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2 Cal.4th 556, 828 P.2d 672, 7 Cal.Rptr.2d 531
Supreme Court of California

ELIZABETH BURDEN, Plaintiff and Respondent,
v.
DAVID SNOWDEN, as Chief of Police, etc., et al., Defendants and Appellants.

No. S021885.
Apr 30, 1992.

SUMMARY

A city police department recruit, who had been terminated by the department, sought reinstatement and other relief by way of a petition for a writ of mandate, contending that the department breached its duties owed her under the Public Safety Officers Procedural Bill of Rights Act (Gov. Code, § 3300 et seq.). The trial court determined that the recruit was a police officer within the meaning of the act and that the department's distinction between recruits and police officers was not valid. The court therefore granted the recruit's petition. (Superior Court of Orange County, No. 590772, William F. Rylaarsdam, Judge.) The Court of Appeal, Fourth Dist., Div. Three, No. G008981, affirmed.

The Supreme Court reversed the judgment of the Court of Appeal with directions to vacate the order of the trial court granting a writ of mandate and to remand the case to that court to determine whether the plaintiff's termination violated her due process rights, an issue which had been raised in, but had not been decided by, the trial court. It held that an examination of the legislative scheme, its history, and extrinsic aids demonstrated the act was not intended to apply to the recruit classification; therefore, the recruit was not entitled to coverage under the act. (Opinion by Baxter, J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d)
Law Enforcement Officers § 11--Public Safety Officers Procedural Bill of Rights Act--Application to Terminated Police Recruit.
In a writ proceeding initiated by a terminated city police recruit, the trial court erred in determining that the recruit was entitled to coverage under the Public Safety Officers Procedural Bill of Rights Act (Gov. Code, § 3300 et seq.). The recruit classification is not one which is specifically covered by the act. By its terms, the act defines public ***557** safety officers to mean only those peace officers referred to in certain enumerated sections of the Penal Code. Pen. Code, § 830.1, includes as peace officers "any police officer of a city," but contains no provision including a recruit or a civilian trainee. Prior to the enactment of the act, the Attorney General had determined that "trainee officers" were not peace officers for purposes of former Pen. Code, § 817, a predecessor to Pen. Code, § 830 et seq. (peace officers), and it may be presumed that the Legislature acquiesced in the Attorney General's distinction. Also, there was no evidence that the city police department classified certain employees as recruits for purposes of avoiding the act, or that the recruit was authorized to exercise the powers of a peace officer. Thus, real and meaningful distinctions exist between recruits and police officers. The act was intended to address the statewide concern for stable labor relations between statutorily defined public safety officers and their employers, not to regulate or restrict appointment of police officers by city police departments, and the act's purpose would not be furthered by extending coverage to persons who have not completed training.

[See **Cal.Jur.3d,** Law Enforcement Officers, § 33; 8 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 7748 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 774.]

(2)
Statutes § 20--Construction--Judicial Function--Reviewing Court.
In determining the scope of coverage under the Public Safety Officers Procedural Bill of Rights Act (Gov. Code, § 3300 et seq.), the reviewing court

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independently determines the proper interpretation of the statute. As the matter is a question of law, the reviewing court is not bound by evidence on the question presented in the lower court or by the lower court's interpretation.

(3)
Statutes § 21--Construction--Legislative Intent.
The rules governing statutory construction are well settled. The court begins with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent. In determining intent, the court looks first to the language of the statute, giving effect to its plain meaning. Although the court may properly rely on extrinsic aids, it should first turn to the words of the statute to determine the intent of the Legislature. Where the words of the statute are clear, the court may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.

(4)
Statutes § 45--Construction--Presumptions--Legislature's Knowledge of Pertinent Opinions of Attorney General.
When construing a statute, a court may presume that the Legislature acts with knowledge ***558** of the opinions of the Attorney General that affect the subject matter of proposed legislation.

(5)
Statutes § 20--Construction--Judicial Function--Determining What Is of Statewide Concern.
Although what constitutes a matter of statewide concern is ultimately an issue for the courts to decide, it is well settled that the courts will accord great weight to the Legislature's evaluation of this question.

(6)
Appellate Review § 32--Presenting and Preserving Questions--Matter Raised for First Time on Appeal.
A ground for relief raised for the first time on appeal is not properly before the appellate court, and the appellate court need not reach the merits of the issue.

COUNSEL

Thomas Kathe, City Attorney, Filarsky & Watt, Steve A. Filarsky, Pillsbury, Madison & Sutro, Amy D. Hogue and Kevin M. Fong for Defendants and Appellants.
Mayer & Reeves, Thomas M. Reeves, Irving Berger, Martin J. Mayer, Whitmore, Johnson & Bolanos, Richard S. Whitmore, Craig W. Patenaude and Helene L. Leichter as Amici Curiae on behalf of Defendants and Appellants.
John K. York and Celinda Tabucchi for Plaintiff and Respondent.

BAXTER, J.

We granted review in this case to determine the narrow issue whether a person hired by a city police department as a "police recruit" is entitled to coverage under the Public Safety Officers Procedural Bill of Rights Act (hereafter the Bill of Rights Act or the Act) (Gov. Code, § 3300 et seq.). [1] Our examination of the legislative scheme, its history and extrinsic aids leads us to conclude that the Act was not intended to apply to the recruit classification; therefore, a recruit is not entitled to coverage under the Act. Accordingly, we reverse the judgment of the Court of Appeal with directions to vacate the order of the trial court granting a writ of mandate and to remand the case to that court for proceedings consistent with this opinion. ***559**

Facts

In February 1988, the Costa Mesa Police Department (hereafter the Department) hired Elizabeth Burden (hereafter Burden) as a police recruit. From the outset, the Department made clear it was hiring Burden as a civilian, not as a police officer. The Department's job recruitment flyer specifically provided: "The Police Recruit position is a non-sworn position performing civilian police training work while attending a P.O.S.T. [Peace Officers Standards and Training] certified basic academy. Upon successful completion of the basic academy, Police Recruits are sworn in as full-time Police Officers." [2] Burden also signed a "Police Officer Trainee Advisement Form" which reflected her acknowledgement that she would not represent herself as a peace officer at any time, that she would not be a peace officer until she successfully completed the police academy, and that she would take no action as a peace officer or "in any other way attempt to use Peace Officer powers." The form further provided: "Due to

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the untimely starting of the police academy we were not able to complete your background, therefore your background will be completed while you are attending the academy. If for some reason you fail to pass your background and or medical, you will be terminated immediately."

Burden was directed to report to the Orange County Sheriff's Academy for 19 weeks of training on a full-time basis. During the time she attended the academy she was paid a flat hourly rate of $10.02 by the Department. Although Burden was not issued a police identification number or badge, she was issued a uniform with a hat piece identifying her as a recruit, a gun, ammunition, a baton and handcuffs.

As part of its standard screening process, the Department conducted a background investigation of Burden. Burden signed a "Release and Waiver" which authorized the Department to obtain any information in the files of her former employers and physicians. The release and waiver additionally provided: "I further understand that I waive any right or opportunity to read or review any background investigation report prepared by the Costa Mesa ***560** Police Department." Burden also signed an "Authorization Form" directed to her previous employer, the Honolulu Police Department, authorizing the release of any and all information for the limited purpose of aiding the Department in evaluating Burden's qualifications as a police recruit. Among other things, the form contained the following statement of understanding: "I understand that I will not receive and am not entitled to know the contents of confidential reports received from these agencies and I further understand that these reports are privileged."

Following receipt of the information from the Honolulu investigation, the Department terminated Burden for "failure to meet standards of a police officer." [3] This occurred during her 15th week at the training academy. Burden finished the remaining four weeks of the academy at her own expense, and subsequently applied without success to four other police departments. These other departments apparently also required Burden to sign release and waiver forms as part of their background investigations.

Through counsel, Burden eventually asked the Department for more specific information concerning the stated grounds for her termination. According to Burden's counsel, Chief of Police David Snowden informed him that Burden had committed "acts, while employed as a Honolulu Police Officer, which preclude her from ever working in law enforcement." No further information was provided.

Burden ultimately filed a claim against the City of Costa Mesa (hereafter the City). Thereafter she filed a mandamus petition in the superior court against the City, the Department and the police chief. Claiming that she was hired as a "public safety officer," Burden contended that the Department breached duties owed to her under the Bill of Rights Act (§ 3300 et seq.), and that her dismissal without notice and a pretermination hearing resulted in a deprivation of a liberty interest under the due process clause of the federal Constitution. The petition sought reinstatement, notice of the specific allegations which caused Burden's termination, an opportunity to respond, a hearing and a redetermination of the decision to terminate her.

The trial court determined that Burden was a public safety officer within the meaning of the Bill of Rights Act and that the Department's attempt to draw a distinction between police officers and recruits was not a valid one. The court further found that Burden's purported waivers of the right to see the results of her background investigation were unenforceable. Believing ***561** Burden was entitled to the Act's protections, the trial court granted her petition. [4]

The Court of Appeal affirmed, rejecting the Department's argument that police recruits are not public safety officers within the meaning of the Act. It also agreed that Burden's waivers were unenforceable. Finally, the court determined that because Burden's termination stigmatized her reputation and affected her ability to earn a living, it was punitive in nature and entitled Burden to an administrative appeal under provisions of the Act.

Discussion

1. *The Bill of Rights Act.*

The Bill of Rights Act establishes certain procedural rights and protections for public safety officers. Among other things, the Act assures a public safety officer the right to an administrative appeal when any punitive action is taken against the officer. (§ 3304, subd. (b).)[5] The Act also affords a public safety officer the opportunity to review and sign any instrument containing any adverse comment before the instrument is entered in the officer's personnel file. (§ 3305.)[6] It further gives the affected officer 30 days to respond in writing to any adverse comment placed in the file. (§ 3306.)[7]

(1a) The central issue is whether Burden is a "public safety officer" within the meaning of the Bill of Rights Act. The Department contends that because it hired Burden as a "police recruit" (referring to a candidate for a ***562** police officer position who has not yet completed a training academy and who is not authorized to use peace officer powers), and not as a "police officer," she is not a public safety officer as defined by the Act. Burden, on the other hand, contends that police recruits are encompassed by the Act's definition of "public safety officer," and that local agencies may not defeat application of the Act by classifying new hires as "recruits" instead of "police officers." Both the trial court and the Court of Appeal below held that the Act was intended to cover police recruits. For the reasons set forth below, we conclude otherwise.

(2) In determining the scope of coverage under the Act, we independently determine the proper interpretation of the statute. As the matter is a question of law, we are not bound by evidence on the question presented below or by the lower court's interpretation. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699 [170 Cal.Rptr. 817, 621 P.2d 856]; *Los Angeles County Safety Police Assn. v. County of Los Angeles* (1987) 192 Cal.App.3d 1378, 1384 [237 Cal.Rptr. 920].)

(3) The rules governing statutory construction are well settled. We begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent. (*Kimmel v. Goland* (1990) 51 Cal.3d 202, 208 [271 Cal.Rptr. 191, 793 P.2d 524]; *California Teachers Assn. v. San Diego Community College Dist., supra,* 28 Cal.3d at p. 698.) "In determining intent, we look first to the language of the statute, giving effect to its 'plain meaning.' " (*Kimmel, supra,* 51 Cal.3d at pp. 208-209, citing *Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 218-219 [188 Cal.Rptr. 115, 655 P.2d 317]; *California Teachers Assn., supra,* 28 Cal.3d at p. 698.) Although we may properly rely on extrinsic aids, we should first turn to the words of the statute to determine the intent of the Legislature. (*California Teachers Assn., supra,* 28 Cal.3d at p. 698.) Where the words of the statute are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history. (*Ibid.*)

(1b) During all relevant times herein, the Bill of Rights Act provided: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31 except subdivision (f), 830.4 except subdivision (f), and 830.5 of the Penal Code." (§ 3301.)[8] Penal Code section 830.1 is the only enumerated section of relevance to this ***563** case. When Burden was terminated in June 1988, Penal Code section 830.1 specified that "any police officer of a city" is a peace officer.[9]

Applying the foregoing rules of statutory construction, we observe that the recruit classification is not one which is specifically covered by the Act. The Act, by its own terms, defines public safety officers to mean only those peace officers referred to in certain enumerated sections of the Penal Code. Notably, the only Penal Code section relevant here provides that a peace officer includes "any police officer of a city," but contains no provision for the conferring of peace officer status upon a person appointed as a "police recruit" or "civilian trainee." (Pen. Code, § 830.1.)

