

AMENDED IN SENATE AUGUST 18, 2010

AMENDED IN SENATE JUNE 29, 2010

AMENDED IN ASSEMBLY APRIL 22, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2765

**Introduced by Committee on Judiciary (Feuer (Chair), Brownley,
Evans, Jones, Lieu, and Monning)**

February 25, 2010

An act to amend Section 338 of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2765, as amended, Committee on Judiciary. Civil actions: statutes of limitation: theft.

Existing law provides that a civil action, in the case of a theft, shall be commenced within 3 years. Existing law provides that in the case of a theft of any article of historical, interpretive, scientific, cultural, or artistic significance, a cause of action is not deemed to have accrued until the discovery of the whereabouts of the article by the aggrieved party, his or her agent, or a law enforcement agency.

This bill would authorize a civil action against a museum, gallery, auctioneer, or ~~art~~ dealer for the recovery of *works of fine art, antiquities, or an article of historical, interpretive, scientific, cultural, or artistic significance that were unlawfully taken or stolen, including a taking or theft by means of fraud or duress*, to be commenced within 6 years of the actual discovery by the ~~aggrieved party~~ *claimant or his or her agent*

of the ~~identity and whereabouts of the article work of fine art and of the facts constituting the cause of action~~ information or facts that are sufficient to indicate that the claimant has a claim for a possessory interest in the work of fine art. This bill would apply to pending and future actions and would also authorize the revival of an action, ~~previously dismissed because of the expiration of a statute of limitation deemed applicable at the time of the dismissal, if the application of these provisions, at the time the action was dismissed, would have resulted in a determination that the cause of action had been timely filed commenced on or before December 31, 2017, and would include any actions that were dismissed based on the expiration of statutes of limitation in effect prior to the date of the enactment of this bill if, prior to that date, the judgment in the action was not final or the time for filing an appeal from a decision on that action had not expired, provided that the action concerns a work of fine art that was taken within 100 years prior to the date this bill is enacted.~~

This bill contains the Legislature’s findings and declarations in support of a finding that this bill is in agreement and conformity with a specified court decision.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

- 1 SECTION 1. (a) The Legislature finds and declares the
- 2 following:
- 3 (1) California’s interest in determining the rightful ownership
- 4 of ~~personal property of historical, interpretive, scientific, cultural,~~
- 5 ~~and artistic significance~~ *fine art* is a matter of traditional state
- 6 competence, responsibility, and concern.
- 7 (2) Because objects of ~~historical, interpretive, scientific, cultural,~~
- 8 ~~and artistic significance often circulate in an underground economy~~
- 9 ~~for many years before surfacing in museums or galleries, existing~~
- 10 *fine art often circulate in the private marketplace for many years*
- 11 *before entering the collections of museums or galleries, existing*
- 12 statutes of limitation, which are solely the creatures of the
- 13 Legislature, often present an inequitable procedural obstacle to
- 14 recovery of these objects by *parties that claim to be* their rightful
- 15 owner.

1 (3) Decisions from California’s intermediate appellate courts
2 have reached differing conclusions as to whether the statute of
3 limitation based upon the “discovery of the whereabouts of the
4 article by the aggrieved party” rule in subdivision (c) of Section
5 338 of the Code of Civil Procedure was intended to apply to
6 property stolen prior to ~~1982~~ 1983, when the express discovery
7 rule was enacted. In *Naftzger v. American Numismatic Society*
8 (1996) 42 Cal.App.4th 421, the court held that the discovery rule
9 applies to actions to recover property stolen prior to ~~1982~~ 1983
10 because there was a discovery rule implicit in the prior version of
11 that statute.

12 (b) The Legislature finds and declares that the court’s decision
13 in *Naftzger v. American Numismatic Society* properly construed
14 the Legislature’s intent, as to the applicability of the discovery
15 rule for thefts occurring before ~~1982~~ 1983, and the Legislature
16 hereby abrogates any contrary holding.

