

# II. D LIABILITY & LEGAL ASPECTS



“Let reverence for the laws, be breathed by every American mother; to the lisping babe, that prattles on her lap; let it be taught in schools, in seminaries, and in colleges; let it be written in Primers, spelling books and in Almanacs; let it be preached from the pulpit, proclaimed in legislative halls, and enforced in courts of justice.”



- Abraham Lincoln (Jan. 27, 1838)

Security officers must understand the law and legal aspects of security service.

If the officer is unfamiliar with issues...There are circumstances that will cause monetary loss and possible jail time.



# CALIFORNIA'S LEGAL SYSTEM

## THE THREE BRANCHES



The California Legal System is modeled upon the Federal Legal System and is comprised of three (3) branches of government.



The Legislative Branch  
The Judicial branch  
The Executive Branch



## THE LEGISLATIVE BRANCH

The legislature is responsible for making and enacting laws. California has two legislative bodies: the State Senate and the State Assembly. These two bodies work together to pass laws.

Once laws are passed, they are written into our codes to be enforced. These are called “STATUTES.” Statutes become the “law of the land” in California. Most common criminal statutes are found in the California Penal Code (CPC) and California Vehicle Code (CVC)

# THE JUDICIAL BRANCH

The Judicial Branch is our court system. We have three levels of courts:

Superior Court: (Trial courts)

Court of Appeal: (Intermediate Appellate courts)

Supreme Court of California:  
(The court with the final say.)



# JURIES



- Jury of twelve (12) peers
- Juries seek the truth and are finders of the fact
- Criminal trials require unanimous verdicts
- Civil trials require 2/3 vote of the jury



## THE EXECUTIVE BRANCH



The Executive Branch enforces the law.

The Governor of the State of California presides over the Executive Branch.

Law enforcement and prosecutors work within the Executive Branch to ensure the laws are enforced.

# PROSECUTION

Prosecutors – Attorneys working for the government who must determine whether or not a suspect should be prosecuted in the Superior Court for the crime alleged.

They are:

- Local City Attorneys (CA)...Enforce misdemeanors and other local ordinances.
- County District Attorneys (DA)... Enforce both misdemeanors and felonies.
- State Attorneys General (AG)...Responsible for handling all appeals on behalf of the prosecution and enforcing State regulations.

## In a trial or in court:

The prosecutor will represent the People of the State of California in court and try to obtain a conviction of a criminal defendant.

A jury will hear the evidence and testimony and decide whether the defendant is guilty or not guilty.







As a security officer, if you were involved in an arrest of a criminal suspect, you will likely be called upon by the prosecution as a witness on behalf of the People.

Your testimony as the arresting officer, or witness, will be very important in receiving a guilty verdict from the jury.

## CRIMINAL LAW and CIVIL LAW: THE DIFFERENCES

Criminal law involves the loss of liberty.

Crimes are punished by fines and/or incarceration.

There are two major categories of crimes:

Felonies (Fel )- punishable by a year or more in the State prison.

Misdemeanors (Misd) - punishable up to a maximum of one year in the county jail.

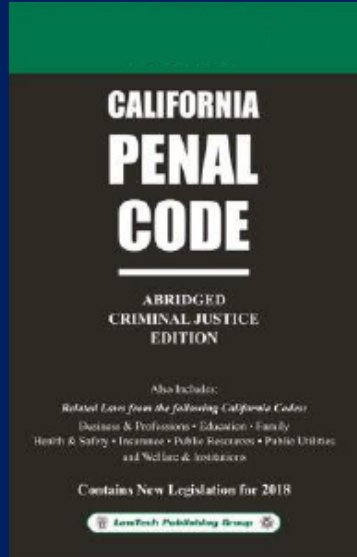
“Wobblers” crimes: Can be charged as either a misdemeanor or a felony.

# California Penal Code

The law for the majority of crimes in California is set forth in the California Penal Code.

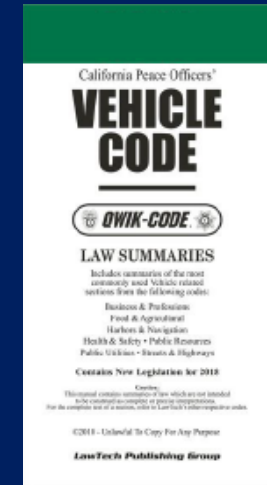
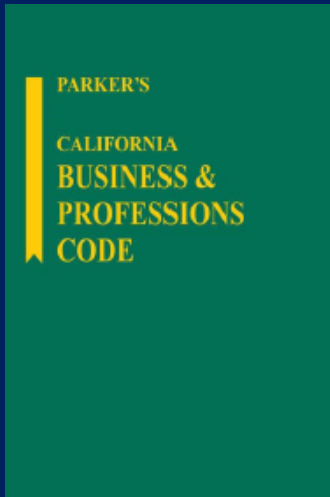
The Penal Code establishes:

- The categories of crimes.
- Elements for each crime.
- The maximum or mandatory sentencing for each crime.



## Other Codes Also Establish Crimes:

- The Health & Safety Code (HS)...Illegal drugs
- The Vehicle Code (VC)...Driving violations
- The Business and Professions Code IBP
- Governing illegal activities by professionals, such as security officers under the “Private Security Services Act.”