Although Penal Code section 830.1 does not specify the recruit classification as a separate category of "peace officer," neither does it expressly exclude recruits. For this reason, Burden essentially takes the position that the term "any police officer of a city" is

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ambiguous and should be interpreted with reference to what she contends was the common meaning of the term "police officer" at the time the Bill of Rights Act was passed. Burden relies on the declarations of two 22-year veteran police officers, which set ***564** forth their current recollections that in 1976, police departments throughout California commonly used the term "police officer" to refer to police recruits and trainees as well as sworn police officers. [10] According to these officers, such practice continued at least until 1982, at which time new policies were instituted whereby new personnel were assigned the classification of "police recruit," and then elevated to "police officer" upon completion of the training academy.

This argument is unpersuasive. The declarations of these two officers are not logically probative of the Legislature's intent in enacting the Bill of Rights Act. Indeed, a 1968 opinion of the California Attorney General gives rise to a presumption that the Legislature did not intend the Act to cover the recruit classification.

(4) When construing a statute, we may presume that the Legislature acts with knowledge of the opinions of the Attorney General which affect the subject matter of proposed legislation. (*Cal. State Employees Assn. v. Trustees of Cal. State Colleges* (1965) 237 Cal.App.2d 530, 536 [47 Cal.Rptr. 73].) (1c) Here it is significant that, before the Bill of Rights Act was enacted, a published opinion of the California Attorney General had concluded that "cadets" and "trainee officers" were not peace officers under former Penal Code section 817, the predecessor statute to Penal Code section 830 et seq. [11] The Attorney General wrote: "There is no provision in [Penal Code] section 817 for the conferring of peace officer status upon a person appointed as a 'cadet' or 'trainee officer.' Since the [L]egislature has expressly named those who are 'peace officers' and has failed to include the aforementioned classifications, and additionally, since the designation 'cadet' or 'trainee ***565** officer' cannot be construed as being within the classification 'reserve' or 'auxiliary' sheriffs, we conclude that these persons are not peace officers within section 817." (51 Ops.Cal.Atty.Gen. 110, 112 (1968).)

Since the designation of peace officers in former Penal Code section 817 is not materially different from the designation in Penal Code section 830.1, subdivision (a) for purposes of making the cadet/trainee distinction, [12] the Legislature presumably acquiesced to the distinction when it subsequently enacted the Bill of Rights Act. (See *Tiffany v. Sierra Sands Unified School Dist.* (1980) 103 Cal.App.3d 218, 227 [162 Cal.Rptr. 669].)

Burden attempts to bolster her position by emphasizing that the Act encompasses a matter of statewide concern. She argues that the Department is improperly attempting to opt out of the legislation by simply "relabelling" a job title. This argument is without merit for two reasons.

To begin with, there is no evidence that the Department simply "relabels" job titles as among recruits and police officers for the purpose of avoiding the Act. Those appointed to the position of police officer are authorized to use the powers of a peace officer and to engage in active law enforcement. On the other hand, those appointed to the recruit position do not exercise such powers or functions; they are committed to attend the training academy on a full-time basis. There is no suggestion that the Department classifies any employee exercising peace officer authority as a recruit. [13] On this record, then, there exist real and meaningful distinctions between those classified as recruits and those classified as police officers. [14]

More significantly, the Department's appointment of police recruits and police officers is not a matter of statewide concern which is addressed by the Bill of Rights Act. ***566**

(5) "Although what constitutes a matter of statewide concern is ultimately an issue for the courts to decide, it is well settled that this court will accord 'great weight' to the Legislature's evaluation of this question. [Citation.]" (*Baggett v. Gates* (1982) 32 Cal.3d 128, 136 [185 Cal.Rptr. 232, 649 P.2d 874], fn. omitted [hereafter *Baggett*].) (1d) The Legislature's evaluation in this instance is quite explicit: "The Legislature hereby finds and declares that the rights and protections provided to peace officers [by the Bill of Rights Act] constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the

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maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California." (§ 3301.) Thus, the plain purpose of the Act is to assure the provision of effective law enforcement services throughout the state by maintaining stable employment relations between certain statutorily defined public safety officers and their employers.

In contrast, we have already recognized that the Bill of Rights Act is not intended to regulate or restrict the appointment of police officers by local law enforcement agencies. In *Baggett, supra,* we held that the home rule provisions of the California Constitution (Cal. Const., art. XI, § 5) do not preclude application of the Act to charter cities. In reaching that conclusion, we explained that the Act does not "purport to regulate [peace officers'] qualifications for employment," or " 'the manner in which,' or 'the method by which,' or 'the times at which,' " peace officers are elected or appointed. (*Baggett, supra,* 32 Cal.3d at p. 138.) Thus, the Act in no way impinges on the Department's ability to hire civilian recruits and to screen and train them before deeming them qualified to assume the position of "police officer." [15]

Burden next argues that if the legislative goal of eliminating labor unrest is to be achieved, the Bill of Rights Act would "logically cover" civilian ***567** trainees as well as postacademy graduates. However, there is no indication the Legislature sought to eliminate labor unrest among all categories of employees hired by law enforcement agencies. On the contrary, section 3301 makes clear that the Legislature was specifically concerned with the assurance of effective law enforcement, and went only so far as to provide procedural protections for certain statutorily designated peace officers.

In this regard, we observed in *Baggett, supra,* that "it can hardly be disputed that the maintenance of stable employment relations between police officers and their employers is a matter of statewide concern. The consequences of a breakdown in such relations are not confined to a city's borders. These employees provide an essential service. Its absence would create a clear and present threat not only to the health, safety and welfare of the citizens of the city, but also to the hundreds, if not thousands, of nonresidents who daily visit there. Its effect would also be felt by the many nonresident owners of property and businesses located within the city's borders. ... The inevitable result is that labor unrest and strikes produce consequences which extend far beyond local boundaries." (32 Cal.3d at pp. 139-140.) [16]

While labor unrest and work stoppage among police officers pose an obvious threat to the health, safety and welfare of the citizenry, it is doubtful that the same can be said in the case of police recruits. Police recruits such as Burden are not permitted to exercise peace officer authority or to otherwise act as police officers; instead, they attend a training academy on a full-time basis. And while it may be said that police recruits provide a pool from which police officers are ultimately selected, recruits are not immediately responsible for the public welfare. We therefore reject the notion that the Act must "logically cover" recruits and trainees in order to achieve the Act's goals.

Indeed, to judicially deem police recruits to be the equivalent of police officers, thus entitling them to the full panoply of protections under the Act, may even detract from effective law enforcement. Appointing new hires to the position of recruit offers local law enforcement agencies their first opportunity to quickly screen out those candidates who are unfit or unable to function as officers. It behooves cities, police departments, police officers, and most important, the public, to weed out these candidates at the earliest opportunity. Construing the term "police officer" to include recruits unnecessarily restricts local agencies from eliminating those candidates whose ***568** background investigations and/or academy performance indicate their likely unsuitability as police officers. [17]

Burden raises two other arguments in support of her expansive interpretation of the Bill of Rights Act. First, she argues that the contents of related statutes show the Legislature's contemplation that recruits who have not completed the training academy are included in the

definition of "peace officer." Second, she contends her position is supported by a 1980 opinion of the Attorney General. As demonstrated below, neither argument has merit.

First, Burden reasons that if the term "peace officer" is intended to refer only to graduates of the training academy, the effect of Penal Code section 832 [18] would be to require "peace officers" who have already completed the training academy to complete the training academy. Burden argues such an interpretation would render Penal Code section 832 redundant and meaningless. We disagree.

In enacting Penal Code section 832, the Legislature expressly stated its intent to set forth minimum standards designed to "raise the level of competence of peace officers where necessary." (Stats. 1971, ch. 1504, § 3, p. 2975.) [19] We do not view the minimum standards contained in section 832 as suggesting any legislative intent to affirmatively confer peace officer status ***569** upon those appointed to trainee positions. We likewise perceive no intent to preclude police departments from requiring an officer candidate to successfully complete academy training before being eligible for the position of police officer. [20]

Next, Burden argues her position is supported by an opinion of the Attorney General concerning the applicability of the Bill of Rights Act to sheriffs and police chiefs. (63 Ops.Cal.Atty.Gen. 829 (1980).) In concluding that sheriffs and police chiefs are covered by the Act, the Attorney General also determined that the Act applies to these and other peace officers even when the officers are unable to exercise peace officer authority for failure to meet the training or certificate requirements prescribed in Penal Code sections 832, 832.3, and 832.4. The Attorney General found that the training requirements are not a condition of employment, but a condition of the exercise of peace officer authority. He therefore concluded that "failure to meet those requirements or receive such a certificate by such a person may create an employer-employee relation of the type contemplated by the Legislature in enacting the act." (63 Ops.Cal.Atty.Gen., *supra,* at pp. 833-834.)

The Attorney General's opinion does not assist a person in Burden's position since it specifically refers to application of the Act to "a person employed in the position of a peace officer described in Penal Code section 830.1" and to any other peace officer "who would otherwise be included" in the Act. (63 Ops.Cal.Atty.Gen., *supra,* at p. 833.) We do not read the opinion as broadly calling for application of the Act to trainees who have not yet attained the position of police officer. [21] To do so would run contrary to our pronouncement in *Baggett, supra,* that the Act does not purport to regulate peace officers' qualifications for employment, or the manner in which, or the method by which, or the times at which, peace officers are elected or appointed. (*Baggett, supra,* 32 Cal.3d at p. 138.)

In sum, while the Bill of Rights Act is intended to provide procedural protections to police officers, it is not intended to regulate or restrict the appointment of police officers by city police departments. Consequently, a person hired by a police department as a recruit and not as a police officer is ***570** not entitled to coverage under the Act where real and meaningful distinctions exist between those classifications. We therefore hold that Burden is not covered by the Act. Because we find the Act inapplicable, we need not and do not decide the other issues raised by the parties regarding interpretation of the Act's provisions, and Burden's purported waivers thereof.

II. *Other Issues.*

Burden argues in her answer brief to the Department's brief on the merits that she is entitled to review her personnel file pursuant to the Public Records Act (§ 6250 et seq.), the Information Practices Act of 1977 (Civ. Code, § 1798 et seq.) and Labor Code section 1198.5. (6) However, this is the first time in this lawsuit that she has asserted these statutes as grounds for relief. Since these issues are not properly before us, we do not reach them on the merits.

Additionally, in the proceedings before the trial court, Burden sought relief on the alternative basis that because her termination stigmatized her reputation and impaired her ability to earn a living in her chosen profession, she was entitled to notice and a name-clearing hearing as part of her liberty interest under the due process clause of the federal Constitution. Since the trial court found the Bill of Rights Act applicable to Burden, it deemed it unnecessary to determine

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whether she additionally had rights as part of her liberty interest. In affirming the trial court judgment, the Court of Appeal also failed to consider this matter.

As the issue of relief under the due process clause of the federal Constitution was not previously addressed by the courts below, we decline to consider it for the first time here. But because the issue has not yet been resolved in the trial court, the matter is remanded to allow that court to decide whether Burden is entitled to a writ of mandate on that ground.

Disposition

The judgment of the Court of Appeal is reversed with directions to vacate the order of the trial court granting a writ of mandate and to remand the case to that court for proceedings consistent with this opinion.

Lucas, C. J., Mosk, J., Panelli, J., Kennard, J., Arabian, J., and George, J., concurred.

On May 28, 1992, the opinion was modified to read as printed above. ***571**

Footnotes

1 Unless otherwise indicated, all further statutory references are to the Government Code.

2 The Department consistently refers to the term “sworn” in describing the status of police officers and their duties, and to the term “non-sworn” in describing recruits and their duties. However, Burden points out the record contains no evidence of any oath used to specifically swear in police officers, and contends that article XX, section 3 of the California Constitution would prohibit any oath other than the oath of allegiance required for all public employees. Since the Department is not taking the position that Burden's failure to be sworn in specifically as a police officer, standing alone, is what precludes her from coverage under the Bill of Rights Act, we attach no significance to the Department's “sworn/non-sworn” terminology. As will be demonstrated, however, we are persuaded that material distinctions otherwise exist between police officers and recruits.

3 The record includes a “Personnel Action Form” which reflects this action, as well as Burden's personnel record which contains the entry “Failed Standards.”

4 Because it found the Bill of Rights Act applicable to Burden, the trial court deemed it unnecessary to determine whether she was also entitled to relief as part of her liberty interest under the due process clause of the federal Constitution. The court reserved jurisdiction to later determine issues of backpay, sanctions and recovery of attorney fees.

5 Section 3304, subdivision (b) provides: “No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.”

6 Section 3305 provides: “No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.”

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7 Section 3306 provides: “A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.”

