

TRAINING BULLETIN

CIVIL DISPUTES - PART II

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Master Alphabetical Index: Commercial Disputes
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PURPOSE OF THIS BULLETIN

The purpose of this bulletin is to discuss civil disputes which are frequently encountered by officers and to emphasize the extent and limits of police authority in such cases. This bulletin supplements the information presented in Departmental Training Bulletin III-J, CIVIL DISPUTES, published on 28 Apr 67.

NEIGHBORHOOD DISPUTES

Neighborhood disputes are frequently a problem for beat officers. These disputes may concern arguments over property boundaries, juvenile activity, animals, parking or a myriad of other situations which have created friction between neighbors. Neighborhood problems most often grow and develop for some time and when finally brought to the attention of the police emotions are usually high. Some of these disputes are quite simple but others may be complicated and serious. However, even the simple problem may erupt into a major dispute if it is handled improperly or allowed to continue. The officer called to the scene of a neighborhood dispute must be proficient in handling people, using tact and diplomacy and his knowledge of the law and human nature to assist him in arriving at a proper and satisfactory solution. Even when there is no criminal violation, the officer can perform a very real service to the citizens by offering a few sensible and impartial suggestions.

Boundary Disputes

You may be called to a dispute where the complainant and his neighbor are having a disagreement about the boundary line between their property. The dispute may involve the placement of a fence, overhanging bushes or trees, or the planting of flowers or shrubs along the disputed area. It may be of help to have the disputants check and compare their title insurance policies, noting variances in the legal descriptions of the separate properties. If this is not satisfactory it may be advisable to suggest that the parties contact a neighborhood real estate office which may have a reliable tract map of the district and where the broker could advise them as to their property limits. Civil engineering firms will, for a nominal fee, survey property to determine boundary lines. If these suggestions fail, you should advise the participants to contact their attorneys for legal advice. You should discourage any physical arrests for trespassing in boundary disputes. These matters are civil in nature and unless definite intent can be shown there is no criminal involvement. If there is any question, or the complainant emphatically demands police action, you should make out a suspicious circumstances report.

Some boundary disputes may involve the complaint that a neighbor has picked fruit off a tree which hangs over the fence into his yard. The District Attorney's Office indicates that this is not a theft and any action taken must be in civil court.

Situations may also exist wherein one neighbor has erected a fence, and the other neighbor has destroyed or knocked it down, claiming it was on his property. **DO NOT MAKE AN ARREST** in this situation. A suspicious circumstances report should be taken to allow a complete investigation and if it is found that the action was criminal, the prosecution will be handled through the complaint-warrant process.

Children and Dogs

Police officers frequently receive assignments where the complaint is that neighborhood children have caused damage to property. While it is true that some elements of a criminal violation may be present, it may also be true that the child who did the damage does not come under the statutory provisions of being capable of committing a crime. Generally, children under fourteen years of age are held incapable of committing crimes, although this is dependent upon whether or not there is clear proof the child knew the wrongfulness of the act. There may also be a question as to whether there was any criminal intent accompanying the act. The complainant does not usually want an arrest but is more interested in collecting for the damage, and it is for this reason that the officer is called. We cannot act as collection agents for the complainant and this fact should be made clear to him. Section 1714.1 of the Civil Code holds parents liable for any willful misconduct of their child which results in property damage or physical injury for up to \$500 for each separate act. Parents are also liable for their child's conduct under the Vehicle Code and Education Code. You are NOT to tell the parent of the child that he has to pay for the damages. This is a matter for the courts to decide. In situations such as these you can sometimes win the cooperation of the parties by explaining the limitations of the law and of our authority to the complainant, and by explaining to the parent of the child that such conduct may well be indicative of criminal knowledge or malicious intent. If the complainant demands police action beyond requesting you to speak with the child and his parents, a suspicious circumstances report should be completed.

Calls are frequently received concerning the complaint that a child has been hit or narrowly missed by a rock thrown by neighborhood children or that they have induced him into a fight or are "picking on him." Such incidents are very common and certainly the majority should not involve official police action. Most people realize that neighborhood children may get into a fight one day but are usually back playing together as old friends on the next day. However, when a parent demands that you take action, complete a suspicious circumstances report. Take an appropriate offense report whenever it appears the fight was serious or vicious, or if injuries were sustained.