17 (c) *In enacting an “actual discovery” rule for actions against*
18 *a museum, gallery, auctioneer, or dealer to recover fine art, the*
19 *Legislature finds and declares that:*

20 (1) *Museums and galleries have played, and continue to play,*
21 *an important role in making information about their collections,*
22 *exhibitions, and acquisitions publicly available and have invested*
23 *significant resources in the care, conservation, study, and display*
24 *of art objects for the benefit of the public. Museums and galleries*
25 *have also increasingly and voluntarily made archives, databases,*
26 *and other resources more accessible to individuals and*
27 *organizations seeking information about the location and history*
28 *of particular art objects, thereby assisting the rightful owners of*
29 *works of fine art who may have a claim for the recovery of these*
30 *works.*

31 (2) *The application of statutes of limitations and any affirmative*
32 *defenses to actions for the recovery of works of fine art should*
33 *recognize this public role taken by museums and galleries and*
34 *should provide incentives for research and publication of*
35 *provenance information about these art works, in order to*
36 *encourage the prompt and fair resolution of claims.*

37 (3) *In the establishment of an “actual discovery” rule for the*
38 *commencement of a statute of limitations for these actions, it is*
39 *appropriate to provide that, in addition to any legal defenses and*
40 *doctrines currently available to parties under California law, all*

1 *equitable affirmative defenses and doctrines are available to the*
2 *parties, including, without limitation, laches and unclean hands,*
3 *in order to permit the courts to take all equitable considerations*
4 *in either party's favor into account.*

5 SEC. 2. Section 338 of the Code of Civil Procedure is amended
6 to read:

7 338. Within three years:

8 (a) An action upon a liability created by statute, other than a
9 penalty or forfeiture.

10 (b) An action for trespass upon or injury to real property.

11 (c) (1) An action for taking, detaining, or injuring any goods
12 or chattels, including actions for the specific recovery of personal
13 property.

14 (2) The cause of action in the case of theft, as ~~defined~~ *described*
15 in Section 484 of the Penal Code, of any article of historical,
16 interpretive, scientific, or artistic significance is not deemed to
17 have accrued until the discovery of the whereabouts of the article
18 by the aggrieved party, his or her agent, or the law enforcement
19 agency that originally investigated the theft.

20 (3) (A) Notwithstanding paragraphs (1) and (2), an action *for*
21 *the specific recovery of a work of fine art brought* against a
22 museum, gallery, auctioneer, or dealer ~~for specific recovery of an~~
23 ~~article of historical, interpretive, scientific, cultural, or artistic~~
24 ~~significance shall be commenced within six years of the actual~~
25 ~~discovery by the aggrieved party of the whereabouts of the article~~
26 ~~and of the facts constituting the cause of action.,~~ *in the case of an*
27 *unlawful taking or theft, as described in Section 484 of the Penal*
28 *Code, of a work of fine art, including a taking or theft by means*
29 *of fraud or duress, shall be commenced within six years of the*
30 *actual discovery by the claimant or his or her agent, of both of the*
31 *following:*

32 (i) *The identity and the whereabouts of the work of fine art. In*
33 *the case where there is a possibility of misidentification of the*
34 *object of fine art in question, the identity can be satisfied by the*
35 *identification of facts sufficient to determine that the work of fine*
36 *art is likely to be the work of fine art that was unlawfully taken or*
37 *stolen.*

38 (ii) *Information or facts that are sufficient to indicate that the*
39 *claimant has a claim for a possessory interest in the work of fine*
40 *art that was unlawfully taken or stolen.*

1 (B) The provisions of this paragraph shall apply to ~~property~~
2 ~~taken, by theft, prior to 1982 regardless of whether or not an action~~
3 ~~would have been barred by an applicable statute of limitation under~~
4 ~~any other provision of law in effect prior to 1982. all pending and~~
5 ~~future actions commenced on or before December 31, 2017,~~
6 ~~including any actions dismissed based on the expiration of statutes~~
7 ~~of limitation in effect prior to the date of enactment of this statute~~
8 ~~if the judgment in that action is not yet final or if the time for filing~~
9 ~~an appeal from a decision on that action has not expired, provided~~
10 ~~that the action concerns a work of fine art that was taken within~~
11 ~~100 years prior to the date of enactment of this statute.~~

12 (C) For purposes of this paragraph:

13 (i) ~~“Actual discovery” means that the party bringing the action~~
14 ~~has express knowledge of the identity and the whereabouts of the~~
15 ~~person or entity that possesses the article of historical, interpretive,~~
16 ~~scientific, cultural, or artistic significance. Notwithstanding Section~~
17 ~~19 of the Civil Code, “actual discovery” does not include any~~
18 ~~constructive knowledge imputed by law. discovery,”~~
19 ~~notwithstanding Section 19 of the Civil Code, does not include any~~
20 ~~constructive knowledge imputed by law.~~

21 (ii) “Auctioneer” means any individual who is engaged in, or
22 who by advertising or otherwise holds himself or herself out as
23 being available to engage in, the calling for, the recognition of,
24 and the acceptance of, offers for the purchase of goods at an auction
25 as defined in subdivision (b) of Section 1812.601 of the Civil Code.

