

## Memorandum 68-38

Subject: Study 50 - Abandonment or Termination of a Lease

Attached as Exhibit I (pink) is a revised draft of the statute relating to abandonment or termination of a lease. In preparing this draft, the staff took into account the views expressed at the February meeting and a draft statute that Commissioner Yale sent to us after the last meeting.

Also attached (white) is a short article from the Winter 1968 issue of the DePaul Law Review. We believe that this is an excellent article and we urge you to read it. The Commission should consider whether the article is worth reprinting as a research study in our report to the Legislature on this subject if we can obtain permission to do so. We make this suggestion because a major purpose to be accomplished by the draft statute is to impose the requirement of mitigation of damages in short term, low rent leases.

Briefly, the draft statute is designed to accomplish the following major objectives. First, the statute is designed to impose a duty to mitigate damages (those damages that the tenant proves could have been or could be reasonably avoided) where the lease is a short term, low rent lease (one for less than five years or for less than \$500 a month rent). To accomplish this objective, the lessor is permitted to retake possession of the property upon abandonment or termination of the lease and nevertheless may recover any loss he sustains as a result of the lessee's breach. The statute also permits the lessor an alternative remedy--he may retain a deposit or advance payment as his damages if the amount is not unconscionable and the lessor elects

to retain the deposit in lieu of utilizing his other remedies. The statute requires that the deposit or advance payment be made within a short time after the tenant takes possession. The tenant who is required to make such an advance payment or deposit will be alerted at the time he makes the payment or deposit that the lessor will have the right to retain the deposit as liquidated damages in the event of the tenant's breach. The statute also permits recovery of attorney's fees if the lease so provides. The lessor is relieved of his obligations under the lease if he retakes possession of the property after the lessee's breach.

The statute also provides for additional remedies to the lessor in the case of a long term or high rent lease (five years or \$500 a month rent). Under such a lease, the lessor may, if the lease so provides, continue to collect the rent each month (as under present law) even though the tenant has abandoned the property. The lessor has no duty to mitigate the damages unless he retakes possession of the property. This remedy will provide adequate protection in cases where a lease is used as a financing transaction. A long term or high rent lease may also contain a provision for liquidated damages, whether or not the amount of the damages would be speculative, and such damages may be recovered unless unconscionable. These provisions are permitted in long term or high rent leases on the assumption that the parties will have advice of counsel and will be advised of their rights and obligations before execution of the lease. The provisions are not applicable to short term, low rent leases in order to protect the tenant who normally will not have the benefit of such advice.

The following Comments relate to the statute set out as Exhibit I.

Section 1951

Comment. Section 1951 states the measure of damages when the lessee breaches the lease and abandons the property or when his right to possession is terminated by the lessor. It is not a comprehensive statement of the lessor's remedies. For example, when the lessee breaches the lease and abandons the property or the lessor terminates the lessee's right to possession because of the lessee's breach, the lessor may simply rescind or cancel the lease without seeking affirmative relief under Section 1951. Where the lessee is still in possession but has breached the lease, the lessor may regard the lease as continuing in force and seek damages for the detriment caused by the breach, resorting to a subsequent action if a further breach occurs. In appropriate cases, the lessor may seek specific performance of the lessee's obligations under the lease, or he may seek injunctive relief to prevent the lessee from interfering with his rights under the lease. Section 1951 makes no change in these remedies. See 30 Cal. Jur.2d Landlord and Tenant § 344 (1956). The lessor may enforce other covenants in the lease such as the lessee's covenant to continue in business or not to compete with the lessor (Section 1952.2), and, if the lease so provides, the lessor is entitled to reasonable attorney's fees (Section 1951.8).

Section 1951.2 provides an alternative remedy, at the lessor's election, if the lease is one described in subdivision (a) of that section and provides for the alternative remedy. See also Section 1951.4 (retention of deposit or advance payment as damages) and Section 1951.6 (liquidated damages).

Subdivision (a)--paragraph (1). Under paragraph (1) of subdivision (a), the basic measure of the lessor's damages is the present worth of the unpaid "rent, including charges equivalent to rent." In this context, the phrase "rent, including charges equivalent to rent," refers to all obligations the lessee undertakes in exchange for use of the leased property. For example, if the defaulting lessee had promised to pay the taxes on the leased property and the lessor could not relet the property under a lease either containing such a provision or providing sufficient additional rental to cover the accruing taxes, the loss of the defaulting lessee's assumption of the tax obligation would be included in the damages the lessor is entitled to recover under this section.