FN8 In 1989 and 1990, section 3301 was amended to specify additional Penal Code sections within its ambit. (Stats. 1989, ch. 1165, § 5; Stats. 1990, ch. 675, § 1.)

9 All of the Penal Code sections specified in section 3301 are contained in chapter 4.5 of part 2, title 3 of the Penal Code which defines “peace officers.” In June 1988, Penal Code section 830 provided: “Any person who comes within the provisions of [chapter 4.5] and who otherwise meets all standards imposed by law on a peace officer is a peace officer, and notwithstanding any other provision of law, *no person other than those designated in this chapter is a peace officer.* The restriction of peace officer functions of any public officer or employee shall not affect his status for purposes of retirement.” (Italics added.)

In 1988, Penal Code section 830.1, subdivision (a) designated the following classifications: “Any sheriff, undersheriff, or deputy sheriff, regularly employed and paid as such, of a county, *any police officer of a city,* any police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department, any marshal or deputy marshal of a municipal court, any constable or deputy constable, regularly employed and paid as such, of a judicial district, or any inspector or investigator regularly employed and paid as such in the office of a district attorney, *is a peace officer.* ...” (Italics added.)

In 1990, an amendment to Penal Code section 830.1, subdivision (a) revised, inter alia, the designation of “any police officer of a city” to “any police officer, employed in that capacity and appointed by the chief of police or the chief executive of the agency, of a city.” (Stats. 1990, ch. 1695, § 9.) The Department invites us to apply this amendment on the basis that *Hays v. Wood* (1979) 25 Cal.3d 772, 782 [160 Cal.Rptr. 102, 603 P.2d 19], compels application of current law because Burden is purporting to seek “relief in futuro.” Alternatively, it urges the amendment merely clarifies existing law. However, even if we were to assume that the new language is dispositive of the issues here, *Hays* is inapplicable because Burden is not seeking injunctive relief directed to future acts. Moreover, the Legislature did not declare the amendment to apply retroactively, nor do the legislative materials provided by the Department support retroactive application of the amended language quoted above. (See *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 287 [279 Cal.Rptr. 592, 807 P.2d 434].) Rather, the materials concern another part of the 1990 amendment which purported to clarify existing law as it pertained to *reserve* officers.

10 In the trial court, Burden submitted the declarations of Sergeant Jack Jansen of the Anaheim Police Department and Lieutenant Leo Tamisiea of the Office of the Chief of the Bay Area Rapid Transit District Police Department. Sergeant Jansen declared that in 1976, all new law enforcement personnel hired by the Anaheim Police Department were assigned the job title of “police officer” from the first day of employment; there was no special classification of “police officer recruit” for those personnel who had not completed the training academy. Sergeant Jansen stated that the department's policy changed in 1982, at which time new personnel were assigned the classification of “police recruit,” and were then elevated to “police officer” upon completion of the training academy. Lieutenant Tamisiea, drawing from his experience as Chairman of the

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Peace Officers' Research Association of California, declared that the same was essentially true for "nearly all (if not all) law enforcement agencies in California."

FN11 Penal Code, former section 817 provided in pertinent part: "A peace officer is the sheriff, undersheriff, deputy sheriff, coroner, deputy coroner, regularly employed and paid as such of a county, any qualified person, when deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city policeman while performing police functions assigned to him by the appointing authority, ... marshal, policeman of a city or town ...." (Stats. 1967, ch. 604, § 1, p. 1952.) In 1968, Penal Code section 817 was repealed (Stats. 1968, ch. 1222, § 58, p. 2322) and was replaced by Penal Code section 830 et seq. (Stats. 1968, ch. 1222, § 1, p. 2303).

12 The Court of Appeal concluded below that the Attorney General's 1968 opinion was inapplicable. It reasoned that, unlike police recruits such as Burden, the employees covered by that opinion were not "regularly employed and paid as such." We are not persuaded. The Attorney General did not determine that cadets and trainees were not peace officers because they were not regularly employed and paid. Rather, the Attorney General concluded quite specifically that cadets and trainee officers did not have peace officer status because there was no express provision in former Penal Code section 817 for such classifications. (See 51 Ops.Cal.Atty.Gen., *supra,* at pp. 110, 112.)

13 Evidence in the record also indicates that recruits are treated in a category separate from police officers with regard to wages. Additionally, the Costa Mesa Police Association, by agreement with the City, represents various police officer classifications, but does not represent the recruit classification.

14 Indeed, Burden is not claiming the Department hired her as a de facto police officer. She does not contend she was authorized to exercise peace officer powers or otherwise act as a police officer. In fact she signed a "Police Officer Trainee Advisement Form" specifically acknowledging that she would not. Aside from her written acknowledgments, Burden was not issued a police identification number or badge. The hat piece she was issued specifically identified her as a recruit.

15 State regulations require that every peace officer employed by a city police department or county sheriff's department shall serve in a probationary status for at least 12 months. (Cal. Code Regs., tit. 11, § 1004.) We note there are cases assuming or recognizing that a public safety officer includes a person who is appointed to a police officer or sheriff position, even though the person is in a probationary status. (E.g., *Gray v. City of Gustine* (1990) 224 Cal.App.3d 621 [273 Cal.Rptr. 730] [probationary police chief]; *Hanna v. City of Los Angeles* (1989) 212 Cal.App.3d 363 [260 Cal.Rptr. 782] [probationary police officer]; *Browning v. Block* (1985) 175 Cal.App.3d 423 [220 Cal.Rptr. 763] [probationary deputy sheriff]; *Swift v. County of Placer* (1984) 153 Cal.App.3d 209 [200 Cal.Rptr. 181] [probationary deputy sheriff]; *Barnes v. Personnel Department* (1978) 87 Cal.App.3d 502 [151 Cal.Rptr. 94] [probationary police officer].) These cases are inapposite since Burden was not hired as a police officer to begin with.

16 The Legislature explicitly stated its concern over such matters when it amended section 3301 in 1983. The legislation was described as "an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect." (Stats. 1983, ch. 964, § 3, p. 3464.)

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17 Indeed, governmental entities may be held vicariously liable for certain misconduct committed by police officers acting within the course and scope of employment. (E.g., *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202 [285 Cal.Rptr. 99, 814 P.2d 1341] [rape arising from misuse of official authority]; *Larson v. City of Oakland* (1971) 17 Cal.App.3d 91 [94 Cal.Rptr. 466] [assault and battery]; *Scruggs v. Haynes* (1967) 252 Cal.App.2d 256 [60 Cal.Rptr. 355] [assault and battery, use of unreasonable force].) Consequently, it is important for cities to be able to swiftly eliminate those candidates most likely to commit misconduct or exercise bad judgment.

18 At the time Burden was hired, Penal Code section 832, subdivision (b) provided in pertinent part: "Every such peace officer described in this chapter, within 90 days following the date that he or she was first employed by any employing agency, shall, prior to the exercise of the powers of a peace officer, have satisfactorily completed [an introductory course of training prescribed by the Commission on Peace Officer Standards and Training]." (Stats. 1987, ch. 157, § 1, p. 1091.) In 1991, section 832 was amended to delete the requirement that the course be completed within 90 days of first employment and to add provisions relating to persons who do not become employed within three years from the date of passing the examination and persons who have had a three-year break in peace officer service. (Stats. 1991, ch. 509, § 2.)

19 Section 1 of the Statutes of 1971, chapter 1504, pages 2974-2975, amended Government Code section 1031 which sets forth six minimum standards for peace officers. Section 2 thereof added section 832 to the Penal Code. Uncodified section 3 thereof provided: "It is the intent of the Legislature in enacting this act that the minimum standards described in Section 2 of this act shall be designed to raise the level of competence of peace officers where necessary and are not intended to supersede state or local law enforcement policy regarding the use of firearms or the exercise of powers to arrest."

20 If anything, the scheme appears to contemplate that, to the extent a police department undertakes to appoint a trainee as a police officer, the trainee shall not exercise peace officer powers until he or she meets the minimum training requirements contained in Penal Code section 832.

21 We also note the 1980 opinion does not acknowledge or distinguish the Attorney General's earlier position that cadets and trainee officers were not peace officers under former Penal Code section 817 (the predecessor statute to section 830 et seq.). (See 51 Ops.Cal.Atty.Gen., *supra,* at p. 110.)

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21 Cal.4th 272, 980 P.2d 927, 87 Cal.Rptr.2d 222, 99 Cal. Daily Op. Serv. 6353, 1999 Daily Journal D.A.R. 8101
Supreme Court of California

BENJAMIN R. HORWICH, Petitioner,
v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; EDWARD ACUNA et al., Real Parties in Interest.

No. S073129.
Aug. 9, 1999.

SUMMARY

The parents of an uninsured driver who died in an automobile accident brought a wrongful death action against the other driver. Defendant alleged as an affirmative defense that, since the decedent was uninsured at the time of the accident, plaintiffs could not recover damages for the nonpecuniary value of her care, comfort, and society under Civ. Code, § 3333.4, subd. (a)(2) & (3), which prohibits recovery of noneconomic damages if the injured person was an uninsured owner or operator of the vehicle involved in the accident. The trial court granted plaintiffs' motion for judgment on the pleadings, finding that the statutory prohibition only applies to the uninsured owner or operator of a vehicle involved in the accident, which plaintiffs were not. (Superior Court of Los Angeles County, No. BC178218, Marlene A. Kristovich, Judge.) The Court of Appeal, Second Dist., Div. One, No. B120188, affirmed.

The Supreme Court affirmed the judgment of the Court of Appeal. The court held that plaintiffs did not come within the provisions of Civ. Code, § 3333.4, since they were not uninsured owners or operators of a vehicle involved in the accident. The statute is aimed at those individuals who have failed to take personal responsibility for their actions, including drivers without obligatory liability insurance. A wrongful death plaintiff who is not the uninsured owner or operator of a vehicle involved in the accident cannot be one who has failed to take personal responsibility, since the law imposes no obligation on that person. Moreover, no absolute rule allows a wrongful death defendant to assert any defense that would have been available against the decedent. In this case, defendant had no basis to invoke § 3333.4 as a defense even if he could have asserted it against the decedent. (Opinion by Brown, J., with George, C. J., Mosk, Kennard, Baxter, and Werdegar, JJ., concurring. Dissenting opinion by Chin, J. (see p. 288).) ***273**

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d)
Wrongful Death § 13--Damages--Nonpecuniary--Statutory Limitation on Recovery for Uninsured Vehicle Owners or Operators-- Application to Decedent's Survivors.
In a wrongful death action brought by the parents of an uninsured driver who died in an automobile accident, against the other driver, the trial court properly granted plaintiffs' motion for judgment on the pleadings, despite defendant's affirmative defense that plaintiffs were not entitled to damages for the nonpecuniary value of the decedent's care, comfort, and society under Civ. Code, § 3333.4, subd. (a)(2) & (3) (enacted as part of Prop. 213), which prohibits a person from recovering noneconomic damages if the injured person was an uninsured owner or operator of the vehicle involved in the accident. Plaintiffs did not come within the provisions of Civ. Code, § 3333.4, since they were not uninsured owners or operators of a vehicle involved in the accident. The statute is aimed at those individuals who have failed to take personal responsibility for their actions, including drivers without obligatory liability insurance. A wrongful death plaintiff who is not the uninsured owner or operator of a vehicle involved in the accident cannot be one who has failed to take personal responsibility, since the law imposes no obligation on that person. Moreover, no absolute rule allows a wrongful death defendant to assert any defense that would have been available against the decedent. In this case, defendant had no basis to invoke § 3333.4 as a defense even if he could have asserted it against the decedent.

[See 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 1429; Flahavan et al., Cal. Practice Guide: Personal Injury (The Rutter Group 1997) ¶ 3:334.2.]

(2)
Statutes § 30--Construction--Language--Literal Interpretation; Plain Meaning Rule.
The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. In order to determine this intent, courts begin by examining the language of the statute. However, language of a statute should not be given a literal meaning if doing so would result in absurd consequences unintended by the Legislature. Thus, the intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act. Finally, courts do not construe statutes in isolation, but rather read every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness. Courts must also consider the object to be ***274** achieved and the evil to be prevented by the legislation. These guiding principles apply equally to the interpretation of voter initiatives.

(3)
Initiative and Referendum § 1--Initiative Statute--Existing Law.
Generally, the drafters who frame an initiative statute and the voters who enact it may be deemed to be aware of existing law.

(4)
Wrongful Death § 1--Nature of Action.
Unlike some jurisdictions in which wrongful death actions are derivative, Code Civ. Proc., § 377.60, creates a new cause of action in favor of the heirs as beneficiaries, based upon their own independent pecuniary injury suffered by loss of a relative, and distinct from any the deceased might have maintained had he or she survived. Although for some purposes the actions may be inextricably linked, that is not categorical; each case must be examined in its context.

