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CIVIL CODE - CIV

DIVISION 3. OBLIGATIONS [1427 - 3273.69] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*)

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.69] (*Part 4 enacted 1872.*)

TITLE 8. INVOLUNTARY TRUSTS [2223 - 2225] (*Title 8 repealed (commencing with Section 2215) and added by Stats. 1986, Ch. 820, Sec. 8.*)

2223. One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner.

(*Repealed and added by Stats. 1986, Ch. 820, Sec. 8. Operative July 1, 1987, by Sec. 43 of Ch. 820.*)

2224. One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he or she has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

(*Repealed and added by Stats. 1986, Ch. 820, Sec. 8. Operative July 1, 1987, by Sec. 43 of Ch. 820.*)

2224.5. An action brought by the Attorney General pursuant to Section 2223 or 2224 may be brought at any time within 10 years after the cause of action accrued.

(*Added by Stats. 2015, Ch. 299, Sec. 2. (AB 556) Effective January 1, 2016.*)

2225. (a) As used in this section:

(1) "Convicted felon" means any person convicted of a felony, or found not guilty by reason of insanity of a felony committed in California, either by a court or jury trial or by entry of a plea in court.

(2) "Felony" means a felony defined by any California or United States statute.

(3) (A) "Representative of the felon" means any person or entity receiving proceeds or profits by designation of that felon, on behalf of that felon, or in the stead of that felon, whether by the felon's designation or by operation of law.

(B) "Profiteer of the felony" means any person who sells or transfers for profit any memorabilia or other property or thing of the felon, the value of which is enhanced by the notoriety gained from the commission of the felony for which the felon was convicted. This subparagraph shall not apply to any media entity reporting on the felon's story or on the sale of the materials, memorabilia, or other property or thing of the felon. Nor shall it apply to the sale of the materials, as the term is defined in paragraph (6), where the seller is exercising his or her first amendment rights. This subparagraph also shall not apply to the sale or transfer by a profiteer of any other expressive work protected by the First Amendment unless the sale or transfer is primarily for a commercial or speculative purpose.

(4) (A) "Beneficiary" means a person who, under applicable law, other than the provisions of this section, has or had a right to recover damages from the convicted felon for physical, mental, or emotional injury, or pecuniary loss proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

(B) If a beneficiary described in subparagraph (A) has died, "beneficiary" also includes a person or estate entitled to recover damages pursuant to Chapter 4 (commencing with Section 377.10) of Title 3 of Part 2 of the Code of Civil Procedure.

(C) If a person has died and the death was proximately caused by the convicted felon as a result of the crime for which the felon was convicted, "beneficiary" also includes a person described in Section 377.60 of the Code of Civil Procedure and any

beneficiary of a will of the decedent who had a right under that will to receive more than 25 percent of the value of the estate of the decedent.

(5) "Beneficiary's interest" means that portion of the proceeds or profits necessary to pay the following:

(A) In the case of a beneficiary described in subparagraph (A) or (B) of paragraph (4), those damages that, under applicable law, other than the provisions of this section, the beneficiary has or had a right to recover from the convicted felon for injuries proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

(B) In the case of a beneficiary described in subparagraph (C) of paragraph (4), those damages that, under all the circumstances of the case, may be just.

(C) A beneficiary's interest shall be reduced by the following amount:

(i) Money paid to the beneficiary from the Restitution Fund because of the crime for which the felon was convicted.

(ii) Money paid to the beneficiary by the convicted felon because of a requirement of restitution imposed by a court in connection with the crime for which the felon was convicted.

(iii) Money paid to the beneficiary because of a judgment against the convicted felon based upon the crime for which the felon was convicted.

(D) In the case of an unsatisfied existing judgment or order of restitution against the convicted felon and in favor of a beneficiary, any money paid to the beneficiary pursuant to this section shall be applied to reduce the amount of the unsatisfied judgment or order.

(6) "Materials" means books, magazine or newspaper articles, movies, films, videotapes, sound recordings, interviews or appearances on television and radio stations, and live presentations of any kind.

(7) "Story" means a depiction, portrayal, or reenactment of a felony and shall not be taken to mean a passing mention of the felony, as in a footnote or bibliography.

(8) "Sale" includes lease, license, or any other transfer or alienation taking place in California or elsewhere.

(9) "Proceeds" means all fees, royalties, real property, or other consideration of any and every kind or nature received by or owing to a felon or his or her representatives for the preparation for the purpose of sale of materials, for the sale of the rights to materials, or the sale or distribution by the convicted felon of materials whether earned, accrued, or paid before or after the conviction. It includes any interest, earnings, or accretions upon proceeds, and any property received in exchange for proceeds.

(10) "Profits" means all income from anything sold or transferred by the felon, a representative of the felon, or a profiteer of the felony, including any right, the value of which thing or right is enhanced by the notoriety gained from the commission of a felony for which a convicted felon was convicted. This income may have been accrued, earned, or paid before or after the conviction. However, voluntary donations or contributions to a defendant to assist in the defense of criminal charges shall not be deemed to be "profits," provided the donation or contribution to that defense is not given in exchange for some material of value.