Under paragraph (1), the lessee is entitled to a credit against the unpaid rent not only of all sums the lessor has received or will receive upon a reletting of the property, but also of all sums that the lessee can prove the lessor could obtain by acting reasonably in reletting the property. The obligation of the lessor to act reasonably in reletting the property to mitigate the damages is not to be interpreted to compel the lessor to relet to any replacement tenant. The lessor has the right under Section 1951 to refuse to allow possession of his property to fall into certain hands. The rules to be applied under Section 1951 are those developed by the courts in establishing limits to the lessor's obligations in those situations where the lease specifically provides that the lessor has a duty to use diligence to procure another tenant upon abandonment of the leased property by the lessee before the end of the term. The case law interpreting this contract duty establishes, generally, that the lessor need not relet

to a tenant who would use the premises for a purpose different than that contemplated in the original lease; nor is the lessor obligated to alter or increase his obligations in order to secure a replacement tenant as, for example, by re-leasing the property for a longer term than the original lease. See Groll, Landlord-Tenant: The Duty to Mitigate Damages, 17 DePaul L. Rev. 311, 319 (1968).

The measure of damages described in paragraph (1) is essentially the same as that formerly described in Civil Code Section 3308. The measure of damages described in Section 3308 was applicable, however, only when the lease so provided and the lessor chose to invoke that remedy. Except as provided in Sections 1951.2, 1951.4, and 1951.6, the measure of damages under Section 1951 is applicable to all cases in which a lessor seeks damages upon breach and abandonment by the lessee or upon termination of the lease because of the lessee's breach of the lease. Moreover, paragraph (1) makes clear that the lessee has the burden of proving the amount he is entitled to have offset against the unpaid rent, while Section 3308 was silent as to the burden of proof. In this respect, the rule stated is similar to that now applied in actions for breach of employment contracts. See discussion in Erler v. Five Point Motors, 249 Cal. App.2d 560, 57 Cal. Rptr. 516 (1967).

The second sentence of paragraph (1) is designed to provide a certain discount rate for discounting all future rental installments in order that the appropriate discount rate will not be a matter that must be proved in each case. Where the statutory discount rate would not be appropriate in a particular case, the parties may provide a different rate in the lease and such rate, if reasonable, will be used instead of the rate prescribed by statute.

Subdivision (a)--paragraph (2). Paragraph (2) of subdivision (a) is included to make clear that the measure of the lessor's recoverable damages is not limited to damages for the loss of future rentals. Paragraph (2), which is based on Civil Code Section 3300, provides that all of the other damages a person is entitled to recover for the breach of a contract may be recovered by a lessor for the breach of his lease.

It will usually be necessary for the lessor to take possession for a time to prepare the property for reletting and to secure a new tenant. The lessor is entitled to recover for the expenses incurred for this purpose that he would not have had if the lessee had not abandoned the property or breached the lease. In addition, the lessor is entitled to recover his expenses in retaking possession of the property, making repairs that the lessee was obligated to make, and in reletting the property. If there are other damages necessary to compensate the lessor for all of the detriment proximately caused by the lessee, the lessor is entitled to recover them also. These would include, of course, damages for the lessee's breach of specific covenants of the lease. Reasonable attorney's fees may be recovered if the lease so provides. See Section 1951.8.

Subdivision (b). Subdivision (b) prescribes the statute of limitations for recovery under Section 1951. Although the prior law was not clear, it appears that, if the lessor terminated a lease because of the lessee's breach and evicted the lessee, his cause of action for the damages resulting from the loss of the rentals due under the lease did not accrue until the end of the original lease term. See De Hart v. Allen, 26 Cal.2d 829, 161 P.2d 453 (1945); Treff v. Gulko, 214 Cal.

591, 7 P.2d 697 (1932). Under Section 1951, an aggrieved lessor may terminate the lease and immediately sue for the damages resulting from the loss of the rentals that would have accrued under the lease.