COUNSEL

Horvitz & Levy, Barry R. Levy, Sandra J. Smith, Jon B. Eisenberg; Barry Bartholomew & Associates and Larry P. Bilbrew for Petitioner.
Carroll, Burdick & McDonough, David M. Rice, Timothy C. Smith; Mayer, Brown & Platt, Alan Untereiner and Kathryn Schaefer for Mercedes-Benz of North America, Inc., as Amicus Curiae on behalf of Petitioner.
No appearance for Respondent.
Law Offices of M. Scott Radovich and M. Scott Radovich for Real Parties in Interest.
Remcho, Johansen & Purcell, Robin B. Johansen, Joseph Remcho, Kathleen J. Purcell, James C. Harrison; and Gina M. Calabrese for Congress of the California Seniors, the Latino Issues Forum, the Greenlining Institute, the Utility Consumer Action Network, the Consumer Attorneys of California and the Proposition 103 Enforcement Project as Amici Curiae on behalf of Real Parties in Interest.

BROWN, J.

In this case, we must determine whether Civil Code section 3333.4 (all unspecified statutory references are to the Civil Code), enacted as ***275** part of Proposition 213, precludes a wrongful death plaintiff whose decedent was the uninsured operator of a motor vehicle involved in an accident from recovering damages for loss of care, comfort, and society. We conclude recovery is permissible and therefore affirm the judgment of the Court of Appeal.

Factual and Procedural Background

Melissa Acuna was killed in an automobile accident; she did not have personal automobile insurance or any insurance for the vehicle she was driving. Her parents, real parties in interest Edward and Elisa Acuna (plaintiffs), sued the driver of the other vehicle, petitioner Benjamin Horwich (defendant), for wrongful death and, on behalf of Melissa's Estate, for survival causes of action. [1]

In his answer, defendant alleged as an affirmative defense pursuant to section 3333.4, subdivision (a)(2) and (3), that Melissa was uninsured at the time of the accident and therefore plaintiffs could not recover damages for the nonpecuniary value of her care, comfort, and society. (See *post*, fn. 3.) Plaintiffs admitted to Melissa's lack of insurance but contended

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the statutory prohibition only applied to the uninsured owner or operator of the automobile involved in an accident, which they were not. The trial court agreed and granted their motion for judgment on the pleadings.

On defendant's petition for writ of mandate, the Court of Appeal affirmed.

Discussion

Section 3333.4 was enacted as part of the Personal Responsibility Act of 1996—Proposition 213—approved by the voters in November 1996. As relevant here, it provides:

"(a) [I]n any action to recover damages arising out of the operation or use of a motor vehicle, a person shall not recover non-economic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other nonpecuniary damages if any of the following applies:

. . . . . .

"(2) The injured person was the owner of a vehicle involved in the accident and the vehicle was not insured as required by the financial responsibility laws of this state. ***276**

"(3) The injured person was the operator of a vehicle involved in the accident and the operator can not establish his or her financial responsibility as required by the financial responsibility laws of this state." [2]

(1a) The question here is whether the statute precludes a wrongful death plaintiff who is not the uninsured owner or operator of a vehicle involved in the accident —but whose decedent was—from recovering for loss of care, comfort, and society. [3]

(2) "The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.] In order to determine this intent, we begin by examining the language of the statute. [Citations.] But '[i]t is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.' [Citations.] Thus, '[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.' [Citation.] Finally, we do not construe statutes in isolation, but rather read every statute 'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.' [Citation.]" (*People v. Pieters* (1991) 52 Cal.3d 894, 898-899 [276 Cal.Rptr. 918, 802 P.2d 420].) We must also consider "the object to be achieved and the evil to be prevented by the legislation. [Citations.]" (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1159 [278 Cal.Rptr. 614, 805 P.2d 873].) These guiding principles apply equally to the interpretation of voter initiatives. (*Whitman v. Superior Court* (1991) 54 Cal.3d 1063, 1072 [2 Cal.Rptr.2d 160, 820 P.2d 262].) ***277**

(1b) The Court of Appeal concluded, and plaintiffs argue, that section 3333.4 only bars recovery when the "injured person" is an uninsured "owner [or operator] of a vehicle involved in the accident ...." Since plaintiffs are neither, they do not come within the express terms of the statute. In his briefing, defendant argues the statute applies more broadly. Under his construction, the statute "specifies no limitation on the type of 'person'—that is, the type of plaintiff (e.g., wrongful death or personal injury)—who is restricted to recovery of economic damages." Therefore, "a person" in subdivision (a) bars recovery by *any* person who brings a cause of action "arising out of the operation or use of a motor vehicle." At oral argument, defendant offered a less sweeping interpretation, which nevertheless would preclude wrongful death plaintiffs from noneconomic recovery. (See *post*, p. 280.) According to defendant, his construction best advances the electorate's intent to ease the economic burden on insured motorists and taxpayers and restore balance to our justice system. (See *Yoshioka v. Superior Court* (1997) 58 Cal.App.4th 972, 983 [68 Cal.Rptr.2d 553].)

As we have recently noted with respect to other provisions in section 3333.4, "[t]he language is not

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pellucid." (*Hodges v. Superior Court* (1999) 21 Cal.4th 109, 113 [86 Cal.Rptr.2d 884, 980 P.2d 433].) Both "a person" and the "injured person" are subject to different interpretations, some supporting plaintiffs' position and some supporting defendant's. We therefore seek enlightenment in the "legislative history" of Proposition 213.[4] (See *White v. Davis* (1975) 13 Cal.3d 757, 775 & fn. 11 [120 Cal.Rptr. 94, 533 P.2d 222].) Considering the electorate's intended goal as reflected in the language of the initiative and in the ballot arguments, we ultimately agree with the Court of Appeal that the controlling language for our purposes is the reference to the "injured person" (§ 3333.4, subd. (a)(2) & (3)), which refers to the plaintiff in the present action, i.e., the limitation on the recovery of nonpecuniary damages by "a person" (*id.*, subd. (a)) operates against only a plaintiff who is the uninsured owner or operator of a vehicle involved in the accident.

To begin, this conclusion accords with the "Findings and Declaration of Purpose" of Proposition 213, which states: ***278**

"(a) Insurance costs have skyrocketed for those Californians who have taken responsibility for their actions. *Uninsured motorists*, drunk drivers, and criminal felons are law breakers, and should not be rewarded for *their* irresponsibility and law breaking. However, under current laws, *uninsured motorists* and drunk drivers are able to recover unreasonable damages from law-abiding citizens as a result of drunk driving and other accidents, and criminals have been able to recover damages from law-abiding citizens for injuries suffered during the commission of their crimes.

"(b) Californians must change the system that rewards individuals who fail to take essential personal responsibility *to prevent them* from seeking unreasonable damages or from suing law-abiding citizens.

"(c) Therefore, the People of the State of California do hereby enact this measure to restore balance to our justice system *by limiting the right to sue of* criminals, drunk drivers, and *uninsured motorists*." (Ballot Pamp., Prop. 213: Text of Proposed Law, Gen. Elec. (Nov. 5, 1996) § 2, p. 102, italics added; hereafter Ballot Pamphlet.)

The declaration of purpose focuses the electorate's concern solely on those who have failed to take *personal* responsibility for their actions, including drivers without obligatory liability insurance. According to the plain language of the proposition, the "Civil Justice Reform" effected by section 3333.4 (Ballot Pamp., *supra*, Prop. 213, § 3, at p. 102) is aimed at these individuals and these individuals alone. A wrongful death plaintiff who is neither the uninsured owner nor operator of a vehicle involved in the accident cannot be one who has failed to take personal responsibility because the law imposes no obligation on that person.[5] Nor are wrongful death plaintiffs mentioned in the text of the proposition as subject to its restrictions. (Cf. §§ 1431.2 [eliminating joint and several liability for noneconomic damages in "any action for personal injury, property damage, or wrongful death"]; 3333.2, subd. (2) [Medical Injury Compensation Reform Act limit on noneconomic damage recovery applies when professional negligence "is the proximate cause of a personal injury or wrongful death"]; *Hodges v. Superior Court*, *supra*, 21 Cal.4th at pp. 117-118 [terms of Proposition 213 do not reflect intent to include product liability actions].)

Parallel language in section 3333.3, also enacted as part of Proposition 213, supports this interpretation. That section provides: "In any action for ***279** damages based on negligence, a person may not recover damages if the plaintiff's injuries were in any way proximately caused by the plaintiff's commission of any felony ...." (See *anteante*, fn. 2.) This provision unequivocally identifies "a person" who is barred from recovery as "the plaintiff" in any subsequent action based on injury negligently sustained during the commission of a felony by that plaintiff. Section 3333.4 references the "injured person" rather than "the plaintiff"; but under the law the terms are equivalent, or at least without legal distinction in these circumstances.

The ballot arguments in favor of Proposition 213 substantiate the determination that wrongful death plaintiffs do not come within the ambit of section 3333.4. In those materials, the initiative

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was characterized as a "Limitation on Recovery to Felons, Uninsured Motorists, Drunk Drivers," and the electorate was advised it "[d]enies recovery of noneconomic damages (e.g., pain, suffering) to ... most uninsured motorists."[6] (Ballot Pamp., *supra*, Summary of Prop. 213, at p. 6.) "A Yes vote on this measure means: Uninsured drivers ... could no longer sue someone who was at fault for the accident for noneconomic losses (such as pain and suffering)." (Ballot Pamp., *supra*, What Your Vote Means, at p. 6.) They "could recover only medical and out-of-pocket expenses but would be prohibited from recovering 'pain and suffering' awards from insured drivers." (Ballot Pamp., *supra*, Arguments-Pro, at p. 7.) The legislative analyst also explained that "[t]his measure would prohibit the recovery of *noneconomic* losses in certain car accidents. Specifically, an uninsured driver ... could not sue someone at fault for the accident for noneconomic losses." (Ballot Pamp., *supra*, Analysis by the Legislative Analyst, at p. 49.)

Finally, the argument in favor of Proposition 213 stated it "*will prevent ... uninsured motorists from collecting these huge monetary awards*" for noneconomic losses. (Ballot Pamp., *supra*, Argument in Favor of Prop. 213, at p. 50.) "*The system needs to be fixed. Illegal behavior shouldn't be rewarded. People who break the law must be held accountable for their actions.*" (*Ibid.*) "Proposition 213 Says No to Uninsured Drivers by Saying No to Huge Monetary Awards for 'Pain and Suffering!' " (*Ibid.*) Conspicuously, it omitted any reference to wrongful death actions as did the argument against the measure, which spoke only of the effect on "an innocent person who cannot [afford insurance]." (Ballot Pamp., *supra*, Argument Against Proposition 213, at p. 51.) ***280**

These arguments evince a single-minded concern with the unlawful conduct of uninsured motorists who, at the expense of law-abiding citizens, could recover for noneconomic losses while flouting the financial responsibility laws. (See Ballot Pamp., *supra*, Rebuttal to Argument Against Prop. 213, at p. 51.) The language of section 3333.4 mirrors this intent. We must therefore construe it in accordance with both the letter and spirit of the enactment. Since the initiative also contains no mention of heirs or those who might sue for loss of the care, comfort, and society of their uninsured decedents, we are not at liberty to apply the prohibition against such plaintiffs. (Cf. *Hodges v. Superior Court*, *supra*, 21 Cal.4th at p. 116 ["no suggestion" Proposition 213 intended to apply in case alleging vehicle design defect].)

Defendant contends the prefatory reference to "a person" in subdivision (a) is definitive in construing section 3333.4. Our interpretation, however, better follows the grammatical structure and logic of the statutory language taken as a whole in light of the electorate's intent. His construction reads "a person" in isolation without taking into account the "if" proviso in subdivision (a), which provides that application is limited by subdivision (a)(2) and (3), restricting recovery only by the "injured person" who is uninsured. (Cf. *People v. Ledesma* (1997) 16 Cal.4th 90, 97 [65 Cal.Rptr.2d 610, 939 P.2d 1310].) "The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299].) Moreover, it would render "[t]he injured person" surplusage. (See also § 3333.4, subd. (a)(1) [prohibiting recovery of noneconomic damages if "[t]he injured person" was convicted of driving under the influence at the time of the accident].) Under defendant's interpretation the statute would effectively read as follows: "[A] person shall not recover non-economic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other nonpecuniary damages if ... [¶] ... [¶] ... the owner of a vehicle involved in the accident ... was not insured as required by the financial responsibility laws of this state.... [or] [¶] ... the operator of a vehicle involved in the accident ... can not establish his or her financial responsibility as required by the financial responsibility laws of this state."