## In California, crimes are usually defined by the California Penal Code:

- The prosecutor has the burden of proving all elements of a crime.
- Conviction for a crime requires that the prosecutor prove all elements beyond a reasonable doubt.
- Crimes are offenses against the People of the State of California and are prosecuted by a governmental agency.
- Crimes are punishable by death, imprisonment, fine, removal from office, or disqualification to hold an office of honor, trust, or profit in the State.

# COMMON CRIMES, ELEMENTS, AND PROCEEDINGS

## An Arrest Is Made By Law Enforcement Personnel.

- A government agency (the District Attorney, the Attorney General, or the City Prosecutor) decides whether a criminal complaint should be filed against the person. The criminal complaint sets forth the criminal charge and the basic facts to support the charge.
- The prosecutor conducts a preliminary hearing in felony matters presenting sufficient evidence to establish the basic elements of the crime.



If the judge determines there is enough evidence to require the Defendant to “answer” for the crime, the case proceeds to a jury trial.

The jury decides the facts of the case.

The judge applies the law in the case and a verdict is rendered.





## VANDALSIM

Vandalism is defined in the California Penal Code (CPC) Section 594(a) as:

Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

- Defaces with graffiti or other inscribed material
- Damages
- Destroys



## California jury instructions list the elements for a vandalism charge.

In order to prove this crime, each of the following elements must be proved:

- A person defaced with graffiti or other inscribed material, damaged or destroyed any real or personal property belonging to another person.
- The person acted maliciously in doing so.
- The amount of damage to the property determines if the vandalism will be charged as felony (over \$400 in damage) or a misdemeanor.

# TRESPASS

California Criminal Jury Instruction (CALJIC) 16.530 lists the elements for a trespass charge.

Every person who enters or remains in any non-commercial dwelling house, apartment, or other residential place without the consent of the owner or his or her agent or person in lawful possession thereof is guilty of a violation of Penal Code Section 602.5, subdivision (a), a misdemeanor.



To prove this crime, each of the following elements must be proved:

- A person willingly entered or remained in a non-commercial dwelling house, apartment or other residential place belonging to another.
- That person entered or remained without the consent of the owner.



# CRIMES AGAINST PERSON OR PROPERTY

## FALSE IMPRISONMENT:

California Penal Code (CPC) section 236 defines false imprisonment as:

The unlawful violation of the personal liberty of another. If a person is falsely imprisoned by means of violence, menace, fraud, or deceit, the crime of false imprisonment is considered a felony and is punishable by imprisonment in state prison.



## KIDNAPPING

California Penal Code (CPC) section 207 defines kidnapping as:

“Every person who forcibly, or by any other means of instilling fear, steals or takes, or holds, detains, or arrests any person in this state, and carries the person into another country, state, or county or into another part of the same county is guilty of kidnapping.”

Kidnapping is a felony.

**NOTE:** A person may be “kidnapped” by moving the person only a few feet.



# BURGLARY

California Jury Instructions Criminal section 14.50 states:

Every person who enters any building with the specific intent to steal, take, and carry away the personal property of another of any value and with the further specific intent to deprive the owner permanently of that property is guilty of the crime of burglary.

California Penal Code section 459





# CRIMES OF THEFT

## LARCENY:

The taking of property from the possession of another person who has a superior right to its possession with the intent to permanently deprive; theft.

- Grand theft – money, labor, or real or personal property valued over \$ 950.00.
- Petty theft – theft with value less than \$ 950.00.

## EMBEZZLEMENT

- The fraudulent appropriation of property by a person to whom it has been entrusted.
- Requires the transfer of ownership of the property.
- The defendant in an embezzlement case has the rightful possession of the property but, then, unlawfully transfers ownership of the property.

# ASSAULT

“Assault - is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” It does not require actual touching or use of force, only the mere attempt to injure another.”

California Penal Code, Section 240

# BATTERY

Battery is any willful and unlawful use of force or violence upon the person of another.”

Excessive use of force, even where force is allowed, can be battery upon a person.

California Penal Code, Section 242



## DISORDERLY CONDUCT CRIMES

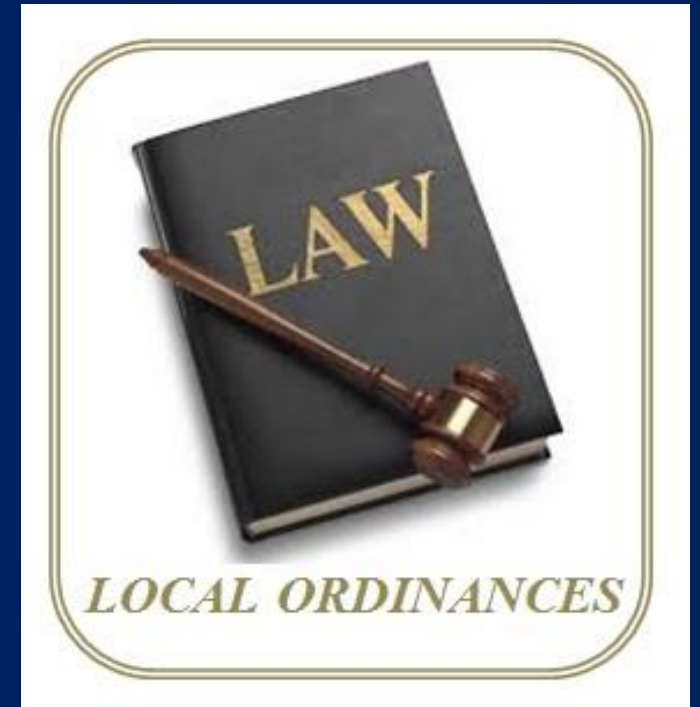
Health and Safety (HS) Code Section 11350 and the sections following prohibit the possession of controlled substances.

