim Compensation

The California Victim Compensation Program (CalVCP) assists eligible victims of crime with actual expenses caused by the crime. CalVCP is a payer of last resort and does not cover expenses that have been covered by a third-party payer (insurance, sick leave, worker's compensation, etc.). Although there are many caveats, generally speaking, the total award amount cannot exceed \$70,000 and the categorical caps are as follows: medical expenses \$70,000; outpatient mental health treatment 40 sessions; funeral and/or burial: \$7,000; and crime scene clean up \$1,000; and relocation in the amount of \$2,000. The amount of compensation available to "derivative victims" are different. Direct victims are those who were physically injured or were children who witnessed the crime, derivative victims are for example, parents, siblings, partners of the direct victim. Applicants/victims must cooperate with law enforcement during the investigation and prosecution of the crime. Also, a victim cannot have participated in or been involved in committing the crime.

Moreover, if the victim has received victim compensation and is initiating a civil lawsuit for monetary damages or reimbursement through an insurance claim, the victim and his or her attorney must notify the Victim Compensation & Government Claims Board within 30 days of filing any action or submitting a claim. Additional information can be found here: http://vcgcb.ca.gov/docs/brochures/LORS_brochure.pdf

There are other eligibility requirements. For more information contact:

CalVCP (800) 777-9229 or
email CalVCP at info@vcgcb.ca.gov.
P.O. Box 3036 Sacramento, CA 95812-3036
<http://www.vcgcb.ca.gov/victims/>

Civil Actions May Help Where Restitution and State Compensation Cannot

Restitution and compensation often do not cover a victim's full economic losses, and neither source pays anything for hard to quantify damages such as pain and suffering. A civil lawsuit may provide more complete compensation to a victim. Victims do not have to choose among restitution, compensation, and filing a civil lawsuit. Victims may receive funds from all three sources, although there are checks and balances in each system to ensure that no victim is compensated for the same loss more than once. Victims may decide to pursue all three financial options at the same time to have the best chance of receiving just compensation from the appropriate source as soon as possible.

III. Why File a Civil Suit

Some of the benefits of civil actions may include:

- **Control of the Case** - Victims have greater control in a civil suit than in a criminal case because they are a party to the civil case, cannot be excluded from the courtroom, and have final approval of settlement proposals.
- **Compensation** - Civil actions can provide compensation for victims for the monetary damages they suffered, such as medical expenses or lost income. Civil actions can also compensate victims for the emotional damage they have suffered.
- **Justice and Accountability** - Civil suits can hold offenders directly accountable to victims. These suits give victims their "day in court," regardless of whether there was a criminal conviction or any prosecution at all.
- **Crime Prevention** - In addition to suing perpetrators, victims can often sue other responsible parties. Civil actions provide economic incentives for crime prevention. Businesses such as hotels, apartments, and shopping centers sometimes fail to enact proper security measures because they view such expenses as unnecessary. When businesses are held accountable for safety lapses, proper security becomes cheaper than the cost of defending lawsuits. Crime victims' civil suits have resulted in increased security protection in public places, better oversight and supervision of daycare facilities, and countless other improvements.

IV. Comparing Civil and Criminal Justice

Both the civil and criminal justice systems have important roles in securing justice for victims of crime. These systems are not mutually exclusive, so victims do not have to choose one system over the other. Many victims choose to go through both systems. Because the criminal and civil justice systems were designed to address different needs, victims are best served when these systems work together. A significant difference between the criminal and civil court systems is that in a civil case, the victim controls essential decisions shaping the case. It is the victim who decides whether to sue, accept a settlement offer, or go to trial.

The Criminal Justice System

The criminal justice process begins after a crime has been committed and reported to law enforcement. If an arrest has been made and charges have been filed, the offender may be prosecuted. In a criminal prosecution, the crime is considered "a crime against the State." The victim's role is primarily defined as a witness for the prosecution. Although the prosecuting attorney may be very helpful to the victim and the victim's family, the prosecutor's primary responsibility is to represent the interests of the state, not the victim.

The criminal justice process judges the guilt or innocence of accused offenders, and when offenders are found guilty, attempts to punish or rehabilitate them.

The Civil Justice System

The civil justice system does not attempt to determine the innocence or guilt of an offender. Offenders are also not put in prison. Rather, civil courts attempt to determine whether an offender or a third party is liable for the injuries sustained as a result of the crime.

A civil court's finding of liability usually means that the defendant must pay the victim, or the victim's family, monetary damages. The civil justice system can provide victims with monetary resources necessary to rebuild their lives.

While the criminal justice system holds defendants accountable for their "crimes against the State," the civil justice system holds defendants who are found liable directly accountable to their victims.

CRIMINAL CASES

In a CRIMINAL case

...the goal is to hold the defendant accountable to the State.

...the State prosecutes and controls the case.

...the victim is a witness. Although the victim may have rights to participate in the criminal justice process, the victim does not have the right to direct the prosecution of the case or to veto the prosecutor's decisions.

...the State must prove that the perpetrator is guilty *beyond a reasonable doubt*.

...the perpetrator is presumed innocent until proven guilty.

...if a perpetrator is found guilty in a criminal court, the perpetrator is subject to punishment, such as probation or jail, and is held accountable to the State. The victim will not obtain money unless the court orders the defendant to pay restitution for the victim's out-of-pocket expenses. The court cannot order restitution for non-economic damages.

...if the perpetrator is found not guilty, the state cannot initiate a second prosecution.

CIVIL LAWSUITS

In a CIVIL lawsuit

...the goal is to hold the defendant accountable to the victim.

...the victim initiates and controls the case.

