Statutory Controls of Damages in Commercial Transactions

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By TERRY BAUM*†

Section 3281 of California's Civil Code provides that "Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages." This section expresses what can be called the ideal of "perfect compensation": full compensation—no more, no less—for loss resulting from another's breach of duty. It is conceivable that the statutory law of damages could stop right there, but in fact California has a sizable body of statutory law affecting the amount of damages that can be recovered.

With reference to the statutory treatment of this subject, several general observations can be made. First, damages have long been a subject of statutory control in this state. As enacted in 1872, the Civil Code, in which most provisions controlling damages are still found, contained a rather comprehensive treatment of the subject which was, for the most part, a codification of common law, offering few, if any, surprises.¹ Second, most of this 1872 body of law remains intact today, and the amount of supplementary legislation enacted since 1872 has not been voluminous. If the charge that the law of damages is unsurpassed for confusion in the entire body of the law² applies to California, there nevertheless has been no irresistible pressure for wholesale revision. Third, while much of the statutory law elaborates on the basic principle of compensation expressed in section 3281 (for it is not, after all, always obvious how the ideal of perfect compensation is to be attained) it is apparent that in many instances the Legislature, for

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† The opinions expressed in this article are those of the author and do not necessarily reflect the views of the Legislative Counsel.

¹ The bulk of these provisions, then as now, were found in CAL. CIV. CODE §§ 3281-3360. Some indication whether these code sections were intended to codify the common law can be found in the annotations to the 1872 Civil Code prepared by Creed Haymond and John C. Bush, two of the three members of the California Code Commission, in CAL. CIV. CODE, ANNOT. ED. (Bancroft & Co., Sumner Whitney & Co. 1874). These annotations will be referred to, hereafter, as "Code Commissioners' Notes."

reasons of practicality or achievement of some social purpose, has intentionally deviated from the principle of perfect compensation and has provided for recovery of a greater or lesser amount.

This article is intended to be a brief review of the statutes controlling the amount of damages recoverable in actions arising out of "commercial transactions," where damages are recoverable at all, and, disregarding nice distinctions that can be drawn between damages and penalties, it will deal also with the latter, where recoverable by private parties. An attempt has been made to divide the statutes into two classes: (1) those which appear to be intended to supply a measure of actual damages, and (2) those which appear to be intended to provide for a recovery less than, or exceeding actual damages. As will be suggested, however, appearances can be misleading, and a statute which guarantees recovery of a seemingly arbitrary sum, such as 250 dollars, regardless of the loss proved in the particular case, may come closer to compensating a party for his actual losses than a statute, embodying a long-revered principle of the law of damages, which calls for fine determinations in each case. As the relevant statutes include a substantially complete statement of the general principles of the law of damages, it would not be feasible in any article of this size to deal generally with the cases decided under these statutes, but reference will be made particularly to cases bearing on the interrelationship of the statutes and of the different types of damages.

I. The Measure of Actual Damages

Breach of Contract Generally

The Legislature has provided that for the breach of an obligation arising from contract, the measure of damages, unless otherwise provided in the Civil Code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom. Though it may not be obvious, this section has been construed to be a codification of the rule of Hadley v. Baxendale, so that the basic measure of damages is such damages as may reasonably be supposed to have been within the contemplation of the parties, at the time of making of the contract, as the probable result of a breach, either by reason of there being damages that naturally flow from a breach, or, if they result

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3 For the purposes of this article, "commercial transactions" has been given a somewhat synthetic definition. The article deals with statutes relating to breach of contract and to other causes of action peculiar to the conduct of a business or considered most likely to arise in transactions to which a business organization is a party.


from special circumstances, because such special circumstances were communicated to the party who committed the breach. It is apparent that even this basic measure of damages is a qualification of the rule of perfect compensation. Evidently for reasons of fairness it was concluded that a party should not be compensated for some detriment traceable to a breach by the other party where such detriment was not reasonably foreseeable by the defaulting party, although it could be contended that it would be as fair or fairer to require the defaulting party to compensate for all losses suffered by the other party, whether or not foreseeable.

This basic statutory provision by its terms recognizes that the Legislature may otherwise legislate with respect to causes of action within the scope of the basic rule, and, in fact, the Legislature has done so. It has, for example, provided that the detriment caused by a breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation, with interest thereon. It has also enacted provisions dealing particularly with the measure of damages for breach of a contract for the sale of real property or goods and for breach of other types of contracts.

Real Property Sales

The detriment to the buyer caused by the breach of an agreement to convey an estate in real property is, by statute, deemed to be the price paid and the expenses properly incurred in examining the title and preparing the necessary papers, with interest, plus, if bad faith is present, the difference between the price agreed to be paid and the value of the estate agreed to be conveyed, at the time of the breach, as well as expenses properly incurred in preparing to enter upon the

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6 Hunt Bros. Co. v. San Lorenzo Water Co., 150 Cal. 51, 87 Pac. 1093 (1906); see Mitchel v. Clarke, 71 Cal. 163, 11 Pac 882 (1886). See McCormick, DAMAGES §138 (1935). Section 3300 was amended to read as it now does by Cal. Stat., Code Am. 1873-4, ch. 612, § 276, p. 265. In the 1872 version the section would seem to have more clearly expressed the rule of Hadley v. Baxendale. It read:

For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, which the party in fault had notice, at the time of entering into the contract, or at any time before the breach, and while it was in his power to perform the contract upon his part, would be likely to result from such breach, or which, in the ordinary course of things, would be likely to result therefrom.

7 For a general discussion of the rule of Hadley v. Baxendale see McCormick, DAMAGES §138 (1935).

8 CAL. CIV. CODE §3302. This section, however, does not apply to a landlord's action for damages on wrongful abandonment of leased premises. Respini v. Porta, 89 Cal. 464, 26 Pac. 997 (1891).
This provision prevails over general rules of damages and, specifically, over Civil Code section 3300. It is provided by statute that the detriment to the seller caused by the breach of an agreement to purchase an estate in real property is deemed to be the excess, if any, of the amount which would have been due to the seller, under the contract, over the value of the property to him. Also among the 1872 provisions still in effect today which prescribe a measure of damages are sections, now largely of historical interest, relating to breach of a covenant of seizin, right to convey, warranty, or quiet enjoyment in a grant of an estate in real property, breach of a covenant against encumbrances, and a breach of an agreement to execute and deliver a quitclaim deed to real property.