If a dog has committed a nuisance or property damage, the property owner may have grounds for a civil damage suit. The only action you should take is to ensure that the animal licensing laws have been complied with and to inform the owner of the dog of the provisions of Section 3-9.07 of the Oakland Municipal Code which governs dogs running loose. Consult Departmental Training Bulletin "Animal Ordinance" for these provisions. If you do not witness the actual commission of the violation and the matter cannot be adjusted any other way, complete an appropriate suspicious circumstances report. These reports are kept by the Animal Control Unit and if the problem becomes chronic a citation hearing may result.

Anonymous Letters

Although not strictly civil in nature and not a common occurrence, neighborhood disputes are occasionally aggravated by anonymous letters and can become serious problems. If the letters are lewd, threatening or otherwise offensive, complete a 415 P. C. crime report with an extra copy to the Postal Inspectors.

Parking Problems

Problems are frequently encountered wherein the complaint is made that a neighbor is parking in the complainant's regular space in the street. The complainant may have been parking in that space regularly for the past ten years, but if it is on a public street and someone else has parked there, he has no alternative but to park elsewhere. He may attempt to get you to issue a citation or to tell the person to move his car, or to get you to help him move it. When this situation occurs, take the time to explain to the complainant that there is nothing that can be done unless some bona fide parking violation exists. If it appears necessary, caution him against attempting to move the car himself or tampering with or damaging the vehicle.

COMMERCIAL DISPUTES

Commercial disputes are fairly common calls during the day and early evening hours. They occur with greater frequency in the downtown and business areas of the City where established businesses are located, but may also occur in residential sections where solicitors or itinerant peddlers operate. These disputes most often involve business transactions and are most frequently civil in nature.

When the situation involves a customer who claims merchandise purchased from a store is not what he expected or what he was led to believe, he will very often attempt to persuade you to force a refund for him from the store. You should advise the complainant that the matter is entirely civil and that we have no authority to force a refund or to take any official action on behalf of either party other than to preserve the peace. Advise the customer to retain his sales receipt or other evidence of sale and to contact an attorney. He may also contact the Better Business Bureau, located in the Latham Square Building at 15th and Broadway Streets to check the merchant's commercial reliability.

When the complaint concerns a cleaning or laundry shop, shoe repair store or similar establishment that has lost or damaged articles of clothing belonging to the complainant, you should, again, explain the limitations of police jurisdiction and advise the complainant that the matter must be handled civilly. This is true even when it appears that a clear case of negligence on the part of the establishment exists. You should advise the complainant to retain his receipt or check stub and, if the article has been damaged, to retain it in its original wrapping, as returned from the store. We may not elicit reimbursement from the store for the complainant.

If the complaint concerns an itinerant peddler or transient merchant, obtain good identification and ensure that the permit and license laws have been adhered to. Consult Departmental Training Bulletin "Door-to-Door Salesmen" for this information. Most complaints of salesmen

misrepresenting merchandise are against persons who usually operate in our city for only a short time and then move on to other cities, not bothering to comply with our licensing and permit regulations. These persons, when misrepresentation complaints are received against them, are naturally subject to outright arrest for failing to have the necessary permit. Occasionally however, complaints are received of misrepresentations when the license and permit regulations have been complied with. Salesmen who have gone to the time and trouble to obtain their permits are usually from our area and their operations are usually established and legitimate. When this situation arises and it does appear that the licensed merchant is misrepresenting his merchandise, you should write a detailed letter, including all the circumstances (identification and addresses of the complaining witness, the peddler and his business and facts of the misrepresentation) and forward it to the Fraud Detail. Upon further investigation the Fraud Detail may recommend revocation of the permit.

REPOSSESSIONS

Police officers are very often confronted with situations wherein repossession is involved. Questions invariably arise as to whether the action is a genuine repossession or an outright theft, whether the person attempting the repossession is lawfully authorized to do so, what rights and limits the reposessor has in gaining possession of the property and so on. Officers must have answers to these questions and knowledge of the laws governing such incidents in order to handle them effectively and to properly advise the participants.