...the victim is a party, and as such, is entitled to all important information relating to the case, and can make decisions about the direction of the case, such as settlement of the claim.

...the victim must prove that it is more likely than not that the perpetrator is liable.

...the civil system does not presume a person is innocent or guilty. The victim and the perpetrator appear as equals.

...if the perpetrator is found liable in a civil court, the perpetrator owes an obligation to the victim, such as money to compensate the victim for economic costs, such as medical expenses, mental health counseling, and lost wages. A civil court can order the perpetrator to pay for non-economic damages, such as pain and suffering, damage to family relationships, and psychological injuries. The civil court can also order punitive damages.

...the victim can sue the perpetrator in a civil court regardless of whether the perpetrator has been found guilty in a criminal prosecution.

Burden of Proof

In the civil justice system, liability must be proven by a fair preponderance of the evidence, which simply means that one side's evidence is more persuasive than the other's. In other words, the plaintiff must prove there is a fifty-one percent or greater chance that the defendant committed all the elements of the particular wrong. This standard is lower than the "proof beyond a reasonable doubt" required for a conviction in the criminal justice system. Therefore, it is sometimes possible to find the defendant liable in a civil case even though a verdict of "not guilty" was rendered in the criminal case. (A civil case can also be successful even if the offender was never prosecuted.)

A good example of this principle is the O.J. Simpson case. Simpson was prosecuted for the murder of his former wife, Nicole Brown, and Ronald Goldman. The jury in the criminal case found Simpson "not guilty" of the murders. Despite Simpson's acquittal, the victims' families filed and won a civil wrongful death lawsuit against Simpson. The jury in the civil case awarded the victims' families monetary damages. While a criminal conviction may increase the chances of a perpetrator being held civilly liable, it is not a requirement for bringing a civil action.

V. Parties in a Civil Suit

Plaintiffs

The main parties in a civil suit are called plaintiffs and defendants. Plaintiffs are the individuals who file the suit. They control the action, are entitled to all information relating to the case, and make decisions, such as whether to accept a settlement. The plaintiff in a civil suit can be the victim, survivors of the victim, or persons responsible for the victim.

Family Members

Family members who might bring a civil suit include the parents, spouse, children, or siblings of the victim.

Defendants

The defendants are the parties against whom a civil action is brought. The defendants in a civil suit can be the perpetrators, individuals who have assisted the perpetrators, or individuals or organizations whose negligence has in some way contributed to the commission of the crime known as “third parties.”

Offenders

The offenders are the individuals who committed the original offense, whether or not they were found guilty by a criminal court.

Third Parties

In some civil cases, a “third-party” defendant may be held liable. Third-party defendants are not the persons who actually commit the crimes, but instead are those parties who may have contributed to or facilitated them. A few examples of possible third-party defendants in a victim’s case would include:

- **landlords** who do not provide adequate security measures, such as locks on doors and windows, or adequate lighting;
- **colleges** that fail to provide adequate security for students or fail to notify students of campus assaults, leaving students vulnerable to victimization;
- **shopping malls** that do not employ security guards or take other necessary measures, despite a likelihood of criminal attacks on customers;
- **people who allow children access to firearms** or other dangerous instruments when the children, in turn, use the weapons to injure other people;

- **childcare centers, schools, and churches** that do not properly check the backgrounds of their employees, or simply transfer employees to other locations following allegations of abuse; or
- **tavern owners** who serve alcohol to known alcoholics or to minors who subsequently injure other people in drunk driving crashes.

VI. Statutes of Limitations

The law sets time limits for filing civil suits, called “statutes of limitations.” Any time after the expiration of the statutory period, unless a legal exception applies, the right to file a civil suit is “time-barred” and cannot proceed.

Although people often speak of “the statute of limitations,” there are many statutes which apply limitations periods to different types of civil actions. Sometimes it is difficult to keep track of the various statutes and their exceptions. **Therefore, a qualified attorney should be consulted to determine which statute applies and to help preserve your right to recover damages.**

In California, *generally* speaking, the statute of limitations applicable to actions for any form of personal injury is two years, that is, a lawsuit must actually be filed before two years from the date of the injury-producing event. There are numerous exceptions, however, to the two-year rule. For example, under California law, if the defendant is ordered to pay restitution as a condition of probation, the time during which the restitution order is in effect is excluded from the time limit for the commencement of a civil action.

In an action for recovery of damages resulting from an act that occurred when the victim was a minor, the statute of limitations begins to run upon a minor’s eighteenth birthday. However, in cases arising from child sex abuse, the statute of limitation is extended even longer. A child sex abuse victim must file the action within eight years of the date of the minor’s eighteenth birthday, or within three years of the date the victim discovered or reasonably should have discovered that the “psychological injury or illness occurring after the age of majority was caused by the sexual abuse.” If the victim is twenty-six or older when a civil action is filed under the delayed discovery exception, the victim, the victim’s attorney, and a psychological expert must acknowledge by sworn certification that the case has merit. A certificate of merit may require a significant amount of time to

produce. Therefore, victims who believe they qualify under the delayed discovery exception should speak with a qualified attorney *immediately*.

In an action for the recovery of damages as a result of domestic violence, the statute of limitations is three years from the date of the last act of violence or within three years from the date the victim discovered or reasonable should have discovered that the injury resulted from an act by the defendant.

In an action arising from the commission of a felony offense, unless a longer period is prescribed for specific action, a one year statute of limitations begins to run *after the criminal judgment is entered*. However, there are several felony offenses that have a ten year statute of limitations that begins to run once the defendant is discharged from parole.