A person may be violating Penal Code (PC) Section 647(f) if the individual is “found in a public place under the influence of intoxicating liquor, any drug, [or] controlled substance...in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others...”

# LOCAL ORDINANCES

Local ordinances can be very specific and can involve prohibitions of various activities, such as skateboarding, bicycling, and trespass.

These ordinances are fully enforceable as the laws passed by the State Legislature.



## CIVIL LAW

When people suffer an injury due to your actions, the criminal actions of third parties, or even your failure to act, the result can be a civil lawsuit. By understanding what is expected of you, you can reduce the likelihood of a lawsuit against your company and you.

- Torts (i.e., wrongs) can be unintentional, such as negligence, or intentional, such as assault and battery, false imprisonment, harassment, etc. Both unintentional and intentional torts are actionable in the civil court system.



# ANATOMY OF A CIVIL LITIGATION

An incident occurs and typically someone suffers injury.

This party is the Plaintiff.

A claim may be submitted immediately providing the defendant with notice as to what transpired, who was involved and what the facts are regarding the injury.

(An injured party does not need to submit any type of claim or notice).

The first notice may be the filling of a lawsuit.

# ANATOMY OF A CIVIL LITIGATION

- After the lawsuit is filed, both parties may participate in oral and or written discovery.
- Upon completion of discovery, a civil lawsuit may proceed through mediation or arbitration or straight to trial.
- The trial may be a court trial with a judge deciding the questions of fact, or more likely, will be a jury trial with a jury determining the facts of the case.

NOTE: With a two-year statute of limitations period for most Civil Actions (CA), it is imperative that the officer:

- Take notes
- Prepare an incident report
- Document the circumstances of all injuries

It will be very difficult to recall specific facts two (2) years after an incident without these aids.

# THE MOST COMMON UNINTENTIONAL TORT

## NEGLIGENCE

Negligence.... Is the failure to use reasonable care to prevent harm to oneself or to others.

A person can be negligent by acting or failing to act. A person is negligent if he or she does something that a reasonably careful person would not do in the same situation or fails to do something that a reasonably careful person would do in the same situation. (CACI 401).

## ELEMENTS OF NEGLIGENCE

- A legal duty to use due care.
- A breach of that duty.
- Causation between that breach and the Plaintiff's resulting injury.
- Actual loss or damage to the Plaintiff.

(Ann M. v. Pacific Plaza Shopping Center (1993) 6 Cal. 4<sup>th</sup> 666.)

## DUTY

Everyone has a duty (often referred to as standard of care) to use ordinary care in conducting activities from which harm might reasonably be anticipated. [Witkin, 6 Summary (9<sup>th</sup>), Torts, §732]

To determine whether or not a duty exists, the relationship of the parties is examined and the foreseeability of harm is analyzed.

**EXAMPLE** - As a security officer, if you are assigned a post in an office building lobby, you would have a duty to ensure that the lobby area is safe for the public use.



## SPECIAL RELATIONSHIP MAY GIVE RISE TO A DUTY

If a person has a Special Relationship to another, there is usually a greater duty to the individual. If a special relationship exists, the party may be liable not only for his or her actions but also for his or her failure to act.

**EXAMPLE:** A security officer may be found to be in a special relationship with an individual(s) for whom the officer is hired to protect. A regular citizen would have no duty to protect someone from harm; however, due to the SPECIAL RELATIONSHIP of the officer, the officer has a duty to take action to protect others.

# CAUSATION

A negligence action must establish the causation between the actions of the one who allegedly committed the TORT and the injury sustained by the Plaintiff.

A connection between the injury and the action must exist.

- Did the hazard cause the injury or would the injury have occurred independent of the hazard?
- Did the actions or inactions of the security officer cause the injury?

The current California Jury instructions defining CAUSATION looks to whether the action (or inaction) was a “substantial factor” in bringing about the plaintiff’s harm:

A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm. (CACI 430).

# DAMAGES

To receive damages the Plaintiff must have suffered injury as a result of another's actions.

- **ECONOMIC DAMAGES** – Actual dollar amount of damage one incurs. (i.e., medical bills, repair invoices, loss of earnings).
- **NON-ECONOMIC DAMAGES** – Awarded for the pain and suffering of the injured party (not tied to any specific dollar amount, but must be reasonably tied to the alleged injury).

## TERRORISTS ACTS AND NEGLIGENCE

The most common Legal and Liability concerns involving a security officer include:

- Wrongful detention
- Excessive use of force
- Unreasonable search
- Failure to act reasonably in the performance of duties



The possibility of a terrorist attack brings a new role for the security professional.