Sales of Goods

The 1872 Civil Code contained a block of sections relating to damages for breach of contract for the sale of goods which were repealed when the Uniform Sales Act was enacted. This repealer would appear

9 CAL. CIV. CODE § 3306. This is the "English Rule," to be contrasted with the "American Rule." Under the "American Rule," the buyer can recover the difference between the contract price and market value plus payments that have been made. See McCormick, DAMAGES § 177. It is to be noted that although this section allows interest on the price paid, it does not provide for interest on the special damages allowed in cases of bad faith on the part of the vendor. Crag Lumber Co. v.Crofoot, 144 Cal. App. 2d 755, 778, 301 P.2d 952, 967 (1956).


12 CAL. CIV. CODE § 3304. The measure prescribed is:

1. The price paid to the grantor; or, if the breach is partial only, such proportion of the price as the value of the property affected by the breach bore at the time of the grant to the value of the whole property;
2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding five years;
3. Any expenses properly incurred by the covenantee in defending his possession.

13 CAL. CIV. CODE § 3305. The measure prescribed is:

"... the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof, not exceeding in the former case a proportion of the price paid to the grantor equivalent to the relative value at the time of the grant of the property affected by the breach, as compared with the whole, or, in the latter case, interest on a like amount."

14 CAL. CIV. CODE § 3306a. This section is somewhat unusual in that it describes the "minimum detriment" caused by the breach. This is stated to be "... the expenses incurred by the promisee in quieting title to the property, and the expenses incidental to the entry upon such property ..." which expenses "... shall include reasonable attorneys' fees ..." to be fixed by the court in the quiet title action.
to be the most sweeping change in the 1872 statutes that has yet been made. The Uniform Sales Act now provides that when the seller is ready and willing to deliver and requests the buyer to take delivery, and the buyer does not do so in a reasonable time, he is liable to the seller for "any loss" occasioned by his neglect or refusal to take delivery and also for a reasonable charge for care and custody of

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15 This block of sections consisted of Cal. Civ. Code §§ 3308-3314 as enacted in 1872, which were repealed by Cal. Stat. 1931, ch. 1070, p. 2234. Section 3308 provided that the detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has not been fully paid in advance, is deemed to be the excess, if any, of the value of the property to the buyer over the amount which would have been due to the seller under the contract, if it had been fulfilled. Section 3309 provided that the detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has been fully paid to him in advance, is deemed to be the same as in wrongful conversion, the measure of damages for conversion being prescribed by Cal. Civ. Code § 3338. Section 3310 provided that the detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is vested in him, is deemed to be the contract price. Section 3311 provided that the detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is not vested in him is, if the property has been resold to satisfy the seller's lien, the excess, if any, of the amount due from the buyer under the contract over the net proceeds of the resale. Or, if the property has not been so resold, the detriment is the excess, if any, of the amount due under the contract over value to the seller, together with the excess, if any, of expenses properly incurred in carrying the property to market over those which would have been incurred for carriage if the buyer had accepted it. Section 3312 provided that the detriment caused by the breach of a warranty of title of personal property sold is the value to the buyer when he is deprived of possession, plus costs he must pay in an action by the true owner. Section 3313 provided that the detriment caused by the breach of a warranty of quality of personal property is the excess, if any, of the value which the property would have had at the time to which the warranty referred, if it had been complied with, over its actual value at that time. Section 3314 provided that the detriment caused by the breach of a warranty of fitness of an article of personal property for a particular purpose is the same as that provided by § 3313, together with fair compensation for loss incurred by an effort in good faith to use it for such purpose.

An incidental effect of the enactment of the Uniform Sales Act and repeal of earlier-enacted sections governing measure of damages in the same field was to reduce drastically the importance of Cal. Civ. Code § 3353. That section, still in effect, provides that in estimating damages, the "value of property to a seller" thereof is deemed to be the price which could have been obtained therefore in the market nearest to the place at which it should have been accepted by the buyer, and at such time after the breach of the contract as would have sufficed, with reasonable diligence, for the seller to effect a resale. "Value to the seller" was a factor in computation of damages under former Cal. Civ. Code § 3311 as enacted in 1872 but is not a factor under Cal. Civ. Code § 1784, and in an action for damages for nonacceptance of goods, it is error to apply § 3353. S. P. Milling Co. v. Billwhack etc. Farm, 50 Cal. App. 2d 79, 122 P.2d 650 (1942). Sections 3354-3356, also defining value for particular purposes, would appear to have greater current vitality. Section 3354 relates to value of property to an owner, as well as a buyer, for deprivation of possession; §3355 relates to damages for deprivation of, or injury to, property of peculiar value to the person seeking recovery of damages; and § 3356 relates generally to the value of an instrument in writing.
the goods. Where the seller is not paid, he may maintain an action for the price of the goods under the terms of the contract. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for nonacceptance, and the measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer’s breach. Where, in such cases, there is an available market for the goods, the measure, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the contract price and the market or current price when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of refusal to accept.

Where the property in the goods has not passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action for damages for nondelivery, and the measure of damages is the loss directly and naturally resulting in the ordinary course of events from the seller’s breach. If, in such cases, there is an available market for the goods, the measure, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time when they should have been delivered or, if no time was fixed, then at the time of the refusal to deliver. In an action by the buyer for damages for breach of warranty by the seller, the measure of damages is the loss directly and naturally resulting in the ordinary course of events from the breach of warranty; and, more specifically, in the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the

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16 CAL. CIV. CODE § 1771.
17 CAL. CIV. CODE § 1783.
18 CAL. CIV. CODE § 1784. The general principle of the duty of the aggrieved party to mitigate damages is not, as such, expressly codified. It is, apparently, a corollary of the principle that the defaulting party is liable only for such loss as is proximately caused by his breach. See CAL. CIV. CODE §§ 3300, 3333; Valencia v. Shell Oil Co., 23 Cal. 2d 840, 846; 147 P.2d 558, 561 (1944) (dictum); Winans v. Sierra Lumber Co., 66 Cal. 61, 4 Pac. 952 (1884) (dictum). It is expressly codified in § 1784(4) with respect to damages for nonacceptance of goods. That section provides:

If, while labor or expense of material amount are necessary on the part of the seller to enable him to fulfill his obligations under the contract to sell or the sale, the buyer repudiates the contract or the sale, or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for no greater damages than the seller would have suffered if he did nothing towards carrying out the contract or the sale after receiving notice of the buyer’s repudiation or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in estimating such damages.

