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to satisfaction of debts for which the property was liable during marriage provides support for permitting the wife (or husband) to share after divorce in community assets which are not suitable for or capable of division at the time of divorce.

The problem of characterizing interests in property as community or separate is readily solved only when it is carefully isolated from the other problems usually present in an action where characterization of property is required. The need for division on divorce particularly complicates the problem of characterization. The suggested three-step analysis consisting of: (1) determination of existence in the sense of the *Secundo* case; (2) characterization based on the two principles which control characterization; and (3) division, seems to clarify the problem. The clarification results from breaking down the problem into the essential questions which need to be answered by the courts. These questions, when segregated, are readily answerable.

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CALIFORNIA SURFACE WATER LAW

California, because of its rapidly growing population and the resultant need for increasing the number of living and business structures, appears to be a place where surface water¹ rights of neighboring landowners will come increasingly into conflict. This development may be attributed to the urbanization of areas which were once rural and the concomitant reshaping of the land's surface. Thus, it is important to know what the California law of surface waters is in order to solve these conflicts.

Two Recent Cases

On April 13, 1965, Division One of the First District Court of Appeal handed down the opinion of *Keys v. Romley*² in which the court announced its adoption of the "reasonable use" doctrine³ as it applies to surface waters in urban areas of

¹ The surface waters referred to are sometimes called "causal surface waters" and, according to Kinyon & McClure, *Interferences With Surface Waters*, 24 MINN. L. REV. 891 n.1 (1940), such waters are generally "those occasional recurrent accumulations of excess water from rains and melting snows which either stand in temporary ponds and puddles or drain off across the countryside until they reach a drainway, stream or lake, or are absorbed in the soil."

² 233 A.C.A. 681, 43 Cal. Rptr. 683 (1965) (*vacated*).

³ A clear explanation of what is involved in the reasonable user doctrine also appears in Kinyon & McClure, *supra* note 1, at 904 (footnotes omitted). "Each possessor is legally privileged to make a reasonable use of his land, even though the flow of surface waters is altered thereby and causes some harm to others. He incurs liability only when his harmful interference with the flow of surface water is unreasonable. The issue of reasonableness or unreasonableness is a question of fact to be determined in each case upon a consideration of all the relevant circumstances, including such factors

California. Division Two of the Second District Court of Appeal, on September 8, 1965, decided the case of *Pagliotti v. Acquistapace*⁴ in which it was announced that the law of California as to surface waters in urban, as well as in rural, areas is the "civil law" doctrine.⁵ Since the courts announcing these two divergent doctrines are courts of equal jurisdiction, it is evident that there is some confusion as to what is the California rule. The California Supreme Court has vacated both opinions and heard arguments in both cases. Its pending decisions will no doubt resolve this confusion.

In *Keys*, defendant, in improving his commercial property, raised the level of his land and increased the flow of surface water, resulting from rain, onto plaintiff's property. Plaintiff's lower estate was flooded and he sought damages. In denying relief, the court stated that although the civil law rule generally prevails in California, "with respect to the rights and liabilities of adjoining landowners regarding surface waters an exception to the civil law rule applies with respect to *urban* land or property."⁶ The court then adopted the reasonable use doctrine as announced in the Minnesota case of *Enderson v. Kelehan*.⁷

In *Pagliotti*, defendant erected an embankment to stop an increased flow of surface water from plaintiff's upper estate. The court, in finding for defendant, applied the civil law rule for urban, as well as for rural, areas, stating that "*the improving landowner, whether lower or upper, must bear the burden of disposing of excess surface waters caused by his improvements.*"⁸

Confusion as to California Law

A seeming confusion as to the law of California is apparent from the groping of the two courts to come to their respective decisions. In two instances, both cases cite the same prior California decisions⁹ to support divergent surface water doctrines. According to *Pagliotti*, *Los Angeles Cemetery Ass'n v. City of Los Angeles*¹⁰ applies the civil law doctrine to surface waters in urban areas, as it was there pointed out that a lower owner is not liable in damages for the backing

as the amount of harm caused, the foreseeability of the harm on the part of the possessor making the alteration in the flow, the purpose or motive with which he acted, and others."

⁴ 237 A.C.A. 29, 46 Cal. Rptr. 533 (1965) (*vacated*).