YOU MUST:

- Heightened access control into buildings
- Diligent sign-in and sign-out sheets
- Careful checking of Identification and Access cards
- A closer look at visitors
- Heightened requirements regarding escorting visitors



- Access control requiring thorough searches of personal property and the use of metal detectors.
- Security officers involved with parking access control must be aware of low riding vehicles and diligently tow abandoned vehicles.
- Patrolling officers must watch for car and truck bombs or unattended packages.

**YOU MUST BE SURE THAT THESE TASKS ARE DONE PROPERLY. FAILURE TO DO SO COULD BE DEEMED NEGLIGENT.**

## INTENTIONAL TORTS

An individual may be liable for his or her intentional acts that cause injury to another. Recovery is not limited to ECONOMIC and NON-ECONOMIC damages. Intentional torts also give rise to liability for punitive damages.

- Damages awarded by the jury to punish the Defendant for their actions.

An insurance policy does not cover for punitive damages.

An employer is not required to pay for punitive damages alleged against its employees.

## THE MOST COMMON INTENTIONAL TORTS ARE:

- Assault and Battery
- Libel and Slander
- False imprisonment and Detention

You will note these civil torts closely resemble crimes previously discussed. The elements are often identical. Be aware that your actions can result in both criminal and civil liability.

## YOU CAN BE PROSECUTED FOR AN ACT, BUT ALSO SUED.

## ASSAULT AND BATTERY

- Raising one's hand to strike another, putting the person in fear of being hit, is an assault.
- Battery requires the actual touching to occur. It is an offensive or harmful touching or contact.
- If a person is being placed under arrest, the touching required may be an offensive contact. Removing an unauthorized person from the premises may be an offensive touching.

How can a security officer perform his or her duties if the officer cannot have contact with others?

# REASONABLE FORCE

California Law allows the use of REASONABLE FORCE to make an arrest.

Reasonable Force is the Minimum amount of force necessary under the circumstances to overcome resistance and to effect an lawful arrest.

California Penal Code Section 836.1

One of the most important actions a security officer must take in cases of any FORCE SITUATION, is to document the actions.

The officer's actions and the other individual's actions must be set forth in a concise, clear, and factual manner.

**A CHRONOLOGICAL SERIES OF EVENTS MUST BE DOCUMENTED TO PROTECT YOURSELF FROM LEGAL ACTION.**



## DOCUMENT THESE EVENTS

- What first drew the officer's attention to this person and What happened next?
- Where did it take place and When?
- Who was involved and Who else was present?
- Why were the actions taken and When did the action start?
- When did it end and Was the officer placed in fear for his/her safety?

## FALSE ARREST AND DETENTION OR IMPRISONMENT

**FALSE ARREST** – The nonconsensual, intentional confinement of a person, without lawful privilege, for an appreciable length of time, however short.



**FALSE IMPRISONMENT** – A person is wrongfully deprived of his or her freedom to leave a particular place by the conduct of another.

Generally, private security personnel do not possess powers any greater than the average citizen.

A private security officer may detain a person based on probable cause.

Probable Cause (PC) is defined as: “A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime.”

Black’s Law Dictionary 1239 (8<sup>th</sup> Ed., 2004)

The licensed security officer must be aware of what constitutes Probable Cause (PC) and be able to identify and state in the incident report or daily log the specific facts which led the officer to believe probable cause existed.

EXAMPLE – Standards to establish probable cause in a shoplifting case:

- See person take property and conceal property
- Constant observation and Observe person pass checkouts
- Observe person exit store

## IMMUNITY FOR ILLEGAL DETENTION/FALSE IMPRISONMENT/FALSE ARREST

The legislature enacted Civil Code section 47 and the California Supreme Court has interpreted the section to provide for a complete immunity (i.e., an “Absolute Privilege”) from civil lawsuits where the person detained is reported to the police, even if the report was erroneous and the criminal conduct did not occur. Even if the mistake leads to a false arrest, there is immunity from a lawsuit.

In order for an individual to obtain immunity using this privilege,  
the police must be called.

**REMEMBER...IMMUNITY DOES NOT APPLY TO CITIZEN'S  
ARRESTS.**





# SHOPKEEPER'S PRIVILEGE AND DETAINING A SUSPECT

## California Penal Code section 490.5

Allows for a retailer and/or their agents to stop and detain persons reasonably suspected of shoplifting for the purpose of investigation, reclaiming the property, and to prevent escape.

A security officer assigned to a retail post is an “Agent” of the business and comes within the protection of the section.



“(f) (1) A merchant may **DETAIN** a person for a reasonable time for the purpose of conducting an investigation in a reasonable manner whenever the merchant has probable cause to believe the person to be detained is attempting to unlawfully take or has unlawfully taken merchandise from the merchant’s premises.”

**REASONABLE TIME** – The beginning and ending time of the detention should be placed in the report or logs kept by the security officer.

**REASONABLE PURPOSE** – example: “I saw the person take two packages of batteries from the shelf in aisle three. I saw the person place the batteries in his coat pocket. I watched the person as he walked past the checkouts and exit the store.

