

## Memorandum 75-31

Subject: Study 39.70 - Prejudgment Attachment (Amendments)

Attached to this memorandum are two copies of a draft of the "Recommendation Relating to Amendments of the Attachment Law." Please mark your editorial changes on one copy and give it to the staff at the May meeting.

The Assembly Judiciary Committee has approved a bill to delay the operative date of the new attachment law for one year. Although no issue was made concerning whether the bill was a desirable one at the hearing, the Executive Secretary spent sometime discussing the bill with the chief counsel to the committee. The chief counsel was quite concerned with the delay. He believes that the Commission was correct last session when it stated that the existing statute is very inadequate. He believes that the operative date of the new statute should not be delayed. The Executive Secretary advised him that the Commission's staff was making every effort to prepare technical amendments that could be enacted this session so that it would not be necessary to delay the operative date. Relying on this assurance, the analysis prepared by the staff of the committee raised no objections to the bill. However, it is apparent that the Commission should make every effort to prepare the necessary revisions to the attachment law for enactment this year if at all possible. The Executive Secretary also discussed the matter with Assemblyman McAlister and we plan to insert the revisions of the attachment law (if they can be prepared in time) in the bill that would delay the operative date of the new law before that bill is considered in the Senate.

Most of the changes proposed in the draft recommendation have been previously considered and approved by the Commission. Three important new matters are briefly discussed below. The staff recently received the rough draft of a law review comment being prepared by Thomas E. Shardlow, a student at U.C.L.A. Several changes suggested by Mr. Shardlow are incorporated in the draft recommendation. Footnotes for quoted portions of Mr. Shardlow's comment are on pink paper attached hereto.

### Attachment in Quasi-Contract Cases

In the draft recommendation, Section 483.010 is proposed to be amended to permit attachment on claims based on contract, express or implied in fact. (See the discussion in the preliminary part of the recommendation and in the Comment to Section 483.010.) Mr. Shardlow's comment draft contains the following discussion:

Prior to the 1972 amendments, attachment was authorized only in actions upon express or implied contracts.<sup>25</sup> The courts, however, liberally construed the words "implied contract" to include implied in law or quasi-contracts.<sup>26</sup> In 1972, instead of using the phrase "contract, express or implied" the legislature set out in detail the types of claim upon which an attachment could be obtained.<sup>27</sup> This specification seems to preclude attachment in quasi-contract actions.<sup>28</sup>

The court is required to determine the probable validity of the plaintiff's claim before issuing a writ of attachment.<sup>29</sup> Claims based on express or implied in fact contracts usually are supported by documentary evidence, present factual situations familiar to the judge, and are governed by application of well settled principles of law. For this reason, those claims lend themselves to accurate summary determination. On the other hand, quasi-contract actions can be amorphous and present more difficult factual and legal questions. A court should not be required to make summary determinations in these actions.<sup>30</sup> Unfortunately the new statutes return to the "contract, express or implied" language of the pre-1972 law.<sup>31</sup> This should not have been done without making it clear that quasi-contractual claims are not meant to be included in that description.

Attached to this memorandum is an excerpt from 2 B. Witkin, California Procedure, Provisional Remedies, concerning attachment where contracts are implied in law.

### Attachment of Leases of Real Property

Mr. Shardlow makes the following interpretation of the Attachment Law:

Under current law a corporation's or partnership's leasehold estates and an individual's leasehold estate of more than one year are attachable.<sup>45</sup> The recent legislation appears to insulate these interests from attachment.<sup>46</sup> A leasehold estate may very well constitute a significant asset of a business<sup>47</sup> and there is no reason why this asset should be exempt. In addition, since a leasehold could be attached by notice instead of seizure so that only the defendant's right to transfer the property would be impaired, attachment of this type of property would probably subject the defendant to less inconvenience and should be encouraged rather than forbidden.

In the draft recommendation, the staff proposes to amend Section 487.010 to make clear that in the case of individuals leasehold estates of at least one year may be attached (as is provided by existing law). It is not entirely clear how the Attachment Law as enacted would be interpreted. The staff believes that it is clear that leases are subject to attachment in the case of a corporate or partnership defendant since Section 487.010 provides that any property for which a method of levy is provided is subject to attachment. Section 488.310 provides for attachment of an "interest in real property" by recording the attachment--"interest in real property" would include a leasehold estate. The problem pointed out by Mr. Shardlow arises in the case of an individual because Section 487.010(c) refers only to "real property." Under Section 765 of the Civil Code, estates for years are chattels real. Hence, in California, it has been decided that filing a judgment pursuant to the statute giving a lien on "all the real property of the judgment debtor not exempt from execution in the county, owned by him at the time, or any which he may afterward acquire" (similar to Section 674) did not give the creditor a lien on a leasehold estate. Summerville v. Stockton Milling Co., 142 Cal. 529, 76 P. 243 (1904).

The draft recommendation treats leasehold estates as real property. Under current law, it is not clear how leasehold estates should be levied upon. 19 Cal.Jur.2d, Executions § 90 at 752 (rev. ed.) states, "Leasehold interests must therefore be levied on as interests in real property, and, unlike personalty, levy is perfected by notice and recording without actual seizure and possession." (Citing In re Maier

Brewing Co., Inc., 65 F.2d 673 (9th Cir. 1933), involving a 20-year lease.) Section 300.2 of the Marshal's Manual states:

Instructions to levy upon a lease or any interest therein should specify whether the plaintiff desires the property to be levied upon as real property or as personal property, and the officer should comply with the instructions so given. Except as to oil or gas leases, leasehold interests are usually personal property, and instructions to levy as personal property should state the addresses of the lessor and the lessee so that both parties to the lease may be served with a copy of the writ and notice of attachment.

Order of Levy and Amount of Property to Be Levied Upon

Mr. Shardlow states:

One of the most disconcerting elements of the new law is that it would remove even the inadequate safeguards now available to protect the defendant from attachment in excess of the plaintiff's claim or selective attachment of crucial assets to exert the most leverage. The current law provides that

[t]he writ must be directed to the sheriff, or a constable, or marshal of any county in which property of such defendant may be, and must require him to attach and safely keep all the property of such defendant within his county not exempt from attachment, or so much . . . as may be sufficient to satisfy the plaintiff's demand . . . .<sup>152</sup>

While it is not clear that the levying officer is likely to estimate the value of the property attached to determine whether the amount is excessive, and in any event the plaintiff can attach an excessive amount of property by attaching in different counties, this provision may have some effect in discouraging flagrant instances of excessive attachment.

The new law will do away with this safeguard<sup>153</sup> and substitute none in its place.<sup>154</sup> The failure of the new law to provide safeguards against excessive attachment may be a defect of constitutional significance. One of the significant factors which led the

U.S. Supreme Court in Fuentes v. Shevin<sup>155</sup> to invalidate the Florida and Pennsylvania prejudgment replevin statutes was that

[t]he statutes . . . abdicate effective state control over state power. Private parties, serving their own private advantage, may unilaterally invoke state power to replevy goods from another.<sup>156</sup>

The recent case of Mitchell v. W.T. Grant Co.,<sup>157</sup> while undercutting Fuentes in many respects, agrees that this abdication of control is a significant factor in evaluating the constitutionality of prejudgment seizure. In upholding a Louisiana prejudgment replevy procedure the Mitchell court noted that

[the defendant] was not at the unsupervised mercy of the creditor and court functionaries. The Louisiana law provides for judicial control of the process from beginning to end.<sup>158</sup>

If the right to a preattachment hearing means anything, it should include the right to a determination of the extent of the seizure and court aid to prevent excessive seizure. Under the new law the plaintiff can unilaterally invoke state power to attach property in excess of the authorized value subjecting the defendant to the "unsupervised mercy of the creditor . . . ."<sup>159</sup>

The new law will also terminate<sup>160</sup> a provision enacted in 1972 which gives a court the discretion to

direct the order in which the writ shall be levied upon different assets of the defendant, if in the aggregate they exceed in value an amount clearly adequate to secure any judgment which may be recovered by the plaintiff.<sup>161</sup>

The Randone court severely criticized the pre-1972 statutes for the absence of such a provision:

[U]nlike the claim and delivery statute invalidated in Blair<sup>162</sup> under which a creditor could only compel the seizure of property to which he claimed title, the instant provision initially grants unlimited discretion to the creditor to choose which property of the debtor he wishes to have attached. A creditor seeking to gain leverage in order to compel a settlement could exercise this choice so as to place a debtor under the most severe deprivation.<sup>163</sup>

Undeniably, the provisions exempting necessities attempt to meet this objection. Nevertheless, in all likelihood the degree of the defendant's hardship will still depend on which property is attached. Conversely, it is difficult to imagine a proper interest the plaintiff could have in the type of property attached.<sup>164</sup> The new law should be amended to require the court to specify the order of levy in accordance with the defendant's wishes, unless the court finds that the proposed order of levy would be unduly prejudicial to the plaintiff.<sup>165</sup>

The draft recommendation contains amendments to Sections 488.010 and 488.030 which would restore the provisions of existing law concerning the court's discretion to direct the order of levy and recognizing the duty of the levying officer to avoid an excessive attachment where he can. However, it should be noted that in most cases neither the court nor the levying officer will have sufficient information to determine with any degree of certainty that an excessive amount of property might be attached. In any event, the statute should provide a means for dealing with a situation where it is clear that the plaintiff is attempting to attach an excessive amount of property.

Respectfully submitted,

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FOOTNOTES

25. Ch. 130, § 1, [1933] Cal. Stat. 582 (repealed 1972).
26. Landry v. Marshall, 243 Cal. App.2d 170, 176, 52 Cal. Rptr. 119, 123 (2d Dist. 1966).
27. The action must be for a liquidated sum and based upon "(1) Money loaned; or (2) A negotiable instrument; or (3) The sale or lease of, or a license to use real or personal property . . . ; or (4) Services rendered . . . ." Cal. Code Civ. Pro. § 537.1(a) (West Supp. 1974).
28. The first three categories of actions seem to assume a consensual transaction. While services may be rendered without consent, it is unlikely that an action for services rendered not based on a real contract could meet the liquidated sum requirement.
29. Cal. Code Civ. Pro. § 538.4 (West Supp. 1975); id. § 484.090(a)(2) (effective Jan. 1, 1976).
30. This is not to say that a court is incompetent to make summary determinations in other than contract cases (e.g. in deciding whether to issue a preliminary injunction). But, the legislature no doubt had the purpose of minimizing incorrectly issued attachments by confining attachments to contract actions and that purpose should not be undermined by increasing that class to include actions based on fictitious contracts.
31. Cal. Code Civ. Pro. § 483.010 (West Supp. 1975)(effective Jan. 1, 1976).
45. Cal. Code Civ. Pro. § 537.3 (West Supp. 1974).
46. Leasehold estates can be attached currently under a code section authorizing the attachment of personal property incapable of manual delivery. Cal. Code Civ. Pro. § 542(5) (West Supp. 1974). The new statutes have no such general provision. The only section under which a leasehold estate could be levied upon would be the section relating to real property. Cal. Code Civ. Pro. § 488.310 (West Supp. 1975) (effective Jan. 1, 1976). However, leasehold estates are generally considered to be personal property. Cal. Civ. Code § 765 (West 1954); Callahan v. Martin, 3 Cal. 2d 110, 118, 43 P.2d 788, 792 (1935). But cf. Cal. Code Civ. Pro. § 537.3 (West Supp. 1974), which authorizes the attachment of an individual's "[r]eal estate, including any leasehold estate . . . ." The version of § 537.3 effective in 1976 makes no mention of leasehold estates. Id. § 487.010 (effective Jan. 1, 1976). It seems unlikely that the omission was unintentional.
47. Two factors are likely to contribute significantly to the value of a lease; prepayment of rent and a long term calling for a rent below market value. Neither is likely to be found outside the commercial sphere.
152. Cal. Code Civ. Pro. § 540 (West Supp. 1975) (emphasis added).

153. 11 Cal. Law Revision Comm'n Reports 893 (1973) (provision contained in first paragraph of Cal. Code Civ. Pro. § 540 not to be continued).
154. It might be thought that the requirement of specifying the property of an individual defendant to be attached would allow the court to review the extent of the attachment sought. Nowhere, however, is the court empowered to determine whether the amount of property sought to be attached is greater than that sufficient to satisfy the plaintiff's claim. This is quite proper. The plaintiff has no idea when he requests the writ how much of the defendant's property the levying officer will be able to locate. Ideally the procedure should work as follows: The plaintiff requests attachment of all the defendant's nonexempt property which the plaintiff can identify. The officer can then be directed to attach only that portion of the property which will satisfy the plaintiff's claim. If some of that property cannot be found, directions to attach additional property can be given. Cal. Code Civ. Pro. § 542 (West Supp. 1975); id. § 488.030 (effective Jan. 1, 1976).