Repossession itself is the seller's action in regaining possession of property from a purchaser who has defaulted in some way from the conditions of the sales contract under which the property was purchased. Usually, the default amounts to the failure of the purchaser to maintain his payments, although there are many other conditions which, if not met, may be justification for repossession. For instance, most contracts, mortgages and lease agreements have a "collateral in jeopardy" clause which is used as reason for repossession whenever the legal owner has information that leads him to believe the customer is a narcotics addict, bootlegger, or active in any crime that will allow the collateral to be confiscated, or that he is planning to leave the state with intent to defraud.

A sale under a conditional sales contract or chattel mortgage agreement is not actually a sale but, rather, is an agreement to sell, with the buyer merely having a conditional right of possession and the seller retaining actual title to the property. The buyer may acquire title only by performing the obligations expressed in the contract.

The philosophy of the laws governing repossession apparently is that the seller has the right, upon default of the buyer, to take property without process of law **ONLY IF POSSESSION CAN BE SECURED PEACEABLY**. If the property cannot be taken peacefully the seller must resort to other civil recourse. He may have his attorney file an action in civil court called "Replevin," or more commonly "Claim and Delivery." This type of action, upon order of the court, directs the sheriff to take the property. In so doing he may break into the dwelling or enclosure to carry out the order. Sellers will, however, usually try to avoid a court action as the value of the property most often does not justify the additional expense. For this reason, professional reposseors are employed to recover the property.

Who Can Repossess?

Repossession may be accomplished by the legal owner of the property or his authorized representative. The representative must either be an employee of the legal owner or a licensed reposessor who has received authorization to act in behalf of the legal owner in retaking the property. For example, an employee of a lending institution or automobile dealer may repossess for his own employer, providing that the employee is working only for his employer in repossessing the property. A bank employee can repossess for another bank only if the authorization to do so has been given to the bank employing him. However, a bank employee cannot repossess for anyone else such as an automobile dealer, finance company or credit union, nor can an employee of any of these businesses repossess for anyone other than his own employer. Private detectives and collection agencies not holding a reposessor's license are also prohibited from repossessing.

All employees of licensed repossession agencies carry a registration card issued by the State of California, along with an identification card issued by their employer. Exceptions arise when new employees are involved who have not had time to receive their registration from the State. They will, however have an identification card from their employer. Representatives of lending institutions and employees of automobile dealers and finance companies will usually have sufficient identification to establish their relation with the company.

Restrictions on Repossessors

Most of the laws governing repossessors are contained in the Business and Professions Code and relate specifically to licensed repossession agencies and their representatives. Under the provisions of the Code they are prohibited from engaging in certain acts and practices. A licensed reposessor is prohibited from using any badge or title, wearing a uniform, using an insignia, identification card or alias, or making any statement with the intent to give an impression that he is connected in any way with the Federal Government, a state government, or any political subdivision of a state government. They may not recover a vehicle sold under a conditional sales agreement without first having received authorization or before a signed or telegraphic authorization has been received from the legal owner of such property. They are further prohibited from soliciting recovery of vehicles after they have been located, charging unincurred expenses, and using recovered property for their own personal use.

The provisions of the Business and Professions Code regulating repossessors do not apply to: (1) the legal owner of personal property which has been sold under a conditional sales agreement, (2) a person employed exclusively and regularly by one employer in connection with the affairs of such employer and where there exists an employer-employee relationship, (3) admitted insurers and agents and insurance brokers licensed by the State, performing duties in connection with insurance transacted by them, or (4) any bank subject to the jurisdiction of the Superintendent of Banks of the State of California or the Comptroller of Currency of the United States.

Reports

Whenever certain property is repossessed, reports to the local law enforcement agencies are required. The purpose of such reports is to eliminate theft reports which the purchaser might make when unaware that the missing property has been repossessed.

Section 28 of the California Vehicle Code states: "Whenever possession is taken of any vehicle by or on behalf of any legal owner thereof under the terms of a security agreement, the person taking possession shall immediately notify, by the most expeditious means available, the city police department where such taking of possession occurred, if within an incorporated city, or the sheriff's department of the county where such taking of possession occurred, if outside an incorporated city, and shall within 24 hours forward a written notice to such department."