19 CAL. CIV. CODE § 1787.
time of delivery and the value they would have had if they had an-
swered to the warranty.\textsuperscript{20} It is specified by statute that the Uniform Sales Act does not affect the right of the buyer or seller to recover interest or special damages in any case where, by law, interest or special damages may be recoverable.\textsuperscript{21}

\textbf{Carriers}

Of less general interest than the statutes discussed above, but as venerable as any of them, are several sections, dating back to the Civil Code as first enacted, relating particularly to carriers. They specify that the measure of damages for a carrier's breach of his obligation to accept freight, messages, or passengers is the difference between the amount which he had a right to charge for the carriage and the amount which it would be necessary to pay for the service when it ought to be per-
formed;\textsuperscript{22} that the measure for breach of a carrier's obligation to deliver freight is the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery;\textsuperscript{23} and that the measure for a carrier's delay in delivery of freight is the deprecia-
tion in the intrinsic value of the freight during the delay.\textsuperscript{24} Liability of common carriers for loss of or injury to baggage and certain types of freight is referred to below in the discussion of statutes limiting recoverable damages by fixed dollar amounts.

\textbf{Fraud—Retrospective Operation}

\textit{Of a New Measure of Damages}

If major changes in the statutes governing measure of damages are infrequent, they do, at least, occur sometimes, and have occurred within the memory of men now living. A major change was effected in 1935 when the Legislature enacted section 3343 of the Civil Code, providing that a person defrauded in the purchase, sale, or exchange of property is entitled to recover the difference between the actual value of that which the defrauded person parted with and the actual value of that which he received, together with any additional damage arising from the particular transaction, thus substituting the “out-of-pocket loss”

\textsuperscript{20} \textsc{cal. civ. code} § 1789.
\textsuperscript{21} \textsc{cal. civ. code} § 1790.
\textsuperscript{22} \textsc{cal. civ. code} § 3315.
\textsuperscript{23} \textsc{cal. civ. code} § 3316.
\textsuperscript{24} \textsc{cal. civ. code} § 3317. This measure is not exclusive, however. It applies only when appropriate, i.e., when the goods are perishable or have a market value for the use intended, by which their value can be determined. It did not apply in a case of delay in delivery of scenery and costumes for a play, requiring cancellation of the opening night performance. Artists' Embassy v. Hunt, 157 Cal. App. 2d 371, 320 P.2d 924 (1958).
rule for the "loss-of-the-bargain" rule. The new section contained, as it does now, the statement that "Nothing herein contained shall be deemed to deny to any person having a cause of action for fraud or deceit any legal or equitable remedies to which such person may be entitled."

The enactment of this section resulted in litigation on an issue likely to be presented in any case in which the measure of damages is changed by statute, namely, whether the new measure of damages applies to pending litigation or to causes of action existing at the time of the enactment which are not yet the subject of litigation. Very rarely does the Legislature state expressly whether a new measure of damages, or, for that matter, any other change in the law, is intended to apply or not to apply to existing causes of action or pending litigation. In *Feckenscher v. Gamble,* the California Supreme Court concluded that the new measure was intended to apply in a case in which the new section became effective after the cause of action had arisen but before the trial commenced, and the quoted sentence in section 3343 did not evidence a contrary intent. Further, such application of the new measure, as it did not deprive plaintiff of a vested right, was constitutional.

**Interest**

On a selective basis the Legislature has provided for recovery of

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25 Bagdasarian v. Gragnon, 31 Cal 2d 744, 193 P.2d 935 (1948); Jacobs v. Levin, 58 Cal. App. 2d Supp. 913, 137 P.2d 500 (1943). Under the "out-of-pocket loss" rule the plaintiff can recover the difference between the value of that with which he parted and the value of that which he received. Under the "loss-of-the-bargain" rule he can recover the difference between the value of the property received and the value that it would have had if it had been as represented. Jacobs v. Levin, *supra.* Although CAL. CIV. CODE § 3343 precludes application of the "loss-of-the-bargain" rule it does not preclude recovery of exemplary damages. Taylor v. Wright, 69 Cal App. 2d 371, 159 P.2d 980 (1945). Ward v. Taggart, 51 Cal 2d 736, 336 P.2d 534 (1959) illustrates that a plaintiff, by suing on the theory of unjust enrichment, may recover substantial damages in a fraud case, though, if the "out-of-pocket loss" rule were applied, he could show no actual damages; and, moreover, he can recover exemplary damages in such a case. CAL. CIV. CODE § 3294, permitting recovery of exemplary damages only in an action for the breach of an obligation not arising from contract, does not preclude recovery of such damages in a case in which the obligation is one imposed by law.

26 In 1959 the Legislature amended CAL. BUS. & PROF. C. § 16750 to authorize recovery of treble, rather than double, actual damages for the unfair trade practices to which the section relates (Cal. Stat. 1959, ch. 2078, p. 4811). In this case the Legislature expressly provided that "The amendments to this section adopted at the 1959 Regular Session of the Legislature do not apply to any action commenced prior to September 18, 1959." A similar provision is found in CAL. BUS. & PROF. C. § 17082, as amended in 1959 (Cal. Stat. 1959, ch. 2074, p. 4806).