⁵ A good explanation of the civil law rule appears in Kinyon & McClure, *supra* note 1, at 893 (footnotes omitted). "In substance, the civil law rule of surface waters is that a person who interferes with the *natural* flow of surface waters so as to cause an invasion of another's interests in the use and enjoyment of his land is subject to liability to the other. Each parcel of land is said to be subject to a natural servitude for the natural flow of surface water across it, and therefore a possessor of lower land is not privileged to obstruct the natural flow of surface water from higher land, nor is a possessor of higher land privileged to increase the natural flow of surface water upon lower land."

⁶ 233 A.C.A. at 685-86, 43 Cal. Rptr. at 687.

⁷ 226 Minn. 163, 32 N.W.2d 286 (1948).

⁸ 237 A.C.A. at 37, 46 Cal. Rptr. at 538.

⁹ *Los Angeles Cemetery Ass'n v. City of Los Angeles*, 103 Cal. 461, 37 Pac. 375 (1894); *Voight v. Southern Pacific Co.*, 194 Cal. App. 2d Supp. 907, 15 Cal. Rptr. 59 (App. Dep't Super. Ct. Los Angeles, 1961).

¹⁰ *Supra* note 9.

up of surface waters onto the upper owner's land when such waters are a result of an unprecedented storm. *Keys* views the holding in *Los Angeles Cemetery Ass'n* as standing for an exception to the civil law doctrine as concerns surface water in urban areas. The reference, however, in *Los Angeles Cemetery Ass'n* to an exception in urban areas¹¹ is mere dictum.

This 1894 case dealt with the special rules regarding the liability of municipal corporations in grading and improving streets within the city. In such a situation, the court states that a municipal corporation is not bound to provide for the escape of mere surface water, but that an exception to this non-liability exists where the water has formed itself a definite channel in which it is accustomed to flow. The city was held not liable, however, because the water in the water course was swelled by an unprecedented and unforeseen storm. The court does not deal with the liability arising from the alteration of the surface water flow and applies no exception to the civil law rule, although it mentions the existence of such exception.

"[T]he *Voight* case [*Voight v. Southern Pacific Co.*],"¹² according to *Keys*, "although not specifically mentioning the 'reasonable use rule,' appears to gravitate towards that principle."¹³ Although the reviewing court in *Voight*, at first sight, does appear to gravitate towards the reasonable use rule, the holding, as *Pagliotti* correctly points out,¹⁴ does no more than apply the civil law rule. The defendant railroad in *Voight* maintained an embankment for its tracks and had provided for natural surface runoff by constructing drains within the embankment. Many years later, as part of the urbanization of the area, plaintiff developed the upper land for business and residence purposes. The regrading and construction caused an increase in the flow of surface water toward defendant's embankments, the existing drains were unable to handle the increased flow, and, as a consequence, the surface waters backed up onto plaintiff's land. The court, in following the civil law rule in this action for damages, supported the defendant's right to refuse acceptance of more than the natural surface water runoff:

Defendant operated its railroad for more than a half a century before the development of the upper country increased the flow of surface waters. At the time of its installation, it provided adequate drainage through its embankment. [I]t seems rather shocking that in such a situation and after having committed no wrong in the first instance, and having maintained the facility for such a length of time, the plaintiffs who have built their homes with knowledge of the situation, would be in a position to impose liability upon defendant.¹⁵

If *Voight* did gravitate toward the reasonable use rule, as the *Keys* court said, the upper landowners could increase the surface water flow and the lower owner could not stop them if he suffered no great damage in having to accept a greater amount of water. However, the *Voight* court did not permit the alteration of the

¹¹ "The doctrine of the civil law, in reference to a servitude in the lower tenement in favor of the upper and dominant tenement, for the flow of surface water, ha[s] no application to lots held in the cities and towns." 103 Cal. at 467, 37 Pac. at 377.

¹² 194 Cal. App. 2d Supp. 907, 15 Cal. Rptr. 59 (App. Dep't Super. Ct. Los Angeles, 1961).

¹³ 233 A.C.A. at 689, 43 Cal. Rptr. at 689.

¹⁴ 237 A.C.A. at 36, 46 Cal. Rptr. at 538.

¹⁵ 194 Cal. App. 2d Supp. at 910, 15 Cal. Rptr. at 61.

surface water flow and forced the upper proprietors to provide for a suitable method of ridding themselves of the excess water. The court did not even look into the reasonableness and the burdens involved.