Principles of statutory construction also counsel that we should avoid an interpretation that leads to anomalous or absurd consequences. (*Calatayud v. State of California* (1998) 18 Cal.4th 1057, 1072 [77 Cal.Rptr.2d 202, 959 P.2d 360].) Defendant's reading of the statute could lead to the broad interpretation that no one could recover noneconomic

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damages when an ***281** automobile owner or operator is uninsured. It would thus follow that if a non-negligent uninsured driver were in an accident with a negligent insured driver and the uninsured driver's passenger were injured, the passenger—as "a person"—would be limited to recovery of economic damages because "the operator of the vehicle involved in the accident [could] not establish his or her financial responsibility as required" by law. In light of the statutory language, the uncodified portions of the initiative, and the ballot arguments in favor of Proposition 213, we cannot find this result consistent with the electorate's ostensibly narrow purpose to penalize scofflaws. (See also *Yoshioka v. Superior Court*, *supra*, 58 Cal.App.4th at p. 983 [purposes of Prop. 213 include "increasing the costs of ... disobeying California's Financial Responsibility Law"]; cf. *Hodges v. Superior Court*, *supra*, 21 Cal.4th at p. 115 ["primary aim of ... Proposition 213, as relevant here, was to limit automobile insurance claims by uninsured motorists" (italics omitted)]; *id*. at pp. 115-118.) At oral argument defendant's counsel disavowed such a result, offering a narrower construction under which the "injured person" must also be an uninsured owner or operator. Wrongful death plaintiffs would still come within the statutory restriction because their injuries are "peripheral." However, he did not satisfactorily explain how the provisions of section 3333.4, read as a whole, support this rather contorted construction.

Defendant contends nevertheless that his construction better effectuates the intent to "restor[e] balance to our justice system and ... reduc[e] costs of mandatory automobile insurance." (*Yoshioka v. Superior Court*, *supra*, 58 Cal.App.4th at p. 983.) By eliminating "big money awards that ... *uninsured motorists and their attorneys go after when these lawbreakers are in an accident with an insured driver*" (Ballot Pamp., *supra*, Rebuttal to Argument Against Prop. 213, at p. 51), the electorate apparently anticipated the change in the law would "decreas[e] the number of lawsuits, reduce[e] annual court-related costs to state and local governments, increas[e] the costs of drunk driving and disobeying California's Financial Responsibility Law, ... and avoid [] unreasonable damages being awarded to the uninsured." (*Yoshioka v. Superior Court*, *supra*, 58 Cal.App.4th at p. 983.) Additionally, because negligent insured drivers would be shielded from noneconomic damage awards, in theory their insurance rates should eventually reflect this savings by insurers. (See Ballot Pamp., *supra*, Argument in Favor of Prop. 213, at p. 50.) According to defendant, denying recovery of noneconomic losses to wrongful death plaintiffs promotes these goals.

Although defendant's analysis is plausible, the text and structure of the initiative lead us to a different conclusion. As we have previously explained in *Hodges v. Superior Court*, *supra*, 21 Cal.4th 109, Proposition 213 was in ***282** substantial part aimed at punishing persons who theretofore could recover fully from insured drivers without themselves obeying the financial responsibility laws. (*Hodges*, *supra*, at pp. 115-116.) Logically, wrongful death plaintiffs who are neither the uninsured owner nor operator of the vehicle involved in the accident were not targeted since they do not contribute to this perceived unfairness, nor are they in a position to rectify it. They have not failed to take personal responsibility; and they can do nothing to reduce the "skyrocket[ing]" insurance costs assertedly attributable to uninsured motorists that Proposition 213 is intended to ameliorate. (Ballot Pamp., *supra*, Prop. 213, § 2, subd. (a), at p. 102.) They are not part of the problem. Thus, we cannot deem them part of the solution.

Defendant suggests section 3333.4 should be interpreted broadly to give uninsured motorists the additional incentive to obtain insurance, so that in the event of their demise in an automobile accident, their heirs will be able to recover nonpecuniary damages. (But see *anteante*, fn. 3.) This argument is flawed in several respects. First, as reflected in the text of the initiative and the ballot arguments, prompting compliance with the financial responsibility laws appears at best an incidental intent of Proposition 213. The principal goals were to punish scofflaws and reform an unfair system that allowed lawbreakers to recover substantial noneconomic damages. (See *Yoshioka v. Superior Court*, *supra*, 58 Cal.App.4th at p. 983.) Second, the law already includes significant direct incentive to comply with these obligations. (See, e.g., Veh. Code, § 16029 [failure to provide proof of financial responsibility is infraction; vehicle may be impounded].) In comparison to avoiding a

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substantial fine (up to $2,000 for a second offense) or the loss of one's vehicle, the tertiary benefit of ensuring full recovery for one's heirs is significantly less compelling.

Additionally, defendant's argument fails to appreciate the essential nature of an incentive. Whether it takes the form of a carrot or a stick, an incentive is most effective to the extent it directly rewards or punishes the person it is intended to motivate. Most people undoubtedly contemplate auto insurance from the perspective of a potential defendant—to protect against personal liability in case of an accident—not as a potential plaintiff—to provide for recovery of noneconomic damages. While section 3333.4 imposes an adverse consequence for the person whose behavior the law seeks to influence, that consequence is itself substantially attenuated, particularly since an uninsured motorist may still recover all economic damages sustained. Moreover, the effectiveness of the incentive requires that the person survive any accident. If the only adverse effect is to limit recovery for one's heirs (who also can still recover economic damages in any event), the provision's efficacy as an incentive decreases to virtually nil. To the extent the voters ***283** intended any inducement to owners and operators to purchase insurance, in all likelihood it was as a matter of enlightened self-interest rather than as a form of estate planning. Life insurance, which does not depend on the vagaries of wrongful death litigation, affords a much more reliable means of providing for one's survivors.

Furthermore, even if a broader reading might marginally increase the incentive to obtain insurance, we cannot read more into the statute than its words, context, and history permit. Other statutes imposing limits on damage recovery expressly apply to wrongful death actions. (See §§ 1431.2, 3333.2.) (3) "Generally, the drafters who frame an initiative statute and the voters who enact it may be deemed to be aware of" existing law. (*In re Harris* (1989) 49 Cal.3d 131, 136 [260 Cal.Rptr. 288, 775 P.2d 1057].) Had the drafters of Proposition 213 intended similar coverage, they could have included appropriate language. (See, e.g., *Californians for Political Reform Foundation v. Fair Political Practices Com.* (1998) 61 Cal.App.4th 472, 485 [71 Cal.Rptr.2d 606].)

(1c) In the alternative, defendant argues he should be able to invoke section 3333.4 because "[a] wrongful death plaintiff is subject to any defenses which the defendant could assert against the decedent ...." (*Saenz v. Whitewater Voyages, Inc.* (1990) 226 Cal.App.3d 758, 763 [276 Cal.Rptr. 672].) Contrary to his assertion, this is not an "absolute" rule. (4) Unlike some jurisdictions wherein wrongful death actions are derivative, Code of Civil Procedure section 377.60 "creates a *new cause of action* in favor of the heirs as beneficiaries, based upon their own independent pecuniary injury suffered by loss of a relative, and distinct from any the deceased might have maintained had he survived. [Citations.]" (6 Witkin, Summary of Cal. Law, *supra*, § 1197, pp. 632-633; see also *Blackwell v. American Film Co.* (1922) 189 Cal. 689, 693-694 [209 P. 999]; *Brown v. Rahman* (1991) 231 Cal.App.3d 1458, 1460-1461, fn. 3 [282 Cal.Rptr. 815].) Although for some purposes the actions may be "inextricably linked" (*Atkins v. Strayhorn* (1990) 223 Cal.App.3d 1380, 1395 [273 Cal.Rptr. 231]), that is not categorical; each case must be examined in its context.

In certain instances, a wrongful death plaintiff is never subject to the particular defense even if it could have been conclusively asserted against the decedent. Most notably, a wrongful death action has its own statute of limitations, which runs from the date of death rather than any antecedent injury. (See, e.g., *Larcher v. Wanless* (1976) 18 Cal.3d 646, 656 [135 Cal.Rptr. 75, 557 P.2d 507]; see also *Cross v. Pacific Gas & Elec. Co.* (1964) 60 Cal.2d 690, 692-693 [36 Cal.Rptr. 321, 388 P.2d 353] [statute of limitations may vary among wrongful death plaintiffs].) Nor can a decedent ***284** release a claim on behalf of his or her heirs in settlement with the defendant. (See, e.g., *Earley v. Pacific Electric Ry. Co.* (1917) 176 Cal. 79, 81-82 [167 P. 513]; see also *Scroggs v. Coast Community College Dist.* (1987) 193 Cal.App.3d 1399, 1404 [239 Cal.Rptr. 916].) Moreover, a defendant cannot assert res judicata

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against the heirs based on a decedent's prior successful personal injury action (*Blackwell v. American Film Co.*, *supra*, 189 Cal. at pp. 693-694), although, as discussed below, principles of collateral estoppel may apply.

The court in *Rhodes v. California Hospital Medical Center* (1978) 76 Cal.App.3d 606 [143 Cal.Rptr. 59], found heirs were not bound by an arbitration agreement between a health care provider and the decedent. In reaching this conclusion, it distinguished cases "holding that heirs could not maintain a wrongful death action where their decedent had no cause of action against the defendant because of matters going to the merits of any action by the decedent." (*Id.* at p. 608.) "This arbitration proceeding does not, at this stage, involve any question as to the existence of a cause of action in [the decedent] or of any defense to such action on its merits. We are here concerned solely with the forum in which a new cause of action in the heirs may be brought." (*Id.* at p. 609.) Subsequent cases have disagreed in light of Code of Civil Procedure section 1295, enacted as part of the Medical Injury Compensation Reform Act, which provides that arbitration clauses in medical service contracts are not contracts of adhesion if formulated according to statutory specifications. (See *Pietrelli v. Peacock* (1993) 13 Cal.App.4th 943, 947, fn. 1 [16 Cal.Rptr.2d 688].) This latter determination is consistent with our discussion below that the application of some limitations or bars to wrongful death actions will turn on statutory interpretation. (See *post*, at pp. 286-287.)

On the other hand, some defenses can be asserted equally against the decedent or the heirs, principally comparative negligence, release in the case of primary assumption of the risk, privilege, and collateral estoppel. In general, courts allow these defenses based on the underlying principles of law, which by their nature extend to the wrongful death plaintiff in addition to, not in the place of, the decedent. Thus, if the decedent had been comparatively negligent, a wrongful death judgment will be reduced proportionately. (See, e.g., *Atkins v. Strayhorn*, *supra*, 223 Cal.App.3d at p. 1395; see also *Buckley v. Chadwick* (1955) 45 Cal.2d 183, 200-201 [265 P.2d 884] [applying principles of contributory negligence to wrongful death actions]; *Smith v. Americania Motor Lodge* (1974) 39 Cal.App.3d 1, 8 [113 Cal.Rptr. 771, 88 A.L.R.3d 1188] [invoking parent's negligence in action for wrongful death of child].) During the era of contributory negligence, the rationale may have been that the decedent's negligence is imputed to the heirs. (See ***285** *Hasson v. Ford Motor Co.* (1977) 19 Cal.3d 530, 552 [138 Cal.Rptr. 705, 564 P.2d 857, 99 A.L.R.3d 158], overruled on other grounds in *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580 [34 Cal.Rptr.2d 607, 882 P.2d 298]; see also *Willis v. Gordon* (1978) 20 Cal.3d 629, 638 [143 Cal.Rptr. 723, 574 P.2d 794] (conc. opn. of Mosk, J.).) More modernly, principles of comparative fault and equitable indemnification support an apportionment of liability among those responsible for the loss, including the decedent, whether it be for personal injury or wrongful death. (See *American Motorcycle Assn. v. Superior Court* (1978) 20 Cal.3d 578, 598 [146 Cal.Rptr. 182, 578 P.2d 899]; *Li v. Yellow Cab Co.* (1975) 13 Cal.3d 804, 809-813 [119 Cal.Rptr. 858, 532 P.2d 1226, 78 A.L.R.3d 393].)