27 12 Cal. 2d 482, 85 P.2d 885 (1938).
interest from the time of a breach. The section of broadest significance for the purposes of actions arising out of commercial transactions, provides that every person who is entitled to recover “damages certain” or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor, from paying the debt. This is another instance of a statute that would seem to depart from the ideal of perfect compensation, apparently for reasons of what is deemed fairness, i.e., the belief that interest should not be awarded when the defaulting party did not know just how much was owing. This section was broadened in 1955 to apply to recovery of damages from any political subdivision of the state, and was further broadened in 1959 to apply to recovery of damages from the state or any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state, which would seem to be about as broad language as could be used to cover governmental agencies generally. Civil Code section 3302 specifically authorizes recovery of interest in an action for breach
of an obligation to pay money only. This section, which has been construed to apply only to contractual relations and not torts, has apparently been construed also as subject to the certainty requirement of section 3287. Section 3288 of the Civil Code provides that in an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud or malice, interest may be given, in the discretion of the jury. Though the latter part of the section could be read as authorizing recovery of interest in cases of all types in which oppression, fraud, or malice is present, apparently no part of this section is applicable to contract actions. Recovery of interest is authorized also for a breach of a covenant of quiet enjoyment and the other covenants named in section 3304 of the Civil Code.

It is provided by statute that any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation, but otherwise the measure of damages statutes are silent on the rate of interest to be applied. Generally, the courts have applied the "legal" rate of interest, i.e., seven per cent.

General Overriding Provisions

Certain general statutory provisions have an overriding limiting effect on the amount of damages recoverable. No damages can be re-

33 See discussion in Apel, Interest as Damages in California, supra note 29 at 269. In the Siminoff case, supra note 32, the court describes it as relating to breach of a contract providing for payment of a liquidated sum.
34 The latter part of the section could be read as not restricted to obligations "not arising from contract," but apparently this is not correct. In McNulty v. Copp, 125 Cal. App. 2d 697, 712, 271 P.2d 90, 100 (1954), the court stated that "Section 3288 of the Civil Code allows the jury to award interest in an action on tort in every case of oppression, fraud or malice." In Taylor v. Wright, 69 Cal. App. 2d 371, 385, 159 P.2d 980, 987 (1945), the court stated with reference, generally, to § 3288 and § 3294 that "those sections limit the right to recover exemplary damages and interest, in the discretion of the jury, to cases based on tort and exclude contract actions." But the courts have not construed § 3287 as applicable exclusively to contract actions. See Tevis v. Beigel, 174 Cal. App. 2d 90, 344 P.2d 360 (1959).
35 Interest is allowed on the price for the time during which the grantee derived no benefit from the property, not exceeding five years.
37 Cal. Const. art. XX, § 22, provides that "... the rate of interest upon the loan or forbearance of any money ... or on accounts after demand or judgment rendered in any court of the State, shall be 7 per cent per annum" unless the parties provide for another rate not to exceed 10 per cent. Most of the reported cases in which interest was awarded do not state what the rate was. Taking as a sampling the cases decided during the past five years in which the rate is indicated, it appears in all cases to have been 7 per cent when the contract did not itself fix the rate. See Lund v. Cooper, 159 Cal. App. 2d 349, 324 P.2d 62 (1958); Nathanson v. Murphy, 147 Cal. App. 2d 462, 305 P.2d 710 (1957); Sears Roebuck & Co. v. Blade, 139 Cal. App. 2d 550, 294 P.2d 1140 (1956).
covered, for a breach of contract, which are not clearly ascertainable in both their nature and origin,\textsuperscript{38} but it has repeatedly been held that this rule does not mean that a person guilty of a breach can escape payment of damages because damages are difficult to ascertain,\textsuperscript{39} or cannot be computed precisely.\textsuperscript{40} It is also provided by statute that future damages are recoverable if they are certain to result,\textsuperscript{41} though as interpreted this requirement is satisfied if it is "reasonably certain" that substantial future damages will result.\textsuperscript{42}

Civil Code section 3358 provides that "Notwithstanding the provisions of this chapter [i.e., re measure of damages] no person can recover a greater amount in damages for the breach of obligation than he could have gained by a full performance thereof on both sides . . . ," with exceptions for exemplary and penal damages. Particularly because this section begins with the clause, "Notwithstanding the provisions of this chapter," there is an implication that other provisions of the chapter provide for greater damages.\textsuperscript{43} There does not appear to be any reported case in which the court stated that the measure of damages would have been different had there been no section 3358. In the typical case, the basic provision in point is Civil Code section 3300, stating the general measure of damages for breach of contract, and the court cites section 3358 for verification of its interpretation of section 3300.\textsuperscript{44}

Civil Code section 3359 provides that damages must, in all cases,

\begin{itemize}
  \item \textsuperscript{38}CAL. CIV. CODE § 3301.
  \item \textsuperscript{39}E.g., California Lettuce Growers v. Union Sugar Co., 45 Cal. 2d 474, 289 P.2d 785 (1955); Elsbach v. Mulligan, 58 Cal. App. 2d 354, 136 P.2d 651 (1943).
  \item \textsuperscript{40}E.g., Long Beach Drug Co. v. United Drug Co., 13 Cal. 2d 158, 89 P.2d 386 (1939).
  \item \textsuperscript{41}CAL. CIV. CODE § 3283.
  \item \textsuperscript{42}Noble v. Tweedy, 90 Cal. App. 2d 738, 203 P.2d 773 (1949).
  \item \textsuperscript{43}"Notwithstanding any other provision of law" (this code, this chapter, this article, etc.) is a common cliche of legislative drafting. It gives the draftsman peace of mind and, though not as neat as amending the sections to be overridden, it accomplishes the purpose that the section containing the clause prevail over any contrary provisions. However, it may sometime be used out of an abundance of caution, the draftsman not being certain that there are contrary provisions in the laws, and thus may be puzzling to the reader. Occasionally, attempts are made to eliminate such clauses where they serve no purpose (e.g. Cal. Stat. 1959, chs. 85, 182, pp. 1941, 2078).
  The Civil Code (Section 3000) declares that for the breach of an obligation arising on contract, the measure of damages is the amount which will compensate the party aggrieved for all detriment proximately caused thereby; and that there may be no manner of doubt as to the interpretation to be put upon this language, section 3358 of the same code further declares . . . .
\end{itemize}
be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered. In contrast with Civil Code section 3358, discussed in the preceding paragraph, it is clear that this section sometimes can materially affect the amount of damages recoverable. Though this section is most often cited in tort cases, it also has application to contract actions, requiring the awarding of lesser damages than would be proper under the otherwise applicable measure of damages, where the contract itself is unconscionable.

