

Judicial Council Of California Civil Jury Instruction 1921

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

1921 Buyer's Damages for Purchase or Acquisition of Property—Lost Profits

[*Name of plaintiff*] may recover damages for profits [or other gains] [he/she/nonbinary pronoun/it] would have made if the property had been as represented. [*Name of plaintiff*] can recover these profits [or other gains] only if [he/she/nonbinary pronoun/it] has proved all of the following:

1. That [*name of plaintiff*] acquired the property for the purpose of using or reselling it for a [profit/gain];
2. That [*name of plaintiff*] reasonably relied on [*name of defendant*]'s [false representation/failure to disclose/promise] in entering into the transaction and in anticipating [profits/gains] from the use or sale of the property; and
3. That [*name of defendant*]'s [false representation/failure to disclose/promise] and [*name of plaintiff*]'s reliance on it were both substantial factors in causing the lost profits.

You do not have to calculate the amount of the lost profits with mathematical precision, but there must be a reasonable basis for computing the loss.

New September 2003

Directions for Use

This instruction should be read immediately after [CACI No. 1920, Buyer's Damages for Purchase or Acquisition of Property](#), if the plaintiff is claiming lost profits.

Sources and Authority

- Fraud in Sale of Property: Buyer's Damages for Lost Profits. [Civil Code section 3343\(a\)\(4\)](#).
- “With glaring inconsistency, California's statutory structure before 1971 permitted recovery of lost profits and earnings under [Civil Code section 3333](#) in fraud cases which did not concern the ‘purchase, sale or exchange of property,’ and even in simple negligence cases and breach of contract cases the injured parties could recover lost profits and earnings, while the ‘out of pocket’ rule barred the fraud victim in property transaction cases from recovering more than the difference between the amount he paid for the property and its actual value.” ([Channell v. Anthony \(1976\) 58 Cal.App.3d 290, 312 \[129 Cal.Rptr. 704\]](#), internal citations and footnote omitted.)
- “The Legislature removed all doubt concerning the recovery of loss of profits resulting from the fraudulently induced property acquisition. Clearly and specifically, lost profits proximately caused are recoverable. The cases cited, the arguments made concerning [Civil Code section 3343](#) limitations are simply not relevant to post-1971 proceedings, where profits are the claimed loss. [Civil Code section 3343](#) as amended, in so many words, authorizes recovery of lost profits.” ([Hartman v. Shell Oil Co. \(1977\) 68 Cal.App.3d 240, 247 \[137 Cal.Rptr. 244\]](#).)

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)

© 2023 by the Judicial Council of California. All rights reserved. See front matter for a listing of Judicial Council Task Force and Advisory Committee members who have contributed to these jury instructions.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.