Section 1951.2

Comment. Even though the lessee has breached the lease and abandoned the property, Section 1951.2 permits the lessor to elect to recover the rent as it becomes due under the terms of the lease if the lease is one described in subdivision (a) and provides for this remedy. Unlike Section 1951, Section 1951.2 imposes no obligation on the lessor to retake possession of the property and relet it to minimize damages. The lessor may permit the property to remain vacant and nevertheless recover the rent provided in the lease as it becomes due. In this respect, the section continues prior California law. See De Hart v. Allen, 26 Cal.2d 829, 832, 161 P.2d 453, 455 (1945).

Section 1951.2 also permits the lessor to retake possession of the property after it has been abandoned by a defaulting lessee and to relet the property to a new teneant. In such a case, the lessor is entitled to recover the rent as it becomes due and the original lessee is entitled to have the rent received on the reletting, less the reasonable expenses of reletting, set off against the amount of the rent payable under the original lease. The reletting of the premises by the lessor does not waive his rights under Section 1951.2. Thus, under Section 1951.2, the lessee may not, by abandoning the property and ceasing to pay rent, relieve himself of the obligation to pay the rent. If he desires to surrender the property, he must secure the lessor's consent. The lessee must prove an unequivocal manifestation of consent on the part of the lessor to the surrender. The reletting or attempting to relet the property is not an unequivocal manifestation of consent and no notice of the intent to relet the property after abandonment by the lessee is necessary. The lessee does not need to be told what his

obligations under the lease are. He knows that he is required to pay the rent to the end of the lease according to the terms of the lease. It is to his benefit, not his detriment, if the lessor is willing to relet the property and thus mitigate the damages. Under the prior law, if the lessor did not wish to accept the surrender of the property, he was required to notify the lessee that he was retaking possession of the property on behalf of the lessee and that he intended to re-lease the property for the account of the lessee. This notice requirement discouraged lessors from reletting to mitigate damages and has been eliminated. In this respect, Section 1951.2 is consistent with the law concerning a wrongfully discharged employee; a wrongfully discharged employee does not have to notify his former employer before taking another job. 1 Witkin, Summary of California Law Agency § 96 at 471 (1960)(by implication).

Under prior law, the lessor could relet the property after the original lessee had breached the lease and abandoned the property. The lessor could relet the property for his own account (in which case the lessee's rental obligation was terminated) or for the account of the lessee (in which case he could recover any deficiency from the lessee). See discussion in Dorcich v. Time Oil Co., 103 Cal. App.2d 677, 685, 230 P.2d 10, 15 (1951). Although no decision so holding has been reported, the rationale of the California cases indicates that, if the lessor received a higher rental when reletting for the account of the lessee than was provided in the original lease, the lessee was entitled to the profit. See Harvey, A Study to Determine Whether the Rights and Duties Attendant Upon the Termination of a Lease Should Be Revised, 54 Cal. L. Rev. 1141, 1156-1166 (1966), reprinted with permission in 8 Cal. Law Revision Comm'n Reports 701, 731 (1967). Under Section 1951.2, the

lessor has the right to relet the property after abandonment, but the fiction of an "agency to relet" is abolished and the lessor is entitled to retain any "profit" made on the reletting.

The remedy provided by Section 1951.2 is available only if the lease so provides. Moreover, the remedy is available only if the lease is for a substantial rent (\$500 or more a month) or a substantial term (five years or more). The remedy is not available if the lessor evicts the lessee; in such a case, the damages are computed under Section 1951, 1951.4, or 1951.6.

Section 1951.2 does not affect any right the lessor may have to obtain specific performance of a covenant by the lessee to engage in business on the leased premises if the lessor elects to resort to that remedy. See Section 1952.2.

Section 1951.4

Comment. Section 1951.4 provides that a lease may include a provision that a deposit or advance payment made by the lessee may be retained by the lessor as damages if the lessee fails to perform his obligations under the lease. The parties may include such a provision in the lease in order to avoid the necessity of determining damages under the rules provided in Section 1951 or 1951.2.

Section 1951.4 contains two provisions designed to protect the unwary tenant. First, the deposit or advance payment must be made at approximately the same time the tenant takes possession of the property. This protects the tenant who fails to read the lease, because he is unlikely to make a deposit unless he knows why the deposit is required. Second, the amount of the deposit must not be an unconscionable sum.