The Legislature has generally declared void any contract provision fixing the amount of damages to be paid for a breach, but it has given force to such provisions where, from the nature of the case, it would be impracticable or extremely difficult to fix the damage, and in some instances it has sanctioned liquidated damages provisions without spelling out a requirement of impracticability or extreme difficulty of fixing damages as a prerequisite to validity of such provisions.

Though they may be in the area of statutes denying the existence of a cause of action, generally beyond the scope of this discussion, mention should, perhaps, be made of the instances in which the Legislature has concluded that with respect to secured obligations, creditors must rely exclusively on their security, as in the case of sale of real property under a purchase mortgage or deed of trust, or under a power of sale in a mortgage or deed of trust, or when the buyer has paid 80 per cent or more of the time sale price in a transaction subject

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\[\text{E.g., Bellman v. S. F. H. S. Dist., 11 Cal. 2d 576, 81 P.2d 894 (1938).}\]
\[\text{Newmire v. Ford, 22 Cal. App. 712, 136 Pac. 725 (1913). The Code Commissioners' Note to \$ 3359 contains an interesting example of the type of case in which the rule of the section can determine allowable damages. The commissioners describe the case of James v. Morgan, 1 Lev. 111, 83 Eng. Rep. 323 (K.B. 1663), as follows:}\]
\[\ldots the defendant had agreed to pay, for a horse sold to him, a farthing for his first shoe nail, two farthings for the second, four for the third, and so on, for the thirty-two nails in the horse's shoes. This, of course, amounted to many thousand pounds sterling, for which the plaintiff sued. But the court directed the jury to assess the damages at the actual value of the horse, which was found to be eight pounds.}\]
\[\text{\textit{CAL. CIV. CODE} \$ 1670.}\]
\[\text{\textit{CAL. CIV. CODE} \$ 1671.}\]
\[\text{\textit{E.g., CAL. AGRIC. C.} \$ 1209 (nonprofit co-operative associations), \$ 2709 (California Agricultural Products Marketing Law of 1937), \$ 3214 (California Agricultural Products Marketing Law of 1943), \textit{CAL. CORP. C.} \$ 13353 (Fish Marketing Act). It has been suggested that these provisions imply legislative findings that in the situations to which these provisions apply, the conditions described by \textit{CAL. CIV. Code} \$ 1671 exist. See Olson v. Biola Coop. Raisin Growers Ass'n, 33 Cal. 2d 664, 204 P.2d 10 (1949).}\]
\[\text{\textit{CAL. CODE CIV. PROC.} \$ 580b.}\]
\[\text{\textit{CAL. CODE CIV. PROC.} \$ 580d.}\]
to the Unruh Act and the seller elects to repossess the goods.\textsuperscript{52}

\textbf{II. Damages Other Than Actual Damages}

In quite a few cases the Legislature has departed, or has at least appeared to depart, from a theory of perfect compensation by permitting the award of damages, in an amount to be determined by the jury or judge, in addition to, or in the absence of, actual damages, or by providing for award of a penalty, in a fixed amount, to the aggrieved party, or by guaranteeing recovery of a fixed sum in addition to actual damages or of a multiple of actual damages. In other instances the Legislature has imposed an upper monetary limit on the amount of actual damages that may be awarded.

\textit{Nominal Damages}

Civil Code section 3360 provides that “When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.” Perhaps it is not as clear from this statute as might be desired whether nominal damages can be recovered even if it is conceded that no actual detriment was suffered or, on the other hand, such damages are recoverable only if some proof is offered that actual detriment was suffered, though compensatory damages cannot be awarded because, for example, the requirement of certainty is not met. It is clear from the cases, however, that there is a right to nominal damages for breach of contract though no actual detriment was suffered,\textsuperscript{53} and the rule is the same in cases of intentional tort,\textsuperscript{54} but contra in negligence cases.\textsuperscript{55}

\textit{Exemplary Damages}

The Legislature has authorized awarding of “exemplary” (or “punitive”) damages where defendant has been guilty of oppression, fraud,

\textsuperscript{52} CAL. CIV. CODE § 1812.5. The Unruh Act (CAL. CIV. CODE §§ 1801-1812.9) enacted in 1959 (CAL. STAT. 1959, c. 201, p. 2092) generally governs credit sales of consumer goods and services, both of the conditional sale contract and revolving account types, with respect to form of the contract, allowable service charges, manner of repossession, and other matters. It does not apply to motor vehicles required to be registered under the Vehicle Code (CAL. CIV. CODE § 1802.1), and transactions relating to such vehicles remain subject to CAL. CIV. CODE §§ 2981-2982.5. The Unruh Act, incidentally, contains no general exclusion of the services of lawyers.

\textsuperscript{53} Sweet v. Johnson, 169 Cal. App. 2d 630, 337 P.2d 499 (1959). But this same case reiterates the rule that failure to award nominal damages is not alone ground for reversal of a judgment or for a new trial unless nominal damages in the given case would carry costs, or the object of the action is to determine some question of permanent right.

\textsuperscript{54} Maher v. Wilson, 139 Cal. 520, 73 Pac. 466 (1903); Crane v. Heine, 35 Cal. App. 466, 170 Pac. 433 (1917).

or malice, but only in actions for the breach of an obligation not arising from contract, and thus only in a minority of the types of actions within the scope of this article.\textsuperscript{56} Although it is possible to think of a number of purposes that an award of such damages could serve, and does in fact serve,\textsuperscript{57} there at least seems to be no doubt of the Legislature's view of the matter, as the statute authorizing such damages also declares the award of such damages to be "for the sake of example and by way of punishing the defendant."\textsuperscript{58} The recovery of exemplary damages is dependent on a showing of actual damages,\textsuperscript{59} as may be indicated by the language of Civil Code section 3294, stating that exemplary damages may be recovered "in addition to the actual damages." Nominal damages will support a recovery of exemplary damages in a case in which there is a showing of actual damages but their extent cannot be determined.\textsuperscript{60} Exemplary damages are never a matter of right,\textsuperscript{61} and when awarded must be in reasonable proportion to actual damages,\textsuperscript{62} though there is no fixed ratio between the two.\textsuperscript{63}

\textbf{Penalties}

In some instances the Legislature has provided for a penalty in a flat amount, payable to a private party.\textsuperscript{64} Thus, Corporations Code section 3015 provides that for failure of a corporation, within 30 days after request therefor, to keep the required share register or books of account or to prepare or submit required financial statements, it shall

\textsuperscript{56} \textit{Cal. Civ. Code} § 3294. Exemplary damages are still recoverable in fraud cases. See footnote 25, \textit{supra}.