A release executed by the decedent in circumstances involving primary assumption of the risk may also be asserted as a defense. (See, e.g., *Saenz v. Whitewater Voyages, Inc.*, *supra*, 226 Cal.App.3d at pp. 763-764 [white water rafting]; *Madison v. Superior Court* (1988) 203 Cal.App.3d 589, 597-598 [250 Cal.Rptr. 299] [scuba diving]; *Coates v. Newhall Land & Farming, Inc.* (1987) 191 Cal.App.3d 1, 8 [236 Cal.Rptr. 181] [dirt bike riding].) In that situation, the decedent agrees in advance of the activity to relieve the defendant of any duty of care. (*Madison v. Superior Court*, *supra*, 203 Cal.App.3d at p. 597; see *Knight v. Jewett* (1992) 3 Cal.4th

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296, 314-315 [11 Cal.Rptr.2d 2, 834 P.2d 696].) The defendant can owe no greater duty to the heirs than to the decedent; thus the premise of any wrongful death action would fail at the outset. Similarly, when the defendant has been justified in the use of deadly force against the decedent, the privileged nature of the conduct is a defense to all civil liability regardless of the plaintiff's status. (See, e.g., *Gilmore v. Superior Court* (1991) 230 Cal.App.3d 416, 420-421 [281 Cal.Rptr. 343].)

If the decedent had unsuccessfully prosecuted a personal injury action, the defendant may invoke collateral estoppel in a subsequent wrongful death suit. (See, e.g., *Evans v. Celotex Corp.* (1987) 194 Cal.App.3d 741, 744-747 [238 Cal.Rptr. 259]; see also *State Farm Fire & Casualty Co. v. Dominguez* (1982) 131 Cal.App.3d 1, 4-6 [182 Cal.Rptr. 109].) This defense arises from the identity of interests between the decedent and the heirs, i.e., the "[p]laintiffs' right to recovery, like the deceased's, depends on the liability of [the] defendant ...." (*Evans v. Celotex Corp.*, *supra*, 194 Cal.App.3d at p. 744; see generally, *Zaragosa v. Craven* (1949) 33 Cal.2d 315, 317-318 [202 P.2d 73, 6 A.L.R.2d 461].) This principle is not unique to wrongful death actions; all parties in privity with an antecedent litigant are subject to the application ***286** of collateral estoppel.[7] (Cf. *Clemmer v. Hartford Insurance Co.*, *supra*, 22 Cal.3d at pp. 876-877.)

In wrongful death actions involving a statutory defense that could have been asserted against the decedent, the results are less definitive. In the main, courts have considered the matter one of statutory construction, applying or disallowing the defense in accordance with the express terms of the provision at issue while respecting the independent status of a wrongful death action. Thus, the exclusivity of workers' compensation prevails as to heirs in light of Labor Code section 3600, which provides that liability under the Workers' Compensation Act (Lab. Code, § 3200 et seq.) is "in lieu of any other liability whatsoever to any person ... for the death of any employee ... ." (See also *Salin v. Pacific Gas & Electric Co.* (1982) 136 Cal.App.3d 185, 190 [185 Cal.Rptr. 899]; but see *Snyder v. Michael's Stores, Inc.* (1997) 16 Cal.4th 991, 999, fn. 2 [68 Cal.Rptr.2d 476, 945 P.2d 781].)

In *Garcia v. State of California* (1967) 247 Cal.App.2d 814 [56 Cal.Rptr. 80], however, the court declined to bar a wrongful death action by the heirs of a prisoner pursuant to Government Code section 844.6. At the time, Government Code section 844.6, subdivision (a), provided in relevant part: "[A] public entity is not liable for: [¶] (1) An injury proximately caused by any prisoner. [¶] (2) An injury to any prisoner." The statute nevertheless contained an exception: "Nothing in this section prevents a person, other than a prisoner, from recovering from the public entity for an injury resulting from the dangerous condition of public property ...." (Former Gov. Code, § 844.6, subd. (c), added by Stats. 1963, ch. 1681, § 1, p. 3277.) The plaintiffs' decedent had died of injuries caused by the collapse of a weight suspension rack furnished to prisoners for training and rehabilitation activities. Because the wrongful death action was "not derivative or a continuation or revival of a cause of action existing in a decedent before his death," but rather "original and distinct" with respect to the heirs, they were not bound by the limitation on a prisoner's right to sue a public entity for injury. (*Garcia v. State of California*, *supra*, 247 Cal.App.2d at p. 816.) Therefore, they could invoke the exception in subdivision (c), which "[did] not distinguish between the survivors of a deceased prisoner and other persons." (*Id.* at p. 817.) ***287**

By contrast, in *Lowman v. County of Los Angeles* (1982) 127 Cal.App.3d 613 [179 Cal.Rptr. 709], the deceased prisoner did not die as the result of a dangerous condition of public property but from alleged malpractice while he was being held for a medical examination in the jail ward. (*Id.* at p. 614.) Thus, the exception, which in any event had been amended in light of *Garcia* (see Stats. 1970, ch. 1099, § 5, p. 1957), did not apply. Under the express terms of the statute, the heirs, as well as the prisoner himself,

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were barred from recovery. (*Lowman v. County of Los Angeles*, *supra*, 127 Cal.App.3d at pp. 615-616.)

In *Whitehill v. Strickland* (1967) 256 Cal.App.2d 837 [64 Cal.Rptr. 584] (*Whitehill*), the court considered whether the defendant could rely on former Vehicle Code section 17158, California's guest statute, to disclaim liability in a wrongful death action. The statute provided: " 'No person riding in or occupying a vehicle owned by him and driven by another person with his permission and no person who as a guest accepts a ride in any vehicle upon a highway without giving compensation for such ride, nor any other person, has any right of action for civil damages against the driver of the vehicle or against any other person legally liable for the conduct of the driver on account of personal injury to or death of the owner or guest during the ride ....' " (*Whitehill*, *supra*, 256 Cal.App.2d at p. 839.) The reviewing court initially recognized that "Vehicle Code section 17158 is in derogation of the common law and must be strictly construed. [Citations.]" (*Whitehill*, *supra*, at p. 840.) Accordingly, it concluded the statute did not bar liability because the decedent's husband (the wrongful death plaintiff), not the decedent herself, owned the vehicle (*ibid.*) and because the defendant, who was not the owner but a permissive driver, "was in no position to extend an invitation to anyone to ride with him." (*Ibid.*) Since the decedent did not come within the express terms of the statute, it did not afford a defense.

(1d) Thus, contrary to defendant's assertion, no "absolute" rule allows a wrongful death defendant to assert any defense that would have been available against the decedent. In the case of a statutory defense, the court must consider the language and intent of the enactment as well as the original and distinct nature of a wrongful death action. As previously discussed, the more reasonable interpretation of section 3333.4, in light of the electorate's objective, precludes its application under the circumstances of this case. Moreover, neither the statute nor any other relevant source explicitly or implicitly refers to wrongful death claims when the plaintiff is not the uninsured owner or operator of the vehicle involved in the accident. Accordingly, we find no basis for defendant to invoke section 3333.4 as a defense even if he could have asserted it against the decedent.

This interpretation avoids anomalous consequences that would appear inconsistent with the intent of Proposition 213. Section 3333.3 precludes ***288** recovery of both economic and noneconomic damages by fleeing felons; and section 3333.4, subdivision (a)(1), precludes recovery of noneconomic damages by drunk drivers. The limitation applies, however, only if the plaintiff is convicted, an unlikely event if the felon or drunk driver dies in the incident. (See *anteante*, fn. 2.) Thus, the heirs of these individuals would not be subject to the defense of section 3333.3 or 3333.4. Nevertheless, under defendant's vicarious defense theory, section 3333.4, subdivision (a)(2) and (3), would virtually always bar heirs of uninsured owners or operators,[8] arguably the least culpable of those wrongdoers targeted by Proposition 213. We decline to ascribe this essentially irrational result to the electorate.

Disposition

The judgment of the Court of Appeal is affirmed.

George, C. J., Mosk, J., Kennard, J., Baxter, J., and Werdegar, J., concurred.

CHIN, J.,

Dissenting.- The issue in this case is whether Civil Code section 3333.4[1] precludes the wrongful death plaintiffs from recovering nonpecuniary damages when the decedent was an uninsured motorist at the time of the accident. Under section 3333.4, subdivision (a)(2) and (3), a "person" cannot recover nonpecuniary damages if the "injured person" was either an uninsured owner or uninsured operator of the vehicle involved in the accident.

While the majority correctly notes that the "controlling language for our purposes is the reference to the 'injured person' " (maj. opn., *ante*, at p. 277*ante*, at p. 277), I am not convinced by its analysis that the "injured person" is by definition any plaintiff seeking recovery. Rather, I am persuaded by the rules

of statutory construction that "injured person" means what it says—the person injured in the underlying accident. Therefore, I respectfully dissent. I would hold instead that section 3333.4 's limitations apply to the heirs of an uninsured motorist killed in an accident.

The majority finds the wrongful death plaintiffs here are not barred from recovery under the section because they, as "injured persons," were neither uninsured owners nor uninsured operators. (Maj. opn., *ante*, at p. 277*ante*, at p. 277.) In so finding, the majority *assumes* what it should be critically asking—what does "injured person" mean under section 3333.4? I cannot accept the majority's ***289** unsupported conclusion that "under the law the terms ['injured person' and 'plaintiff'] are equivalent, or at least without legal distinction in these circumstances." (Maj. opn., *ante*, at p. 279*ante*, at p. 279.) This tautological argument should not replace reasoned analysis, especially given the significance of the term "injured person" in this context.

Indeed, the majority's interpretation of "injured person" runs counter to general rules of statutory construction. An interpretation that renders any term surplusage should be avoided. (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 [110 Cal.Rptr. 144, 514 P.2d 1224].) Under section 3333.4, subdivision (a), the term "person," which controls paragraphs (1) through (3), clearly refers to a plaintiff seeking recovery. No other conclusion is possible. Those paragraphs, however, contain the apparently narrower term, "injured person." By defining "injured person" also to mean the plaintiff, the majority's interpretation effectively renders the term "injured" preceding "person" surplusage.

Instead, "[i]f reasonably possible, the phrase must be given a meaning that will make of it something more than only an unnecessary and tautological addition to the act." (*Golden Gate Scenic Steamship Lines, Inc. v. Public Utilities Com.* (1962) 57 Cal.2d 373, 377 [19 Cal.Rptr. 657, 369 P.2d 257].) Here, not only is it reasonably possible that "injured person" means the person directly injured in the underlying accident, but the statute also supports this interpretation. Subdivision (c) of section 3333.4 describes the "injured person" as a person "injured by a motorist who at the time of the accident was operating his or her vehicle ...." This language makes clear that the "injured person" is someone directly injured in the accident, not merely anyone who is a plaintiff in an action relating to an accident.

I do not suggest that plaintiffs have not been "injured" by their daughter's death. (See *Krouse v. Graham* (1977) 19 Cal.3d 59, 68 [137 Cal.Rptr. 863, 562 P.2d 1022].) However, the majority has not presented any compelling argument that the term "injured person" under the section should be defined generally as any plaintiff seeking recovery (which definition would render the term "injured" surplusage), when the statutory language itself supports a narrower definition.

Section 3333.3, which also was enacted as part of Proposition 213, also supports my interpretation. The majority asserts that section 3333.3 's language is "[p]arallel" to that of section 3333.4. (Maj. opn., *ante*, at p. 278*ante*, at p. 278.) The language is hardly parallel; rather, it is quite different. Section 3333.4 precludes nonpecuniary damages when the "injured person" is an uninsured motorist. By contrast, section 3333.3 prohibits any damages in a negligence ***290** action if the "plaintiff's injuries" were caused by the "plaintiff's" commission of a felony. We may reasonably conclude that if the electorate intended "injured person" to mean "plaintiff" in section 3333.4, it would have stated so specifically, as it did in section 3333.3. "[W]hen the drafters of a statute have employed a term in one place and omitted it in another, it should not be inferred where it has been excluded." (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1010 [239 Cal.Rptr. 656, 741 P.2d 154].) The electorate's use of the term "injured person" in section 3333.4 rather than section 3333.3 's broader reference to "plaintiff" shows clearly that the electorate intended a different meaning.

The majority's concern that this interpretation would preclude anyone, including a passenger, from recovering nonpecuniary damages when a vehicle's owner or operator is uninsured is unfounded. (Maj. opn., *ante*, at pp. 280-281*ante*, at pp. 280-281.) A passenger who is injured in the accident is an "injured person" who, as neither the uninsured owner

nor uninsured operator of the vehicle, can recover nonpecuniary damages.

