

Judicial Council Of California Civil Jury Instruction 1920

Judicial Council Of California Civil Jury Instructions | July 2023 Update
By the Judicial Council of California Advisory Committee on Civil Jury Instructions

Fraud or Deceit

1920 Buyer's Damages for Purchase or Acquisition of Property

If you decide that *[name of plaintiff]* has proved *[his/her/nonbinary pronoun/its]* claim against *[name of defendant]*, you also must decide how much money will reasonably compensate *[name of plaintiff]* for the harm. This compensation is called “damages.”

[Name of plaintiff] must prove the amount of *[his/her/nonbinary pronoun/its]* damages. However, *[name of plaintiff]* does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. You must not speculate or guess in awarding damages.

The following are the specific items of damages claimed by *[name of plaintiff]*:

1. The difference between [the amount that *[name of plaintiff]* paid] [or] [the fair market value of what *[name of plaintiff]* exchanged for the property] and the fair market value of the property at the time of sale;
2. Amounts that *[name of plaintiff]* reasonably spent in reliance on *[name of defendant]*'s [false representation/failure to disclose/promise] if those amounts would not otherwise have been spent in the purchase or acquisition of the property; [and]
3. *[Insert additional harm arising from the transaction]* to the extent that *[name of defendant]*'s [false representation/failure to disclose/promise] was a substantial factor in causing that *[insert additional harm arising from the transaction]*; [and]
4. [Lost profits [or other gains].]

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Directions for Use

For an instruction on damages for loss of use, see [CACI No. 3903G, Loss of Use of Real Property \(Economic Damage\)](#).

The first element of this instruction should be modified in cases involving promissory fraud: “In cases of promissory fraud, the damages are measured by market value as of the date the promise was breached because that is the date when the damage occurred.” (*Glendale Fed. Sav. & Loan Assn. v. Marina View Heights Dev. Co.* (1977) 66 Cal.App.3d 101, 145–146 [135 Cal.Rptr. 802].)

Sources and Authority

- Fraud in Sale of Property: Buyer’s Damages. [Civil Code section 3343](#).
- “As they apply to damages for fraud, [subdivisions \(a\)\(2\) and \(a\)\(3\) of section 3343](#) are limited to recovery of damages by sellers of real property, while subdivision (a)(4) deals with purchasers of real property.” (*Channell v. Anthony* (1976) 58 Cal.App.3d 290, 309 [129 Cal.Rptr. 704], footnote omitted.)

- “Before 1935 the California courts had no statutory mandate on the measure of damages for fraud. While the ‘benefit of the bargain’ measure of damages was generally employed, on occasion California courts sometimes applied the ‘out of pocket’ rule when the ‘loss of bargain’ rule was difficult to apply or would work a hardship on plaintiff or defendant.” (*Channell, supra*, 58 Cal.App.3d at p. 309.)
- “We find nothing in [section 3343](#) as amended which requires that a plaintiff show ‘out-of-pocket’ loss (i.e., an amount by which the consideration paid exceeded the value of the property received) in order to be entitled to any recovery for fraud in a property transaction.” (*Stout v. Turney* (1978) 22 Cal.3d 718, 729 [150 Cal.Rptr. 637, 586 P.2d 1228].)
- “All doubt concerning this matter was set at rest, however, in the carefully considered opinion in *Bagdasarian v. Gragnon* (1948) 31 Cal.2d 744, 753 [192 P.2d 935] where it was definitely and finally determined that the term ‘actual value,’ as used in the statute, was that same market value so frequently defined in actions for condemnation.” (*Nece v. Bennett* (1963) 212 Cal.App.2d 494, 497 [28 Cal.Rptr. 117], internal citation omitted.)
- “[P]ursuant to [Civil Code section 3343](#), amounts paid for escrow fees, moving to and from the property, building permits, telephone connections, fences, yard cleaning, garage materials, door locks, shrubbery, taxes, rent and labor are examples of recoverable damages when reasonably expended in reliance on the fraud.” (*Cory v. Villa Properties* (1986) 180 Cal.App.3d 592, 603 [225 Cal.Rptr. 628], internal citations omitted.)
- “To recover damages for fraud, a plaintiff must have sustained damages proximately caused by the misrepresentation. A damage award for fraud will be reversed where the injury is not related to the misrepresentation.” (*Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220, 1252 [1 Cal.Rptr.2d 301], internal citations omitted.)

Secondary Sources

6 Witkin, *Summary of California Law* (11th ed. 2017) Torts, §§ 1897-1899

3 Levy et al., *California Torts*, Ch. 40, *Fraud and Deceit and Other Business Torts*, § 40.23 (Matthew Bender)

23 *California Forms of Pleading and Practice*, Ch. 269, *Fraud and Deceit* (Matthew Bender)

10 *California Points and Authorities*, Ch. 105, *Fraud and Deceit* (Matthew Bender)

WEST'S EDITORIAL REFERENCES

Direct References:

- See [BAJI 12.56](#)

Related References:

- [BAJI 12.31, 12.57](#)

Statutory References:

- [Civ. Code, § 3343](#)

Library References:

- [Cal. Jur. 3d, Real Estate §§ 421 to 429](#)

Research References:

- West's Key Number Digest, [Fraud](#) 59(1) to 62, 65(1)

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