\textsuperscript{57} McCormick, \textit{Damages} § 77 (1935). Compare with the discussion in text of the Unruh Civil Rights Act, \textit{infra}.

\textsuperscript{58} \textit{Cal. Civ. Code} § 3294.


\textsuperscript{60} Sterling Drug, Inc. v. Benatar, 99 Cal. App. 2d 393, 221 P.2d 965 (1950). In the \textit{Sterling} case the court stated, at p. 400:

Nominal damages are not only recovered where no actual damage resulted from an ascertained violation of right but also where actual damages have been sustained, the extent of which cannot be determined. . . . The granting of exemplary damages in cases of the latter kind is not inconsistent with the rule that actual damage is a necessary predicate of punitive damages. . . . Clearly the case before us is of the latter kind.


\textsuperscript{62} \textit{Ibid}.

\textsuperscript{63} Ingram v. Higgins, 103 Cal. App. 2d 287, 229 P.2d 305 (1951).

\textsuperscript{64} There are, of course, numerous statutory provisions for penalties, as distinguished from fines in criminal cases, payable to the state. These are particularly common in the laws regulating financial institutions and are usually accompanied by provisions authorizing compromise by the state; e.g., \textit{Cal. Fin. C.} § 3376 provides for a penalty payable by a bank which fails to report loans, as required, to the Superintendent of Banks, and \textit{Cal. Fin. C.} § 3357 authorizes compromise.
be liable to the requesting shareholder or shareholders for a penalty in
the amount of ten dollars per day of such failure to act, up to a
maximum of 1,000 dollars, with the proviso that liability for all such
requests made on the same day, for the same act, shall not exceed one
hundred dollars per day.65

Civil Rights

In other instances, the statutes make provision for recovery by a private party of a fixed sum in addition to actual damages. An instance of this which has recently received a good deal of publicity is Civil Code section 52, which provides that for violation of the rights guaranteed by Civil Code section 51 (the Unruh Civil Rights Act),66 i.e., rights to full and equal accommodations, advantages, facilities, privileges or services in “all business establishments of every kind whatever,” a person is liable for actual damages and 250 dollars in addition thereto.67 It can be observed, at the outset, that the nature of the 250 dollars may not be beyond dispute. In most cases we have no evidence of legislative intent outside a statute itself,68 but it is possible to think of a number of purposes one or more of which might be served by a provision for recovery of a fixed sum in addition to actual damages. It may be that it is recognized that although actual damages are allowed, certain types of damage suffered by plaintiff, for which compensation should be allowed, will not be compensated for under the general rules of damages, but should be compensated for, and the fixed sum amounts to a statutorily liquidated sum to compensate for such damage.69 The fixed sum may be a rough approximation of attorney’s

65 See also Cal. Corp. C. § 3016 making a corporation officer liable to an aggrieved party, for similar penalties, in the event of unreasonable neglect, failure, or refusal to enter a transfer of shares on the books of the corporation and to issue a share certificate.

66 The name of Assemblyman Jesse M. Unruh is part of the official short title of two major pieces of legislation enacted in 1959, the other being the Unruh Act (Cal. Civ. Code §§ 1801-1812.9), generally governing retail installment sales of consumer goods and services.


68 Many attorneys familiar with the Congressional Record and the voluminous reports of congressional committees on bills sent to the floor assume, or hope, that similar materials exist which will be useful in resolving a question of interpretation of an enactment of the California Legislature. These attorneys are likely to be disappointed, as corresponding materials relating to California legislation do not exist. Occasionally, if a bill resulted from an interim investigation by a legislative committee, useful information can be found in the interim committee report. Sometimes a statement of intent can be found in the chapter law adding the section or sections in question. For a general discussion of extrinsic aids to interpretation of California statutes see Comment, 4 Stan. L. Rev. 387.

69 Cal. Civ. Code § 2209, relating to damages for refusal or postponement of a message by a carrier, is similar to Cal. Civ. Code § 52 in that it provides for recovery
fees, not otherwise allowable. It may be the result of the conclusion that persons whose rights are violated should be encouraged to seek redress, that actual damages for violation of those rights are likely to be small, and that to induce such aggrieved persons to take action, some substantial compensation must be guaranteed. And, of course, it may be designed to punish the defendant and to warn him and others not to commit or repeat the proscribed act.

A former civil rights statute, very similar in its structure to section 52, provided for recovery of “actual damages, and one hundred dollars in addition thereto,” and, in the case of Greenberg v. Western Turf Assn., the California Supreme Court dealt with the question of the nature of the guaranteed recovery and the question of its relationship to punitive damages. In the Greenberg case, defendant took the position that the fixed sum amounted to liquidated punitive damages and therefore punitive damages could not be allowed in addition to the fixed sum of one hundred dollars. The court disagreed. It described the one hundred dollars as a penalty, which, it remarked, could as well have been made payable to the common school fund, but concluded that it was not the same as punitive damages. It was recoverable without a showing of oppression or malice and apart from any consideration of the feelings of the plaintiff. Thus, recovery of exemplary damages under section 3294 of the Civil Code was not precluded.

Comparing this type of provision with Civil Code section 3294, governing exemplary damages, certain differences are evident. The other conditions of the statute being met, recovery of the 250 dollars is a matter of right, not one of discretion with the judge or jury, and the requirement that exemplary damages be proportionate to actual damages has no parallel here, unless it can be said that the Legislature

of actual damages plus the fixed sum of fifty dollars. In this case the Code Commissioners’ Note indicates that the fixed sum was intended to serve the purpose of compensating for nonmonetary detriment, i.e., “annoyance” suffered by reason of delay in delivery of the message.