In an action that involves a claim of negligence by a governmental body for personal injury, prior to filing the suit, specific notice must be given to the governmental body in what is called a “presentment of a claim.” This notice must be provided to the local public entity or the state government within six months of the act that gave rise to the injury before the victim is able to file any actions in a court of law. There are several exceptions that may extend this time to one year. As there are often a number of complicated issues that one must deal with when asserting a claim against a governmental body claims involving a governmental body or employees of a governmental body should be dealt with *promptly* and properly to avoid disallowance of a claim because of a failure to file adequate presentment of the claim. **Victims should speak to a qualified attorney immediately to protect against such short deadlines.**

VII. Types of Civil Lawsuits

There are numerous claims under which civil actions may be brought. They include wrongful death, assault and battery, intentional or negligent infliction of emotional distress, and negligence. Some of these claims are described below.

In civil cases, the crime or wrongful act is referred to as a tort. For most criminal offenses, there is a corresponding tort for which a crime victim may bring a civil suit. Some examples of torts include:

- **Assault** - putting the victim in fear of immediate injury while the perpetrator has the ability to inflict

such injury.

- **Battery** - intentional physical contact with a person without that person's consent. Battery includes the crimes of sexual battery, rape, molestation, fondling, forcible sodomy, malicious wounding, and attempted murder.
- **Wrongful Death** - a death caused by another person which occurs without justification or excuse, including murder, manslaughter, and vehicular homicide.
- **False Imprisonment** - holding a victim against his or her will for any amount of time, no matter how brief. This often occurs in rape and kidnapping situations.
- **Intentional or Reckless Infliction of Emotional Distress** - causing a victim emotional distress or anxiety through extreme and offensive conduct. This is frequently seen in stalking cases.
- **Fraud** - an intentional misrepresentation of facts made to deceive the victim, resulting in damages. This is often seen in white collar or economic crimes such as criminal fraud, telemarketing schemes, or racketeering.
- **Conversion** - the theft or destruction of personal property or money. This includes larceny, concealment, and embezzlement.
- **Negligence** - the failure to use such care as a reasonably prudent person would use under similar circumstances, when such failure is the cause of the plaintiff's injury. Examples include negligent security and negligent hiring.

Common Defenses

There are several defenses that defendants of a civil lawsuit may use in an effort to avoid civil liability. These defenses include: self defense, comparative negligence, assumption of risk, and immunity.

- **Self Defense** - perpetrators claim their actions were justified because they were defending themselves or someone else.
- **Comparative Negligence** - the defendant claims that the victim's negligent conduct caused or contributed to the victim's injuries. In California, the amount of money a successful plaintiff collects will be reduced by the plaintiff's proportional share of the blame for the injury.

- **Assumption of Risk** - defendants claim they should not be held liable because the victims voluntarily and knowingly exposed themselves to the danger.
- **Immunity** - Under certain circumstances, the law provides immunity from civil liability to government agencies, government employees, and other parties.

VIII. Victim Privacy

Attorneys may employ various methods to protect victims' privacy. Victims' names and other personal information can be kept out of public records by filing suits under pseudonyms, such as Jane or John Doe. Victims can also use confidentiality agreements with the offender, or third-party defendant; file cases "under seal" (closed to the public); and videotape depositions. Each of these techniques allows victims to fight for their rights in a safer manner.

IX. Filing a Civil Lawsuit

A victim begins the civil case by filing a document that in California is called the complaint. This document sets out the facts of the case and the legal claims being made. Defendants then have a certain amount of time to file a document called the answer. In this, defendants set forth their version of the facts and any defenses which apply. As a part of the process of the case, either side can request information from the other side. (For more information, see "Discovery.") In addition, either party can file motions asking the court to throw out certain claims or defenses, or dismiss the entire case.

X. Discovery

As part of the legal process, each side can ask the other side for information and documents relating to the case. This process is called discovery. Civil discovery involves investigations of the facts and circumstances of the case, interviewing witnesses, obtaining relevant documents, and questioning parties and other witnesses under oath. The investigation may include a review of police records, informal interviews of eye witnesses, and photographing the location of the crime.

Interrogatories

Interrogatories are a list of questions sent to the opposing party. They are usually limited in number by the court rules of the jurisdiction in which the case has been filed. Interrogatories must be answered in a specified amount of time.

Request for Production of Documents

Like interrogatories, document requests are a formal procedure by which one side can ask the other side to produce documents and other materials relevant to the case.

Requests for Admission

Requests for Admission are sets of statements sent to the opposing party that he or she must deny, admit, or state that there is insufficient information to admit or deny the statement.

Depositions

An additional method for obtaining information in the pretrial portion of a civil case is a deposition. A deposition is a proceeding in which a party's attorney has the opportunity to question opposing parties and potential witnesses under oath. Deposition testimony is transcribed. The transcripts may be used at trial for various reasons, including if the witnesses are no longer available or if the witnesses offer trial testimony which conflicts with the deposition.

After documents have been produced, interrogatories have been answered, and depositions have been completed, each side should know much more about the other side's case. At this point, the parties sometimes engage in negotiations which lead to settlement of the case.

XI. Trial

If a settlement is not reached, the case proceeds to trial. A plaintiff wins at trial if the plaintiff has met his or her burden of proof and the defendant has not successfully asserted a defense to the claim. If the plaintiff wins, the judge or jury awards damages and the matter is over unless the defendant appeals. A defendant wins at trial if the plaintiff has not met the burden of proof or the defendant has successfully asserted a defense. If the defendant wins, the case is finished unless the plaintiff appeals.