Unlike the majority, I do not readily dismiss the argument that a wrongful death plaintiff generally "stands in the shoes" of the decedent and is subject to any defenses that the defendant could have asserted against the decedent. (*Saenz v. Whitewater Voyages, Inc.* (1990) 226 Cal.App.3d 758, 763-764 [276 Cal.Rptr. 672]; *Argonaut Ins. Co. v. Superior Court* (1985) 164 Cal.App.3d 320, 324 [210 Cal.Rptr. 417].) Under this general rule, "If one injured by a tortious act may not himself recover from the tortfeasor, 'then it follows that under established law governing wrongful death actions, his survivors may not recover in ... such an action.' " (*Salin v. Pacific Gas & Electric Co.* (1982) 136 Cal.App.3d 185, 192 [185 Cal.Rptr. 899], quoting *Cole v. Rush* (1955) 45 Cal.2d 345, 351 [289 P.2d 450, 54 A.L.R.2d 1137], overruled on other grounds in *Vesely v. Sager* (1971) 5 Cal.3d 153, 167 [95 Cal.Rptr. 623, 486 P.2d 151].)

Although this rule concededly is not absolute, nothing in section 3333.4 's language suggests the intent to carve out an exception under the circumstances of this case. Section 3333.4 seeks to deter persons from disobeying the financial responsibility laws. In this regard, the section is closely analogous to the defense of comparative negligence, which *can* be asserted against the decedent's heirs. (See *Buckley v. Chadwick* (1955) 45 Cal.2d 183, 200-201 [265 P.2d 884]; *Atkins v. Strayhorn* (1990) 223 Cal.App.3d 1380, 1395 [273 Cal.Rptr. 231].) If a wrongful death plaintiff's recovery can be reduced by the decedent's comparative negligence, we may reasonably conclude the electorate intended a wrongful death plaintiff's recovery similarly to be reduced by the decedent's failure to obtain legally required insurance. ***291**

Moreover, the secondary materials which the majority cites are not dispositive. (Maj. opn., *ante*, at pp. 277-279*ante*, at pp. 277-279.) While Proposition 213's uncodified "Findings and Declaration of Purpose" refer to targeting "[u]ninsured motorists, drunk drivers, and criminal felons," without specific mention of wrongful death plaintiffs (Ballot Pamp., text of Prop. 213, § 2, as presented to voters, Gen. Elec. (Nov. 5, 1996) p. 102), the same findings also do not specifically create any exception to the general rule that a wrongful death plaintiff "stands in the shoes" of the decedent.

My interpretation furthers the intent and purpose of Proposition 213. "... Proposition 213 was designed primarily for the benefit of 'law-abiding citizens'—i.e., drivers who obey the financial responsibility laws ...." (*Hodges v. Superior Court* (1999) 21 Cal.4th 109, 116 [___ Cal.Rptr.2d ___, ___ P.2d ___]), and was also intended "to reduce skyrocketing insurance premiums by encouraging motorists to buy liability insurance." (*Yoshioka v. Superior Court* (1997) 58 Cal.App.4th 972, 983 [68 Cal.Rptr.2d 553].) Barring the heirs of uninsured motorists from recovering nonpecuniary damages provides an additional incentive for those motorists to purchase insurance, to the benefit of all law-abiding citizens. The majority summarily attempts to discount the effectiveness of this incentive without providing any substantive basis for doing so. (Maj. opn., *ante*, at pp. 282-283*ante*, at pp. 282-283.) I remain unpersuaded. If denying nonpecuniary damages to uninsured motorists "encourag[es] motorists to buy liability insurance" (*Yoshioka v. Superior Court, supra*, 58 Cal.App.4th at p. 983), the incentive is certainly increased when the uninsured motorist's heirs are also denied such damages. I believe the electorate sought this incentive when it prohibited nonpecuniary damages whenever the "injured person" was an uninsured motorist.

Accordingly, I dissent.

Footnotes

1 Only the wrongful death action is at issue here.

2 Section 3333.4, subdivision (a)(1), bars recovery of nonpecuniary damages when "[t]he injured person was at the time of the accident operating the vehicle in violation of Section 23152 or 23153 of the Vehicle Code, and was convicted of that offense." Vehicle Code sections 23152 and 23153 forbid driving under the influence of alcohol or drugs or driving with a blood-alcohol level of .08 percent or greater.

Proposition 213 also enacted section 3333.3, which provides: "In any action for damages based on negligence, a person may not recover any damages if the plaintiff's injuries were in any way proximately caused by the plaintiff's commission of any felony, or immediate flight therefrom, and the plaintiff has been duly convicted of that felony."

3 A threshold question arises whether section 3333.4 applies in wrongful death actions because heirs are limited to recovery for pecuniary damages only. (See, e.g., *Parsons v. Easton* (1921) 184 Cal. 764, 773-774 [195 P. 419]; *Valente v. Sierra Railway Co.* (1910) 158 Cal. 412, 418-419 [111 P. 95]; see generally, 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 1213, pp. 649-650, and cases cited therein.) In *Krouse v. Graham* (1977) 19 Cal.3d 59, 69 [137 Cal.Rptr. 863, 562 P.2d 1022], however, this court referred to "loss of such *nonpecuniary* factors as the society, comfort, care and protection of a decedent" as recoverable in a wrongful death action. (Italics added.) In light of our holding that plaintiffs do not come within the provisions of section 3333.4 because they are not the uninsured "owner [or operator] of a vehicle involved in the accident," we need not resolve, and express no opinion on, this potential inconsistency in the law.

4 Plaintiffs and amici curiae in support of their position request we take judicial notice of ballot pamphlet arguments and the text of the initiative. By separate order, we have granted that request. (Evid. Code, §§ 452, subd. (c), 459; *People v. Hazelton* (1996) 14 Cal.4th 101, 107, fn. 2 [58 Cal.Rptr.2d 443, 926 P.2d 423].) Plaintiffs also request we take notice of other, nonofficial election materials as well as materials relating to Assembly Bill No. 432 and Senate Bill No. 31 (1995-1996 Reg. Sess.), the legislative antecedents to Proposition 213. Although we have granted that request as well, these matters were not directly presented to the voters and therefore not relevant to our inquiry. (Cf. *Hodges v. Superior Court*, *supra*, 21 Cal.4th at p. 118, fn. 6.)

5 We emphasize that our holding applies only to wrongful death plaintiffs who are neither uninsured owners nor operators of a vehicle involved in the accident. Although we express no opinion on the question because the facts are not before us, it would appear that an heir who is the uninsured owner or operator of the vehicle involved in the accident would come within the intended scope of section 3333.4.

6 Throughout, the ballot pamphlet materials also note Proposition 213's prohibition against suits by convicted felons for crime-related injury and recovery of noneconomic damages by convicted drunk drivers. Since uninsured motorists are at issue here, we cite only to these references in the initiative, except to the extent that parallel language supports our construction of section 3333.4, subdivision (a)(2) and (3). We express no opinion as to the applicability of the other provisions of Proposition 213 in wrongful death actions.

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7 A question might arise whether a wrongful death plaintiff would be bound pursuant to principles of collateral estoppel by a finding under section 3333.4 that the decedent could not recover noneconomic damages. Under the facts of this case, we need not definitively resolve this issue. However, given our interpretation of section 3333.4 as it applies in these circumstances, there may be insufficient identity of issues to preclude subsequent litigation by the heirs. (See *Clemmer v. Hartford Ins. Co.* (1978) 22 Cal.3d 865, 876-877 [151 Cal.Rptr. 285, 587 P.2d 1098]; see generally, *Bernhard v. Bank of America* (1942) 19 Cal.2d 807, 813 [122 P.2d 892].)

8 Under section 3333.4, subdivision (c), the heirs of an uninsured driver would not be limited to economic damages if the driver of the other vehicle were convicted of driving under the influence.

1 All further statutory references are to the Civil Code.

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232 Cal.App.3d 1038, 283 Cal.Rptr. 873

INDUSTRIAL RISK INSURERS,
Plaintiff and Appellant,
v.
THE RUST ENGINEERING
COMPANY, Defendant and Respondent.

No. A051674.
Court of Appeal, First District, Division 4, California.
July 29, 1991.

[Opinion certified for partial publication. *]

SUMMARY

A property and business interruption insurer brought an action against an engineering company to recover amounts paid under its policy on account of a boiler explosion at its insured's paper mill. Defendant had designed, and substantially completed its work on, a rapid drain system for the boiler more than 10 years before the suit was filed, but the system itself was not completed until later. The trial court granted defendant's motion for summary judgment on the ground that the action was time barred under Code Civ. Proc., § 337.15 (10-year limitations period for suits for latent defects in improvements to real property). (Superior Court of Contra Costa County, No. 309948, Peter L. Spinetta, Judge.)

The Court of Appeal affirmed, holding that the trial court properly granted summary judgment for defendant. The court held that the reasonably plain meaning of Code Civ. Proc., § 337.15, subd. (g) (date of substantial completion relates to rendering of services by each profession or trade), is that the limitations period commences as to each profession on the date its services to the improvement are substantially complete. (Opinion by Perley, J., with Poche, Acting P. J., and Reardon, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d)
Limitation of Actions § 35--Commencement of Period--Actions Involving Real Property--Latent Defects--Completion of ***1039** Professional's Services.
In an action by a property and business interruption insurer against an engineering company to recover amounts paid under its policy on account of a boiler explosion at its insured's paper mill, the trial court properly granted summary judgment for defendant on the ground that the action was time barred under Code Civ. Proc., § 337.15 (10-year limitations period for suits for latent defects in improvements to real property). Defendant had designed a rapid drain system for the boiler and had completed its work on the system more than 10 years before the suit was filed, although the system itself was completed later. The reasonably plain meaning of Code Civ. Proc., § 337.15, subd. (g) (date of substantial completion relates to rendering of services by each profession or trade), is that the limitations period commences as to each profession on the date its services to the improvement are substantially complete.

[See 3 **Witkin,** Cal. Procedure (3d ed. 1985) Actions, § 428.]

(2)
Statutes § 30--Construction--Language--Literal Interpretation.
A statute should be interpreted so as to effectuate its apparent purpose, and the legislative purpose is determined in the first instance by the language used in the statute. If the language is clear and unambiguous, there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature.

(3)
Statutes § 39--Construction--Giving Effect to Statute--Conformation of Parts.
Statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.

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(4)
Statutes § 21--Construction--Legislative Intent.
If a statute is on its face amenable to two diametrically opposed interpretations, each of which conflicts in some significant way with the words the Legislature used, a court is compelled to impute to the statute that meaning which comports with the objective the Legislature sought to achieve. Where uncertainty exists, consideration should be given to the consequences that will flow from a particular interpretation. Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent.

(5)
Limitation of Actions § 18--Period of Limitation--Real Property--Latent Defects--Statutory Purpose.
The purpose of Code Civ. Proc., § 337.15 (statute of limitations applicable to suits for latent defects in improvements to real property), is to shield members of the ***1040** construction industry from liability of indefinite duration for property damage caused by their work.

[Statutes of limitations: actions by purchasers or contractees against vendors or contractors involving defects in houses or other buildings caused by soil instability, note, 12 **A.L.R.4th** 866. See also **Cal.Jur.3d,** Limitation of Actions, § 28.]

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PERLEY, J.

In this case we hold that the 10-year time limit Code of Civil Procedure section 337.15 places on suits for latent defects in improvements to real property commences when the defendant's work on the improvement is substantially completed, rather than when the improvement itself is substantially completed. The trial court here granted the motion of respondent, The Rust Engineering Company, for summary judgment under section 337.15, finding that the $20 million damage claim of appellant, Industrial Risk Insurers, was time barred and that there was no triable issue of fact to the contrary. We affirm the judgment entered in favor of respondent.

I.

A 400-ton boiler at Louisiana Pacific Fiberboard Corporation's paper mill in Antioch, California, exploded on July 5, 1987, killing 3 people, wounding several others and causing extensive property damage. Appellant, Fiberboard's property and business interruption insurer, filed suit against respondent on December 24, 1987, to recover amounts paid under its policy on account of the explosion. The complaint alleged that the explosion was caused by failure of the rapid drain system respondent designed for the boiler, and that respondent was liable for the resulting damages under theories of strict liability, negligence or breach of warranty. Judgment was entered for respondent on the ground that it had substantially completed its ***1041** services in connection with the rapid drain system by December 24, 1977, 10 years before the filing of the complaint.

There is no dispute on appeal that the rapid drain system was an "improvement" to real property within the meaning of Code of Civil Procedure section 337.15.[1] (1a) The issue is whether this statute's 10-year time frame for suits for latent defects commenced when the system itself was substantially completed, or earlier, when respondent's work on the system was substantially completed. In the published portion of our discussion, we will explain why we conclude that the limitations period began with the substantial completion of respondent's services. In the unpublished portion, we will address the evidence presented in connection with the motion for summary judgment, which established that virtually all of respondent's services with respect to the rapid drain system were furnished more than 10 years prior to the filing of the complaint.

II.