Aside from the above cases,¹⁶ the only other California decision cited by *Keys* as providing an exception to the civil law rule concerning urban areas, is the 1873 decision of *Ogburn v. Connor*.¹⁷ The *Ogburn* case deals with the problems of surface water as between neighboring owners of land in a rural area. The court applied the civil law rule and held the owner of the lower parcel of land liable for obstructing the flow of surface water from the plaintiff's upper land. The court does mention a reasonable use exception existing as to urban areas—that as long as one does acts not inconsistent with the due exercise of dominion of his own property, he is not liable for loss or detriment caused by obstruction of surface water or by an alteration of its flow. But the problem here, as in *Los Angeles Cemetery Ass'n*, is that the reasonable use doctrine is mentioned only by way of dictum. The case does not even lean in the direction of applying the exception.

As demonstrated, the *Keys* court cites no California cases which truly support its position that the California decisions are leaning toward the reasonable use doctrine in urban areas. The only case cited by *Keys* that actually upholds the reasonable use doctrine for application to surface waters is the Minnesota case of *Anderson v. Kelehan*:¹⁸ "With respect to surface waters, Minnesota has evolved the rule of reasonable use and follows neither the rule of the common law¹⁹ nor that of the civil law."²⁰ This is what the *Keys* court thinks the law of California should be. But it cannot validly base its adoption of the reasonable use exception on the existence of any trend in the California cases, nor on *Anderson* because it is merely persuasive authority.

Pagliotti Correctly Interprets the Law

Although the *Keys* court is incorrect in its interpretation of California law, the *Pagliotti* court seems to have difficulty in coming to the conclusion that the surface water law, applying equally to urban and rural areas in California, is the civil law doctrine.²¹ Notwithstanding this seeming insecurity, the court rests its

¹⁶ *Los Angeles Cemetery Ass'n v. City of Los Angeles*, 103 Cal. 461, 37 Pac. 375 (1894); *Voght v. Southern Pacific Co.*, 194 Cal. App. 2d Supp. 907, 15 Cal. Rptr. 59 (App. Dep't Super. Ct. Los Angeles, 1961).

¹⁷ 46 Cal. 346 (1873).

¹⁸ 226 Minn. 163, 32 N.W.2d 286 (1948).

¹⁹ This rule is otherwise known as the common enemy rule. An excellent statement of the rule is given in 5 POWELL, REAL PROPERTY ¶ 730, at 433-34 (1962). "[E]ach landowner is entitled to regard surface water as an 'enemy,' and is entitled to treat this enemy in the manner which reduces his injury to a minimum, without care for the effects thereby caused to his neighbors."

²⁰ 226 Minn. at 167, 32 N.W. 2d at 289.

²¹ The court, after coming to the conclusion that the decisions of the California courts support the view that the civil law is proper as concerns urban land, rests its decision on the view that it is for the courts to place the burden for any change in the surface water from its natural state on the person who is doing the developing of the land because he is the one who will reap the benefits therefrom. 237 A.C.A. at 38, 46 Cal. Rptr. at 538.

decision squarely on California case authorities,²² two of which are *Vought* and *Los Angeles Cemetery Ass'n* discussed above.

Another case relied upon in *Pagliotti* was *Heil v. Sawada*,²³ wherein defendant, in building a large housing development, constructed a drainage ditch which diverted the natural flow of surface water and discharged it onto plaintiff's property. The court, in holding defendant liable, quoted from *Allen v. Stowell*:²⁴ "To thus wrongfully cause water to flow upon another's land which would not flow there naturally is to create a nuisance *per se*."²⁵ Although it mentions nuisance, the *Allen* court grounds its decision on the familiar civil law rule that to alter the natural course of surface water imposes liability. Also cited in *Pagliotti* is *Le Brun v. Richards*.²⁶ Here, the rights of an upper owner of property to have the surface water naturally falling upon his land flow to lower ground was protected against a lower owner who obstructed the path of the water. The court held: "It is thoroughly settled in California that the owner of the upper or dominant estate has a legal and natural easement or servitude in the lower or servient estate to discharge all surface waters naturally falling or accumulating on his land"²⁷

Two Categories of Surface Water Cases

The above cases cited in *Pagliotti* are in harmony with the other California decisions in this area which, for convenience, may be placed into two categories—(1) the protection of the lower estate owner from surface water flowing from the upper tenement which exceeds the natural flow in amount and velocity and (2) the protection of the upper owner from the lower owner's activities resulting in an obstruction of the surface waters.