71 The full section read:
Any person who is refused admission to any place of amusement contrary to the provisions of the last preceding section, is entitled to recover from the proprietor, lessee, or their agents, or from any such person, corporation, or association, or the directors thereof, his actual damages, and one hundred dollars in addition thereto.

72 140 Cal. 357, 73 Pac. 1050 (1903).

73 It is also established that a statute of this type is not exclusive in the sense of denying the right to injunctive relief. Orloff v. Los Angeles Turf Club, 30 Cal. 2d 110, 180 P.2d 321 (1947).
prejudged the value of actual detriment and calculated the penalty accordingly.

Is recovery of the fixed sum under a statute such as Civil Code section 52 dependent on a showing of actual damages? It does not appear that this question has been answered by the courts. It is noted that section 52 provides for recovery of actual damages and 250 dollars "in addition thereto," and this language can be contrasted with the language of the section as it read prior to amendment in 1959, authorizing recovery in every case of "damages in an amount not less than one hundred dollars." Similarly to present section 52 of Civil Code, section 3294, the exemplary damages statute, provides for recovery of such damages "in addition to actual damages" and the quoted phrase was, in one case, referred to as a ground for requiring a showing of actual damages as a prerequisite to recovery of exemplary damages. It would not seem that a section worded as is section 52 must necessarily be construed as was section 3294 in this case. That is, it would not do great violence to such a section to read it as providing for recovery of (1) actual damages, if any, and (2) a penalty of 250 dollars, the latter being independently recoverable. If it is sought to justify a contrary conclusion by analogy to the law of exemplary damages, it must be noted that the requirement of a "showing" of actual damages as a necessary prerequisite to recovery of exemplary damages is a principle generally recognized in most jurisdictions, apart from the specific wording of any particular statute and even in the absence of any statute on the subject of exemplary damages. It is also noted that in a case in which a purpose of a statute worded like Civil Code section 52 is to assure a substantial recovery notwithstanding the difficulty of showing actual damages, such purpose can be defeated by requiring a showing of actual damages as a prerequisite to recovery of the fixed amount.

Other statutes similar in structure to Civil Code section 52 relate to refusal of a carrier to carry a message and failure to execute certain documents pertaining to satisfaction of obligations.

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76 Cal. Civ. Code § 2209 provides that "Every person whose message is refused or postponed, contrary to the provisions of this chapter [Ch. 1, Title 8, Pt. 4, Div. 3, Cal. Civ. Code] is entitled to recover from the carrier his actual damages, and fifty dollars in addition thereto." The other statutes to which reference is made do not use the phrase "in addition to." Cal. Civ. Code § 2941 provides that for refusal to execute a certificate of discharge of a mortgage or deed of trust or to enter satisfaction, as required, the mortgagee, beneficiary or assignee is liable to the mortgagor or trustor or owner for "all damages which he or they may sustain by reason of such refusal, and shall also forfeit
Multiple Damages

In a few cases the statutes provide for multiple damages,\textsuperscript{77} i.e., twice or three times actual damages or some factor related to actual damages. Recovery of treble the amount of actual damages is authorized by Business and Professions Code section 16750, relating to combinations for the purpose of price-fixing, decreasing production, and other purposes in restraint of trade, Business and Professions Code section 17082, relating to use of loss leaders and other unfair trade practices,\textsuperscript{78} and in provisions relating to regulation of food warehousemen.\textsuperscript{79} The statutes provide for recovery of treble the amount of excessive charges under the usury law,\textsuperscript{80} and in certain consolidation transactions under the Unruh Act.\textsuperscript{81} In the field of landlord and tenant, there is provision for damages in the amount of treble rent.\textsuperscript{82}

to him or them the sum of three hundred dollars.” CAL. CIV. CODE § 3024 provides that for failure to mail or deliver a statement of satisfaction of an obligation secured by an assignment of accounts receivable, the assignee “shall be liable to the assignor for all actual direct damages suffered by him as a result of such failure and, if the failure is in bad faith, for a penalty of one hundred dollars.” CAL. CIV. CODE § 3040, relating to failure to deliver or mail a certificate of satisfaction of an obligation secured by an inventory lien, is similar to § 3024.

\textsuperscript{77} Art. 3 (commencing with § 3344) of Ch. 2, Title 2, Pt. 1, Div. 4, Civ. Code, which included provisions of this type relating to holding over by tenants and injuries to trees is headed “Penal Damages.”

\textsuperscript{78} At a time when § 17082 still provided only for actual damages, it was held that, the conditions of CAL. CIV. CODE § 3294 being met, exemplary damages were recoverable. Sandler v. Corden, 94 Cal. App. 2d 254, 210 P.2d 314 (1949). It would seem that this would still be true, unless multiple damages are liquidated exemplary damages. By analogy to the penalty considered in Greenberg v. Western Turf Assn. (see text, supra, at note 27), it would seem that they are not. Exemplary damages can be recovered in addition to treble interest under the Usury Law. Harris v. Gallant, 183 Cal. App. 2d . . . , 6 Cal. Rptr. 630 (1960).

\textsuperscript{79} CAL. PUB. UTIL. C. § 2573.

\textsuperscript{80} CAL. CIV. CODE § 1812.9 provides that in case of violation of the provisions of the Unruh Act relating to time price differential or service charge on a consolidated total of two or more contracts, the buyer may recover from the person guilty of the violation three times the total of the time price differential or service charge and any delinquency, collection, extension, deferral or refinancing charge imposed, contracted for or received.