XII. Damages

Damages refers to the amount of money awarded to the plaintiff. There are three main types of damages that can be awarded in civil cases: special damages; general damages; and punitive damages. Special damages (also known as economic damages) are direct damages that must be proven with certainty such as medical bills, lost wages, and other expenses, and are awarded to “pay-back” the victim for actual monetary damages they suffered. General damages (also known as non-economic damages) are more discretionary and include damages for physical and emotional pain and suffering and the amount of general damages are typically left to the conscience of the jury. Punitive damages are rarely awarded, but in especially egregious circumstances, punitive or “vindictive” damages are awarded to punish the defendant.

XIII. Judgment and Enforcement

A victim contemplating a civil lawsuit should understand that obtaining a civil judgment is only half the battle. In many cases, it may be difficult to collect the money awarded by the court. Some defendants do not or cannot pay judgments entered against them. However, there are potential sources of payment, such as insurance or various types of income, that should always be considered.

XIV. When a Perpetrator Sues a Victim

On very rare occasions, offenders may sue or counter-sue victims. Defendants may take this step to harass or intimidate victims into dropping charges or withdrawing their civil suits.

Sometimes these suits are filed in response to the victim’s civil complaint, along with answers to the complaint. Victims need to know that truth is an absolute defense to defamation and slander, which are the most common civil claims filed by perpetrators.

XV. About Lawyers

Finding a Lawyer

The National Center for Victims of Crime established the National Crime Victim Bar Association (NCVBA) to facilitate civil suits by crime victims. The NCVBA offers victims free referrals to attorneys for consultation.

Victims seeking more information or attorney referrals should call the NCVBA at 202-467-8716 or Toll Free at (844) LAW HELP

Selection Considerations

More attorneys than ever are representing crime victims in civil lawsuits, though relatively few specifically list themselves as “crime victim” attorneys. Typically, these attorneys can be found handling premises liability, personal injury, wrongful death, or professional malpractice claims on behalf of plaintiffs. Finding qualified attorneys to represent victims in civil lawsuits often requires diligence.

A productive attorney-client relationship is based on the ability of both sides to communicate fully and effectively with each other. Although relating sensitive details can be difficult for crime victims, they should feel as comfortable as possible in fully disclosing all details and information to their attorneys. Attorneys should be able to effectively explain all aspects of legal proceedings to victims, and they should be responsive to victims’ needs and requests.

Victims should fully understand all the details of any retainer agreement (contract to hire the attorney) prior to signing it. If victims have questions, they should feel comfortable discussing them with their attorneys. If questions persist, local bar association personnel may be able to explain laws, regulations, and common practices pertaining to contracts with attorneys.

Victims should be clear about what they wish their attorneys to do, and attorneys should be clear about what services they are providing. Understanding each other’s expectations—as well as avoiding unrealistic expectations—can minimize the possibility of disappointment and frustration.

Victims should feel free to consult with several lawyers before selecting one. Lawyers are professionals, and it is good consumer practice to obtain a second opinion in selecting professional legal counsel.

Victims should cooperate, as fully as possible, with their attorneys. Such cooperation is necessary for successful representation of their interests. By the same token, victims have the right to expect their attorneys to be understanding, respectful, and responsive to their needs. Attorneys have the right to expect their clients to be honest and willing to participate in building their own cases.

Information Your Attorney May Need

When crime victims consult with an attorney, they should be prepared to answer detailed questions about the case that will allow the attorney to conduct a proper evaluation. Attorneys might request information such as the following:

About the Criminal Event:

- Date and time of criminal occurrence
- Location of events, addresses, and description of premises
- How the perpetrator gained access to the victim
- Identification of witnesses to any stage of the occurrence
- Identification of known physical evidence
- Whether a police report was filed, and if so, identification of: the police department where the complaint was filed, the detective or officer assigned to the case, the complaint or report number, and statements taken as part of an investigation
- Whether there was or is a criminal case, and if so, identification of: the prosecutor, current stage of criminal case, and description of the case investigation conducted
- If a third party might bear some liability for the occurrence of the crime, details surrounding the crime and where it was committed become increasingly important, such as whether there was any security.

About the Perpetrator:

- If the perpetrator is known to the victim: nature of relationship with victim, perpetrator's name and aliases, address, date of birth and Social Security number, employment information, and any information known about the perpetrator's assets and insurance coverage

- If the perpetrator is not known to the victim: physical description of the perpetrator and identifying features

About Damages Sustained by the Victim:

- Medical information: degree of physical, emotional, and psychological injuries sustained, and extent and cost of anticipated treatment
- Identification of hospital, physician services
- Identification of property damage
- Lost amount of victim's or victim's spouse's time from work, lost wages, money recouped from workers' compensation, or state or private disability insurance
- Source of funds to cover damages or losses such as insurance (policy number), crime victims' compensation, Medicare, and restitution

Fees and Retainers

Usually, the types of civil cases brought by victims of crime are billed by attorneys on a contingency fee basis. This means the attorney is only paid if the victim is awarded a monetary settlement or judgment. Attorneys will be paid a predetermined percentage of the total award.

There are also costs, such as filing fees, deposition fees, and service of process fees the victim might be responsible to pay before a suit is filed or during the course of the suit. Some attorneys require that plaintiffs pay a retainer fee. A retainer is money paid to an attorney, but kept in a special account from which the above-mentioned costs can be paid. Money not used in the retainer may be returned to the client at the conclusion of the suit.

XVI. Conclusion

The civil justice system offers victims of crime another opportunity to secure what they seek most—justice. Regardless of whether there was a successful criminal prosecution or any prosecution at all, victims can bring their claims before the court and ask to have the responsible parties held accountable. While money awarded in civil lawsuits can never fully compensate victims for the trauma of their victimizations or the loss of loved ones, it can provide valuable resources for crime victims to help rebuild their lives.