Protection of the Lower Owner

The development of property and the resultant change in the land's slope and surface from grading and paving, results in water, which would normally have been absorbed into the soil, running off according to the slope of the land onto the neighboring lower tenement. This type of land improvement has resulted in extensive surface water rights litigation in which the courts, in protecting the lower owner, have strictly applied the civil law doctrine.²⁸

²² *Le Brun v. Richards*, 210 Cal. 308, 291 Pac. 825 (1930); *Armstrong v. Luco*, 102 Cal. 272, 36 Pac. 674 (1894); *Inns v. San Juan Unified School District*, 222 Cal. App. 2d 174, 34 Cal. Rptr. 903 (1963); *Heil v. Sawada*, 187 Cal. App. 2d 633, 10 Cal. Rptr. 61 (1960); *Andrew Jergens Co. v. City of Los Angeles*, 103 Cal. App. 2d 232, 229 P.2d 475 (1951); *Jaxon v. Clapp*, 45 Cal. App. 214, 187 Pac. 69 (1919); *Vought v. Southern Pacific Co.*, 194 Cal. App. 2d Supp. 907, 15 Cal. Rptr. 59 (App. Dep't Super. Ct. Los Angeles, 1961).

²³ 187 Cal. App. 2d 633, 10 Cal. Rptr. 61 (1960).

²⁴ 145 Cal. 666, 79 Pac. 371 (1905).

²⁵ *Id.* at 669, 79 Pac. at 372.

²⁶ 210 Cal. 308, 291 Pac. 825 (1930).

²⁷ *Id.* at 313, 291 Pac. at 827.

²⁸ *E.g.*, *Allen v. Stowell*, 145 Cal. 666, 79 Pac. 371 (1905); *Armstrong v. Luco*, 102 Cal. 272, 36 Pac. 674 (1894); *Inns v. San Juan Unified School District*, 222 Cal. App. 2d 174, 34 Cal. Rptr. 903 (1963); *Frustuck v. City of Fairfax*, 212 Cal. App. 2d

*Armstrong v. Luco*²⁹ is an early California case protecting the lower owner, which deals with the problem of surface water rights and liabilities in an urban area. Here, the owner of an upper lot in San Francisco was negligent in allowing his drain and sewer pipes to corrode and in permitting standing water to flow onto the lower land of his neighbor. The court quotes with approval the instructions given by the trial court to the jury:

The water upon each lot in a city, arising from rain, or from any cause originating on the lot, such as a spring or cause of that kind, should be conducted by the owner thereof, if he wishes to have it removed, directly from it to a sewer or other place appropriate for the receipt and discharge of the same, and not to be turned or led onto an adjoining lot without the consent of the owner.³⁰

Although this is an early case, it very clearly gets to the heart of the problem of water rights and their relationship to urbanization. The slightly more recent case of *Jaxon v. Clapp*³¹ reinforces the decision in *Armstrong*. The upper owner here, in addition to altering the grade of his land, which accelerated the flow of surface water from his property, erected a wall leaving drainage holes which concentrated the flow of water onto plaintiff's land. The court found this upper owner liable for the damage caused to the lower owner from such alteration of the natural conditions.³²

Protection of the Upper Owner

An examination of the second category of surface water cases shows that the California courts have consistently found a need to protect the upper owner from the activities of the lower owner in developing his land. In regrading and erecting structures upon his property, the lower owner can cause "damage" to the upper proprietor. The damage results when such improvements serve to obstruct the free and natural flow of surface water from higher to lower land which causes the water to back up and flood the upper estate; this too is responsible for a great

345, 28 Cal. Rptr. 357 (1960); *Heil v. Sawada*, 187 Cal. App. 2d 633, 10 Cal. Rptr. 61 (1960); *People ex rel. Dep't of Public Works v. Stowell*, 139 Cal. App. 2d 728, 294 P.2d 474 (1956); *Jaxon v. Clapp*, 45 Cal. App. 214, 187 Pac. 69 (1919); *Voight v. Southern Pacific Co.*, 194 Cal. App. 2d Supp. 907, 15 Cal. Rptr. 59 (App. Dep't Super. Ct. Los Angeles, 1961).

²⁹ *Supra* note 28.

³⁰ 102 Cal. at 274, 36 Pac. at 675.

³¹ 45 Cal. App. 214, 187 Pac. 69 (1919).