The only practical way that a defendant can truly be protected against excessive attachment is if the court directs the officer not to attach property valued above the plaintiff's claim or if it provides a prompt post attachment procedure for a defendant who wishes to have the excessive attachment dissolved. Of course, the defendant would have a cause of action for excessive attachment under the new law as under current law. *White Lighting Co. v. Wolfson*, 68 Cal. 2d 336, 438 P.2d 345, 66 Cal. Rptr. 697 (1968). But as the United States Supreme Court reasoned: "No damage award can undo the fact that the arbitrary taking . . . has already occurred." *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972).

155. 407 U.S. 67 (1972).
156. Id. at 93.
157. 416 U.S. 600 (1974).
158. Id. at 616.
159. Id.
160. 11 Cal. Law Revision Comm'n Reports 890 (1973) (last paragraph of Code of Civ. Pro. § 538.4 not to be continued).
161. Cal. Code Civ. Pro. § 538.4 (West Supp. 1974).
162. *Blair v. Pitchess*, 5 Cal. 3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971).
163. 5 Cal. 3d at 561, 488 P.2d at 30, 96 Cal. Rptr. at 726.
164. Since the attachment of property greatly in excess of his claim exposes the plaintiff to liability, he would be well advised not to attach property with an uncertain value. Also, he would not wish to attach property which might decrease in value because of the danger that it would not be sufficient to cover his claim if eventually sold for that purpose.

165. For example, a defendant should not be permitted to claim priority for the seizure which he does not own or which he has concealed. Otherwise, the levying officer will delay attaching property which could be found, while searching for nonexistent property. It might be proper for the court to issue a "turnover writ" in this case with the defendant subject to contempt if he fails to deliver the property to the levying officer. See notes 149-51 & accompanying text supra.

EXHIBIT I

2 B. Witkin, California Procedure, Provisional Remedies §§ 124-128 (2d ed. 1970)

**B. Actions in Which Attachment Is Allowed.**

**1. Resident Defendant Served: Action on Contract.**

**(a) Contract Express or Implied.**

**(1) [§124] In General.**

C.C.P. 537(1) states that an attachment may be had "In an action upon a contract, express or implied," for the direct payment of money (see *infra*, §§130, 131), made or payable in this state (see *infra*, §§132, 133, 134), and not secured (see *infra*, §135 et seq.). (See generally C.E.B., Rem. Unsec. Cred., p. 5; C.E.B., Debt Collection Practice, p. 154; 6 Am.Jur.2d 591; 58 A.L.R.2d 1451 [what sort of claim, obligation or liability within statute].)

*Express contracts* and *contracts implied in fact* are true contracts, and the right to attach in actions for recovery of money due thereunder or for damages for breach thereof raises no problem except that of certainty of damages. (See *infra*, §§130, 131.) Nor is it an objection that the plaintiff creditor is in a fiduciary relationship with the defendant debtor. (*Mayer v. Northwood Textile Mills* (1951) 105 C.A.2d 406, 410, 233 P.2d 657.)

An action for *unlawful detainer* is one for recovery of possession of property, not a contract action. (See *Pleading*, §506.) But a special statutory provision allows attachment in such an action where a verified complaint shows that rent is due. (C.C.P. 537(4); see *Lori v. Wolfe* (1947) 80 C.A.2d 557, 180 P.2d 21; *Garfinkle v. Montgomery* (1952) 113 C.A.2d 149, 156, 248 P.2d 52.)

Where the complaint is in several counts and one is a contract count, attachment may issue on that count. (*Samuels v. Superior Court* (1969) 276 C.A.2d 264, 81 C.R. 216, *infra*, §219; see also *infra*, §130.)

**(2) Quasi-Contractual Obligations.**

**(aa) [§125] Recovery of Money Paid Under Contract.**

The reference in C.C.P. 537(1) (*supra*, §124) to "implied" contract covers contracts "implied in law" or quasi-contracts. Hence an attachment may issue in any action properly classified as quasi-con-

tractual, no matter what the nature of the defendant's breach may be. (See *Samuels v. Superior Court* (1969) 276 C.A.2d 264, 267, 81 C.R. 216, *infra*, §219.)

Thus, the plaintiff, after notice of rescission of a contract for fraud, failure of consideration, or other ground, may sue to recover the money he paid. Upon rescission the law implies an obligation to return the money paid, and this implied contract justifies attachment. (*McCall v. Superior Court* (1934) 1 C.2d 527, 531, 538, 36 P.2d 642, overruling *Stone v. Superior Court* (1932) 214 C. 272, 275, 4 P.2d 777; *Bennett v. Superior Court* (1933) 218 C. 153, 161, 21 P.2d 946; *Weaver v. Superior Court* (1949) 93 C.A.2d 729, 732, 209 P.2d 830, 210 P.2d 246; *Filipan v. Television Mart* (1951) 105 C.A.2d 404, 405, 233 P.2d 926; *Landry v. Marshall* (1966) 243 C.A.2d 170, 176, 52 C.R. 119, citing the text; 21 Cal. L. Rev. 130; 20 Cal. L. Rev. 541; 5 So. Cal. L. Rev. 440; *Actions*, §95.)

This rule was codified in 1961 by adding the following sentence to C.C.P. 537(1): "An action brought pursuant to Section 1692 of the Civil Code shall be deemed an action on an implied contract within the meaning of that term as used in this section."

The same is true of an action to recover money paid under a contract, without rescission, on total failure of consideration. (*Santa Clara etc. Fuel Co. v. Tuck* (1878) 53 C. 304, 305; see discussion, *Bennett v. Superior Court*, *supra*; *Landry v. Marshall*, *supra*; cf. *Powers v. Freeland* (1931) 114 C.A. 146, 151, 299 P. 736 [rule inapplicable where consideration had not wholly failed].)

#### (bb) [§126] Waiver of Tort.

In certain situations an injured party has a cause of action normally in tort but may elect to "waive the tort" and sue in quasi-contract for restitution rather than damages. The quasi-contract action or count will support an attachment. (See *Los Angeles Drug Co. v. Superior Court* (1936) 8 C.2d 71, 74, 63 P.2d 1124 [conversion]; *Bank of America v. Hill* (1937) 9 C.2d 495, 499, 71 P.2d 258 [same]; *Oil Well etc. Co. v. Barnhart* (1937) 20 C.A.2d 677, 679, 67 P.2d 696 [agent's failure to remit moneys to principal]; *De Leonis v. Etchepare* (1898) 120 C. 407, 409, 52 P. 718 [same]; *Hill v. Superior Court* (1940) 16 C.2d 527, 530, 106 P.2d 876 [executor's embezzlement]; *Nutzel v. Kozdron* (1944) 64 C.A.2d 908, 910, 149 P.2d 411 [money obtained by robbery]; *Arcturus Mfg. Corp. v. Rork* (1961) 198 C.A.2d 208, 213, 17 C.R. 758, citing the text [action against agent alleging fraudulent

kick-backs and other secret profits, and seeking their recovery]; *Klein v Benaron* (1967) 247 C.A.2d 607, 610, 56 C.R. 5 [money obtained by fraud]; *Samuels v. Superior Court* (1969) 276 C.A.2d 264, 268, 81 C.R. 216 [action to recover rents unlawfully collected]; *Actions*, §102; see discussion, *Hallidie v. Enginger* (1917) 175 C. 505, 508, 166 P. 1 [attachment denied where complaint showed election of damage action].)

### (3) [§127] Judgments.

A *judgment* is, for some purposes, regarded as contractual or quasi-contractual; and an action on a judgment is on "implied contract" within the meaning of the attachment statute, even though the judgment was rendered on a *tort* claim. (*Grothcer v. Rosenberg* (1936) 11 C.A.2d 268, 272, 53 P.2d 996; *Minor v. Minor* (1959) 175 C.A.2d 277, 279, 345 P.2d 954 [action to recover defaulted installments on divorce decree]; see 6 Am.Jur.2d 597; 47 Am.Jur.2d 66; *Actions*, §87.)

### (4) [§128] Statutory Obligations.

Some statutory obligations are treated as contractual in nature, and attachment is allowed. (See *Anderson v. Doolittle* (1950) 97 C.A.2d 836, 838, 218 P.2d 848 [action to recover treble damages for usury]; *Actions*, §88; 6 Am.Jur.2d 593; but cf. *Walker v. McCusker* (1884) 65 C. 360, 4 P. 206 [liability under C.C.P. 707 for occupation of land after foreclosure sale held not founded on contract and attachment unauthorized].)

Others are a basis for attachment by reason of express statutory provision; e.g., action by *the State or a subdivision* to collect taxes or money due on a statutory obligation or penalty (C.C.P. 537(5); *Peninsula Prop. Co. v. Santa Cruz* (1950) 34 C.2d 626, 630, 213 P.2d 489 [State's cross-complaint for rents, issues and profits of tax-deeded property]); action on the liability of a spouse, relative or kindred for "support, maintenance, care or necessaries" (C.C.P. 537(1)); action by an injured employee against his uninsured employer (Lab.C. 3707); action by the State or a subdivision under Health & Saf.C. 11680.5, against a defendant who unlawfully sold narcotics, to recover money paid over to him in the course of the investigation (C.C.P. 537(6)).

In the absence of express statutory provision attachment is not permissible in an action on a statutory *penalty* which is not contractual in nature. (See *Talcott Land Co. v. Hershiser* (1921) 184 C. 748, 763,

195 P. 653 [action against directors for unlawful division of capital stock under former corporation law].)

## RECOMMENDATION

relating to  
AMENDMENTS TO THE ATTACHMENT LAW

The Attachment Law (Code Civ. Proc. §§ 481.010-492.090) was enacted in 1974<sup>1</sup> on recommendation of the Law Revision Commission. See Recommendation Relating to Prejudgment Attachment, 11 Cal. L. Revision Comm'n Reports 701 (1973).<sup>2</sup> The new law will go into effect on January 1, 1976.<sup>3</sup> The Commission has reviewed the Attachment Law as enacted and comments which have been received concerning it; this recommendation proposes a number of revisions in that statute.

Cases in Which an Attachment May Be Issued

As enacted, Section 483.010 of the Attachment Law permits the issuance of an attachment in an action against a "defendant engaged in a trade, business, or profession" on an express or implied contract where the amount claimed is not less than \$500, exclusive of costs, interest, and attorney's fees, provided that the subject of the contract upon which the claim is based was not used "primarily for personal, family, or household purposes." In order to more adequately achieve the purpose of permitting attachment only in commercial situations, the Commission recommends that Section 483.010 be amended as follows:

(1) Where the defendant is a corporation, partnership, or other entity other than a natural person, the writ of attachment should be issuable without requiring the plaintiff to show that the defendant is engaged in a trade, business, or profession or that the subject of the contract upon which the claim is based was not used primarily for personal, family, or household purposes. Section 537.2 of existing law permits attachment against all business corporations and partnerships

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1. Cal. Stats. 1974, Ch. 1516 (Assembly Bill No. 2948).
  2. See also Report of Senate Committee on Judiciary on Assembly Bill 2948, Senate J. 13010 (August 21, 1974).
  3. Cal. Stats. 1974, Ch. 1516, § 49.

without such additional showing. The recommended change would permit the issuance of an attachment against any entity other than a natural person regardless of whether the entity is organized for profit or is engaged in an activity for profit. The availability of attachment to secure the claim of a person who furnishes goods or services or loans money to a corporation should not depend upon the fortuity of whether the defendant was organized under the General Corporation Law or the General Nonprofit Corporation Law.

(2) Where the defendant is an individual, however, a writ of attachment should be issuable only where the plaintiff shows that the contract claim arises out of the conduct by the individual of a trade, business, or profession and that the subject of the contract was not used primarily for personal, family, or household purposes. Under Section 483.010 as enacted, it is possible for an attachment to be issued against an individual who is engaged in a business on a contract claim unrelated to the business. The proposed change would correct this anomaly.<sup>4</sup>

(3) A writ of attachment should be issuable only where the claim is based upon a contract which is express or implied in fact. This change would prevent attachment based on contracts implied in law, i.e., quasi-contracts.<sup>5</sup> Although the requirements in Section 483.010 that the claim

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4. Section 537.2(c) of existing law permits attachment against "[i]n-dividuals engaged in a trade or business." It is interesting to note that, in Advance Transformer Co. v. Superior Court, 44 Cal. App.3d 127, 142, \_\_\_ Cal. Rptr. \_\_\_, \_\_\_ (1974), the court construed existing law "as limiting the attachment to situations in which the claim arises out of the defendant's conduct of his business."