In addition, Section 5-15.21 of the Oakland Municipal Code provides that: "Every person repossessing a motor vehicle or other vehicle subject to registration under the laws of this State, or any aircraft, watercraft, or machinery or device mounted on wheels, and movable from place to place, hereinafter referred to as repossessed property, from the owner or custodian thereof shall forthwith report that fact to the Chief of Police. Immediate report shall be made by telephone, followed by a post card or letter containing the name and address of the person so repossessing, the name and address of the person in whose name the repossessed property is registered, the date and time of repossessing, the make, model, year and license number of the repossessed property, or engine number if no license number is available, the location from which the property was repossessed, and any other information required by the Chief of Police."

Notice of repossession is made to the Records Section of the Records and Communications Division. When such notice is received, the information is listed on an Auto Repossession Record form (fig. 1) which is placed in the Towed Vehicle File. Thereafter, when any officer receives an assignment to take a report of a stolen automobile the Towed Vehicle File is first checked to make sure that the vehicle has not been towed or repossessed. A problem will sometimes arise when the vehicle has just been repossessed and the owner is not aware of this fact. If the owner calls the Department to report his vehicle stolen before the reposessor has had time to make a notification, a check of the Towed Vehicle File will show the vehicle as being clear. In this case an officer is dispatched and a stolen automobile report completed. As a safeguard therefore, all stolen automobile reports are double checked against the Towed Vehicle File when they are processed. When a vehicle is found to have been repossessed rather than stolen, the report is stopped and the owner notified.

LICENSE NUMBER	AUTO REPOSSESSION RECORD OAKLAND POLICE DEPARTMENT			
DATE/TIME VEHICLE REPOSSESSED	YEAR	MAKE	MODEL	COLOR
LOCATION VEHICLE TAKEN FROM				
PERSON REPOSSESSING VEHICLE		PHONE		
AGENCY REPOSSESSING VEHICLE		ADDRESS		
LEGAL OWNER		ADDRESS		
REGISTERED OWNER		ADDRESS		
CLERK				

Figure 1

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Determining Identity of Repossessed Vehicle

Occasionally there will arise disputes as to whether the vehicle being repossessed is the one which is supposed to be repossessed. When the task of repossessing has been turned over to a licensed agency, the representative will have in his possession a letter or other evidence authorizing the agency to repossess the vehicle on behalf of the legal owner. This authorization is commonly referred to as an assignment. If the person attempting the repossession is an employee of a lending institution or automobile dealer he will have a form¹ such as a ledger card, fully describing the property to be repossessed and the location or address where the property is usually kept.

Entering Private Property to Repossess

Occasionally³ a dispute will involve the issue of a reposessor's right to enter private property, and it may be demanded of the officer to arrest the reposessor for such an alleged violation. As a general rule a reposessor has the right to enter private property to effect repossession for default under a sales contract but in so doing he may not break in or commit any breach of the peace. However, because the matter is governed by the terms of the contract the situation remains a civil matter and this fact must be explained fully to the disputing parties. Even though you may not take action there may be cause for civil action and the disputants should be referred to their attorneys. If the complainant demands the reposessor be arrested for trespass or burglary and you cannot settle it any other way, complete a suspicious circumstances report. **DO NOT ARREST** unless a clear case of burglary has been committed.

An experienced reposessor usually will not aggravate the situation if he finds the purchaser has become angry to the extent he may possibly be moved to violence. They realize the dangers of such situations and will usually leave and attempt the repossession at another time.

It is beyond the scope of your authority as a police officer to make the decision as to who should have the property - this decision is for the civil courts to determine. It may be of help in settling the dispute to advise the complainant to check his copy of the sales contract. In any case, the complainant should be advised to contact an attorney for legal advice.

Personal Property in Repossessed Vehicle

Section 7538.2 of the Business and Professions Code requires that if personal effects or other personal property, not covered by a conditional sales agreement or by a chattel mortgage, are contained in or on personal property at the time it is recovered, a complete and accurate inventory shall be made of such personal property or effects. The date and time the inventory is made shall be indicated and it shall be signed by the person or persons who recovered the personal property on behalf of the legal owner or mortgagee. It is also required, in addition to itemization, that the property be kept in safekeeping for a reasonable length of time. Further, the reposessor is required to make a condition report of the condition of the reposessed vehicle for the legal owner.

