

LITIGATION



March 12, 2025

Via E-mail: civiljuryinstructions@jud.ca.gov

Mr. Eric Long
Advisory Committee on Civil Jury Instructions
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102

re: Invitation to Comment—CACI 25-01

Dear Mr. Long:

The Jury Instructions Committee of the California Lawyers Association’s Litigation Section has reviewed the proposed revisions to civil jury instructions (CACI 25-01) and appreciates the opportunity to submit these comments.

**1. CACI No. 1013. Landlord’s Liability for Dangerous Dog Kept on Property—
Essential Factual Elements**

Element 2 requires actual knowledge. We believe “knew” is appropriate and “or must have known” should be deleted. The phrase “or must have known” is both unclear and unnecessary. CACI 202, *Direct and Indirect Evidence* explains circumstantial evidence more clearly and can be given if desired.

2. VF-1003. Landlord’s Liability for Dangerous Dog Kept on Property

a. We would delete “, or must [*name of defendant landlord*] have known,” in Question 2 for the reasons stated above.

b. We would add optional questions on the comparative negligence of plaintiff and others, as in VF-401 and VF-402.

3. CACI No. 1621. Negligence—Recovery of Damages for Emotional Distress—No Physical Injury—Bystander—Essential Factual Elements

Agree.

4. CACI No. 1803. Misappropriation of Name, Likeness, or Identity—Essential Factual Elements

a. We agree with the proposed revisions to the title and instruction.

b. We would revise the third paragraph in the Directions for Use by adding a preface and would refer to both CACI No. 1302, *Consent Explained* and CACI No. 1303, *Invalid Consent*:

“If the parties dispute whether plaintiff gave consent, ~~C~~consider giving an instruction explaining consent and/or invalid consent. See generally CACI No. 1302, *Consent Explained*; CACI No. 1303, *Invalid Consent*.”

c. We find the sentence, “Consider giving an introductory instruction listing the legal theories under which the plaintiff is suing if more than one type of misappropriation has been alleged,” unclear and unnecessary. It is unclear whether the “type of misappropriation” refers to a common law versus a statutory claim or different aspects of plaintiff’s identity. We would delete this sentence.

d. We would revise the second sentence in the fifth paragraph of the Directions for Use because the two causes of action do not necessarily cover all the same conduct.

“The two causes of action overlap, and the same conduct ~~should~~ may be covered by both.”

d. We agree with the other proposed revisions to the Directions for Use.

e. We agree with the proposed revisions to the Sources and Authorities.

f. We suggest considering the addition of a reference to Labor Code section 927, effective January 1, 2025, relating to digital replicas.

5. CACI No. 1804A. Misappropriation of Name, Voice, Signature, Photograph, or Likeness (Civ. Code, § 3344)

a. We agree with the proposed revisions to the title and instruction.

b. We would revise the second sentence in the Directions for Use to refer to “plaintiff” rather than “person,” consistent with the instruction.

c. We would delete the last sentence in the second paragraph of the Directions for Use beginning, “Consider giving,” for the reasons stated above relating to CACI No. 1803.

d. We suggest the following revisions to the second paragraph in the Directions for Use for greater clarity:

“One’s name, voice, signature, photograph, and likeness are protected under both the common law and ~~under~~ Civil Code section 3344. While the term ‘identity’ is sometimes used to refer to the statutorily protected categories, a plaintiff’s ‘identity’ is protected only under the common law and not under the statute. As the statutory remedy is cumulative (Civ. Code, § 3344(g)), both this instruction and CACI No. 1803, *Misappropriation of Name, Likeness, or Identity*, which sets forth the common-law cause of action, may be given. ~~Consider giving an introductory instruction listing the legal theories under which the plaintiff is suing if more than one type of misappropriation has been alleged.~~”

e. We would revise the fifth paragraph in the Directions for Use in the same manner that we propose revising the same language in the Directions for Use for CACI No. 1803.

f. We agree with the other proposed revisions to the Directions for Use.

g. We agree with the proposed revisions to the Sources and Authorities.

6. CACI No. 1804B. Misappropriation of Name, Voice, Signature, Photograph, or Likeness—Use in Connection With News, Public Affairs, or Sports Broadcast or Account, or Political Campaign (Civ. Code, § 3344(d))

a. We agree with the proposed revisions to the title and instruction.

b. We would revise the second paragraph to match the second sentence in the Directions for Use for CACI No. 1804A, for consistency and would change “person’s” to “plaintiff’s,” as stated above:

“Select the specific type of misappropriation from the applicable bracketed terms for the aspect of the ~~person~~plaintiff’s identity at issue in the case.”

c. We would revise the fourth paragraph in the Directions for Use in the same manner that we propose revising the identical paragraph in the Directions for Use for CACI No. 1804A.

- d. We agree with the other proposed revisions to the Directions for Use.
- e. We agree with the proposed revisions to the Sources and Authorities.