5. For a discussion of the meaning of the language "contract, express or implied" under the attachment law in force prior to 1972, see 2 B. Witkin, California Procedure, Provisional Remedies §§ 124-128 at 1552-1555 (2d ed. 1970). Attachment has been permitted, for example, in the following quasi-contract situations: rescission of contract for fraud or failure of consideration, recovery of money embezzled or taken in a robbery, conversion, recovery of fraudulent kickbacks and secret profits, recovery of rents collected unlawfully, and recovery of treble damages for usury. See cases cited id. at §§ 125, 126, 128.

be for a fixed or readily ascertainable amount and that in the case of an individual the claim arise from the conduct by the individual of a trade, business, or profession would preclude the issuance of an attachment in many quasi-contract situations, this amendment is needed to prevent attachment in the other situations where the parties did not in fact intend to create a contract.

#### Leasehold Estates With Unexpired Term of Less Than One Year

Subdivision (c) of Section 487.010 provides that, where the defendant is an individual, all of the individual's real property is subject to attachment. The Commission recommends that this subdivision be amended to provide that in the case of an individual the property subject to attachment includes any interest in real property except a leasehold estate with an unexpired term of less than one year. Such leasehold estates should be free from attachment in order to prevent the attachment of most residential leases. Current law contains a similar provision.<sup>6</sup>

#### Postlevy Claims of Exemption

As enacted, the Attachment Law incorporates the exemption procedure provided by Section 690.50 for claiming exemptions after levy of an ex parte writ.<sup>7</sup> Section 690.50 requires that claims of exemption be filed within 10 days after levy, except in the case of homestead claims made under Section 690.235, in which case claims must be filed within 20 days after levy. However, in many instances the defendant will not be aware of the attachment of his property until after the 10-day period has expired. In addition, there is not the need for such an expeditious determination of exemption claims before judgment that there is after judgment. Accordingly, the Commission recommends that the Attachment Law be amended to provide that the time provided by Section 690.50 for claiming exemptions runs from the date the defendant receives notice of attachment from the levying officer.

Several sections in the noticed hearing procedures for obtaining a writ of attachment<sup>8</sup> make clear that, if the defendant does not claim an

6. See Code Civ. Proc. § 537.3(b)(6).

7. See Code Civ. Proc. §§ 484.530 and 485.230.

8. See Code Civ. Proc. §§ 484.050, 484.070, 484.340, and 484.350.

exemption for property described in the plaintiff's application for the writ at the hearing on issuance of the writ or if the defendant claims an exemption for such property or any property not described in the writ but fails to prove the exemption, the defendant may not later claim the exemption unless he shows that the right to the exemption is a result of changed circumstances occurring after that time. However, the Attachment Law as enacted did not specify the procedure for showing changed circumstances. The Commission recommends that the procedure provided by Section 690.50 be incorporated for the purpose of claiming exemptions based upon a showing of changed circumstances.

Where the plaintiff has chosen to levy on farm products or inventory of a going business by placing a keeper in charge of the property, Section 488.360 permits the defendant to apply for an order removing the keeper on the grounds that the property is essential for the support of the defendant and the defendant's family. The application for the order is made by a notice of motion. The hearing is held not later than five days after the motion is filed, and the plaintiff is to be given not less than three days' notice. The Commission recommends that a procedure like that provided by Section 488.360 be provided for all claims of exemption based upon a showing that the property is necessary for the support of the defendant and the defendant's family. If property levied upon is truly necessary for the support of the defendant and the defendant's family, an expeditious procedure for claiming an exemption is needed. The procedure provided by Section 690.50 which contemplates filing a claim of exemption with the levying officer and waiting for the plaintiff to file a counteraffidavit before a hearing may be held is not designed for the speedy determination of hardship exemption claims.

#### Turnover Order for Documentary Evidence of Title to Property Levied Upon

Section 482.080 provides that the court may issue an order directing the defendant to cooperate in transferring possession of the property sought to be attached to the levying officer. A similar turnover order directing the defendant to transfer to the levying officer possession of any documentary evidence of title should be available where the property sought to be attached is levied upon by service on a third person of a copy of the writ and notice of attachment, or where the property in the defendant's possession is seized but the defendant holds

documentary evidence of title thereto. Such an order, enforceable only after the property is levied upon, would be useful, for example, where a motor vehicle is attached and the defendant holds the certificate of ownership or where the right to payment on a nonnegotiable instrument<sup>9</sup> is attached and the defendant holds the nonnegotiable instrument. Possession by the levying officer of the documentary evidence of title to property attached facilitates the eventual collection of the debt or sale of the property and prevents any transfer by the defendant.

#### Insufficient Undertaking and Wrongful Attachment

Under the Attachment Law as enacted, it could be argued that the failure of the attaching creditor to increase an undertaking when ordered to do so pursuant to Section 489.220 (undertaking to obtain a writ of attachment or protective order) or Section 489.410 (undertaking on appeal) is a wrongful attachment under Section 490.010. The Commission recommends that it be made clear that such failure is not in itself a wrongful attachment. The defendant is protected by the original undertaking for the period between the date of the levy and the date on which the increase is ordered<sup>10</sup> and the rights obtained by filing the insufficient undertaking cease upon the plaintiff's failure to comply with the order,<sup>11</sup> thereby minimizing any injury to the defendant's interests.

#### Description of Property Subject to Temporary Protective Order

Chapter 6 (commencing with Section 486.010) of the Attachment Law as enacted did not provide the manner of description of property whose transfer is restrained by a temporary protective order. A defendant against whom such an order is issued is subject to being held in contempt if he violates the order. Consequently, Section 486.050 should be

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9. A "nonnegotiable instrument" is an instrument which is otherwise negotiable within Division 3 of the Commercial Code but which is not payable to order or to bearer. See Civil Code § 955; Commercial Code § 3805. The right to payment on a nonnegotiable instrument is a chose in action and is attached by service on the account debtor. See Code Civ. Proc. §§ 481.020, 481.050, 488.370.

10. The original undertaking remains in effect notwithstanding the order for an increase. See Code Civ. Proc. § 489.090(d). As provided in subdivision (a) of Section 489.220, the amount of the original undertaking is \$2,500 in municipal court and \$7,500 in superior court.

11. See Code Civ. Proc. §§ 489.090(c) and 489.410(a).

amended to require the order to describe the property in a manner adequate to permit the defendant to identify the property subject to it.

#### Effect of Temporary Protective Order on Deposit Accounts

Section 486.060, which permits the defendant who is subject to a temporary protective order to write checks for certain purposes despite the order, is unclear. The Commission recommends that this section be amended to make clear that the defendant may write checks for any purpose he pleases so long as there remain sufficient funds in his accounts to secure the plaintiff's claim and to meet payroll, legal, and other expenses specified in the section.

#### Wrongful Attachment Liability for Levy on Property of Third Person

The Attachment Law makes the plaintiff liable for damages, costs, and attorney's fees to a third person whose property is attached except where the plaintiff has relied in good faith on registered or recorded ownership.<sup>12</sup> This exception to the plaintiff's wrongful attachment liability is too narrowly drawn. A plaintiff, who has acted reasonably and in good faith where there is no recorded or registered ownership but has nevertheless attached property of a third person, should not be liable for a wrongful attachment. Accordingly, the Commission recommends that the limited exception to liability for attachment of a third person's property provided by Section 490.010 be expanded to protect any plaintiff who makes the levy in good faith and reasonably believes that the property belongs to the defendant.

#### Minor Amendments

The Commission also recommends several minor amendments and amendments of a technical nature which are explained in the Comments following the affected sections of the bill, infra.

#### Revision of Official Comments

The Comments to Sections 489.110 and 490.010 were not revised to reflect amendments made by the Senate Judiciary Committee. These Comments, revised to reflect the Senate Judiciary Committee amendments, are set out as an appendix to this recommendation.

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12. See Code Civ. Proc. §§ 490.010 and 490.020.

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The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 481.050, 482.080, 483.010, 484.050, 484.070, 484.340, 484.350, 484.530, 485.230, 486.050, 486.060, 486.090, 487.010, 487.020, 488.010, 488.030, 488.080, 488.310, 488.350, 488.360, 488.430, 488.530, 488.560, 489.130, 489.230, 489.310, 489.320, 490.010, 491.010, and 690.50 of, and to add Sections 482.100 and 489.130 to, the Code of Civil Procedure, relating to attachment.

The people of the State of California do enact as follows:

SECTION 1. Section 481.050 of the Code of Civil Procedure is amended to read:

481.050. "Chose in action" means any right to payment which arises out of the conduct of any trade, business, or profession and which (a) is not conditioned upon further performance by the defendant or upon any event other than the passage of time, (b) is not an account receivable, (c) is not a deposit account, and (d) is not evidenced by a negotiable instrument, security, chattel paper, or judgment. The term includes an interest in or a claim under an insurance policy and a right to payment on a nonnegotiable instrument which is otherwise negotiable within Division 3 (commencing with Section 3101) of the Commercial Code but which is not payable to order or to bearer .

Comment. The amendment of the last sentence of Section 481.050 makes clear that a right to payment on a "nonnegotiable instrument" is a chose in action. See Com. Code § 3805 (relating to any instrument whose terms do not preclude transfer and which is otherwise negotiable within the Commercial Paper division of the Commercial Code but which is not payable to order or to bearer).

SEC. 2. Section 482.080 of the Code of Civil Procedure is amended to read:

482.080. (a) If a writ of attachment is issued, the court may also issue an order directing the defendant to transfer possession-of-the property-sought-to-be-attached to the levying officer \* :

(1) Possession of the property sought to be attached.

(2) Possession of any documentary evidence of title to any property of or any debt owed to the defendant which is sought to be attached. An order issued pursuant to this paragraph may not be enforced by the levying officer before the property or debt has been levied upon.

(b) Such The order shall contain a notice to the defendant that failure to ~~turn-over-possession-of-such-property-to-the-levying-officer~~ comply with the order may subject the defendant to being held in contempt of court ~~or-arrest~~ .

Comment. Subdivision (a)(2) is added to Section 482.080 to provide for issuance of a "turnover" order directing the defendant to transfer to the levying officer the muniments of title to property or a debt which is attached. The enforcement of the order is conditioned on the prior levy of the writ of attachment on the property or debt itself. Issuance of an order under subdivision (a)(2) is appropriate, for example, where a motor vehicle has been or is to be attached and the certificate of ownership is sought or where the right to payment on a nonnegotiable instrument has been or is to be attached (by service on the account debtor as provided by Section 488.370) and the nonnegotiable instrument itself is sought. Possession of such muniments of title is useful to facilitate eventual collection (such as in the case of a nonnegotiable instrument) or sale (such as in the case of the certificate of ownership of a motor vehicle) and to prevent a transfer. An order under subdivision (a) may be issued at the time of issuance of the writ of attachment or thereafter.

Subdivision (b) of Section 482.080 is amended to delete the words "or arrest" from the last sentence. This amendment makes clear that the defendant is not subject to arrest independent of contempt proceedings. See Code Civ. Proc. § 501 (civil arrest abolished). A person may still be arrested in the course of contempt proceedings. See Code Civ. Proc. §§ 1212, 1214.

SEC. 3. Section 482.100 is added to the Code of Civil Procedure, to read:

482.100. (a) The defendant may claim an exemption provided in Section 487.020 for property levied upon pursuant to a writ issued under this title if the right to the exemption is the result of a change in circumstances occurring after the denial of a claim of exemption for the property earlier in the action or after expiration of the time for claiming the exemption earlier in the action.

(b) A claim of exemption under this section shall follow the procedure provided in Section 690.50 except that the defendant may claim the exemption at any time, subject to subdivision (a). References in Section 690.50 to "the debtor" shall be deemed references to the defendant, and references in Section 690.50 to "the creditor" shall be deemed references to the plaintiff.

(c) Notwithstanding subdivision (b), the defendant may claim the exemption provided in subdivision (b) of Section 487.020 by following the procedure provided in this subdivision. The claim shall be made by filing with the court and serving on the plaintiff a notice of motion. Service on the plaintiff shall be made not less than three days prior to the date set for the hearing. The hearing shall be held not more than five days after the filing of the motion unless, for good cause shown, the court orders otherwise. The notice of motion shall state the relief requested and shall be accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised. At the hearing on the motion, the defendant has the burden of proving that the property is exempt pursuant to subdivision (b) of

Section 487.020. Upon such showing and the showing required by subdivision (a), the court shall order the release of such property.