The remedy provided by Section 1951.4 is an alternative remedy to those provided by Sections 1951 and 1951.2. The lessor is required to give the lessee written notice of his election to utilize the remedy under Section 1951.4 within 60 days after the lessee's breach. Failure to give the notice within this time results in a waiver of the remedy provided by Section 1951.4.

Section 1951.4 changes the prior California law. Under the prior California law, the right of the lessor to retain an advance payment depended on the nomenclature used by the parties. The case law relating to the various prepayment devices was recently summarized as follows:

"[T]he monies paid upon the execution of a lease . . . fall into four classes: (1) advance payment of rent; (2) as a bonus or consideration for the execution of the lease; (3) as liquidated damages; and (4) as a deposit to secure faithful performance of the terms of the lease." . . . [I]f the payment was made under the first two classes it may be retained by the landlord if the lease is terminated due to the fault of the tenant. Payments under

class three are penalties, result in forfeitures, are invalid as such, and may be recovered by the tenant. Payments made under the fourth class are retainable by the landlord only to the extent of the amount of damage actually suffered. [Warming v. Shapiro, 118 Cal. App.2d 72, 75, 257 P.2d 74, 76 (1963).]

Although the labels differ, these various prepayment provisions are the same in substance. However, under existing law, the name applied to the prepayment by the parties to the lease determines whether the sum may be retained by the lessor upon the lessee's default. Section 1951.4 changes the California law so that the substance of a prepayment clause, rather than its technical terminology, controls the right of the lessor to retain the advance payments.

Section 1951.6

Comment. Section 1951.6 provides that a high rent (\$500 or more per month) or long term (five years or more) lease may include a provision for liquidated damages for breach of the lease by the lessee subject only to the limitation that the amount of the liquidated damages must not be an unconscionable sum. There is no requirement that it be difficult or impracticable to fix the amount of damages. The parties may wish to include a liquidated damages provision in order to avoid the necessity of computing damages under Section 1951 or as an alternative to computing damages under Section 1951.2. Under prior law, a liquidated damages provision was void. E.g., Jack v. Sinsheimer, 125 Cal. 563, 58 Pac. 130 (1899); McCarthy v. Tally, 46 Cal.2d 577, 297 P.2d 981 (1956).

Section 1951.8

Comment. Leases, like other contracts, sometimes provide that a party is entitled to recover reasonable attorney's fees incurred in successfully enforcing or defending his rights in litigation arising out of the lease. Section 1951.8 makes it clear that nothing in Sections 1951 to 1953 impairs a party's rights under such a provision.

Section 1952

Comment. Section 1952 changes the prior California law. Under the prior law, breach of the lease and abandonment of the property by the lessee did not terminate the lease and the lessor remained obligated to perform all his obligations under the lease. If the lessor violated any of the provisions of the lease, he in effect excused the lessee from further rental payments and from any liability for prospective damages caused by the lessee's abandonment. See Kulawitz v. Pacific Woodenware & Paper Co., 25 Cal.2d 664, 155 P.2d 24 (1944); Welcome v. Hess, 90 Cal. 507, 27 Pac. 369 (1891). Section 1952 makes it clear that the lessor is no longer required to act after a breach and abandonment or after termination of the lease as if the lessee's right to have the lessor perform his obligations continued in existence; the lessor is excused from further performance of his obligations after he retakes possession of the property.

Section 1952.2

Comment. Section 1952.2 makes it clear that the statute sections therein listed do not affect the right of the lessor to obtain equitable relief where such relief is appropriate.

For example, an apartment building may be leased under a "master lease" to a lessee who then leases the individual apartments to subtenants. The appointment of a receiver may be appropriate if the lessee under the master lease collects the rent from the subtenants but fails to pay the lessor the rent payable under the master lease. The receiver would collect the rent from the subtenants on behalf of the lessee and pay to the lessor the amount he is entitled to receive under the master lease. This form of relief would protect the lessor against the lessee's misappropriation of the rent from subtenants and at the same time would preserve the lessee's obligation to pay the rent provided in the master lease.