**ARTICULATED PURPOSE** – There must be a specific, articulated, identifiable purpose of the detention.

## REASONABLE INVESTIGATION AND MANNER

Penal Code Section 490.5(f)(3)... Allows the security officer to examine any items “in plain view” to determine the ownership of the property.

Penal Code Section 490.5(f)(4)... Allows the officer to request the person detained to surrender the suspected stolen item.

**IF THE PERSON REFUSES TO SURRENDER THE ITEM(S), THE OFFICER MAY CONDUCT A “LIMITED AND REASONABLE SEARCH” TO RECOVER THE ITEM(S).**

Specifically, the code section allows the security officer to search “packages, shopping bags, handbags or other property in the immediate possession of the person detained.” The security officer may NOT search any clothing worn by the person.

Upon surrender or discovery of the item, the person detained may also be requested, but may not be required, to provide adequate proof of their true identity.



## THE SHOPKEEPER'S PRIVILEGE ALLOWS A SECURITY OFFICER OR SHOPKEEPER TO DETAIN A PERSON IF:

The officer has Probable Cause (PC) to believe the person has stolen or attempted to steal merchandise.

The officer acts reasonably under all circumstances.

**FAILURE TO MEET THESE TWO REQUIREMENTS MAY LEAVE THE OFFICER LIABLE FOR FALSE ARREST, DETENTION, OR IMPRISONMENT. COMPLIANCE MAY PROVIDE IMMUNITY.**

## FALSE IMPRISONMENT

In a civil action, a wrongful confinement requires the following:

- There was an unnecessary delay in releasing the person.
- The individual did not consent to the delay.
- The individual was harmed and the person conducting the confinement's actions was a substantial factor in causing harm to the individual.



# MALICIOUS PROSECUTION

If a security officer causes an individual to be arrested and prosecuted **KNOWING** there was no Probable Cause to have the person arrested, the officer could be liable for the TORT of malicious prosecution.



## ELEMENTS FOR MALICIOUS PROSECUTION

That the defendant was actively involved in causing plaintiff to be prosecuted or in causing the continuation of the prosecution.

That the criminal proceeding ended in plaintiff's favor.

That the defendant did not reasonably believe facts supporting probable cause existed and acted primarily for a purpose other than that of bringing plaintiff to justice.

That plaintiff was harmed and the defendant's conduct was a substantial factor in causing plaintiff's harm.

# DEFAMATION

There are two types of Defamation: Libel and Slander.

“Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.”

## Libel Law

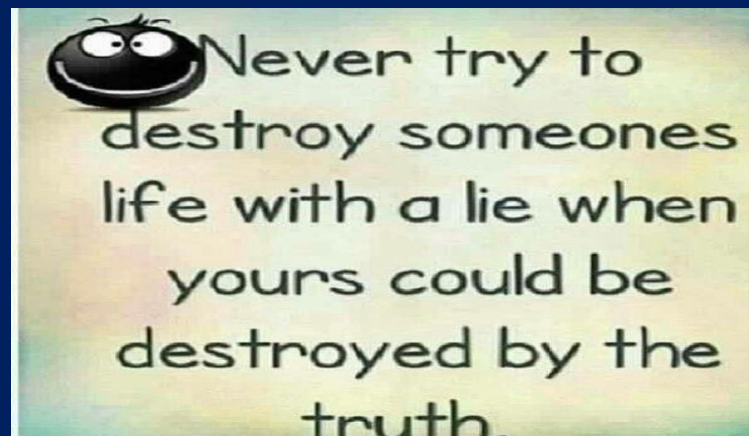
Libel Law is where an incident can be brought to the high courts if something is published, which can cause a disruption in an individual (or individuals) profession or trade or other area of their life.

“Slander is a false and unprivileged publication, orally uttered and also communications by radio or any mechanical or other means:

- Charges any person with crime or with having been indicted, convicted, or punished for a crime;
- Imputes in him the present existence of an infectious, contagious, or loathsome disease;
- Tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires or by imputing something with reference to his office, profession, trade or business that has a natural tendency to lessen its profits;

- Imputes to him impotence or a want of chastity;
- Which by natural consequence causes actual damage.

TRUTH IS ALWAYS A DEFENSE TO ANY  
DEFAMATION ACTION.





## ELECTRONIC EAVESDROPPING

“One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.”

(Rest.2d, Torts §625B)



- It is unlawful to eavesdrop by means of a listening device on a private communication. (California Penal Code Section 630)
- It is unlawful to record a private communication without consent. (California Penal Code section 632)
- It is unlawful to videotape an individual when there is an expectation of privacy.





# SEXUAL HARASSMENT

Sexual harassment includes:  
Unwelcome Sexual Conduct



A supervisor is prohibited from forcing a subordinate to tolerate “Unwelcome Sexual Conduct.” This results in strict liability. The corporation is liable regardless of whether or not the corporation had knowledge of the supervisor’s conduct.

# HOSTILE WORK ENVIRONMENT

A Hostile Work Environment exists when unwelcome sexual conduct interferes with an employee's job performance by creating an intimidating, hostile, or offensive work environment.