Comment. Section 482.100 provides the procedure for making postlevy claims of exemption under this title where the right to the exemption is based upon a change in circumstances occurring after the exemption was previously denied or the defendant failed previously to make a timely claim. Sections 484.070 and 484.350 provide for claiming exemptions at a noticed hearing on issuance of a writ. Sections 484.530 and 485.230 incorporate Section 690.50 for claiming exemptions immediately after levy of an ex parte writ.

The requirement that the defendant show a change in circumstances giving rise to the exemption in any case where the exemption has previously been made but denied or where the exemption was required to be made at a certain time but the defendant failed to do so is applicable, for example, where the defendant failed to claim an exemption for property described in the plaintiff's application for a writ issuable at a noticed hearing (Section 484.070(a)), where the defendant made a claim of exemption as to property not described in the plaintiff's application for a writ issuable after a noticed hearing but failed to prove the exemption (Section 484.070(b)), or where the defendant failed to claim the exemption within the time for making a claim of exemption after levy of an ex parte writ of attachment or additional writ (Section 484.530 or 485.230).

Subdivision (b) incorporates the procedure provided by Section 690.50 for claiming exemptions after levy of any writ issued under Chapter 4 or 5. See Sections 484.090 (writ issued at noticed hearing), 484.370 (additional writ issued at noticed hearing), 484.520 (ex parte additional writ), 485.220 (ex parte writ), and 485.540 (ex parte additional writ).

The provisions for claiming exemptions after levy apply as well in the case of a nonresident defendant whose property has been levied upon pursuant to a writ issued under Chapter 12 except that the nonresident defendant must first have filed a general appearance. See Sections

492.040 and 492.050. Under Chapter 12, the initial determination of exemptions is made when the defendant makes a general appearance. See Sections 492.040 and 492.050. The procedures of Section 482.100 are applicable where the right to the exemption is the result of a change in circumstances occurring after that time.

A claim of exemption made pursuant to subdivision (b) may be made at any time after levy so long as the defendant can show, pursuant to subdivision (a), that the right to claim the exemption is the result of a change in circumstances occurring after the claim was previously denied or the time for previously making the claim had expired.

A more expeditious procedure is provided by subdivision (c) for claiming a hardship exemption. See Section 487.020(b) (exemption of property necessary for the support of an individual defendant or the defendant's family supported in whole or in part by the defendant). This procedure is substantially the same as the exemption procedure formerly provided for removing a keeper in charge of farm products or inventory of a going business. See Section 488.360(b). Subdivision (b) of former Section 537.3 permitted the defendant to claim a hardship exemption at any time after levy upon five days' notice to the plaintiff. It should be noted that an exemption may also be claimed for necessities pursuant to the procedures provided by subdivision (b) where there is no need for the more expeditious procedure provided by subdivision (c).

After levy, the defendant may claim an exemption only for property which has been levied upon. Contrast Section 484.070 which permits the defendant to claim an exemption for property which is not described in the plaintiff's application.

SEC. 4. Section 483.010 of the Code of Civil Procedure is amended to read:

483.010. (a) Except as otherwise provided by statute, an attachment may be issued only in an action against a defendant engaged in a trade, business, or profession on a claim or claims for money in which, each of which is based upon a contract, express or implied in fact, where the total sum claimed amount of such claim or claims is a fixed or readily ascertainable amount not less than five hundred dollars (\$500) exclusive of costs, interest, and attorney's fees. Each claim shall be based upon a contract, express or implied.

(b) An attachment may not be issued if the claim is secured by any interest in real or personal property arising from agreement, statute, or other rule of law (including any mortgage or deed of trust of realty, any security interest subject to Division 9 (commencing with Section 9101) of the Commercial Code, and any statutory, common law, or equitable lien). However, an attachment may be issued (1) where the claim was originally so secured but, without any act of the plaintiff or the person to whom the security was given, such security has become valueless or (2) where the claim was secured by a nonconsensual possessory lien but such lien has been relinquished by the surrender of the possession of the property.

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(c) If the action is against an individual, an attachment may be issued only on a claim which arises out of the conduct by the individual of a trade, business, or profession. An attachment may not be issued where the on a claim against an individual which is based on the sale or lease or a license to use property, the furnishing of services, or the loan of money and where the property sold or leased, or licensed for use, the services furnished, or the money loaned was used by the individual primarily for personal, family, or household purposes.

(d) An attachment may be issued pursuant to subdivision (a) this section whether or not other forms of relief are demanded.

Comment. Section 483.010 is amended to permit attachment in an action against a defendant that is not an individual without a showing that the defendant was engaged in a trade, business, or profession or that the goods, services, or money furnished were used primarily for the defendant's personal, family, or household purposes. Consequently, an attachment may be issued against a business corporation or partnership on a contract claim or claims where the amount of such claims is not less than \$500, exclusive of costs, interest, and attorney's fees. In addition, unlike former Section 537.2, Section 483.010, as amended, permits attachment on such claims against corporations and other artificial persons regardless of whether they are organized for profit or engaged in an activity for profit. However, subdivision (c) provides that, if the defendant is an individual, an attachment may be issued only if the contract claim "arises out of the conduct by the individual of a trade, business, or profession" and only if the goods, services, or money furnished were not used primarily for the defendant's personal, family, or household purposes.

Subdivision (a) is also amended to provide that the contract must be express or implied in fact. This amendment makes clear that an attachment may not be issued where the claim is based on a contract implied in law, i.e., a quasi-contract. See Civil Code §§ 1619-1621; Desny v. Wilder, 46 Cal.2d 715, 299 P.2d 257 (1956). The language "contract, express or implied" appearing in paragraph 1 of Section 537 (enacted 1872, temporarily repealed by Cal. Stats. 1972, Ch. 550, § 1 and repealed by Cal. Stats. 1974, Ch. 1516, § 12) was interpreted to include both contracts implied in fact and contracts implied in law (quasi-contracts). See McCall v. Superior Court, 1 Cal.2d 527, 36 P.2d 642 (1934); 2 B. Witkin, California Procedure Provisional Remedies §§ 125-128 at 1552-1555 (2d ed. 1970).

SEC. 5. Section 484.050 of the Code of Civil Procedure is amended

to read:

484.050. The notice of application and hearing shall inform the defendant of all of the following:

(a) A hearing will be held at a place and at a time, to be specified in the notice, on plaintiff's application for a right to attach order and a writ of attachment.

(b) The order will be issued if the court finds that the plaintiff's claim is probably valid and the other requirements for issuing the order are established. The hearing is not for the purpose of determining whether the claim is actually valid. The determination of the actual validity of the claim will be made in subsequent proceedings in the action and will not be affected by the decisions at the hearing on the application for the order.

(c) If the right to attach order is issued, a writ of attachment will be issued to attach the property described in the plaintiff's application unless the court determines that such property is exempt from attachment. However, the order will not be limited to the property described in the application but may later be extended to any nonexempt property of the defendant.

(d) If the defendant desires to oppose the issuance of the order, he shall file with the court a notice of opposition and supporting affidavit as required by Section 484.060 not later than five days prior to the date set for hearing.

and serve on  
the plaintiff

(e) If the defendant claims that the property described in the application, or a portion thereof, is exempt from attachment, he shall include such claim in the notice of opposition filed pursuant to Section 484.060 or file a separate claim of exemption with respect to the property as provided in Section 484.070. If he does not do so, the claim of exemption will be barred in the absence of a showing of a change in circumstances occurring after the ~~hearing~~ expiration of the time for claiming exemptions.

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(f) The defendant may obtain a determination at the hearing whether property not described in the application is exempt from attachment, but the failure to claim that property not so described is exempt from attachment will not preclude him from making a claim of exemption with respect to such property at a later time.

(g) Either the defendant or his attorney or both of them may be present at the hearing.

(h) The notice shall contain the following statement: "You may seek the advice of an attorney as to any matter connected with the plaintiff's application. Such attorney should be consulted promptly so that he may assist you before the time set for hearing."

Comment. Subdivisions (d) and (e) of Section 484.050 are amended to conform to the provisions of Sections 484.060 and 484.070. See Section 482.100 (procedure for claiming exemptions based upon a showing of changed circumstances).

SEC. 6. Section 484.070 of the Code of Civil Procedure is amended to read:

484.070. (a) If the defendant claims that the property described in the plaintiff's application, or a portion of such property, is exempt from attachment, the defendant shall claim such exemption as provided in this section. ~~If~~

~~he fails to do so~~ the defendant fails to make such claim or makes such claim but fails to prove that the property is exempt, he may not later claim such exemption.

~~unless he shows that he did not have a right to the exemption at the time the plaintiff filed his application and that the right to the exemption is the result of a change in circumstances occurring after that time.~~

(b) If the defendant desires to claim at the hearing that property not described in the plaintiff's application is exempt from attachment, in whole or in part, the defendant shall claim such exemption as provided in this section. Failure to make such claim does not preclude the defendant from later claiming the exemption. If the claim is made as provided in this section but the defendant fails to prove that the property is exempt from attachment, he may not later claim that the property, or a portion thereof, is exempt ~~unless he shows that the right to the exemption is the result of a change in circumstances occurring after the hearing.~~ except as provided in

except as provided in Section 482.100.

Section 482.100.

- (c) The claim of exemption shall:
- (1) Describe the property claimed to be exempt.
  - (2) Specify the statute section supporting the claim.
- (d) The claim of exemption shall be accompanied by an affidavit supporting any factual issues raised by the claim and points and authorities supporting any legal issues raised.
- (e) The claim of exemption, together with any supporting affidavit and points and authorities, shall be filed and served on the plaintiff not less than five days before the date set for the hearing.
- (f) If the plaintiff desires to oppose the claim of exemption, he shall file and serve on the defendant, not less than two days before the date set for the hearing, a notice of opposition to the claim of exemption, accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised. If the plaintiff does not file and serve a notice of opposition as provided in this subdivision, no writ of attachment shall be issued as to the property claimed to be exempt. If all of the property described in the plaintiff's application is claimed to be exempt and the plaintiff does not file and serve a notice of opposition as provided in this subdivision, no hearing shall be held and no right to attach order or writ of attachment shall be

issued and any temporary protective order issued pursuant to Chapter 6  
(commencing with Section 486.010) expires .

- (g) If the plaintiff files and serves a notice of opposition to the claim as provided in this section, the defendant has the burden of proving that the property is exempt from attachment.

Comment. Subdivisions (a) and (b) of Section 484.070 are amended to reflect the enactment of Section 482.100. Subdivision (f) is amended to provide for automatic expiration of a temporary protective order upon the plaintiff's failure to oppose a claim of exemption as to all the defendant's property described in the plaintiff's application. This amendment eliminates the need of the defendant in such cases where there is no hearing and the defendant is not already in court to proceed under Section 486.100 for early vacation of the order. See Section 486.090 and Comment thereto.

SEC. 7. Section 484.340 of the Code of Civil Procedure is amended to read:

484.340. The notice of application and hearing shall inform the defendant of all of the following:

(a) The plaintiff has applied for a writ of attachment to attach the property described in the application.

(b) A hearing will be held at a place and at a time, to be specified in the notice, to determine whether the plaintiff is entitled to the writ.

(c) A writ of attachment will be issued to attach the property described in the plaintiff's application unless the court determines that such property is exempt from attachment.

(d) If the defendant claims that the property described in the application, or a portion thereof, is exempt from attachment, he shall file with the court a claim of exemption with respect to the property as provided in Section 484.350 not later than five days prior to the date set for hearing. If he does not do so, the claim of exemption will be barred in the absence of a showing of a change in circumstances occurring after the hearing.

and serve on  
the plaintiff

(e) Either the defendant or his attorney or both of them may be present at the hearing.

expiration of the  
time for claiming  
exemptions.

(f) The notice shall contain the following statement: "You may seek the advice of an attorney as to any matter connected with the plaintiff's application. Such attorney should be consulted promptly so that he may assist you before the time set for hearing."

Comment. Section 484.340 is amended to conform to the provisions of Section 484.350. See Section 482.100 (procedure for claiming exemptions based upon a showing of changed circumstances).

SEC. 8. Section 484.350 of the Code of Civil Procedure is amended to read:

484.350. (a) If the defendant claims that the property described in the plaintiff's application, or a portion of such property, is exempt from attachment, the defendant shall claim such exemption as provided in this section. If

~~he fails to do so~~ the defendant fails to make such claim or makes such

claim but fails to prove that the property is exempt , he may not later claim such exemption )

unless he shows that he did not have a right to the exemption at the time the plaintiff filed his application and that the right to the exemption is the result of a change in circumstances occurring after that time.

except as provided in Section 482.100.