\textsuperscript{81} CAL. CIV. CODE § 3344 provides that if any tenant gives notice of his intention to quit the premises and does not deliver up possession at the time specified in the notice, he must pay to the landlord treble rent during the time he continues in possession after such notice. CAL. CIV. CODE § 3345 provides that if any tenant, or any person in collusion with the tenant, holds over any lands or tenements after demand made and one month's notice, in writing given, requiring the possession thereof, such persons holding over must pay to the landlord treble rent during the time he continues in possession after such notice. Provision for such damages is, of course, found in areas outside the scope of this article, e.g., CAL. CIV. CODE § 3346, relating to injury to trees, which provides, variously, for actual, double, and treble damages, depending on the gravity of the misconduct; CAL. PUB. UTIL. C. § 7951, relating to injury to telegraph or telephone or electric power or gas property, provides for recovery of three times actual damages.
Attorney's Fees

Although no attempt is made in this article to discuss, generally, recovery of costs, it would not be inappropriate to refer to the Legislature's treatment of recovery of attorney's fees. Attorney's fees are, of course, not ordinarily recoverable, but the Legislature has provided for such recovery in a few cases, e.g., Code of Civil Procedure section 1031, requiring that an attorney's fee not exceeding twenty per cent of the amount recovered by the plaintiff, be awarded in an action for recovery of wages for labor performed where the amount of the demand, exclusive of interest, does not exceed 300 dollars. Provision for award of attorney's fees is found also in Business and Professions Code sections 16750 and 17082, relating to combinations in restraint of trade and unfair trade practices, previously referred to in connection with multiple damages. It is apparent that the Legislature has been very selective in allowing such compensation. Further, in each of the instances just cited the plaintiff is awarded an attorney's fee if he prevails, but a corresponding recovery by defendant is not authorized if he is the prevailing party. It can be conjectured that in the case of Code of Civil Procedure section 1031 recovery of attorney's fees was allowed because the plaintiff would likely be a person of limited means, or it would not be worth while to press the claim if an attorney's fee were not awarded. The same would not seem to be true of the Business and Professions Code provisions relating to trade restraints and unfair trade practices. In either case, contrasted with the general rule that a party cannot recover an attorney's fee, such provisions have the appearance of penalties, not greatly unlike provisions previously described providing for recovery of a fixed sum of money in addition to actual damages.

Such provisions authorizing recovery of an attorney's fee by one party but not the other have not gone unchallenged. Former section 1195 of the Code of Civil Procedure, authorizing recovery of attorney's fees by a successful mechanics' lien claimant, but not by the defendant if he prevailed, was held unconstitutional, although it would seem that the California Supreme Court has since shown greater liberality toward such legislation.

83 CAL. BUS. & PROF. C. § 16750 can be read also as allowing recovery of an attorney's fee by plaintiff even if he does not prevail.


85 Builders' Supply Depot v. O'Connor, 150 Cal. 265, 88 Pac. 925 (1907).

86 In Municipal Utility District v. Pacific Gas & Electric Co., 20 Cal. 2d 684, 128 P.2d 529 (1942), the court upheld CAL. CODE CIV. PROC. § 526b against the contention of denial of equal protection though, under this section, an attorney's fee is recoverable only by a defendant in a proceeding to enjoin sale or expenditure of proceeds of securities.
Ceiling on Actual Damages

In contrast to provisions, previously discussed, which authorize award of a fixed sum in addition to actual damages, there are a few code provisions found in the laws relating to carriers and other public utilities, and the laws relating to innkeepers, which impose a monetary limit on actual damages, absent an agreement to the contrary. For example, it is provided by statute that the liability of any stage line, transfer company, or other common carrier operating over the public highways for the loss of or damage to any baggage shall not exceed one hundred dollars for each trunk and its contents, and lesser limits apply to other items, unless a higher valuation is declared at the time of delivery of such baggage to the carrier and assented thereto in writing by such carrier.\(^87\) Similar provisions are found in Civil Code sections 1859 and 1860, governing innkeepers and operators of rest homes and like establishments. Perhaps such limitations can be viewed as predeterminations by the Legislature of the amount of damages reasonably foreseeable by the party sought to be held liable. Suggesting either that they were not that originally or that they no longer accurately measure foreseeable damages is the fact that such limitations, like the penalties recoverable in addition to actual damages, have remained unchanged over remarkably long periods, notwithstanding changes in economic conditions.\(^88\)

III. Conclusion

California has a considerable number of statutes governing the

\(^87\) CAL. CIV. CODE § 2205. Also, CAL. CIV. CODE § 2200 reads:

A common carrier of gold, silver, platina, or precious stones, or of imitations thereof, in a manufactured or unmanufactured state; of time-pieces of any description; of negotiable paper or other valuable writings; of pictures, glass, or chinaware; of statute, silk, or laces; or of plated ware of any kind, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice, upon his receipt thereof, by mark upon the package or otherwise, of the nature of the freight; nor is such carrier liable upon any package carried for more than the value of the articles named in the receipt or the bill of lading.

\(^88\) For example, the sum mentioned in CAL. CIV. CODE § 2200 has remained unchanged since enactment in 1872, and the limits in CAL. CIV. CODE § 1859 on liability per item of baggage, have remained unchanged since 1895. Similarly the sum which under CAL. CIV. CODE § 2209, is recoverable for a carrier's refusal or postponing of a message has remained unchanged since 1872. This tendency of specific dollar amounts in the statutes to ossify is noticeable also in other fields. Thus, $500 has remained the maximum amount of a fine for a misdemeanor, except where otherwise specially provided (and there is usually no such special provision), since 1872. CAL. PEN. CODE § 19.
amount of damages recoverable in commercial transactions, some of which express principles of the law of damages antedating the statutes while others set forth rules which are innovations by the Legislature. The statutes would seem to be a logical starting point for research and, sometimes, will be only a starting point. In some instances the principle stated in a code section is, unavoidably, so inexact that examination of the cases interpreting the section is quite essential to application of the statute to a specific situation. And the interrelationship of the various statutes in the field is, to a large extent, determined by case law (and is not always clearly determined by either statute or case law). If the statutes do not solve all problems it is at least clear that it could be fatal to disregard the statutes and to proceed on the theory that the law provides for perfect compensation, i.e., compensation exactly equal to loss. Intentionally or otherwise the Legislature has, in numerous instances, provided, or appeared to provide, for more or less than such perfect compensation.

When working with these statutes certain possibilities should be kept in mind. A literally applicable general statute may in fact be inapplicable because a more specialized statute prevails over it. Even a statute which appears to have been tailored for the type of case at hand may be inapplicable because it has been construed to be applicable only where “appropriate,” and the case at hand is one in which its application is inappropriate. And if it is established that the statute is in point, it nevertheless may not tell the whole story. Other statutes, such as those relating to interest and exemplary damages, may grant a right to additional damages.

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89 See, e.g., text at note 10 supra.
90 See, e.g., note 24 supra.