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

- a. We agree with the proposed revisions to the title.
- b. We would delete “*e.g., celebrity*” within brackets in the first sentence of the instruction and in elements 1 and 2. The words “other person” include “celebrity.” The common law and statutory claims do not apply only to celebrities, and we believe highlighting celebrity is potentially misleading.
- c. We would delete “*e.g., picture*” within brackets in the introductory paragraph and elements 1 and 2 to avoid any unintended suggestion as to the type of work for which the instruction is or is not appropriate.
- d. Element 2 is based on *Comedy III*, which involved the use of celebrities’ likeness. The “subsidiary inquiry” from *Comedy III* expressed in element 2 reflects the fact that a celebrity likeness has a value derived from the celebrity’s fame. The likeness of a noncelebrity, however, generally has no value derived from fame. We believe element 2 is not appropriate in cases involving noncelebrities where the likeness has no value derived from the person’s fame. We suggest adding language to the Directions for Use to remedy this.

8. CACI No. 1930. Receiving Stolen Property—Civil Liability—Essential Factual Elements (Pen. Code, § 496(c))

- a. We agree with the elements of the instruction.
- b. We would change “Property is stolen” and “Property is obtained by extortion” in the two alternative paragraphs after the elements to “Property was ...,” consistent with element 1.
- c. Rather than explain “stolen” by reference to “theft” and then define “theft,” we would explain “stolen” without reference to theft for simplicity and greater clarity:

““Property is was stolen if it was ~~obtained by theft.~~ Property is obtained by theft if a ~~person takes someone took~~ possession of the property, owned by someone else, without the owner’s consent, and with the intent either to permanently deprive the owner of that property or to deprive the owner of a major portion of the value or enjoyment of the property for an extended period of time.”
- d. We would revise the second sentence in the third paragraph of the Directions for Use, referring to “Other definitions of theft,” accordingly.

9. VF-1930. Receiving Stolen Property—Civil Liability

Agree.

10. CACI No. 3006. Bane Act—Essential Factual Elements (Civ. Code, § 52.1)

a. Proposed new alternative element 1 does not require a credible threat of violence, as is required for speech alone to support liability under the Bane Act. (Civ. Code, § 52.1(k)). We propose either adding language to the Directions for Use stating that this alternative element 1 should not be given if the threat, intimidation, or coercion involved speech alone.

b. We agree with the other proposed revisions to the instruction.

c. We agree with the proposed revisions to the Directions for Use.

d. We agree with the proposed revisions to the Sources and Authorities.

11. VF-3035. Bane Act (Civ. Code, § 52.1)

a. We agree with the other proposed revisions to the verdict form.

b. We would add language to the Directions for Use on when to give the first alternative question 1.

c. We agree with the other proposed revisions to the Directions for Use.

12. CACI No. 3704. Existence of “Employee” Status Disputed

Agree.

13. CACI No. 3713. Nondelegable Duty

Agree.

14. CACI No. 4013. Disqualification From Voting

a. The proposed revision to the instruction repeats the grounds for a finding of gravely disabled that are stated in CACI No. 4000, *Conservatorship—Essential Factual Elements*. We find it unnecessary and unhelpful to repeat those grounds in this instruction. We suggest the following revisions:

“If you find that [*name of respondent*], as a result of [~~a mental health disorder/a severe substance use disorder/a co-occurring mental health disorder and a severe substance use disorder/impairment by chronic alcoholism~~], is gravely disabled, then you must also decide whether [*he/she/nonbinary pronoun*] should also be disqualified from voting. To disqualify [*name of respondent*] from voting, all 12 jurors must find, by clear and convincing evidence, that

[he/she/nonbinary pronoun] cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process.”

b. We would revise the first sentence of the Directions for Use for greater clarity:

~~“Give T~~his instruction is to be used in proceedings subject to Elections Code section 2208(b) and should be given with CACI No. 4000, *Conservatorship—Essential Factual Elements*, if the petition prays for this relief.”

15. CACI No. 4306. Termination of Month-to-Month Tenancy—Essential Factual Elements

We agree with the proposed revisions, except the citation to Civil Code section 1946.1(j) in the Sources and Authorities should be to section 1946.1(k).

16. CACI No. 4307. Sufficiency and Service of Notice of Termination of Month-to-Month Tenancy

We agree with the proposed revisions, except the citation to Civil Code section 1946.1(j) in the Sources and Authorities should be to section 1946.1(k).

17. CACI No.4409. Remedies for Misappropriation of Trade Secret

Agree.

18. CACI No. 4601. Protected Disclosure by State Employee—California Whistleblower Protection Act—Essential Factual Elements (Gov. Code, § 85.47.8(c))

Agree.

19. CACI No. 4602. Termination of Month-to-Month Tenancy—Essential Factual Elements

Agree.

Sincerely,

Reuben A. Ginsburg
Chair, Jury Instructions Committee of the
California Lawyers Association’s
Litigation Section