We are called upon to construe subdivisions (a) and (g) of Code of Civil procedure section 337.15, which read as follows: "(a) No action may be brought to

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recover damages from any person, or the surety of a person, who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property more than 10 years after the substantial completion of the development or improvement for any of the following: [¶] (1) Any latent deficiency in the design, specification, surveying, planning, supervision, or observation of construction or construction of an improvement to, or survey of, real property. [¶] (2) Injury to property, real or personal, arising out of any such latent deficiency. ... [¶] (g) The 10-year period specified in subdivision (a) shall commence upon substantial completion of the improvement, but not later than the date of one of the following, whichever first occurs: [¶] (1) The date of final inspection by the applicable public agency. [¶] (2) The date of recordation of a valid notice of completion. [¶] (3) The date of use or occupation of the improvement. [¶] (4) One year after termination or cessation of work on the improvement. [¶] *The date of substantial completion shall relate specifically to the performance or furnishing* [*sic*] design, specifications, surveying, planning, supervision, testing, observation of construction or construction *services by each profession* ***1042** *or trade rendering services to the improvement.*" (§ 337.15, subds. (a), (g) [italics added].)

(2) A statute should be interpreted so as to effectuate its apparent purpose. (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798 [268 Cal.Rptr. 753, 789 P.2d 934]; *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 252 [110 Cal.Rptr. 144, 514 P.2d 1224].) The legislative purpose is determined in the first instance by the language used in the statute. (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 724 [257 Cal.Rptr. 708, 771 P.2d 406].) "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299] [describing the "plain meaning" rule].) (1b) The language we have highlighted in the last sentence of Code of Civil Procedure section 337.15, subdivision (g) "relates" the concept of substantial completion to services rendered to an improvement, and it relates this concept "specifically" to the services rendered by "each" profession. It is somewhat imprecise to say that things are related without saying how they are related. But the reasonably plain meaning of this sentence is that the limitations period commences as to each profession on the date its services to the improvement are substantially complete.

Appellant offers no alternative construction of the words used in the last sentence of Code of Civil Procedure section 337.15, subdivision (g). Appellant maintains, however, that the sentence "cannot be read to eliminate" the references to "substantial completion of the improvement" in the first sentences of Code of Civil Procedure section 337.15, subdivisions (a) and (g). Appellant also suggests that our interpretation of the last sentence of subdivision (g) effectively negates subdivision (g)(4), which states that the limitations period cannot commence any later than one year "after termination or cessation of work on the improvement." Appellant reasons that subdivision (g)(4) will never come into play if the limitations period is triggered by the substantial completion of services.

(3) "[S]tatutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387 [241 Cal.Rptr. 67, 743 P.2d 1323].) (1c) The last sentence of Code of Civil Procedure section 337.15, subdivision (g) is not necessarily inconsistent with subdivision (g)(4). The latter provision ensures that the limitations period will begin to run at some fixed point after work on an improvement stops, even if some portion of the work is not substantially complete. However, it is difficult to reconcile the last sentence of subdivision (g) with the references elsewhere in the statute to substantial completion of the ***1043** improvement. The statement in the first sentence of subdivision (g) that the limitations period "shall commence upon substantial completion of the improvement" poses an obvious problem for our conclusion that the limitations period can commence for a trade or profession *before* an improvement is substantially complete. There is at least sufficient

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conflict in the language of the statute to preclude application of the plain meaning rule.

(4) If a statute "is on its face amenable to two diametrically opposed interpretations, each of which conflicts in some significant way with the words the Legislature used .... [¶] we are compelled to impute to the statute that meaning which comports with the objective the Legislature sought to achieve." (*American Tobacco Co. v. Superior Court* (1989) 208 Cal.App.3d 480, 485-486 [255 Cal.Rptr. 280].) "Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. [Citation.] Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent." (*Dyna-Med, Inc. v. Fair Employment & Housing Com., supra,* 43 Cal.3d at p. 1387.)

Section 337.15 of the Code of Civil Procedure was enacted in 1971 in response to lobbying by the construction industry for statutes limiting the duration of liability for real property improvements. (See generally Boyle & Hastings, *California Code of Civil Procedure Sections 337.1 and 337.15: Defective Construction Defect Statutes* (1990) 21 Pacific L.J. 235, 242-243.) (5) Numerous opinions have noted that the purpose of section 337.15 is to shield members of the construction industry from liability of indefinite duration for property damage caused by their work. (See *Martinez v. Traubner* (1982) 32 Cal.3d 755, 760 [187 Cal.Rptr. 251, 653 P.2d 1046]; *Regents of University of California v. Hartford Acc. & Indem. Co.* (1978) 21 Cal.3d 624, 633, fn. 2 [147 Cal.Rptr. 486, 581 P.2d 197]; *Sandy v. Superior Court* (1988) 201 Cal.App.3d 1277, 1285 [247 Cal.Rptr. 677]; *Cascade Gardens Homeowners Assn. v. McKellar & Associates* (1987) 194 Cal.App.3d 1252, 1256 [240 Cal.Rptr. 113]; *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762, 773 [167 Cal.Rptr. 440]; *Ernest W. Hahn, Inc. v. Superior Court* (1980) 108 Cal.App.3d 567, 570 [166 Cal.Rptr. 644], disapproved on another point in *Martinez v. Traubner, supra*; *Leaf v. City of San Mateo* (1980) 104 Cal.App.3d 398, 404-405 [163 Cal.Rptr. 711].)

(1d) Our decision is consistent with the statutory purpose identified in these cases. A defendant's services with respect to an improvement may be completed well before the improvement itself is finished. If the limitations period does not commence until substantial completion of the improvement, construction industry members may be subject to liability for an indefinite ***1044** time over 10 years after the substantial completion of their work. We do not believe that this was what the Legislature intended when it added subdivision (g) to the statute in 1981.

Appellant has a reasonable argument to the contrary based on portions of the legislative history of Code of Civil Procedure section 337.15, subdivision (g). There are legislative committee and caucus reports indicating that this subdivision was intended to codify the holding of *Liptak v. Diane Apartments, Inc., supra,* 109 Cal.App.3d 762. (See *Schwetz v. Minnerly* (1990) 220 Cal.App.3d 296, 305-306 [269 Cal.Rptr. 417].) The Liptaks' tract house was damaged by earth movements, and they sued two companies involved in the grading and filling of the slope that moved. Work on the slope was one improvement within the tract development. This improvement was completed over 10 years before the suit was filed. The development, however, was not substantially completed until less than seven years before the suit was filed. The issue was whether the limitations period under section 337.15, subdivision (a) commenced with substantial completion of the development or the improvement. The court held that the 10-year period "commences to run in respect to a person who has contributed towards 'an improvement' when such improvement has been substantially completed irrespective of whether or not the improvement is part of a development." (*Liptak v. Diane Apartments, Inc., supra,* 109 Cal.App.3d at p. 772.)

The Senate Committee on Judiciary and the Senate Republican Caucus digests for the bill that became Code of Civil Procedure section 337.15, subdivision (g) state in pertinent part: " 'In [*Liptak*], the court of appeal held that with respect to a developer,

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the ten-year limitation period does not commence until the development is substantially completed. [¶] With respect to a person who has contributed to an improvement on the developed property, the court held that the period commences when that particular improvement has been substantially completed, regardless of the completion time of the development itself. [¶] AB 605 would codify the *Liptak* holding on these issues.' " (*Schwetz v. Minnerly, supra,* 220 Cal.App.3d at pp. 305-306.) In light of these statements, appellant submits that the Legislature intended the limitations period to begin upon substantial completion of the improvement, rather than a trade or profession's contribution to the improvement.

The *Liptak* court had no occasion to distinguish between completed improvements and completed contributions to improvements; it was only called upon to distinguish completed improvements from completed developments. Its holding thus does not extend to our situation—despite how that holding was phrased—and a legislative intent to codify that holding is not dispositive. In any event, other portions of the legislative history indicate ***1045** that Code of Civil Procedure section 337.15, subdivision (g) encompasses the reasoning, as well as the holding, of *Liptak,* and the reasoning of *Liptak* supports a distinction between completion of services and completion of an improvement.

The *Liptak* court wrote: "In the matter at bench if we were to hold that the 10-year period provided for in section 337.15 commenced to run at the time the development was substantially completed, the period of respondents' liability would extend for 15 years beyond the time their work on the improvement had actually been completed. By adopting such a construction, the period could be extended even longer, depending upon the activities of the developer. However, if the same work had been performed for one other than a developer, the period would begin to run upon substantial completion of the work. In *Regents of University of California v. Hartford Acc. & Indem. Co., supra,* 21 Cal.3d 624, 633, footnote 2, the court indicated that section 337.15 was for the benefit of the contractor, in stating: 'A contractor is in the business of constructing improvements and must devote his capital to that end; the need to provide reserves against an uncertain liability extending indefinitely into the future could seriously impinge upon the conduct of his enterprise ....' [¶] The construction which appellants wish placed upon section 337.15 could result in extending a contractor's liability for an indefinite period, long beyond the 10-year period anticipated by the section ...." (*Liptak v. Diane Apartments, Inc., supra,* 109 Cal.App.3d at pp. 772- 773.)

There is something in the foregoing passage for both sides. The court speaks of time running from the completion of work, and uses the words "their" work and "the" work as if the terms were synonymous, when the difference may amount to $20 million in our case. But the thrust of this passage is that the statute should be liberally construed to avoid indefinite periods of liability, and that this is best accomplished by tying the period of liability to work the defendant has done. As previously noted, these same considerations support our interpretation of Code of Civil Procedure section 337.15, subdivision (g).

These considerations are also represented in the legislative history. The record in our case includes the Assembly Committee on Judiciary's digest of the bill that became Code of Civil Procedure section 337.15, subdivision (g). This digest comments that "The bill's proponents state the definition of 'substantial completion' in the bill is needed so that the various professions and trades rendering services to an improvement may be able to predict with certainty when their liability for 'latent deficiencies' will terminate." The digest also explains that the last sentence of subdivision (g) "further delineates the liability of each participant in an improvement by providing that ***1046** the date of substantial completion shall relate specifically to the performance or furnishing of services, as defined, by each profession or trade rendering services to the improvement." This legislative determination to draw lines with respect to the liability of each participant in an improvement is consistent with our reading of the last sentence of subdivision (g).

We note finally that our decision is supported by the California Supreme Court's opinion in *Valley Circle Estates v. VTN Consolidated, Inc.* (1983) 33 Cal.3d

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604 [189 Cal.Rptr. 871, 659 P.2d 1160]. In *Valley Circle,* the plaintiffs' home was damaged from soil subsidence. They sued the general contractor of the residence, which was completed less than 10 years before the complaint was filed. The general contractor cross-complained for equitable indemnity against a subcontractor that had completed its services 12 years before the complaint was filed. The issue on appeal was whether the cross-complaint for indemnity was timely under Code of Civil Procedure section 337.15. The court held that "a cross-complaint for indemnity may be filed *more than 10 years after the alleged indemnitor has substantially completed his services,* provided that the underlying action was itself brought within the 10-year limitation period of the statute. [¶] Thus, a defendant timely sued under section 337.15, subdivision (a), may file under subdivision (c) a cross-complaint for indemnity against a third party *who could not otherwise be reached* by a direct action for indemnity filed by the defendant, or by a direct suit for damages filed by the plaintiff." (33 Cal.3d at p. 609 [italics added].) The highlighted language assumes that the limitations period for direct actions under Code of Civil Procedure section 337.15 runs from the substantial completion of services rather than the improvement. (See also *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 491- 2 [213 Cal.Rptr. 256, 698 P.2d 159] [dicta reflecting the same assumption].)

The court was careful to note that its holding in *Valley Circle* did "not create an infinite period of liability on the part of improvers of real property who contract to perform services for a general contractor," and reiterated that "[i]n a direct action for damages or indemnity, a subcontractor may be held liable no more than 10 years after substantial completion of *his* services." (*Valley Circle Estates v. VTN Consolidated, Inc., supra,* 33 Cal.3d at p. 614 [italics added].)

We therefore agree with the trial court that the relevant inquiry is into the date of substantial completion of respondent's services, and turn to the evidence presented on that issue. ***1047**

III. *

. . . . . .

IV.

The judgment is affirmed.

Poché, Acting P. J., and Reardon, J., concurred.

Appellant's petition for review by the Supreme Court was denied October 17, 1991. ***1048**

Footnotes

* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part III.

1 In view of our conclusion that the suit is untimely under this 10-year statute, we do not reach respondent's alternative argument that the suit alleges "patent" rather than latent defects, and is therefore barred by the 4-year statute of limitations for suits based on patent defects in the design of real property improvements (Code Civ. Proc., § 337.1).

* See footnote, *ante,* page 1038*ante,* page 1038.

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