³² An example of the civil law doctrine as it is used to protect the lower proprietor in rural areas is its strict application in *People ex rel. Dep't. of Public Works v. Stowell*, 139 Cal. App. 2d 128, 294 P.2d 474 (1956). Here, in regrading land as part of a flood control project, the Department of Public Works altered the natural condition of the land and directed surface water onto defendant's land, to where it had not flowed naturally. Defendant erected a dike to protect his land from being inundated by these new surface waters. The court, in this action to compel the removal of the dike, sustained defendant's right to ward off surface water which was not a result of natural conditions. It was forced to condone the use of self-help in order to sustain the civil law doctrine; and the court thereby defeated the purpose of the needed flood control project.

deal of litigation in California.³³ In *Gonella v. City of Merced*³⁴ both defendant railroad and defendant city inadequately maintained railroad embankments which did not sufficiently provide for the flow of normal surface water run-off. As a consequence, the storm water coming from plaintiff's land collected and backed up onto his land. Defendants were held liable for the damage caused by the flooding under the civil law doctrine laid down in *Le Brun*.

A recent use of the civil law doctrine for the protection of the upper owner was made in the case of *Andrew Jergens Co. v. City of Los Angeles*.³⁵ Here, defendant constructed new streets but failed adequately to provide for surface water run-off in its installation of underground culverts. As a result of heavy rains, surface water was forced back, flooding plaintiff's land. To protect the upper owner, the court granted an injunction against defendant, restraining any further construction until a new and adequate method was found to take care of the normal surface water run-off. The court ignored the doctrine of non-liability of municipal corporations for the obstruction of "mere" surface water, as announced in *Los Angeles Cemetery Ass'n*. Instead, it based its decision wholly on a strict application of the civil law rule and refused to permit the needed development because it would cause some change in the natural surface water drainage. This decision, in particular, portrays the true state of the law in California as regards surface water. It appears that instead of becoming more lenient as new construction increases, the courts are more strictly applying the civil law rule.

From the foregoing cases, it is apparent that *Pagliotti* correctly stated the California law as to surface water rights and liabilities. The California courts have consistently and strictly applied the civil law doctrine without any effort to mitigate its harsh effects, even though some cases hinted they would do so had the facts been proper.³⁶

Is the Civil Law Rule the Best One for California?

Although the civil law rule is the California law today, it does not mean that it is the rule that should be, or that it is the best rule that could be, applied. The civil law doctrine is justified by its supporters, including the reviewing court in *Pagliotti*, on the basis that it is an objective standard of conduct and does not present the difficulties in its applications that are presented by the reasonable use doctrine. As the *Pagliotti* court states:

We have no quarrel with a rule of reasonable use insofar as it may apply to a question of tort liability. However, as a rule of property law intended to regulate the relationship of adjoining owners it would appear nothing more than an

³³ E.g., *Le Brun v. Richards*, 210 Cal. 308, 291 Pac. 825 (1930); *Heier v. Krull*, 160 Cal. 441, 117 Pac. 530 (1911); *Ogbum v. Connor*, 46 Cal. 346 (1873); *Gonella v. City of Merced*, 153 Cal. App. 2d 44, 314 P.2d 124 (1957); *Provident Irrigation District v. Cecil*, 126 Cal. App. 2d 13, 271 P.2d 157 (1954); *Woo v. Martz*, 110 Cal. App. 2d 559, 243 P.2d 131 (1952); *Andrew Jergens Co. v. City of Los Angeles*, 103 Cal. App. 2d 232, 229 P.2d 475 (1951).

³⁴ *Supra* note 33.

³⁵ 103 Cal. App. 2d 232, 229 P.2d 475 (1951).

³⁶ *Los Angeles Cemetery Ass'n v. City of Los Angeles*, 103 Cal. 461, 37 Pac. 375 (1894); *Ogbum v. Connor*, 46 Cal. 346 (1873); *Jaxon v. Clapp*, 45 Cal. App. 214, 187 Pac. 69 (1919); *Vought v. Southern Pacific Co.*, 194 Cal. App. 2d Supp. 907, 15 Cal. Rptr. 59 (App. Dep't Super. Ct. Los Angeles, 1961).

invitation to a lawsuit in the case of every dispute arising over the disposition of surface waters, for in the absence of any objective standards it is difficult to see how adjoining property owners would ever agree upon what use was reasonable. Known rights and known liabilities promote the stability and tranquility of property.³⁷

Although this desire to apply an objective standard is laudable, the civil law rule fails to take into account that more than objective rules are necessary to regulate society. It fails to provide for the equities which must be considered in the urban setting where land space is at a premium and people are compelled to live in close proximity to their neighbors. As Professor Powell has stated:

This approach [the reasonable user rule] permits the needed adjustment in the conflicting interests of adjacent land owners, and represents the best approach to the problems of surface waters. It has a bit of costliness in lack of predictability, but it provides fairness in the required behavior of neighbors.³⁸

In addition to its not having an objective standard, the reasonable use rule, according to the *Pagliotti* court, would present an "invitation to a lawsuit." It would appear, however, that when a state follows a rule of law which finds liability for any change in the surface water flow, that rule would provide more of an invitation to lawsuits than one which permits some alteration of the surface configuration, some change in the flow of surface waters which result, and some use of the common sense approach of compromise between neighboring landowners.