26 (iii) “Dealer” means a person who holds a valid seller’s permit
27 and who is actively and principally engaged in, or conducting the
28 business of, selling works of fine art, ~~antiquities, or articles of~~
29 ~~historical, interpretive, scientific, cultural, or artistic significance..~~

30 (iv) “Duress” means a threat of force, violence, danger, or
31 retribution against an owner of the work of fine art in question,
32 or his or her family member, sufficient to coerce a reasonable
33 person of ordinary susceptibilities to perform an act that otherwise
34 would not have been performed or to acquiesce to an act to which
35 he or she would otherwise not have acquiesced.

36 (v) “Fine art” has the same meaning as defined in paragraph
37 (1) of subdivision (d) of Section 982 of the Civil Code.

38 (iv)

39 (vi) “Museum or gallery” shall include any public or private
40 organization or foundation operating as a museum or gallery.

1 (4) Section 361 shall not apply to an action brought pursuant to
2 paragraph ~~(2)~~ or (3).

3 ~~(5) The provisions of paragraph (3) shall apply to pending~~
4 ~~actions, including appeals from a prior dismissal of a cause of~~
5 ~~action. Any cause of action, previously dismissed because the~~
6 ~~dismissal of that action was based, in whole or in part, upon the~~
7 ~~expiration of a statute of limitation deemed applicable at the time~~
8 ~~of the dismissal, shall be revived, without prejudice, and must be~~
9 ~~commenced within five years of the effective date of the act adding~~
10 ~~this paragraph if the provisions of paragraph (3), if applied to that~~
11 ~~cause of action at the time of the dismissal, would have resulted~~
12 ~~in a determination that the cause of action had been timely filed.~~

13 *(5) A party in an action to which paragraph (3) applies may*
14 *raise all equitable and legal affirmative defenses and doctrines,*
15 *including, without limitation, laches and unclean hands.*

16 (d) An action for relief on the ground of fraud or mistake. The
17 cause of action in that case is not deemed to have accrued until
18 the discovery, by the aggrieved party, of the facts constituting the
19 fraud or mistake.

20 (e) An action upon a bond of a public official except any cause
21 of action based on fraud or embezzlement is not deemed to have
22 accrued until the discovery, by the aggrieved party or his or her
23 agent, of the facts constituting the cause of action upon the bond.

24 (f) (1) An action against a notary public on his or her bond or
25 in his or her official capacity except that any cause of action based
26 on malfeasance or misfeasance is not deemed to have accrued until
27 discovery, by the aggrieved party or his or her agent, of the facts
28 constituting the cause of action.

29 (2) Notwithstanding paragraph (1), an action based on
30 malfeasance or misfeasance shall be commenced within one year
31 from discovery, by the aggrieved party or his or her agent, of the
32 facts constituting the cause of action or within three years from
33 the performance of the notarial act giving rise to the action,
34 whichever is later.

35 (3) Notwithstanding paragraph (1), an action against a notary
36 public on his or her bond or in his or her official capacity shall be
37 commenced within six years.

38 (g) An action for slander of title to real property.

39 (h) An action commenced under Section 17536 of the Business
40 and Professions Code. The cause of action in that case shall not

1 be deemed to have accrued until the discovery by the aggrieved
2 party, the Attorney General, the district attorney, the county
3 counsel, the city prosecutor, or the city attorney of the facts
4 constituting grounds for commencing the action.

5 (i) An action commenced under the Porter-Cologne Water
6 Quality Control Act (Division 7 (commencing with Section 13000)
7 of the Water Code). The cause of action in that case shall not be
8 deemed to have accrued until the discovery by the State Water
9 Resources Control Board or a regional water quality control board
10 of the facts constituting grounds for commencing actions under
11 their jurisdiction.

12 (j) An action to recover for physical damage to private property
13 under Section 19 of Article I of the California Constitution.

14 (k) An action commenced under Division 26 (commencing with
15 Section 39000) of the Health and Safety Code. These causes of
16 action shall not be deemed to have accrued until the discovery by
17 the State Air Resources Board or by a district, as defined in Section
18 39025 of the Health and Safety Code, of the facts constituting
19 grounds for commencing the action under its jurisdiction.

20 (l) An action commenced under Section 1603.1, 1615, or 5650.1
21 of the Fish and Game Code. These causes of action shall not be
22 deemed to have accrued until discovery by the agency bringing
23 the action of the facts constituting the grounds for commencing
24 the action.

25 (m) An action challenging the validity of the levy upon a parcel
26 of a special tax levied by a local agency on a per parcel basis.

27 (n) An action commencing under Section 51.7 of the Civil Code.