In some cases, other forms of relief may be appropriate. For example, a lessor of property in a shopping center may include a covenant in a particular lease that the lessee shall operate a particular business in the leased property and shall not open another business engaged in the same activity within a specified area. If the lessee repudiates the lease and the lessor, to minimize his damages, relets the property to another for the same or a similar purpose, the seeking of damages from the first lessee for the repudiation and abandonment should not preclude the lessor from also obtaining specific enforcement of the original lessee's covenant not to compete. The right to specific

§ 1952.2

enforcement of the lessee's covenant not to compete would be in addition to the lessor's right to damages for loss of rent, for the failure to continue in business, and for other damages resulting from the repudiation of the lease.

Under prior law, there were no cases considering specific enforcement of the covenant to pay rent because the lessor could allow the property to remain vacant and sue for the rent as it accrued. Thus, the remedy at law was equivalent to specific performance. In addition, the suit was for money damages and the remedy at law was deemed adequate. Under Section 1951, however, the lessor must sue for damages within four years of the breach of a written lease and within two years of the breach of an oral lease. Under such circumstances, a situation might arise where the court would consider rendering a judgment of specific performance of a covenant to pay rent or remain in business on the premises because of the impossibility of computing money damages or because the lease called for payment in something other than money. Such a situation might occur under a lease calling for the rental to be paid from a specific percentage of the gross or net receipts. Section 1952.2 is designed to make it clear that that remedy will be available if proper under the circumstances; Sections 1951, 1951.2, 1951.6, 1951.8, and 1952 do not preclude an action for specific performance of a lease provision if that remedy is appropriate.

Section 1953

Comment. Section 1953 is designed to clarify the relationship between Sections 1951-1951.8 and the chapter of the Code of Civil Procedure relating to actions for unlawful detainer, forcible entry, and forcible detainer. The actions provided for in the Code of Civil Procedure are designed to provide a summary method of recovering possession of property. Those actions may be used by a lessor whose defaulting lessee refuses to vacate the property after termination of the lease.

Subdivision (b) of Section 1953 provides that the fact that a lessor has recovered possession of the property by an unlawful detainer action does not preclude him from bringing a separate action to recover the damages to which he is entitled under Sections 1951, 1951.4, 1951.6, and 1951.8. Some of the incidental damages to which the lessor is entitled may be recovered in either the unlawful detainer action or in an action to recover the damages specified in Sections 1951, 1951.4, 1951.6, and 1951.8. Under Section 1953, such damages may be recovered in either action, but the lessor is entitled to but one determination of the merits of a claim for damages for any particular detriment.

Subdivision (c) does not preclude the lessor from recovering damages under Sections 1951, 1951.4, 1951.6, and 1951.8 or obtaining specific relief to enforce a covenant not to compete. If the lease is not terminated, it continues in force for purposes of a covenant from the lessee to the lessor, other than the covenant to pay rent. However, when the lessor has evicted the lessee under the unlawful detainer provisions, he cannot proceed under the provisions of Section

1951.2; a lessor cannot evict the tenant and refuse to mitigate damages. Thus, where a lessee who is holding under a lease for more than a five-year term is evicted for failure to pay rent, the lessor cannot hold him to a promise to guarantee the rent made pursuant to Section 1951.2. In effect, the lessor is put to an election of remedy in such a case.

Section 1953.5

Comment. Section 1953.5 is included to preclude the application of Sections 1951 to 1953 to existing leases.

Section 1954

Comment. An agreement for the exploration for or the removal of natural resources, such as the so-called oil and gas lease, has been characterized by the California Supreme Court as a profit a prendre in gross. See Dabney v. Edwards, 5 Cal.2d 1, 53 P.2d 962 (1935). These agreements are distinguishable from leases generally. The ordinary lease contemplates the use and preservation of the property with compensation for such use, while a natural resources agreement contemplates the destruction of the valuable resources of the property with compensation for such destruction. See 3 Lindley, Mines § 861 (3d ed. 1914).

Sections 1951-1953 are intended to deal with the ordinary lease of real property, not with agreements for the exploration for or the removal of natural resources. Accordingly, Section 1954 limits these sections to their intended purpose. Of course, some of the principles expressed in these sections may be applicable to natural resources agreements. Section 1954 does not prohibit application to such agreements of any of the principles expressed in this article; it merely provides that the statutes found here do not require such application.