Conclusion

The strict application of the civil law doctrine serves as a hindrance to the needed growth and development of California urban areas. This growth and development requires a good deal of construction. But, in the words of Professor Powell, "Almost any construction, or any regrading alters the surface configuration and can easily violate the requirements of this civil law handling of the problems of surface water."³⁹ To overcome this conflict between the need for development of the urban areas and the strict application of the civil law rule and permit the state of California to meet the requirements of its rapidly expanding population, some modification of the civil law rule, at least as concerns the growing urban areas of the state, is suggested. Other states following the civil law rule have modified it for urban areas.⁴⁰ As stated by the Maryland court in *Kidwell v. Bay Shore Development Corp.*:⁴¹

[T]his Court has recognized that a strict and rigid adherence to the civil-law rule, in some cases, works undue hardships upon one or more of the parties; and has applied the reasonable-use doctrine. The application of this doctrine does not change the adopted rule of law, but provides mitigation from harsh results which may be reached by a strict application thereof.⁴²

³⁷ 237 A.C.A. at 39, 46 Cal. Rptr. at 539-40.

³⁸ 5 POWELL, REAL PROPERTY ¶ 731 (1962).

³⁹ *Id.* ¶ 729, at 433.

⁴⁰ *Johannsen v. Otto*, 225 Iowa 976, 282 N.W. 334 (1938); *Bolinger v. Murray*, 18 La. App. 158, 137 So. 761 (1931); *Kidwell v. Bay Shore Development Corp.*, 232 Md. 577, 194 A.2d 809 (1963); *Wellman v. Kelley*, 197 Ore. 553, 252 P.2d 816 (1953).

⁴¹ *Supra* note 40.

⁴² 232 Md. at 583, 194 A.2d at 812.

A willingness to use the reasonable use doctrine has also occurred in states professing to follow the common enemy (common law) approach to surface water rights.⁴³ With the common enemy approach, which is diametrically opposed to the civil law rule but equally as harsh in its results, any alteration or diversion of the natural flow of surface water is permitted. An example of a court's modification of the common enemy doctrine may be seen in *Hodges Manor Corp. v. Mayflower Park Corp.*⁴⁴ Here, it was held that the property owner may not exercise this right to rid himself of surface water in a wanton or careless manner. Instead, he must be guided by the rule that one is to use his own property so that he does not injure the rights or property of another.

The need for the reasonable use doctrine where either the civil law or the common enemy doctrine was followed was recognized in the foregoing cases in states which were not so greatly in need of modification of these strict rules of law in urban areas as is California. But, until *Keys*, California courts have stubbornly adhered to the strict application of the civil law rule.

Thus, to complete the comparison of the divergent cases of *Keys* and *Pagliotti*, it may be said that, in the final analysis, there was confusion as to the law in California in the minds of the two District Courts of Appeal. One court—*Pagliotti*—was stating what the California law is and what it has been, while the second court—*Keys*—thought that it was interpreting an existing trend in the California law.

Although it did not base its decision on California authority, the *Keys* court recognized the equities involved in surface water rights and liabilities and attempted at least to modify the civil law rule in its application to urban areas by adopting the reasonable use rule. It may be hoped that the California Supreme Court will adopt this view and accept the reasonable use rule for urban areas.⁴⁵

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⁴³ *Reutner v. Vouga*, 367 S.W.2d 34 (Mo. App. 1963); *Clark v. City of Springfield*, 241 S.W.2d 100 (Mo. App. 1951); *Turnell v. Mahlin*, 171 Neb. 513, 106 N.W.2d 693 (1960); *Hodges Manor Corp. v. Mayflower Park Corp.*, 197 Va. 344, 89 S.E.2d 59 (1955).

⁴⁴ *Ibid.*

⁴⁵ As this issue was going to press, the California Supreme Court handed down its opinions in the *Keys* and *Pagliotti* cases, and adopted the reasonable use rule. *Keys v. Romley*, S.F. No. 21556, April 11, 1966; *Pagliotti v. Acquastapace*, L.A. No. 27867, April 11, 1966.

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