(b) The claim of exemption shall:

(1) Describe the property claimed to be exempt.

(2) Specify the statute section supporting the claim.

(c) The claim of exemption shall be accompanied by an affidavit supporting any factual issues raised by the claim and points and authorities supporting any legal issues raised.

(d) The claim of exemption, together with any supporting affidavit and points and authorities, shall be filed and served on the plaintiff not less than five days before the date set for the hearing.

Comment. Subdivision (a) of Section 484.350 is amended to reflect the enactment of Section 482.100.

SEC. 9. Section 484.530 of the Code of Civil Procedure is amended to read:

484.530. (a) ~~If a writ of attachment is issued under this article,~~  
~~the~~ The defendant may claim an exemption as to the property levied upon  
pursuant to a writ issued under this article by following the procedure  
set forth in Section 690.50 except that the defendant shall claim the  
exemption not later than 20 days, in the case of real property described  
in Section 690.235, or 10 days, in the case of all other property, after  
the defendant receives the notice of attachment describing such property .  
For this purpose, references in Section 690.50 to "the debtor" shall be  
deemed references to the defendant, and references in Section 690.50 to  
"the creditor" shall be deemed references to the plaintiff.

(b) Notwithstanding subdivision (a), a claim of exemption shall be  
denied if such claim has been denied earlier in the action and there is  
no change in circumstances affecting such claim.

Comment. Subdivision (a) of Section 484.530 is amended to provide  
that, for purposes of attachment, the time limits for claiming exemptions  
provided in Section 690.50 run from the time the defendant receives the  
notice of attachment from the levying officer. See Section 488.020  
(notice of attachment). Subdivision (b) applies where the defendant has  
made a claim of exemption pursuant to Section 484.070 for property not  
described in the plaintiff's application but failed to prove his right  
to the exemption. See also Section 482.100 (postlevy claims of exemption  
on grounds of changed circumstances).

SEC. 10. Section 485.230 of the Code of Civil Procedure is amended to read:

485.230. ~~If a writ of attachment is issued under this chapter, the~~  
The defendant may claim the exemptions provided by Section 487.020  
an exemption as to property levied upon pursuant to a writ issued under

this article by following the procedure set forth in Section 690.50 except that the defendant shall claim the exemption not later than 20 days, in the case of real property described in Section 690.235, or 10 days, in the case of all other property, after the defendant receives the notice of attachment describing such property . For this purpose, references in Section 690.50 to "the debtor" shall be deemed references to the defendant, and references in Section 690.50 to "the creditor" shall be deemed references to the plaintiff.

Comment. Section 485.230 is amended to provide that, for the purposes of attachment, the time limits for claiming exemptions provided in Section 690.50 run from the time the defendant receives the notice of attachment from the levying officer. See Section 488.020 (notice of attachment). See also Section 482.100 (postlevy claims of exemption on grounds of changed circumstances).

SEC. 11. Section 486.050 of the Code of Civil Procedure is amended to read:

486.050. (a) Except as otherwise provided in ~~subdivision (b)~~ ~~and in Sections~~ Section 486.040 and 486.060 , the temporary protective order may prohibit any transfer by the defendant of any of ~~his~~ the defendant's property in this state subject to the levy of the writ of attachment. The temporary protective order shall describe the property in a manner adequate to permit the defendant to identify the property subject to the temporary protective order.

(b) ~~If~~ Notwithstanding subdivision (a), if the property is farm products held for sale or is inventory, the temporary protective order may not prohibit the defendant from transferring the property in the ordinary course of business, but the temporary protective order may

impose appropriate restrictions on the disposition of the proceeds from such transfer.

Comment. Subdivision (a) of Section 486.050 is amended to provide for the manner of description of property which is subject to the temporary protective order. The description in a temporary protective order restraining the transfer of property of an individual defendant or a portion of the property of a corporation or a partnership should be sufficiently specific to permit accurate identification.

The temporary protective order should restrain the transfer only of an amount of the defendant's property which is reasonably necessary to protect the plaintiff's interest until a writ of attachment can be issued. Where an excessive amount of property is subject to the temporary protective order, the plaintiff may be liable for abuse of process. Cf. White Lighting Co. v. Wolfson, 68 Cal.2d 336, 438 P.2d 345, 66 Cal. Rptr. 697 (1968).

The amendments to the introductory portion of subdivision (a) and to subdivision (b) are technical and make no substantive change.

SEC. 12. Section 486.060 of the Code of Civil Procedure is amended to read:

486.060. Notwithstanding Section 486.050, any terms of the temporary protective order issued under this chapter shall permit the defendant to may issue any number of checks against his deposit accounts in this state :

(a) In an aggregate amount of not more than one thousand dollars (\$1,000) ~~against any of his deposit accounts in this state~~ for any purpose.

(b) ~~In any amount so long as the aggregate amount remaining on deposit in this state is more than the amount of the plaintiff's claim.~~ In any amount for the following purposes:

~~(e)~~ In any amount in payment (1) Payment of any payroll expense (including taxes and premiums for ~~workmen's~~ worker's compensation and unemployment insurance) falling due in the ordinary course of business prior to the levy of a writ of attachment.

~~(d)~~ In any amount in payment (2) Payment for goods thereafter delivered to the defendant C.O.D. for use in his trade, business, or profession.

~~(e)~~ In any amount in payment (3) Payment of taxes if penalties will accrue for any delay in payment.

~~(f)~~ In any amount in payment (4) Payment of reasonable legal fees and reasonable costs and expenses required for the representation of the defendant in the action.

(c) In any amount for any purpose so long as the aggregate amount remaining in the defendant's deposit accounts in this state is not less than the amount of the plaintiff's claim plus any additional amounts permitted to be paid pursuant to subdivisions (a) and (b).

Comment. Section 486.060, as enacted, and its predecessor, former Section 538.3, failed to clearly state the rules permitting a defendant who is subject to a temporary protective order to write checks. Section 486.060, as amended, makes clear that, if funds are available, the defendant may write checks regardless of the plaintiff's claim, for a total of \$1,000 for any purpose and for any amount for the purposes listed in subdivision (b). Section 486.060 does not require the defendant to write checks for the purposes described in subdivisions (a) and (b) nor does it establish a preference of one of these purposes over any other. However, the defendant may not write checks under subdivision (c) unless the defendant (1) has either written checks for the purposes described in subdivisions (a) and (b) or reserved sufficient funds in his deposit accounts to cover checks permitted to be written by subdivisions (a) and (b) and (2) has reserved sufficient funds to pay the plaintiff's claim. Subdivision (c) is intended to prevent a temporary protective order issued on a small claim from tying up large accounts. Where the defendant's accounts are insufficient to allow payment of the full amount permitted by subdivisions (a) and (b) and to reserve a fund to secure the full amount of the plaintiff's claim, Section 486.060 makes clear that checks written under subdivisions (a) and (b) have preference over the plaintiff's interest in reserving a fund to secure his claim.

In the following examples illustrating the application of Section 486.060, assume that the defendant has deposit accounts totaling \$10,000 in this state and the plaintiff has a \$5,000 claim:

(1) If expenses under subdivision (b) total \$2,000, the defendant may write checks totaling \$1,000 under subdivision (a) and \$2,000 under subdivision (b). The defendant may then write additional checks totaling \$2,000 under subdivision (c), reserving \$5,000 to cover the plaintiff's claim.

(2) If, in the first example, the defendant had decided for some reason to defer payment of the \$2,000 payable under subdivision (b), he could still write an additional check for \$2,000 since subdivision (c) allows checks to be written in amounts in addition to the total of amounts permitted to be paid under subdivisions (a) and (b) and the amount of the plaintiff's claim.

(3) If expenses under subdivision (b) total \$3,000, the defendant may still write checks for no more than \$1,000 for any purpose under subdivision (a). No checks could be written under subdivision (c) since only \$1,000 remains in the account and the plaintiff's claim is \$5,000.

(4) If the defendant has no expenses under subdivision (b), he may write checks totaling \$5,000 for any purpose--\$1,000 under subdivision (a) and \$4,000 under subdivision (c).

The introductory clause of Section 486.060 is amended to make clear that the defendant may issue checks for the purposes and in the amount provided regardless of the temporary protective order. The form of the temporary protective order is prescribed by the Judicial Council. See Section 482.030(b).

SEC. 13. Section 486.090 of the Code of Civil Procedure is amended to read:

486.090. Except as otherwise provided ~~in Sections 484.080, 486.110, and 489.320~~ by statute, the temporary protective order shall expire at the earliest of the following times:

(a) Forty days after the issuance of the order or, if an earlier date is prescribed by the court in the order, on such earlier date.

(b) As to specific property described in the order, when a levy of attachment upon that property is made by the plaintiff.

Comment. The amendment to Section 486.090 is technical and makes no substantive change. The effective date of the temporary protective order may be extended pursuant to Section 484.080 in the case of a continuance. The court may modify or vacate a temporary protective order pursuant to Section 486.100 (on application of defendant), or terminate the order pursuant to Section 489.320 (undertaking to secure termination). It should also be noted that, where the defendant claims an exemption for all the property described in the plaintiff's application for a writ and the plaintiff does not oppose the claim of exemption, the temporary protective order expires without a hearing or further court action. Section 484.070(f). In cases where the court determines at a hearing that property is exempt, or that a writ of attachment may not issue for any other reason, the defendant may move the court to vacate or modify the protective order pursuant to Section 486.100.

SEC. 14. Section 487.010 of the Code of Civil Procedure is amended to read:

487.010. The following property of the defendant is subject to attachment:

(a) Where the defendant is a corporation, all corporate property for which a method of levy is provided by Article 2 (commencing with Section 488.310) of Chapter 8.

(b) Where the defendant is a partnership, all partnership property for which a method of levy is provided by Article 2 (commencing with Section 488.310) of Chapter 8.

(c) Where the defendant is an individual ~~engaged-in-a-trade,-business,-or-profession,-all-of-his-real-property-and~~ all of the following property:

(1) Accounts receivable, chattel paper, and choses in action except any such individual claim with a principal balance of less than one hundred fifty dollars (\$150).

(2) Deposit accounts except the first one thousand dollars (\$1,000) deposited in any single financial institution or branch thereof; but, if the defendant has more than one deposit account, the court, upon application of the plaintiff, may direct that the writ of attachment be levied on balances of less than one thousand dollars (\$1,000) if an aggregate of one thousand dollars (\$1,000) in all such accounts remains free of levy.

(3) Equipment.

(4) Farm products.

(5) Inventory.

(6) Judgments arising out of the conduct by the individual of the trade, business, or profession.

(7) Money on the premises where the trade, business, or profession is conducted by the individual .

(8) Negotiable documents.

(9) Negotiable instruments.

(10) Securities.

(11) Any interest in real property except a leasehold estate with an unexpired term of less than one year.

(d) Where the defendant is an individual who is a partner and is sued for his individual liability as a partner of a partnership ~~which is engaged in a trade, business, or profession~~, all of the defendant's ~~real property and all of his~~ property which is of a type described in subdivision (c) and which is used or held for use in the ~~partnership's trade, business, or profession~~ partnership.

Comment. The amendment of the introductory clause of Section 487.010 makes clear that only the defendant's property is subject to attachment. All other property is exempt from attachment in the action as provided by subdivision (d) of Section 487.020.

Subdivision (c) is amended to make clear that leasehold estates with an unexpired term of less than one year are not subject to attachment where the defendant is an individual. This amendment continues former law. See former Section 537.3(b)(6).

The reference to real property in subdivision (d) is deleted because it is made unnecessary by incorporation of the types of property listed in subdivision (c). The words "engaged in a trade, business, or profession" are deleted from subdivisions (c) and (d) to conform with Section 483.010.

SEC. 15. Section 487.020 of the Code of Civil Procedure is amended to read:

487.020. ~~Notwithstanding Section 487.010, the~~ The following property is exempt from attachment:

(a) All property exempt from execution.

(b) Property which is necessary for the support of an individual defendant ~~and members of his household~~ or the defendant's family supported in whole or in part by the defendant .

(c) All compensation paid or payable by an employer to an employee for personal services performed by such employee whether denominated as wages, salary, commission, bonus, or otherwise.

(d) All property not subject to attachment pursuant to Section 487.010.

Comment. The introductory phrase of Section 487.020, reading "Notwithstanding Section 487.010," is deleted since it was confusing when read with subdivision (d); this amendment makes no substantive change. The language of subdivision (b) is amended to make clear that an individual defendant is entitled to the exemption as well as a defendant with a family; this language is based on Section 690.6 (hardship exemption for earnings).