## RETALIATION

Under Title VII:

- A cause of action exists for discharges or other forms of retaliation which result from employee complaints about sexual harassment.
- Victims of retaliatory behavior include relatives, friends, witnesses as well as victims of sexual harassment itself.



## DETERMINING “UN-WELCOME CONTACT”

“ Reasonable Woman Standard or Fatherhood Standard ”

The alleged conduct is viewed through the eyes of the “AVERAGE Reasonable Woman” or through the eyes of the “Reasonable Father.”

If your wife, husband, or child came home from work with a story regarding how they were treated at work, how would YOU react.

**IF YOU WOULD FIND THE CONDUCT OFFENSIVE OR UPSETTING,  
THEN IT PROBABLY QUALIFIES AS ACTIONABLE SEXUAL  
HARASSMENT.**



# CIVIL RIGHTS LIABILITY

In California, and in every other state, citizens have a right to freely exercise their Constitutional Rights.

When a Constitutional Right is violated, it can give way to civil rights violations. These are actionable in both California State courts and, sometimes, in Federal courts.



**THE PENALTIES ARE STIFF.**

## THE “ UNRUH ” ACT

“ All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or blindness or other physical disability are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.”



This act compels recognition of the equality of ALL persons in the right to a particular service offered by an organization or entity covered by the act.

As a security officer, you cannot discriminate or act in a way to prevent certain classes of people from enjoying their Constitutionally protected rights.

These classes are based upon:

RACE, SEX, RELIGION, NATIONAL ORIGIN, GENDER  
IDENTIFICATION

and, or any type of HANDICAP

If the interference (or even attempted interference) of the enjoyment of civil rights is done by threats, intimidation, or coercion, the person so interfered with does not need to be a member of the designated “CLASSES.”





# DAMAGES FOR “ UNRUH ACT ” VIOLATIONS

The Unruh Act authorizes a legal action for:

**Actual Damages:** Loss of earnings, medical expenses, including psychological expenses, mental anguish, pain and suffering.

**Punitive Damages:** Up to three times actual damages, the Judge will determine the final amount of PUNITIVE damages.

**Attorney’s Fees:** Expensive, can run up to tens, if not hundreds of thousands of dollars, for services.

# FEDERAL CIVIL RIGHTS VIOLATIONS

Federal Civil Rights Violations are only actionable in court if the  
**TORTIOUS** acts are committed by a person acting under the  
“Color of Authority”

**APPLIES-** To Government Employees or Law Enforcement officers

Be aware that if a security officer is “acting in concert” with law  
enforcement officers, they can be deemed to be acting under “Color  
of Authority” and may be liable.

# RIGHT TO PRIVACY

## Searches:

- Remember the rules set forth for Shopkeeper's Privilege.
- Reasonableness is the rules
- If the search may not be considered reasonable, don't conduct the search.



## SEARCH FOR WEAPONS

“Any person making an arrest may take from the person arrested all offensive weapons which he may have about his person and must deliver them to the magistrate before whom he is taken”

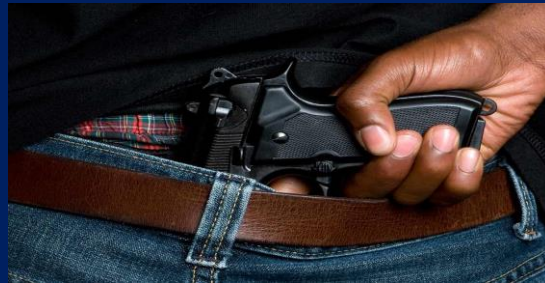
California Penal Code Section 846

**A SEARCH FOR CONTRABAND INCIDENTAL TO ARREST OR A SEARCH OF A PREMISES IS NOT ALLOWED.**

Generally, a security officer has only the authority to conduct a search that is specifically allowed.

An officer may search the specific items set forth in the SHOPKEEPER'S PRIVILEGE and search for weapons pursuant to an arrest. Both searches must be reasonable. A weapons search should be limited to a "pat down" on the outside of clothing only.

**THE SEARCH FOR WEAPONS IS MADE ONLY AFTER AN ARREST.**





# SEQUENCE OF EVENTS

## (Field Scenario)

- Security officer observes unlawful activity and has probable cause to detain.
- Officer detains individual and continues the investigation.
- A search of shopping bags, packages, purses, etc. pursuant to Shopkeeper's Privilege and discovers stolen items.
- The Security officer arrests the individual pursuant to a citizen's arrest.

THE SECURITY OFFICER MAY SEARCH FOR WEAPONS FOR  
“ OFFICER SAFETY ”

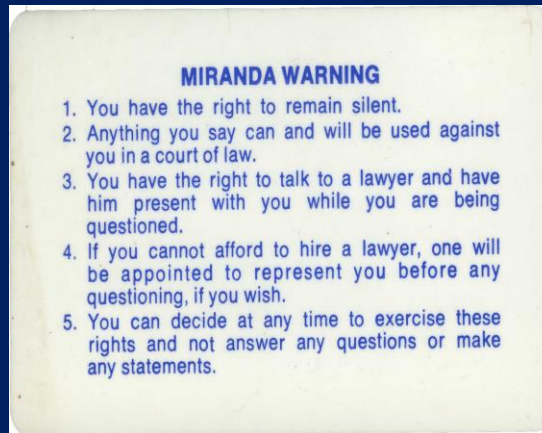


# MIRANDA WARNINGS

The general rule is that Miranda warnings are NOT REQUIRED before a private security officer questions another individual.