For more information about civil justice for crime victims, or to order more copies of this booklet, please contact the National Crime Victim Bar Association.

NOTABLE CALIFORNIA CRIME VICTIM CIVIL CASES

- **Restitution**

Restitution Is Not Limited to Victims Who Suffer Physical Injury

People v. Broussard

856 P.2d 1134, California, CA, 09/02/1993

The defendant was convicted of two counts of receiving stolen property, and was ordered to pay full restitution of \$5,545 to the victims of his crimes. The defendant appealed the order, claiming that restitution was payable only to crime victims who had suffered death or physical injury. This argument was based on a statutory definition of "victim" contained in a separate section of the restitution statute. The Appellate Court affirmed the order, and another appeal was taken. The State Supreme Court affirmed, holding that restitution was payable to all crime victims, including those who had not suffered physical injury or death. The "plain meaning" of a statute is followed, except in cases where the plain meaning would lead to absurd results. That is the case at hand. The state voters added a Constitutional Amendment requiring that restitution be ordered to all crime victims, even those who have not suffered death or physical injury. When the Legislature enacted the enabling legislation, it would be absurd to believe that they intended to change the will of the voters. The narrow definition of "victim" does not apply to the restitution section.

- **Restitution**

Court Cannot Delegate Its Restitution Authority and Must Consider Offenders Ability to Pay

U.S. v. Mikaelian

168 F.3d 380, 9th Cir., CA, 02/17/1999

In 1994 and 1995, Hovsep Mikaelian ("Mikaelian") and several accomplices illegally acquired permits to sell fuel on the wholesale market. The men committed multiple acts of mail, wire and telecommunications fraud, and some of the money collected through the scheme was used to buy and sell heroin. Mikaelian pleaded guilty in exchange for cooperating with the government in its prosecution of the other defendants. However, at sentencing the government did not move for a downward departure for substantial assistance because in its opinion, Mikaelian's cooperation was not "meaningful." The district court sentenced Mikaelian to 14 years in prison, five years of supervised release, and ordered him to pay \$2,435,280 in restitution, the amount of the taxes evaded, jointly and severally, by Mikaelian and his accomplices. The restitution order could be modified by Mikaelian's probation officer if he determined that Mikaelian would be unable to pay. Mikaelian appealed. The United States Court of Appeals, Ninth Circuit, affirmed the conviction, but reversed the sentencing order and remanded to a different district judge. The presentence report submitted to the district judge concluded that Mikaelian appeared not to have the ability to pay restitution, and the district court failed to take Mikaelian's

future ability to pay into consideration. Furthermore, the district court improperly delegated its authority when it gave the probation officer discretion to adjust the restitution amount, a power vested only to the court.

- **Restitution**

Legal Fees Incurred to Recover Economic Damages in a Civil Action May Be Included in a Restitution Order

People v. Pinedo

60 Cal. App. 4th 1403, 1406, 71 Cal. Rptr. 2d 151, 152 (Cal. Ct. App. 1998)

Defendant was driving with a blood-alcohol level of .19 percent when his car spun out of control and collided with Plaintiff's vehicle, injuring him as a result. Plaintiff retained counsel and received a civil settlement of \$22,000 from the Defendant's insurance carrier. Plaintiff's attorney was paid \$7,000 from the settlement as a contingency fee. Defendant pled no contest and was placed on probation and ordered to pay restitution that included the \$7,000 for the contingency fee paid to Plaintiff's attorney. Defendant appealed the order arguing the order was improper because the attorney fees did not arise from the criminal proceeding. Specifically, a portion of the settlement arose from noneconomic losses which may not be ordered in restitution. The court disagreed. Pursuant to §1202.4 of the Penal Code, when a defendant is granted probation, a court must order restitution to reimburse for all economic loss which resulted from the defendant's criminal conduct. The Court held that legal fees incurred by a victim to recover damages in a civil case is a logical result of the Defendant's criminal conduct because Defendant's drinking and driving directly caused the economic losses reimbursed in the civil case. Therefore, the legal expense to recover damages in a civil action satisfied the requirements that the fees be proper, necessary, and a logical result of appellant's criminal conduct under §1202.4. Lastly, Defendant argued the probation officer could not determine whether the attorney's fees were reasonable because he lacked sufficient information. Yet, Defendant failed to provide any evidence at the sentencing hearing. The court explained that once a probation officer's report includes a recommendation of a restitution amount, the burden shifts to the defendant to present evidence to challenge the amount he claims is unreasonable. Here, the Defendant presented no such evidence. Therefore, the court had no basis on which to find that the fee was unreasonable.

- **Restitution**

All Attorney's Fees Incurred to Recover for Victim's Economic Damages as Defined in 1202.4 May Be Recoverable as Restitution Provided the Amount is Reasonable