Section 1954.5

Comment. Section 1954.5 is included to prevent the application of any provision of Sections 1951 to 1953 to lease-purchase agreements by public entities if such application would make the agreement invalid.

EXHIBIT I

CIVIL CODE

Note: Sections 1951-1954.5 are new.

Section 1951. Damages recoverable upon abandonment or termination of lease of real property

1951. (a) Except as otherwise provided in Sections 1951.2 to 1952.2, inclusive, if a lessee of real property breaches the lease and abandons the property before the end of the term, or if his right to possession is terminated by the lessor because of a breach of the lease, the lessor may recover the sum of the following:

(1) The amount by which the present worth of the unpaid rent, including charges equivalent to rent, exceeds the amount of rental loss that the lessee proves could have been or could be reasonably avoided. For the purpose of this paragraph, unless the lease otherwise provides, the present worth of an unpaid rental installment that is not yet due is that amount which, together with five percent simple interest thereon from the time of computation to the due date of the rental installment, will equal the amount of the rental installment on the due date.

(2) Any other damages necessary to compensate the lessor for the detriment proximately caused by the lessee's breach or which in the ordinary course of things would be likely to result therefrom, less the amount of such damages that the lessee proves could have been or could be reasonably avoided.

(b) An action to recover under this section must be commenced within four years after the breach in the case of a written lease and within two years after the breach in the case of an oral lease.

§ 1951.2

Section 1951.2. Long term or high rent leases: alternative method  
of computing damages

1951.2. (a) This section applies only to leases of real property in which the term of the lease is five years or longer, or in which the rent, including charges equivalent to rent, amounts to \$500 or more per month, or both.

(b) If the lease so provides, the lessor may elect to recover from the lessee, in lieu of the damages provided in Section 1951, the amount of the rent, including charges equivalent to rent, as it becomes due under the lease.

(c) The lessor's reletting or attempting to relet the premises after the lessee has breached the lease and abandoned the property does not waive his rights under this section.

(d) If the lessor relets the property during the term of the lease, he is not accountable to the lessee for any rent, including charges equivalent to rent, received from the reletting, but such rent, less the reasonable expenses of reletting, shall be set off against any amount recoverable under subdivision (b).

Section 1951.4. Retention of deposit or advance payment as damages

1951.4. If a lessee of real property breaches the lease and abandons the property before the end of the term, or if his right to possession is terminated by the lessor because of a breach of the lease, the lessor may elect to retain as damages, in lieu of the damages provided in Sections 1951 and 1951.2, any amount paid to the lessor as consideration for the possession of the property or as a deposit to secure the performance by the lessee of his obligation under the lease (whether designated prepaid rent, bonus, consideration for the execution of the lease, security deposit, liquidated damages, or other designation) if:

(a) Such amount is not an unconscionable sum and was actually paid to the lessor at or before the time the lessee entered into possession of the property or within 15 days after the execution, renewal, or extension of the lease, whichever is later;

(b) The lease expressly provides that the lessor may retain such amount as damages for the lessee's failure to perform his obligations under the lease; and

(c) Not later than 60 days after such breach of the lease, the lessor gives the lessee written notice that he elects to utilize his remedy under this section and waives all other rights and remedies against the lessee. Notice sent to the lessee by certified or registered mail addressed to the leased premises is sufficient notice for the purposes of this subdivision.

Section 1951.6. Long term or high rent leases: liquidated damages

1951.6. (a) Notwithstanding Sections 1670 and 1671 of the Civil Code, if the lessor of real property retakes possession of the property after the lessee has breached the lease and abandoned the property before the end of the term or after the lessee's right to possession has been terminated by the lessor because of a breach of the lease, the lessor may recover such amount as is provided in the lease as liquidated damages for such breach if:

(1) The lease is one described in subdivision (a) of Section 1951.2; and

(2) The amount of the liquidated damages is not an unconscionable sum.

(b) Unless the lease otherwise provides, the remedy provided by this section is in lieu of the remedy provided by Section 1951 in any case where the lessor retakes possession of the property and liquidated damages are provided in the lease and they meet the requirements of paragraphs (1) and (2) of subdivision (a).

Section 1951.8. Attorney's fees

1951.8. If the lease so provides, a lessor or lessee of real property may recover, in addition to any other relief or amount to which he may be entitled, reasonable attorney's fees incurred in enforcing or defending his rights under the lease.