SEC. 16. Section 488.010 of the Code of Civil Procedure is amended to read:

488.010. (a) The writ of attachment shall identify the defendant whose property is to be attached. If the writ of attachment does not describe the property or interest therein in a manner adequate to permit the levying officer to execute the writ, the plaintiff shall give to the levying officer instructions in writing, signed by the plaintiff or his attorney of record, which contain a description of such property adequate to permit the levying officer to execute the writ. The court may direct the order of levy of the writ of attachment upon the property described therein if the court finds at the hearing on issuance of the writ that the aggregate value of such property clearly exceeds the amount to be secured by the attachment.

~~(b) Where the property sought to be attached is real property standing in the name of a third person, whether alone or together with the defendant,~~  
Where the defendant's interest in real property is sought to be attached, the writ of attachment shall identify such third any person , other than the defendant, in whose name the defendant's interest in real property stands upon the records of the county .

(c) Where the defendant's crops or timber to be cut are sought to be attached, the writ of attachment shall identify any person other than the defendant, in whose name the real property on which the crops are growing or on which the timber is standing stands upon the records of the county.

Comment. Subdivision (a) of Section 488.010 is amended to restore a provision of former law. See the last sentence of former Section 538.4.

Subdivision (b) is amended to state more clearly the requirement that the writ identify a third person in whose name the defendant's interest in real property stands upon the records of the county. This amendment makes clear that the requirement of subdivision (b) is applicable where a leasehold interest is sought to be attached. See Comment to the amendment of subdivision (c) of Section 487.010. The addition of the phrase "upon the records of the county" restores language of former Section 542. Subdivision (b) is applicable, for example, where there has been a fraudulent transfer, where the defendant's interest in the real property is unrecorded, or where there is a resulting trust in favor of the defendant. Subdivision (b) is applicable only in the situation where the defendant's interest in real property is recorded in the name of another person and is not applicable in the normal situation where title is legitimately held jointly. The requirement of subdivision (b) applies where, for example, the defendant has an unrecorded leasehold interest in real property which is recorded in the name of a third person. In this situation,

the defendant's interest stands upon the records of the county as part of the fee interest of the third person.

Subdivision (c) is added to make clear that, where the defendant's crops are growing or timber is standing on real property which stands upon the records of the county in the name of a third person, the writ shall identify the third person. See Section 488.360(c).

SEC. 17. Section 488.030 of the Code of Civil Procedure is amended to read:

488.030. (a) A writ of attachment shall be directed to a levying officer in the county in which property of the defendant described in the writ may be located.

(b) Upon the receipt of written instructions from the plaintiff, or his attorney of record, the levying officer to whom the writ is directed and delivered shall execute the same without delay in the manner provided in this

chapter on the property described in the writ or so much thereof as is clearly sufficient to satisfy the amount to be secured by the attachment . The levying officer is not liable for a determination made in good faith under this subdivision.

(c) Where a copy of the summons and complaint has not previously been served on the defendant, the plaintiff or his attorney of record shall instruct the levying officer to make such service at the same time he serves the defendant with a copy of the writ of attachment.

Comment. Subdivision (b) of Section 488.030 is amended to explicitly provide for the duty of the levying officer to levy upon no more property than is clearly necessary to secure the plaintiff's claim. See Section 484.090 (writ of attachment states amount to be secured thereby). This amendment is based on part of the first sentence of former Section 540.

SEC. 18. Section 488.080 of the Code of Civil Procedure is amended to read:

488.080. (a) The levying officer shall make a full inventory of property attached and return such inventory with the writ as provided in Section 488.070.

(b) ~~The~~ Upon the request of the levying officer ; at the time of service ; ~~shall request any person who retains property in his possession or any account debtor or judgment debtor levied upon to give him~~ other than the defendant shall give the levying officer a memorandum, describing ~~the~~ any property of the defendant in his possession or any debt owed to the defendant which is levied upon and stating its value or the amount owing, within 10 days after such service. If the person denies that he possesses such property or owes such debt, he shall so state in the memorandum. If the person fails to give ~~such~~ the memorandum within the time specified, the levying officer shall state such fact at the time ~~he makes his return~~ the writ is returned pursuant to Section 488.070. A person failing to give ~~such~~ the memorandum within the time specified may be required to pay the costs of any proceedings taken for the purpose of obtaining the information required by ~~such~~ the memorandum.

Comment. Subdivision (b) of Section 488.080 is amended to state more directly the duty to give a memorandum on request of the levying officer. In addition, the amendment makes clear that the person served has a duty to give the officer a memorandum even where he denies that he has the defendant's property or owes a debt to the defendant. See Section 488.550(c).

SEC. 19. Section 488.310 of the Code of Civil Procedure is amended to read:

488.310. (a) To attach an interest in real property, the levying officer shall record with the office of the county recorder of the county where the

real property is located a copy of the writ and the notice of attachment.

(b) Where, ~~on the date of recording, the writ identifies a person, other than the defendant, in whose name the defendant's interest in real property stands upon the records of the county~~ ~~is the name of a third person, either alone or together with the defendant~~, the recorder shall index such attachment when recorded in the names of both the defendant and such ~~third~~ other person.

(c) Promptly after recording and in no event more than 15 days after the date of recording, the levying officer shall mail a copy of the writ and the notice of attachment to the defendant and to any ~~third~~ other person identified in the writ in whose name the defendant's interest in real property stands on the date of recording. ~~Such copies shall be mailed to~~ upon the records of the county at the address of the defendant and any third such other person as shown by the records of the office of the tax assessor of the county where the real property is located.

(d) Promptly after recording and in no event more than 15 days after the date of recording, the levying officer shall serve an occupant of the property with a copy of the writ and the notice of attachment or, if there is no occupant on the property at the time service is attempted, the levying officer shall post a copy of the writ and notice in a conspicuous place on the property attached. Service upon the occupant may be made by leaving the copy of the writ and notice with the occupant personally, or, in his absence, with any person, of suitable age and discretion, found upon the property at the time service is attempted and who is either an employee or agent of such occupant or a member of his family or household. Where the property described in the writ consists of more than one distinct lot, parcel, or governmental subdivision and any of such lots, parcels, or governmental subdivisions lie with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service or posting need be made under this subdivision as to each such continuous, unbroken tract.

(e) A failure to send the notices required by subdivision (c) or to post or serve notice pursuant to subdivision (d) shall not affect the lien created pursuant to subdivision (a).

Comment. The amendments of subdivisions (a), (b), and (c) of Section 488.310 are largely technical. See the Comment to Section 488.010 as amended. The last sentence of subdivision (c) is amended to eliminate the provision for mailing the defendant's copy of the writ and notice at his address as it appears on the tax assessor's records; the copies are mailed to the defendant at his address for service in the action. The phrase "interest in real property" used in this section includes leasehold estates. See Section 487.010(c)(11) (leasehold estates with an unexpired term of less than one year not subject to attachment in action against an individual defendant). It should also be noted that the excess value of a homestead may be attached under this section. See Civil Code §§ 1237-1304 and Code Civ. Proc. § 690.235 (homestead exemption). Cf. Southern Pacific Milling Co. v. Milligan, 15 Cal.2d 729, 104 P.2d 654 (1940); Marelli v. Keating, 208 Cal. 528, 282 P. 793 (1929).

SEC. 20. Section 488.350 of the Code of Civil Procedure is amended to read:

**488.350. (a)** To attach a motor vehicle or vessel for which a certificate of ownership has been issued by the Department of Motor Vehicles and which is equipment of a going business, the levying officer shall file with the Department of Motor Vehicles a notice which shall contain all of the following:

(1) The name and mailing address, if known, of both the plaintiff and the defendant in the described action.

(2) A description of the vehicle or vessel attached.

(3) A statement that the plaintiff in the action has acquired an attachment lien in such vehicle or vessel.

(b) Promptly after filing and in no event more than 45 days after the date of filing pursuant to this section, the levying officer shall serve the defendant with a copy of the writ and the notice of attachment.

(c) Promptly after filing and in no event more than 30 days after the date of filing pursuant to this section, the levying officer shall determine from the department the name and address of the legal owner, if any, of the vehicle or vessel as shown by the records of the department on the date of filing and shall serve such legal owner with a copy of the writ and the notice of attachment.

(d) The lien of attachment acquired pursuant to levy under this section does not affect the rights of a person who is a bona fide purchaser of the vehicle or vessel and obtains possession of both the vehicle or vessel and its certificate of ownership.

(e) A failure to serve the defendant pursuant to subdivision (b) or the legal owner pursuant to subdivision (c) shall not affect the lien created pursuant to subdivision (a).

(f) The fee for filing and indexing each notice of attachment, notice of extension, or notice of release with the Department of

by certified mail  
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requested .

Motor Vehicles is three dollars (\$3). Upon the request of any person, the Department of Motor Vehicles shall issue its certificate showing whether there is on file, on the date and hour stated therein, an notice of attachment, naming a particular person, and if a notice is on file, giving the date and hour of filing of each notice and the name of the plaintiff. The fee for the certificate issued by the department is two dollars (\$2). Upon request, the department shall furnish a copy of any notice of attachment or notice affecting a notice of attachment for a fee of one dollar (\$1) per page.

Comment. Subdivision (c) of Section 488.350 is amended to provide the manner of service of the writ and notice.

SEC. 21. Section 488.360 of the Code of Civil Procedure is amended to read:

488.360. (a) To attach farm products or inventory of a going business, if the defendant consents, the levying officer shall place a keeper in charge of such property for a period not to exceed 10 days. During such period, the defendant may continue to operate his farm or business at his own expense provided all sales are final and are for cash or the equivalent of cash. For the purposes of this subdivision, payment by check ~~or by a credit card issued by a person other than the defendant~~ shall be deemed the equivalent of a cash payment. The levying officer shall incur no liability for accepting payment in the form of a cash equivalent. The proceeds from all sales shall be given to the keeper for the purposes of the levy unless otherwise authorized by the plaintiff. If the defendant does not consent or, in any event, after the end of such 10-day period, the levying officer shall take such property into his exclusive custody unless other disposition is made by the parties to the action. At the time of levy or promptly thereafter, the levying officer shall serve the defendant with a copy of the writ and the notice of attachment.

(b) Where property is levied upon pursuant to subdivision (a), the defendant may apply for an order pursuant to this subdivision for the release of property ~~essential for the support of the defendant and his family~~ exempt pursuant to subdivision (b) of Section 487.020 in the manner provided in subdivision (c) of Section 482.100 . Such application shall be made by filing with the court and serving on the plaintiff a notice of motion, -- Service on the plaintiff shall be made not less than three days prior to the date set for hearing, -- The hearing shall be held not more than

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~~five-days-after-the-filing-of-the-motion, unless-for-good-cause, the~~  
court orders otherwise. The notice of motion shall state the relief  
requested and shall be accompanied by an affidavit supporting any factual issues  
raised and points and authorities supporting any legal issues raised. At  
the hearing on the motion, the defendant has the burden of showing that the  
property, or a portion thereof, attached pursuant to subdivision (a) and the  
~~proceeds therefrom are essential for the support of himself and his family.~~  
Upon such showing, If the court determines that the property is exempt pur-  
suant to subdivision (b) of Section 487.020, the court shall order the removal  
of the keeper and return the defendant to possession of such exempt property  
~~as-is-essential-for-the-support-of-himself-and-his-family~~ and may make such  
further order as the court deems appropriate to protect the plaintiff against  
frustration of the collection of his claim. Such order may permit the plain-  
tiff to levy by filing pursuant to subdivision (c) and may provide reasonable  
restrictions on the disposition of the property previously levied upon.

(c) Notwithstanding the provisions of subdivision (a), upon the election and the instructions of the plaintiff, the levying officer shall attach farm products or inventory of a going business by filing a notice in the form prescribed by the Secretary of State which indicates that the plaintiff has acquired an attachment lien on the farm products or inventory of the defendant. When the property is crops or timber to be cut, the notice shall be recorded in the office of the county recorder in the county where the ~~land on which the crops are growing or on which the timber is standing~~ is located. Where, on the date of recording, the ~~land on which the crops are growing or on which the timber is standing~~ stands in the name of a ~~third person, either alone or together with the defendant,~~ the recorder shall index such attachment when recorded in the names of both the defendant and such ~~third person.~~ In all other cases, the notice shall be filed in the office of the Secretary of State. The fee for filing and indexing each notice of attachment, notice of extension, or notice of release in the office of the Secretary of State is three dollars (\$3). Upon the request of any person, the Secretary of State shall issue ~~his~~ certificate showing whether there is on file, on the date and hour stated therein, any notice of attachment, naming a particular person, and if a notice is on file, giving the date and hour of filing of each notice and the name of the plaintiff. The fee for the certificate issued by the Secretary of State is two dollars (\$2). A combined certificate may be issued pursuant to Section 7203 of the

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Government Code. Upon request, the Secretary of State shall furnish a copy of any notice of attachment or notice affecting a notice of attachment for a fee of one dollar (\$1) per page. A lien acquired pursuant to this subdivision shall provide the plaintiff the same rights and priorities in the attached property and proceeds of the attached property as those of a secured party with a perfected security interest in collateral where the filed financing statement covering the original collateral also covers proceeds. Promptly after filing and in no event more than 15 days after the date of filing pursuant to this subdivision, the levying officer shall serve the defendant with a copy of the writ and the notice of attachment or recording

mail a copy of the writ and the notice of attachment to the defendant and, in the case of crops growing or timber standing on real property, to any other person identified in the writ in whose name the real property stands, upon the records of the county at the address of such other person as shown by the records of the office of the tax assessor of the county where the property is located .