(b) (1) All proceeds from the preparation for the purpose of sale, the sale of the rights to, or the sale of materials that include or are based on the story of a felony for which a convicted felon was convicted, shall be subject to an involuntary trust for the benefit of the beneficiaries set forth in this section. That trust shall continue until five years after the time of payment of the proceeds to the felon or five years after the date of conviction, whichever is later. If an action is filed by a beneficiary to recover his or her interest in a trust within those time limitations, the trust character of the property shall continue until the conclusion of the action. At the end of the five-year trust period, any proceeds that remain in trust that have not been claimed by a beneficiary shall be transferred to the Controller, to be allocated to the Restitution Fund for the payment of claims pursuant to Section 13969 of the Government Code.

(2) All profits shall be subject to an involuntary trust for the benefit of the beneficiaries set forth in this section. That trust shall continue until five years after the time of payment of the profits to the felon or five years after the date of conviction, whichever is later. If an action is filed by a beneficiary to recover his or her interest in a trust within those time limitations, the trust character of the property shall continue until the conclusion of the action. At the end of the five-year trust period, any profits that remain in trust that have not been claimed by a beneficiary shall be transferred to the Controller, to be allocated to the Restitution Fund for the payment of claims pursuant to Section 13969 of the Government Code.

(3) Notwithstanding paragraph (2), in the case of a sale or transfer by a profiteer of the felony, the court in an action under subdivision (c) shall, upon an adequate showing by the profiteer of the felony, exclude from the involuntary trust that portion of the profits that represents the inherent value of the memorabilia, property, or thing sold or transferred and exclusive of the amount of the enhancement to the value due to the notoriety of the convicted felon.

(c) (1) Any beneficiary may bring an action against a convicted felon, representative of the felon, or a profiteer of a felony to recover his or her interest in the trust established by this section.

(2) That action may be brought in the superior court of the county in which the beneficiary resides, or of the county in which the convicted felon resides, or of the county in which proceeds or profits are located.

(3) If the court determines that a beneficiary is entitled to proceeds or profits pursuant to this section, the court shall order the payment from proceeds or profits that have been received, and, if that is insufficient, from proceeds or profits that may be received in the future.

(d) If there are two or more beneficiaries and if the available proceeds or profits are insufficient to pay all beneficiaries, the proceeds or profits shall be equitably apportioned among the beneficiaries taking into account the impact of the crime upon them.

Prior to any distribution of any proceeds to a beneficiary, the court shall determine whether the convicted felon has failed to pay any portion of a restitution fine or penalty fine imposed by a court, or any restitution imposed as a condition of probation. The court shall also determine whether the felon is obligated to reimburse a governmental entity for the costs of his or her defense and whether a portion of the proceeds is needed to cover his or her reasonable attorney's fees incurred in the criminal proceeding related to the felony, or any appeal or other related proceeding, or in the defense of the action brought under this section. The court shall order payment of these obligations prior to any payment to a beneficiary, except that 60 percent of the proceeds or profits shall be reserved for payment to the beneficiaries.

(e) (1) The Attorney General may bring an action to require proceeds or profits received by a convicted felon to be held in an express trust in a bank authorized to act as a trustee.

(2) An action may be brought under this subdivision within one year after the receipt of proceeds or profits by a convicted felon or one year after the date of conviction, whichever is later.

That action may be brought in the superior court of any county in which the Attorney General has an office.

(3) If the Attorney General proves that the proceeds or profits are proceeds or profits from the sale of a story or thing of value that are subject to an involuntary trust pursuant to this section, and that it is more probable than not that there are beneficiaries within the meaning of this section, the court shall order that all proceeds or profits be deposited in a bank and held by the bank as trustee of the trust until an order of disposition is made by a court pursuant to subdivision (d), or until the expiration of the period specified in subdivision (b).

(4) If the Attorney General prevails in an action under this subdivision, the court shall order the payment from the proceeds or profits to the Attorney General of reasonable costs and attorney's fees.

(f) (1) In any action brought pursuant to this section, upon motion of a party the court shall grant a preliminary injunction to prevent any waste of proceeds or profits if it appears that the proceeds or profits are subject to the provisions of this section, and that they may be subject to waste.

(2) Upon motion of the Attorney General or any potential beneficiary, the court shall grant a preliminary injunction against a person against whom an indictment or information for a felony has been filed in superior court to prevent any waste of proceeds or profits if there is probable cause to believe that the proceeds or profits would be subject to an involuntary trust pursuant to this section upon conviction of this person, and that they may be subject to waste.

(g) Any violation of an order of a court made pursuant to this section shall be punishable as contempt.

(h) The remedies provided by this section are in addition to other remedies provided by law.

No period of limitations, except those provided by this section, shall limit the right of recovery under this section.

(Amended by Stats. 2000, Ch. 261, Sec. 2. Effective January 1, 2001.)