Any confessions or incriminating statements made to a security officer may be admitted in a trial.

Always document any statements made by the individual and should be recorded in the reports or logs.

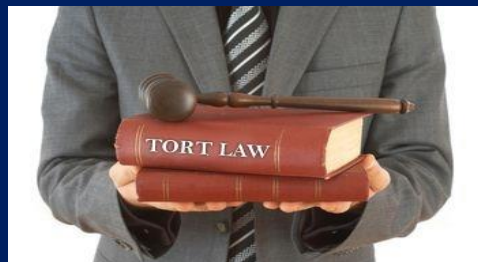


## VICARIOUS LIABILITY

### Responent Superior – Liability for Acts of Employees

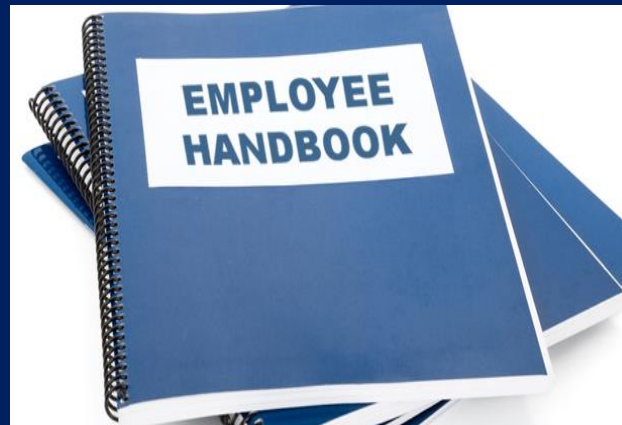
Your actions can directly cause a lawsuit, not only against you, but also against your employer. “RESPONDENT SUPERIOR” means, literally, the superior shall respond.

This means the innocent principal or employer is liable for the TORTS of the agent or employee committed while acting within the scope of his employment (i.e. engaged in work he was employed to perform, during his working hours).



The question as to whether or not an employee is acting within the course and scope of employment depends upon whether the act was:

- Either required by, or incident to, the employee's duties.
- Could be reasonably foreseen as beyond the SCOPE of his employee's duties.



## THE REASONS FOR HOLDING THE EMPLOYER RESPONSIBLE FOR THE ACTIONS OF THE EMPLOYEE ARE TO:

- Prevent recurrence of the tortious misconduct.
- Provide greater assurance of compensation for the victim.
- Guarantee that the victim's losses will be equitably borne by those who benefit from the enterprise that gave rise to the injury.

Liability under the doctrine of RESPONDENT SUPERIOR extends to malicious acts and other intentional torts of employee committed within the scope of his employment.



## WORKPLACE VIOLENCE

As a security officer, you might be involved in trying to prevent violence that occurs in the workplace. Often, this involves nothing more than being aware of your surroundings and listening to your clients when they describe issues about which you should be aware.

**EXAMPLE:** You are working in the lobby, checking identification of employees and visitors, and are asked to make sure an individual is not allowed up as there is a Restraining Order (RO) in place against him due to acts of violence.

IF THE PERSON SHOWS UP, LAW ENFORCEMENT SHOULD BE IMMEDIATELY NOTIFIED.

The person, who is the intended victim, should be IMMEDIATELY notified and affirmative steps should be taken to protect that person until the police can arrive and take the violator into custody.

Every step should be taken to provide protection for both parties.



## OBSERVING SITUATIONS CAN OFTEN PREVENT AN INCIDENT FROM OCCURRING.

(Field scenario )

If two employees are seen arguing, simply approaching and inquiring whether everything is all right might be enough to allow the individuals a chance to think and cool down.

## BOTH A CORPORATION AND AN INDIVIDUAL MAY OBTAIN A RESTRAINING ORDER FROM THE COURT.

“Any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, which can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an injunction on behalf of the employee prohibiting further unlawful violence or threats of violence by that individual.”

Code of Civil Procedure Section § 527.8

The Security Officers on duty, at the place of employment, must have knowledge of the Restraining Order (RO).

The officers should know the identity and be familiar with the appearance of the person(s) restrained. A photograph must be included in the order to diminish any identity issues.

The laws and duties of the officer with respect to detention and arrest apply when a person is found to have violated a restraining order. Always notify local law enforcement.

## DAMAGES

Economic Damages are “objectively verifiable monetary losses including:

- Medical expenses and loss of earnings.
- Burial costs and loss of use of property.
- Costs of repair or replacement.
- Costs of obtaining substitute domestic services.
- Loss of employment and business opportunities.”



Non-economic damages mean subjective, non-monetary losses including, but not limited to:

- Pain and suffering and inconvenience.
- Mental suffering and emotional distress.
- Loss of society and companionship and consortium.
- Humiliation and injury to reputation.