(d) A failure to serve the defendant or any other person pursuant to subdivision (a) or (c) shall not affect the lien created pursuant to either subdivision.

Comment. The provision in subdivision (a) of Section 488.360 permitting payment by credit card where a farm or business is allowed to continue operation under the authority of a keeper is deleted because of the lack of general provisions enabling the levying officer to collect charged amounts from the issuer of the credit card.

Subdivision (b) is amended to reflect the enactment of Section 482.100 and to conform to the general exemption provisions. See Sections 482.100, 487.020, and Comments.

Subdivision (c) is amended to conform to changes made in Sections 488.010 and 488.310. In addition, the last sentence of subdivision (c) now provides that a copy of the writ and notice of attachment must be sent both to the defendant and to any other person in whose name the real property

(on which the defendant's crops are growing or the defendant's timber is standing) stands upon the records of the county. This provision was omitted from the Attachment Law as enacted. Compare subdivision 2a of former Section 542. Subdivision (d) is amended to conform to subdivision (c).

SEC. 22. Section 488.430 of the Code of Civil Procedure is amended to read:

488.430. (a) To attach the interest of a defendant in personal property belonging to the estate of a decedent, whether by testate or intestate succession, the levying officer shall (1) file a copy of the writ and the notice of attachment in the office of the clerk of the court in which the estate is being administered and (2) serve the personal representative of the decedent with a copy of the writ and the notice.

(b) Promptly after levy and in no event more than 45 days after levy, the levying officer shall serve the defendant with a copy of the writ and the notice of attachment. A failure to serve the defendant pursuant to this subdivision shall not affect the lien created pursuant to subdivision (a).

(c) The personal representative shall report such attachment to the court when any petition for distribution is filed.

(d) Such attachment shall not impair the powers of the representative over the property for the purposes of administration.

(e) If a decree orders distribution to the defendant, delivery of the property shall be ordered to the officer making the levy subject to the claim of the defendant or any person claiming under him. The property shall not be delivered to the officer making the levy until the decree distributing the interest has become final.

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estate is being  
administered

Comment. Subdivision (c) of Section 488.430 is amended to make clear that the personal representative is required to report the attachment to the probate court. This amendment makes no substantive change.

SEC. 23. Section 488.530 of the Code of Civil Procedure is amended to read:

488.530. (a) Whenever property is or may be attached, ~~upon application of either party~~ the plaintiff, the defendant, or any third person whose interest has been determined pursuant to Section 689, after reasonable notice to the other parties and upon may apply by noticed motion for the order provided in this subdivision. Upon a showing that the property is perishable or will greatly deteriorate or greatly depreciate in value or that for some other reason ~~that~~ the interests of the parties will be best served thereby, the court may order that such property be sold or may appoint a receiver or direct the levying officer to take charge of, cultivate, care for, preserve, collect, harvest, pack, or sell such property.

(b) Notwithstanding subdivision (a), if the levying officer determines that property is extremely perishable or will greatly deteriorate or greatly depreciate in value before a court order for the sale of the property could be obtained, the levying officer may take any action necessary to preserve the value of the property or sell the property. The levying officer is not liable for a determination made in good faith under this subdivision.

(c) ~~(b)~~ Any sale of such property shall be made in the same manner that property is sold on execution and the proceeds shall be deposited in the court to abide the judgment in the action.

(d) ~~(c)~~ Where a receiver is appointed, the court shall fix the daily fee of such receiver and may order the plaintiff to pay such fee and expenses of the receiver in advance or may direct that the whole or any part of such fee and expenses be paid from the proceeds of any sale of such property.

(e) ~~(d)~~ Except as otherwise provided in this section, the provisions of Chapter 5 (commencing with Section 564) and Chapter 5A (commencing with Section 571) of Title 7 govern the appointment, qualifications, powers, rights, and duties of a receiver appointed under this section.

Comment. Subdivision (a) of Section 488.530 is amended to provide a procedure for application for the order provided by this section. New subdivision (b) provides for the situation where the property is so perishable that there is not ample time to obtain the court order normally required by subdivision (a).

SEC. 24. Section 488.560 of the Code of Civil Procedure is amended to read:

488.560. (a) The levying officer shall release an attachment whenever he receives a written direction to that effect from the plaintiff, or a certified copy of an order of the court in which the action is pending, discharging or dissolving the attachment or releasing the property.

(b) Where the property to be released has been taken into custody, it shall be delivered to the person from whom it was taken unless otherwise ordered by the court. If such person cannot be found within the county where the property was levied upon, the levying officer shall retain the property but give ~~reasonable~~ notice to such person, as to where he may secure its possession. If, after 30 days from the giving of such notice, such person has not claimed the property, the levying officer shall sell such property in the same manner that property is sold on execution and deposit the proceeds, after first deducting his costs and expenses, in the court to abide the judgment in the action.

by certified mail,  
return receipt  
requested, sent to  
such person's last  
known address.

(c) Where the property to be released has not been taken into custody, the levying officer shall release the attachment by issuing a written release addressed to the person served with the copy of the writ and notice and, where the writ and notice were recorded or filed, by recording or filing such written release in the same office. Where the attached property is real property, the plaintiff or his attorney, instead of the levying officer, may record the release.

an interest in

(d) There shall be no liability for persons acting in conformity with the release of the levying officer or for such officers releasing such attachments in accordance with this section.

Comment. Subdivision (b) of Section 488.560 is amended to provide the manner of service of the notice. The last known address of a person from whom property was taken but who can no longer be found within the county will often be the address of the place where the property was taken into custody. Subdivision (c) is amended to conform to the amendments of subdivision (c) of Section 487.010 and Section 488.310.

SEC. 25. Section 489.130 is added to the Code of Civil Procedure, to read:

489.130. Where the court orders the amount of the undertaking increased pursuant to Sections 489.220 or 489.410, the plaintiff's failure to increase the amount of the undertaking is not a wrongful attachment within the meaning of Section 490.010.

Comment. Section 489.130 makes clear that the mere failure of the plaintiff to increase the amount of an undertaking when ordered to do so pursuant to Section 489.220 (undertaking to obtain a writ of attachment or protective order) or Section 489.410 (undertaking on appeal) is not a wrongful attachment under Section 490.010. The insufficient undertaking remains in effect pursuant to subdivision (d) of Section 489.090, and the plaintiff's liability for wrongful attachment pursuant to Section 490.010 is limited to the amount of the insufficient undertaking by subdivision (b) of Section 490.020. However, where an order to increase the amount of the undertaking is not complied with, the rights obtained by filing the insufficient undertaking cease as provided in subdivision (c) of Section 489.090 and subdivision (a) of Section 489.410.

SEC. 26. Section 489.230 of the Code of Civil Procedure is amended

to read:

489.230. (a) The notice of ~~levy of the writ of~~ attachment shall include a statement, in a form adopted by the Judicial Council, advising the defendant that the undertaking has been filed and informing him of his right to object to the undertaking on the grounds provided in Section 489.070.

temporary

(b) A protective order shall include a statement comparable to the one required by subdivision (a), the content of which shall be prescribed by rule adopted by the Judicial Council.

Comment. Section 489.230 is amended to make clear that the statement required by subdivision (a) is to be included in the notice of attachment provided by Section 488.020. The amendment of subdivision (b) is technical.

SEC. 27. Section 489.310 of the Code of Civil Procedure is amended

to read:

~~489.310. (a) Upon reasonable notice to the plaintiff, a defendant whose property has been or is subject to being attached and who has appeared in the action may apply to the court in which the action is pending or, if a writ of attachment is levied in another county, to a court in such county having jurisdiction in cases involving the amount specified in the writ, for an order permitting him to substitute an undertaking in lieu of any property which has been or is subject to being attached.~~

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(a) Whenever a writ is issued, a defendant who has appeared in the action may apply by noticed motion to the court in which the action is pending for an order permitting the defendant to substitute an undertaking for any of his property in the state which has been or is subject to being attached. Where a writ is issued to a county other than the county where the action is pending, a defendant who has appeared in the action may apply by noticed motion to a

court in such county having jurisdiction in cases involving the amount specified in the writ issued to such county for an order permitting the defendant to substitute an undertaking for any <sup>of his</sup> property in that county which has been or is subject to being attached.

(b) The application shall include a statement, executed under oath, describing the character of the defendant's title to the property and the manner in which he acquired such title.

(c) Before making such order, the court shall require the defendant to file with the court in which the application is made an undertaking to pay the plaintiff the value of the property released not exceeding the amount of any judgment recovered by the plaintiff in the the action against ~~such~~ defendant. The amount of the undertaking filed pursuant to this section shall be equal to the lesser of (1) the value of the property attached or prevented from being attached or (2) the amount specified by the writ to be secured by the attachment. The court shall issue such order upon being satisfied that a sufficient undertaking has been filed.

(d) Where an action is against more than one defendant, any defendant may make such application. The filing of an undertaking by such defendant shall not subject him to any demand against any other defendant; however, the levying officer shall not be prevented thereby from attaching, or be obliged to release from attachment, any property of any other defendant. Where two or more defendants have an interest in the same property, a joint application and undertaking shall be filed to secure the release of such property.

Comment. Subdivision (a) of Section 489.310 is amended to make clear that, where a writ is issued to a county other than the county where the action is pending, the defendant may apply to either the court where the action is pending or the court in the other county for an order allowing him to substitute an undertaking for property which has been or is subject to being attached. The order of the court in the other county may allow the release only of the property in that county whereas the order of the court where the action is pending may release property throughout the state. The amendment also provides that the defendant applies by noticed motion rather than "upon reasonable notice to the plaintiff."

SEC. 28. Section 489.320 of the Code of Civil Procedure is amended

to read:

489.320. (a) Upon ~~reasonable~~ motion to the plaintiff or defendant who has been served with a temporary protective order and who has appeared in the action may apply to the court in which the action is pending for an order terminating the temporary protective order.

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by noticed  
motion

(b) Before making an order terminating the temporary protective order, the court shall require the defendant to file an undertaking to pay the plaintiff the amount of any judgment recovered by the plaintiff in the action against such defendant. The amount of the undertaking filed pursuant to this section shall be equal to the amount of the plaintiff's claim. The court shall issue the order terminating the temporary protective order upon being satisfied that a sufficient undertaking has been filed.

(c) Where an action is against more than one defendant, any defendant may make such application. The filing of an undertaking by such defendant shall not subject him to any demand against any other defendant; however, the levying officer shall not be prevented thereby from attaching, or be obliged to release from attachment, any property of any other defendant. Where two or more defendants have an interest in the same property, a joint application and undertaking shall be filed to secure the release of such property.

Comment. Subdivision (a) of Section 489.320 is amended to provide that an application for an order under this section is made by noticed motion.

SEC. 29. Section 490.010 of the Code of Civil Procedure is amended to read:

490.010. A wrongful attachment consists of any of the following:

(a) The levy of a writ of attachment or the service of a protective order in an action in which attachment is not authorized, except that it is not a wrongful attachment if both of the following are established:

(1) The levy was not authorized solely because of the prohibition of subdivision (c) of Section 483.010.

(2) The person who sold or leased, or licensed for use, the property, furnished the services, or loaned the money reasonably believed that it would not be used primarily for personal, family, or household purposes.

(b) The levy of a writ of attachment or the service of a protective order in an action in which the plaintiff does not recover judgment.

(c) The levy of a writ of attachment obtained pursuant to Article 3 (commencing with Section 484.510) of Chapter 4 or Chapter 5 (commencing with Section 485.010) on property exempt from attachment except where the plaintiff shows that he reasonably believed that the property attached was not exempt from attachment.