Section 1952. Lessor relieved of obligations after retaking possession

1952. When the lessor of real property retakes possession of the property after the lessee has breached the lease and abandoned the property before the end of the term or after the lessee's right to possession has been terminated by the lessor because of a breach of the lease, the obligation of the lessor thereafter to perform his obligations under the lease is excused. Nothing in this section affects the right of the lessor to seek relief for the default in performance or to enforce any other provisions of the lease.

Section 1952.2. Right to other appropriate relief

1952.2. Nothing in Sections 1951, 1951.2, 1951.6, 1951.8, or 1952. affects the right of the lessor under a lease of real property to obtain the appointment of a receiver, or to obtain specific or preventive relief, in any case where such relief is appropriate.

Section 1953. Effect on unlawful detainer, forcible entry, and forcible detainer actions

1953. (a) Except as provided in subdivision (c), nothing in Sections 1951 to 1952.2, inclusive, affects the provisions of Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, relating to actions for unlawful detainer, forcible entry, and forcible detainer.

(b) The bringing of an action under the provisions of Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure does not affect the lessor's right to bring a separate action to recover damages under Sections 1951, 1951.4, 1951.6, and 1951.8, but no damages shall be recovered in the subsequent action for any detriment for which a claim for damages was made and determined on the merits in the previous action.

(c) Notwithstanding the fact that the judgment referred to in Section 1174 of the Code of Civil Procedure does not declare the forfeiture of the lease, the lessor's right to damages after the lessor evicts the lessee is limited to the damages that the lessor is entitled to recover under Sections 1951, 1951.4, 1951.6, and 1951.8. Nothing in this subdivision affects the right of the lessor to obtain specific or preventive relief in any case where that relief is appropriate.

Section 1953.5. Leases executed before January 1, 1970

1953.5. Sections 1951 to 1953, inclusive, do not apply to:

(a) Any lease executed before January 1, 1970.

(b) Any lease executed on or after January 1, 1970, if the terms of the lease were fixed by a lease or other contract executed before January 1, 1970.

Section 1954. Natural resources agreements

1954. An agreement for the exploration for or the removal of natural resources is not a lease of real property within the meaning of Sections 1951 to 1953, inclusive.

Section 1954.5. Lease purchase agreements of public entities

1954.5. Where an agreement for a lease of real property from or to any public entity or any nonprofit corporation whose title or interest in the property is subject to reversion to a public entity would be made invalid if any provision of Sections 1951 to 1953, inclusive, were applicable, such provision shall not be applicable to such a lease. As used in this section, "public entity" includes the state, a county, city and county, city, district, public authority, public agency, or any other political subdivision or public corporation.

RIGHTS UPON TERMINATION OF LEASE OF  
PERSONAL PROPERTY

Section 3308 (amended)

SEC. Section 3308 of the Civil Code is amended  
to read:

3308. (a) The parties to any lease of real or personal property may agree therein that if such Unless the lease otherwise provides, if a lease shall be of personal property is terminated by the lessor by reason of any breach thereof by the lessee, the lessor shall thereupon be entitled to recover from the lessee the sum of the following:

(1) The present worth at the time of such termination, of the excess, if any, of the amount of rent and charges equivalent to rent reserved in the lease for the balance of the stated term or any shorter period of time specified in the lease over the ~~then~~ reasonable rental value of the premises property for the same period.

(2) Any other damages necessary to compensate the lessor for all of the detriment proximately caused by the lessee's breach or which in the ordinary course of things would be likely to result therefrom, less the amount of such damages that the lessee proves could have been or could be reasonably avoided.

~~The rights of the lesser under such agreement shall be cumulative to all~~

(b) Nothing in this section precludes the lessor from resorting to any other rights or remedies now or hereafter given to the lesser him by law or by the terms of the lease .

~~It is provided, however, that the election of the lessor to exercise the remedy hereinabove permitted shall be binding upon him and exclude recourse thereafter to any other remedy for rental or charges equivalent to rental or damages for breach of the covenant to pay such rent or charges accruing subsequent to the time of such termination. The parties to such lease may further agree therein that unless the remedy provided by this section is exercised by the lessor within a specified time the right thereto shall be barred.~~