People v. Fulton

109 Cal. App. 4th 876, 135 Cal. Rptr. 2d 466 (Cal. Ct. App. 2006).

Defendant was driving with a blood-alcohol level of 0.16 percent when he crossed a center double-yellow line causing a head-on collision with the vehicle driven by Plaintiff. Defendant pled guilty to driving while under the influence of alcohol (DUI). Prior to the guilty plea, Plaintiff filed a civil suit against Defendant which settled for \$100,000. During a restitution hearing, Plaintiff presented evidence to show Plaintiff's counsel collected a 25% contingency fee of \$25,000. After a hearing, the lower court considered the amount of attorneys fees and costs for collection Plaintiff was owed and ordered Defendant to pay Plaintiff \$25,000 in attorney fees pursuant to section 1202.4, subdivision (f)(3)(H). Defendant appealed claiming the amount was improper because a portion of the attorney's fees was incurred to recover non-economic damages, not allowable under the section 1202.4. The court disagreed and held that the \$25,000 did reflect the amount of attorney's fees incurred to recover for Plaintiff's economic damages and the amount was reasonable. Pursuant to 1202.4, subdivision (f)(3)(H), Defendant argued that attorney's fees are recoverable as restitution only to the extent they are incurred to collect a recoverable restitution item, such as medical expenses and lost wages, and not to collect damages awarded for pain and suffering in a civil suit. The Government argued attorney's fees are economic losses, as defined under the restitution statute. The court looked at the importance of public policy stating that policy seeks to provide crime victims with direct restitution for all losses they suffer. In a case where fees cannot be reasonably divided between the pursuit of economic versus non-economic losses, the victim is entitled to actual and reasonable attorney's fees. It is the victim's burden to present prima facie evidence of the amount of restitution he or she is entitled to receive. The burden then shifts to the defendant to negate the evidence and/or to prove that all or a portion of the attorney's fees are non-economic losses. Defendant argued that \$13,307.35 was a reasonable amount of attorney fees; however, the Court found that the amount provided by Defendant was substantially less than what the evidence shows Plaintiff's economic damages to be. Therefore, the Court determined that there was no basis to find the attorney's fees unreasonable.

- **Inadequate Security**

Landlord and Manager Liable for the Kidnapping and Sexual Assault on a Tenant

Pamela B. v. Hayden

31 Cal.Rptr.2d 147, Cal.App. 2 Dist., CA, 06/07/1994

Tenant was kidnapped from underground parking garage of her security apartment building and sexually assaulted. She brought suit against building's landlord and manager alleging negligence in their failure to provide security. Landlord had been told about light bulbs that needed changing and locks that needed repairing but did not fix them. The lower court entered judgment on jury verdict awarding \$1.2 million to tenant, attributing 95% of fault to landlord and manager, 4% to rapist, and 1% to rapist's aider. The landlord and manager appealed. The appellate court held: criminal act of rapist was not "superseding cause" which broke chain of causation and relieved defendants of liability from failure to repair; expert testified that rapist "more likely than not" would have been deterred from entering area had security measures been in place; no substantial evidence supported apportionment of fault that jury gave.

- **Inadequate Security**

\$7 Million Awarded a Plaintiff Due to Lack of Security in Parking Lot

Valentine v. Nayarit Restaurant & Night Club

BC 209989, Calif., CA, 11/29/2000

Alma Valentine went with some friends to the Guatemala Musical Restaurant and Dancing Club. The club advertised that there was secure parking in the back. In fact, the only lot available in the back was a city parking lot. When Valentine left, her female companion Nellie offered a ride to a man named Rene. Valentine got into a dispute with her male companion, Vargas, about whether they should drive Rene. Vargas then got into a heated dispute with Rene. Five or six of Rene's companions rushed over to Valentine's vehicle. One of the companions pulled a gun and shot at Vargas, striking Valentine in the back and causing her to become a paraplegic. Valentine sued Martinez Enterprise, which owned the restaurant, and Metro Security Patrol, which was the security company for the restaurant. The case settled for \$1,243,400 from Metro Security and \$6,000,000 from Martinez.

- **Employer Liability**

Drunk Driver's Employer Liable for Death

Curler v. Bithell

No. 758980, Orange County Super. Ct., CA, 06/13/1997

Bithell was driving a vehicle leased by his employer when he ran a red light at an intersection and struck Curler's car on the driver's side. Curler, 34, suffered fatal injuries. She had been a property manager earning about \$18,000 annually. Curler's husband and minor son sued Bithell, alleging that he had been driving while intoxicated. His blood alcohol content was reportedly .25. Bithell later pled guilty to vehicular manslaughter and received a prison term. The plaintiffs also sued Bithell's employer under the doctrine of respondeat superior. The parties settled on the first day of trial for \$.7 million, paid by Bithell's employer. Cutler's husband received \$1.7 million and her minor son received the rest.

- **Employer Liability**

\$2.02 Million Awarded for Vehicular Assault

Joans v. National Home Care Sys., Inc.

No. 698583, San Diego County Super. Ct., CA, 03/19/1997

As Joans, 60, was walking in an apartment complex parking lot, she was struck by a pickup truck driven by Lind for her employer. Joans was dragged under the truck for about five to ten feet. She was comatose for four weeks and hospitalized for three months. She suffered a subdural hematoma, requiring a craniotomy; respiratory failure, requiring a tracheotomy; and right-side hemiparesis. She now has short-term memory loss, balance problems, and amnesia covering large segments of her life. She must use a walker and requires assisted living. She has incurred \$434,000 in medical expenses. Joans sued Lind, alleging that she (1) failed to use her rear-view mirrors before backing up and (2) was traveling at an excessive speed under the circumstances. The plaintiff also sued Lind's employer under the doctrine of respondeat superior and for negligent hiring. The plaintiff claimed that Lind should not have been driving because she had been taking medication that depressed the central nervous system. The plaintiff also sued the apartment complex management company, alleging that it knew that Lind was parking in the "Resident Parking Only" lot even though she had been warned not to. The plaintiff also claimed that the defendant knew that on one occasion Lind travelled at an excessive speed through the lot. The parties settled before trial for \$2.02 million. Lind's employer contributed \$2 million and the management company contributed the rest.

- **Employer Liability**

Public School Districts May Be Held Vicariously Liable For Negligent Hiring, Training and Supervision of its Employees

C.A. v. William S. Hart Union High School District, et al.