# PUNITIVE DAMAGES

- Not necessarily related to the injury.
- Awarded by the jury to punish the Defendant.
- Are not allowed in negligence cases.
- Are allowed in actions that allege intentional torts, such as assault or false imprisonment or possibly in actions where the party knew of a prior accident and failed to fix the hazard.
- Not covered by insurance policy.
- Employer not required to pay for punitive damages awarded against an employee.

# PRIVATE SECURITY SERVICES ACT



In California, the Private Security Services Act requires that private security companies and their security officer employees be properly licensed.

These licenses are issued and regulated by the Bureau of Security and Investigative Services (BSIS).



A Security Guard or Security Officer is a person who furnishes a service, the purpose of which is:

“ To protect specific persons or specific property or to prevent the theft, unlawful taking, loss, embezzlement, misappropriation, or concealment of any goods, wares merchandise, money, bonds, stocks, notes, documents, papers, or property of any kind...”



The requirements for a person to successfully apply for a Security Officer license are:

- Must be at least 18 years of age.
- Must not have been convicted of a crime or have performed an act involving dishonesty, fraud, or deceit.
- Must comply with the requirements regarding licensing.
- Must pass the Powers of Arrest Test examination with 100% accuracy.



Before receiving a license, a security officer must pass a criminal background check.

The individual's criminal history will be investigated by the State Department of Justice using a national database.



# TRAINING

Effective July 1, 2004

The minimum training requirements for a newly licensed security officer are 40 hours of training. (AB2880)

The Powers to Arrest examination provides detailed information for the security officer. Each security officer must complete a training course of approximately eight hours in length . After passing the test and the background check, the security officer is ready to be licensed.



## EXPIRATION AND RENEWAL OF LICENSE

A SECURITY OFFICER LICENSE SHALL BE RENEWED EVERY TWO YEARS.

- If the license is renewed prior to its expiration, the officer must simply apply and pay the renewal fee.
- If the license expires, if within 60 days the officer must also pay a delinquency fee.
- A person may not act as a security officer if the officer's license has been suspended for any reason.

# RELATIONSHIP BETWEEN A SECURITY OFFICER AND A PRIVATE PATROL OPERATOR (PPO)

A Private Patrol Operator is a Security Firm.

It must have a license from the Bureau of Security and Investigative Services. The PPO shall require any employer hired as a licensed security officer to have a valid license.





## OTHER LAWS AND REGULATIONS

### UNIFORM: Badge Requirements

A security officer's badge and patch must be approved by the Chief of BSIS. Unapproved badges and patches are not to be worn.



### FIREARMS: Weapons Regulations

A security officer may not carry a firearm unless the officer has in his possession a firearm's qualification card.





## TO OBTAIN A FIREARM QUALIFICATION CARD:

The applicant must be a licensed officer or PPO and have filed a completed application with the BSIS.

The application must include:

- Proof of payment for the fee.
- Proof of successful completion of a training course for a firearm including passage of a written test.
- Proof of qualifying on an approved firearm's range.

**THE BUREAU MUST ALSO DETERMINE THAT THE CARRYING OF A FIREARM PRESENTS NO APPARENT THREAT TO THE PUBLIC SAFETY.**

# AUTHORIZED DEFENSE WEAPONS

## TO CARRY A BATON ON THE JOB:

A licensed security officer must pass an eight (8) hour training course from a certified instructor.



## TO CARRY “CHEMICAL AGENTS” ON DUTY:

A four (4) hour training class is mandated.



# MANDATORY REPORTING TO “BSIS” FOR VIOLENT INCIDENTS

The BUREAU OF SECURITY AND INVESTIGATIVE SERVICES (BSIS)

Requires a written report of an incident involving any physical altercation or use of a deadly weapon while a security officer is on duty.

The report must be prepared within seven (7) days of the incident.



# A DEADLY WEAPON INCLUDES ANY INSTRUMENT OR WEAPON COMMONLY KNOWN AS:

Blackjack or Billy club

Brass knuckles, Dirk, or Dagger

Firearms

Knives with a blade longer than four inches

Razors with an unguarded blade

Metal pipe or bar used or intended to be used as a club



## DUTIES OF THE SECURITY OFFICER

The security officer's duties are typically defined by the contract with the client and the approved Post Orders (PO).

The security officer is usually required to:

- Observe and document
- Provide a visual deterrent (crime prevention)
- Act as a liaison between the public and the client

- The security officer's actions may assist in deterring crime.
- The officer may reduce but not prevent risk of injury to persons or damage to or loss of property.
- Always report suspicious activity.
- The officer acts in self-defense and defense of others, if required.
- The officer's role is normally not to detain or arrest, but assist in de-escalating situations and managing aggressive behavior.

# Laws can embody standards.

“Governments can enforce laws – but the final task is not a task for government. It is a task for each and every one of us. Every time we turn our heads the other way when we see the law flouted – when we tolerate what we know to be wrong – when we close our eyes and ears to the corrupt because we are too busy or too frightened – when we fail to speak up and speak out – we strike a blow against freedom and decency and justice.” Robert F. Kennedy  
 U.S. Attorney General (B.1928-1968)





FOR ANY QUESTIONS OR CONCERNS...

PLEASE REFER TO YOUR POST ORDERS OR COMPANY RULES FOR  
CLARIFICATIONS REGARDING ANY MATTERS OR TRAINING ISSUES.