Officer's Duty

Repossession of property is always a civil matter and the sole duty of the officer called to the scene is to preserve the peace. The refusal of the purchaser to relinquish the property is of no concern to the officer. If the repossession cannot be accomplished peacefully, you may suggest to the person so attempting it that it is to his advantage to desist in his efforts and to resort to further civil action. Make sure that you do not create the impression of authority for either side, and impress this impartiality on the participants. However, you must also make it clear to those involved that regardless of the civil matter of the incident, any violation of a criminal law will subject the violator to arrest and prosecution.

The person from whom the property is being reposessed may claim that a theft is being committed or that a trespass is or was committed. As in other similar situations, the parties must be advised that the situation is wholly civil in nature and the limits of police jurisdiction must be explained. The best course of action is to refer such participants to their attorneys. Do not assist the reposessor in enforcing the repossession but, conversely, do not tell him he may not reposse. If the complainant demands police action, even though he has been told that the matter is civil, complete a suspicious circumstances report to settle the problem temporarily. It may be necessary in extreme cases for the complainant to speak with follow-up investigators to convince him that the matter is not criminal in nature.

Prosecution

If you suspect a violation of the provisions of the Business and Professions Code regulating licensed repossessioners, complete a suspicious circumstances report, including all the information and circumstances of the incident. The regulations are contained in Article 3, Chapter 11, of the Business and Professions Code. Route an extra copy of the report to the Department of Professional and Vocational Standards, Bureau of Private Investigators and Adjusters, 1021 'O' Street, Sacramento, California 95814, Attention: Chief of Department.

SMALL CLAIMS COURT

Frequently during the course of your regular duties you will have occasion to refer citizens to other agencies or governmental departments for assistance. When civil disputes are involved the participants are very often referred to a Small Claims Court for a judicial determination which the police cannot render. The following general information will assist you in ascertaining whether a particular situation should properly be referred to the Small Claims Court.

The purpose of the Small Claims Court is to reduce the expense and delay attending ordinary methods of litigation where the amount claimed is small. Proceedings are informal with the object of dispensing speedy justice between parties. In California the Small Claims Court is not a separate, formally constituted tribunal, set apart from the other courts. Rather, it is a special procedure for dispensing of claims for small amounts, and judges of municipal and justice courts, when exercising the jurisdiction and procedure provided by the small claims statute, are known and referred to as the Small Claims Court.

Jurisdiction of the Small Claims Court is limited to cases for the recovery of money only when the amount claimed does not exceed \$1500 and when the court is the proper court for trial. A party cannot sue for the return of personal property - only for the value thereof up to \$1500. However, while there is no provision in the law for a decision to be rendered for property other than money, it is not unusual, when the suit is for the value of an article wrongfully withheld, to render a judgment allowing for the return of the property which would satisfy the money judgment. The small claims statute has been construed to give the Small Claims Court jurisdiction over tort claims as well as claims based on contract. Thus tort actions for libel, for example, may be prosecuted in the Small Claims Court when the amount claimed does not exceed \$1500 and when all other conditions have been met.

No attorney at law, or other person, may represent the plaintiff or defendant in the filing, prosecution or defense in a Small Claims Court proceeding, and litigants themselves are allowed to tell their stories in their own way. The judges are lenient as to the rules of evidence and probably have more latitude to arrive at an equitable decision than in any other judicial proceedings. They may make outside investigations, question people who may have something to contribute or visit scenes of accidents and so on.

Actions in the Small Claims Courts are commenced by filing with the Small Claims Court clerk an affidavit or declaration on a form provided by the Court, together with a required \$1.50 filing fee. The declaration is usually prepared in the court clerk's office from information furnished by the plaintiff. A date is set for hearing of the claim and a copy of the declaration and order must

be delivered to the party from whom the money is sought. Although costs are low, they must be prepaid and ordinarily become a part of the judgment awarded by the court.

In Oakland, the Small Claims Court clerk's office is located at 600 Washington Street, on the fourth floor. Information may be obtained by calling 834-5151.