2012 Cal. Lexis 2185 (Cal., Mar. 8, 2012)

Plaintiff was fourteen to fifteen years old in 2007 when his public high school counselor sexually abused him on and off school premises. The counselor exploited her position by grooming the Plaintiff prior to introducing sexual abuse. The abuse caused emotional harm and fear. As a result, Plaintiff sued the counselor, the school district ("Defendant"), and the principal, school superintendent, and numerous other administrators and personnel ("employees"). The complaint alleged the employees were individually liable to Plaintiff due to their failure to properly hire, train, and supervise the counselor. Plaintiff alleged further that the District was vicariously liable for its employees' negligent hire, train and supervision of the counselor. Defendant moved for a demurrer and the lower court sustained finding no statutory authority that permitted a public entity to be held vicariously liable under a negligent hire, train and supervision theory. The Court of Appeals affirmed in a divided decision. The California Supreme Court reversed the lower courts and remanded. In doing so, it held a public school district may be vicariously liable under Section 815.2 for the negligence of its employees in hiring, supervising and retaining a school employee who sexually abuses a student. Generally, a public entity may not be liable unless exclusive statutory authority permits. Gov. Code §816. However, section 815.2 states that "[a] public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if this act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative. Therefore, an employee of a public entity is liable for negligent acts or omissions to the same extent as any private person, and the public entity is vicariously liable for any injury the employee causes as a result thereof, to the same extent as any public employer." Furthermore, under 815.2(a), a school district is vicariously liable for injuries proximately caused by such negligence. Because the Plaintiff was under the supervision of the counselor, one of its employees, the Court found that the Defendant's administrators and personnel had a "special relationship" with the Plaintiff. This special relationship created a duty to take reasonable measures to protect Plaintiff from injuries at the hands of others in the school environment. Therefore, Defendant's administrative and supervisory employees had a duty of reasonable care to protect a Plaintiff from foreseeable dangers, including from other school employees, and third parties acting negligently or intentionally. The Defendant breached this duty when it negligently hired, trained, and supervised the administrative and supervisors of the counselor who allegedly knew or had reason to know of the counselor's dangerous propensities.

- **Sovereign Immunity**

Police Treatment of Domestic Violence is Violation of Equal Protection

Thurman v. City of Torrington

595 F. Supp. 1521, D. Conn. , 7/1/1985

Charles and Tracey Thurman, estranged husband and wife, had a violent separation. In October 1982, Charles attacked Tracey and, using physical force took Charles Thurman, Jr., from the residence. At the time, Tracey went to the Torrington Police Department. The department refused to accept the complaint. On November 9, 1982, Charles broke the windshield of Tracey's car while she was sitting in it. He was convicted of breach of the peace, and received a suspended sentence of six months in jail and a two year "conditional discharge." During the two-year period, he was to stay completely away from Tracey and commit no further crimes. During the period of conditional discharge, Tracey called the police department several times complaining that Charles was violating the terms of the discharge. The police refused to do anything about Tracey's complaints. At one point, Charles threatened to kill Tracey. At that time, Tracey attempted to get Charles arrested for violating his conditional discharge. The police department refused to help Tracey. Officers repeatedly asked her to return to the police station at a later date. Tracey pursued her attempts to get Charles arrested, but to no avail. On June 10, 1983, Charles appeared at the residence where Tracey was staying. Tracey, remaining indoors, called the police department and asked that Charles be arrested for violation of the conditional discharge. After about 15 minutes, Tracey went outside to persuade him not to take her or hurt Charles, Jr. Soon thereafter, Charles began to stab Tracey in the chest, neck, and throat. Approximately 25 minutes after Tracey's call, a single police officer arrived at the scene. When the officer arrived, Charles dropped the knife, and in the officer's presence, kicked Tracey in the head and ran into the house. Charles returned from the house holding Charles, Jr., and dropped the child on his wounded mother. Charles then kicked Tracey in the head a second time. Soon thereafter, three more police officers arrived at the scene, but continued to let Charles wander about the crowd and to continue to threaten Tracey. Finally, when Charles approached Tracey again (this time, she was lying on a stretcher) Charles was arrested and taken into custody. The court found that Tracey was discriminated against because the violence was a domestic dispute. The evidence showed that police protection was fully provided to persons abused by someone with whom the victim had no domestic relationship, but the police consistently afforded lesser protection when the victim was a woman abused or assaulted by a spouse or boyfriend or when a child was abused the a father or stepfather. The court awarded Tracey \$2.3 million.

- **Intentional Infliction of Emotional Distress**

Employer Liable for Supervisors Outrageous Acts

Herrick v. Quality Inn Hotel

24 Cal.Rptr.2d 203, Cal.App. 2 Dist., CA, 11/04/1993

Plaintiff was hotel security guard and brought suit against employer hotel for intentional infliction of emotional injury based on allegation that plaintiff's supervisor, security manager, pointed a gun at employee's head and threatened to "blow it off." The lower court entered judgment for plaintiff on jury verdict and reduced punitives. Both employer and employee appealed. Appellate court held that the action fell within the "injury caused by willful physical assault" exception to the workers' compensation exclusive remedy exception. The court also held that the amount of punitives as reduced by the trial judge was not excessive and evidence supported claim that the employer ratified supervisor's conduct because supervisor had been arrested for a similar incident only one month before the incident leading to the present cause of action.