(d) The levy of a writ of attachment on property of a person other than the person against whom the writ was issued except that it is not a wrongful attachment ~~if all of the following exist:~~

~~(1) The property levied on is required by law to be registered or recorded in the name of the owner.~~

~~(2) It appeared that, at the time of the levy, the person against whom the writ was issued was such registered or record owner.~~

~~(3) The plaintiff made the levy in good faith and in reliance on the registered or recorded ownership, where the~~

plaintiff shows that he reasonably believed that the property attached was the property of the defendant and that he in good faith caused the levy to be made .

Comment. Subdivision (d) of Section 490.010 is amended to broaden the exception to the plaintiff's statutory liability for attachment of a third person's property. The amendment makes clear that a plaintiff who acts reasonably and in good faith is not liable under this chapter to a third person whose property is attached.

SEC. 30. Section 491.010 of the Code of Civil Procedure is amended to read:

491.010. (a) Any Upon application of the plaintiff, the court may order any person owing debts to the defendant, or having in his possession or under his control any personal property belonging to the defendant, ~~(may be required)~~ to appear before the court and be examined on oath regarding such property. The plaintiff's application shall be accompanied by an affidavit showing that the person named therein owes debts to the defendant or has in his possession or under his control personal property belonging to the defendant.

(b) The plaintiff shall give the defendant at least three days' notice of an examination ordered pursuant to this chapter.

- (c) ~~(b)~~ If the person ordered to appear pursuant to this section fails to appear, and if the order requiring his appearance has been served by a sheriff or some person specially appointed by the court in the order, the court may, pursuant to a warrant, have such person brought before the court to answer for such failure to appear.
- (d) ~~(c)~~ After such examination, if the person admits that he is indebted to the defendant, or that he holds property belonging to the defendant, the court may order that such debt or property belonging to the defendant be attached in the manner and under the conditions provided by this title and that any amount owing be paid to the levying officer. If the person admits that he holds property which belongs to the defendant and in which he claims no interest, the court may order that such property be delivered to the levying officer on such terms as may be just.

Comment. Subdivision (a) of Section 491.010 is amended to provide for the plaintiff's application and supporting affidavit. See Section 482.040 (general requirements for affidavits). Former Section 545 did not specify the procedure for obtaining the order for an examination. Subdivision (b) requires the plaintiff to give the defendant notice of the examination of a third person.

SEC. 31. Section 690.50 of the Code of Civil Procedure is amended to read:

690.50. \_\_\_\_\_ (a) If the property mentioned in Sections 690.1 to 690.29, inclusive, shall be levied upon under writ of ~~attachment or~~ execution, the ~~defendant or~~ judgment debtor (herein referred to as "the debtor"), in order to avail himself of his exemption rights as to such property, shall within 20 days, in the case of real property described in Section 690.235, and 10 days, in the case of all other property, from the date such property was levied upon deliver to the levying officer an affidavit of himself or his agent, together with a copy thereof, alleging that the property levied upon, identifying it, is exempt, specifying the section or sections of this code on which he relies for his claim to exemption, and all facts necessary to support his claim, and also stating therein his address within this state for the purpose of permitting service by mail upon him of the counteraffidavit and any notice of the motion herein provided. For purposes of this

section, if the property levied upon consists of the earnings of a judgment debtor, each date that earnings are withheld from the judgment debtor shall be deemed to be the date earnings were levied upon. A judgment debtor shall have the right to file a separate claim of exemption each time that a withholding of earnings occurs, provided, that if a prior claim of exemption has been adjudicated under the same levy, that each separate claim of exemption thereafter be supported by a statement under oath alleging the changed circumstances which support the new claim of exemption. If a claim of exemption be allowed, the judgment creditor shall have the right, at any time during the effective period of the claim of exemption, to move the court for consideration of the claim previously granted on the grounds of a material change of circumstances affecting the debtor's exemption rights. If the judgment creditor does make such a motion, he must support his motion by a statement under oath alleging the changed circumstances which support his motion for consideration.

(b) Forthwith upon receiving the affidavit of exemption, the levying officer shall serve upon ~~the plaintiff or the~~ the person in whose favor the writ runs (herein referred to as "the creditor"), either personally or by mail, a copy of the affidavit of exemption, together with a writing, signed by the levying officer, stating that the claim to exemption has been received and that the officer will release the property unless he receives from the creditor a counteraffidavit within 10 days after service of such writing, in the case of real property described in Section 690.235, and within five days after service of such writing, in all other cases.

(c) If the creditor desires to contest the claim to exemption, he shall, within such period of 10 days, in the case of real property described in Section 690.235, and five days, in all other cases, file with the levying officer a counteraffidavit alleging that the property is not exempt within the meaning of the section or sections of this code relied upon, or if the claim to exemption be based on Sections 690.2, 690.3, 690.4, 690.6, alleging that the value of the property claimed to be exempt is in excess of the value stated in the applicable section or sections, together with proof of service of a copy of such counteraffidavit upon the debtor.

(d) If no such counteraffidavit, with such proof of service, is so filed with the levying officer within the time allowed, the officer shall forthwith release the property.

(e) If such counteraffidavit, with such proof of service, is so filed, either the creditor or the debtor shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the claim to exemption, the priority or division of payment between one or more creditors from nonexempt earnings under the provisions of Section 690.6 or the value of the property claimed to be exempt. Such hearing shall be granted by the court upon motion of either party made within five days after the counteraffidavit is filed with the levying officer, and such hearing must be had within 15 days from the date of the making of such motion unless continued by the court for good cause. The party making the motion for hearing shall give not less than five days' notice in writing of such hearing to the levying officer and to the other party, and specify therein that the hearing is for the purpose of determining the claim to exemption. The notice may be of motion or of hearing and upon the filing of the notice with the clerk of court, the motion is deemed made.

(f) If neither party makes such motion within the time allowed, or if the levying officer shall not have been served with a copy of the notice of hearing within 10 days after the filing of the counteraffidavit, the levying officer shall forthwith release the property to the debtor.

(g) At any time while the proceedings are pending, upon motion of either party or upon its own motion, the court may (1) order the sale of any perishable property held by such officer and direct disposition of the proceeds of such sale, and (2) make such other orders as may be proper under the particular circumstances of the case. Any orders so made may be modified or vacated by the court or judge granting the same, or by the court in which the proceedings are pending, at any time during the pendency of the proceedings, upon such terms as may be just.

(h) The levying officer in all cases shall retain physical possession of the property levied upon if it is capable of physical possession. or in the case of property not capable of physical possession, the levy shall remain in full force and effect, pending the final determination of the claim to exemption. However, no sale under execution shall be had prior to such final determination unless an order of the court hearing the claim for exemption shall so provide.

(i) At such hearing, the party claiming the exemption shall have the burden of proof. The affidavits and counteraffidavits shall be filed by the levying officer with the court and shall constitute the pleadings, subject to the power of the court to permit an amendment in the interests of justice. The affidavit of exemption shall be deemed controverted by the counteraffidavit and both shall be received in evidence. Nothing herein shall be construed to deprive anyone of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial may be waived in any such case in like manner as in the trial of an action. No findings shall be required in a proceeding under this section. When the hearing is before the court sitting without a jury, and no evidence other than the affidavit and counteraffidavit is offered, the court, if satisfied that sufficient facts are shown thereby, may make its determination thereon. Otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits. At the conclusion of the hearing, the court shall give judgment determining whether the claim to exemption shall be allowed or not, in whole or in part, and may give judgment determining the priority or division of payment between one or more creditors from nonexempt earnings under the provisions of Section 690.6, which judgment shall be determinative as to the right of the creditor to have the property taken and held by the officer or to subject the property to payment or other satisfaction of his judgment. In such judgment the court shall make all proper orders for the disposition of such property or the proceeds thereof.

(j) A copy of any judgment entered in the trial court shall be forthwith transmitted by the clerk to the levying officer in order to permit such officer to either release the property attached or to continue to hold it to sell it, in accordance with the provisions of the writ previously delivered to him. Such officer, unless an appeal from the judgment is waived, or the judgment has otherwise become final, shall continue to hold such property under attachment or execution, continuing the sale of any property held under execution until such judgment becomes final. However, if a claim to exemption under Section 690.6 is allowed by such judgment, the debtor shall be entitled to a release of the earnings so exempted at the expiration of three days, unless otherwise ordered by the court, or unless the levying officer shall have been served with a copy of a notice of appeal from the judgment.

(k) When any documents required hereunder are served by mail, the provisions of this code relating to service by mail shall be applicable thereto.

(l) Whenever the time allowed for an act to be done hereunder is extended by the court, written notice thereof shall be given promptly to the opposing party, unless such notice be waived, and to the levying officer.

(m) An appeal lies from any judgment under this section. Such appeal to be taken in the manner provided for appeals in the court in which the proceeding is had.

Comment. Subdivisions (a) and (b) of Section 690.50 are amended to delete the references to attachment. Exemptions from attachment are governed by Title 6.5 (commencing with Section 481.010).

EXHIBIT

The Comment to Section 489.110 should read as follows:

*Comment.* Section 489.110 supplements Section 1058a. Under Section 1058a, a motion to enforce liability on an undertaking is directed to the sureties. Section 489.110 makes clear that the liability may be enforced directly against the sureties. In contrast with what appeared to be the former law, the beneficiary need not attempt to satisfy his judgment first from the assets of the principal. *CK* former Section 552; *Bezaire v. Fidelity & Deposit Co.*, 12 Cal. App.3d 888, 91 Cal. Rptr. 142 (1970); CIVIL CODE § 2845. It is not clear whether the enactment in 1972 of Section 1058a changed the former rule.

Section 489.110 in no way interferes with the contractual relationship between principal and surety.

The Comment to Section 490.010 should read as follows:

*Comment.* Section 490.010 provides a statutory cause of action for wrongful attachment in four specific situations. As Section 490.060 makes clear, the liability provided by Section 490.010 is not exclusive. The defendant may pursue his common law remedies if he chooses.

*Subdivision (a).* Subdivision (a) provides that wrongful attachment occurs when a writ of attachment is levied or a protective order is served in an action where attachment is not authorized. An exception is provided, however, which protects the plaintiff where levy is not authorized because the goods, services, or money furnished were used primarily for consumer purposes but the person who furnished them reasonably believed that they would not be so used. This provision is based on a portion of subdivision (a) of former Section 539 which provided for recovery where "the restraining order or the attachment is discharged on the ground that the plaintiff was not entitled thereto under Sections 537 to 537.2, inclusive."

*Subdivision (b).* Subdivision (b) provides that wrongful attachment occurs when a writ of attachment is levied or a protective order is served where judgment in the action is not in favor of the plaintiff. This provision is based on another portion of subdivision (a) of former Section 539 which provided for recovery where "the defendant recovers judgment."

*Subdivision (c).* Subdivision (c) provides that wrongful attachment occurs when the plaintiff levies an ex parte writ of attachment on property which is exempt from attachment except where the writ was obtained under Chapter 12 (nonresident attachment) of this title or where the plaintiff reasonably believed that the property was not exempt from attachment. See Section 487.020 (property exempt from attachment). The determination that the property was not exempt made pursuant to Sections 484.520, 485.220, or 485.540 does not preclude a finding that the plaintiff acted unreasonably. For example, the determination may have been based on false affidavits or inadequate investigation by the plaintiff. Attachment of exempt property was classified as a form of abuse of process. See *White Lighting Co. v. Wolfson*, 68 Cal.2d 336, 349, 438 P.2d 345, 353, 66 Cal. Rptr. 697, 705 (1968); *McNabb v. Byrnes*, 92 Cal. App. 337, 268 P. 428 (1928).

*Subdivision (d).* Subdivision (d) provides that wrongful attachment occurs when a writ of attachment is levied against property of a person other than the person against whom the writ is issued. This will generally be a nonparty but may include a codefendant. An exception is provided comparable to that provided in Section 689. Under former law, the remedy of a third person was to file a complaint in intervention (see *Beshara v. Goldberg*, 221 Cal. App.2d 392, 34 Cal. Rptr. 501 (1963)), a third-party claim under Code of Civil Procedure Section 689, or a separate action for damages for conversion, trespass, or some other tort (see *McPheters v. Bateman*, 11 Cal. App.2d 106, 53 P.2d 195 (1936); *Edwards v. Sonoma Valley Bank*, 59 Cal. 136 (1881)), or for specific recovery (see *Taylor v. Bernheim*, 58 Cal. App. 804, 209 P. 55 (1922)). See generally 5 B. WITKIN, CALIFORNIA PROCEDURE *Enforcement of Judgment* §§ 103-115 at 3468-3481 (2d ed. 1971). Subdivision (d) does not preclude such actions (see Section 490.060) but provides a statutory alternative.