- **Punitive Damages**

Victim's Son Sues Murderer, Awarded \$7.5 Million

Loucks v. Jacobs

San Diego (CA) Super. Ct., CA, 01/12/2005

Dr. Harvey Jacobs had been married to Nadine Loucks for two weeks when he strangled her to death. Jacobs was convicted of second-degree murder in 2000 and sentenced to fifteen years to life. Jeremiah Loucks, Nadine's twenty-nine-year-old son, filed suit against Jacobs for wrongful death. As he had done during his criminal trial, Jacobs, who represented himself in the civil case, claimed that Nadine had choked on a pastry during an intoxicated eating frenzy. Jeremiah offered uncontradicted expert medical testimony that Nadine had been strangled by another person and that someone had tried to cover up the crime by stuffing a piece of pie down her throat after she was already dead. The jury awarded Loucks \$2.5 million for loss of love and affection and \$5 million for punitive damages. There is an ongoing dispute about whether Jacobs has any assets that could be used to satisfy the judgment. According to his lawyer, one of Jeremiah's main goals in bringing the suit was to ensure that Jacobs will have no assets if he ever gets out of prison.

- **Negligent Hiring**

School Pays \$700,000 to a Student When a Coach Had Unlawful Sexual Contact With Her

Doe v. Roe School

Los Angeles Cnty. Super. Ct., CA, 03/05/2004

A high school coach allegedly had unlawful sexual contact with Doe, a 16 year old student at his school. The alleged abuse lasted for several years, causing Doe emotional distress. Doe sued the coach and the school, claiming unlawful sexual contact against the coach, and negligent hiring and supervision against the school. Doe contended that a criminal background check would have shown a felony conviction and drug convictions. She further contended that another coach was aware of the sexual contact at the time and did not report it. The defendant argued that the coach never engaged in sexual relations with Doe while she was a minor. The case was settled for \$700,000, paid by the school.

- **Title IX**

School May Be Liable for Sexual Harassment and Assault under Title IX

Oona R.-S. by Kate S. v. Santa Rosa City Schools

890 F. Supp. 1452, N.D.Cal., CA, 05/02/1995

On several occasions, plaintiff's student teacher sexually harassed and assaulted her, through inappropriate touching and fondling. The principal did not act on plaintiff's complaints until many other students came forward with similar claims. Only then was the student teacher dismissed. Also, all students were allowed to watch MTV at school. Plaintiff and other female students requested that this policy be changed, because the male students began to refer to the female students in vulgar and demeaning terms. Plaintiff had two male students written up for their comments. Later, one of these students struck plaintiff. That student was never disciplined, but the principal began to retaliate against the plaintiff. Plaintiff brings this 1983 civil rights claims based on Title IX rights, against the offending student teacher and several other school officials. Defendants move to dismiss. The District Court held that Title IX confers an enforceable right upon the plaintiff. That is the right to be free from gender discrimination, in the form of sexual harassment, either stemming from teachers or from peers. To make a claim under Title IX, a student must show that each defendant intentionally discriminated against her on the basis of sex or is liable under the 1983 standard for supervisory liability for his own wrongful conduct when supervising a subordinate who intentionally discriminates. This is not a respondeat superior standard, but imposes liability on a supervisory employee for his own culpable action or inaction in the training, supervision, or control of his subordinate. Here, plaintiff has stated a claim under 1983 against the student teacher, and all but two of the school officials. As to the peer harassment, Title IX is also violated when female students are subjected to sexual harassment by male students and school officials discriminate

against the female students based on their gender, by encouraging or failing to appropriately respond to the harassment. Plaintiff has stated a claim against the school here. Qualified immunity is not available to the school officials. Reasonable school officials would have known in 1992 that failure to adequately supervise a student teacher and allowing or condoning peer sexual harassment would violate a female students civil rights.

- **Statute of Limitations**

Adult Survivor of Child Sex Abuse Must File Suit within Three years of Discovering that the Injury was caused by the Abuse

Lent v. Doe

47 Cal.Rptr.2d 389, 40 Cal.App.4th 1177

Plaintiff, Michael Lent alleges that he was sexually abused by his uncle, defendant Doe over a three year period when plaintiff was 12 years old. The incidents occurred during the summer months when Lent would stay over his uncle's and aunt's. As a result of the defendant's acts, plaintiff developed feelings of "deep shame, self blame and self loathing." He never repressed the memories. He used alcohol and drugs increasingly, dropped out of high school at age 17, became addicted to cocaine and speed, and became an angry, alienated and sometimes suicidal person. Lent further alleges that he became subject to denial and dissociation which naturally and reasonably prevented him from being able to discover that the psychological injuries that occurred during his adult life were connected to the sexual abuse until on or after September 1, 1991 when he underwent counseling. Lent filed his action in January 1994 when he was 31 years old. The complaint contains two counts: sexual molestation, and negligent infliction of emotional distress. Doe demurred arguing that the complaint was time barred by the statute of limitations. The trial court rejected plaintiff's theory of delayed discovery, sustained defendants demurrer without leave to amend and dismissed Lent's case. Lent appealed. The Court of Appeals reversed the trial court's verdict and ruled that Lent did timely file his complaint. The operative language to the 1990 statutory amendment requires an action for childhood sexual abuse to be commenced within 8 years of the date the plaintiff attains the age of majority or within 3 years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after age of majority was caused by the sexual abuse, whichever period expires later. The goal of amending § 340.1 was to allow sexual abuse victims a longer time period in which to become aware of their psychological injuries and remain eligible to bring suit against their abuser. Since this new statute was amended, the question was whether the legislature has the power to make the statute of limitations retroactive. The Court held that it was constitutionally permissible as long as it does not interfere with vested title to real or personal property. Furthermore, the statutes of limitations in civil actions are procedural rather than substantive and are not subject to the general rule against statutory retroactivity.