6-21/100.00 Writ of Possession (Claim and Delivery)

Claim and delivery is not an action in and of itself. It is a provisional remedy available to a plaintiff in an action for recovery of specific personal property in the possession of the defendant. The provisional remedy cannot be employed independently, but only under the action for recovery of the property. (McFaddin v. H.S. Crocker Co., 219 CA 2d 585)

A claim and delivery action is merely an action for the recovery of the possession of personal property, and the possession obtained by the auxiliary proceedings is a temporary possession and does not operate to give the one so gaining possession the full right of possession like a final judgment in the action. A plaintiff gaining possession through claim and delivery proceedings must keep the property so that it may be returned to the defendant in case the final judgment awards it to the defendant, and the plaintiff cannot sell the property prior to final judgment and thus make it impossible for the defendant to regain possession. (Steele

v. Marlborough, 100 CA 491)

Claim and delivery is only available against defendants who have actual or constructive possession of the property sought to be recovered. (Lamus v. Engwicht, 39 CA 523) Property may properly be seized from possession of a person acting as agent for defendant and claiming no ownership interest. (Phillips Aviation Co. v. Superior Court, 246 CA 2d 46)

An owner of personal property that has been attached in an action in which the owner is not a defendant may recover the property through Claim and Delivery proceedings. (Kellogg v. Burr, 126 CA 38; Rhodes v. Patterson, 3 CA 469) The attaching creditor may be joined as a defendant with the attaching officer in the replevin action. (Taylor v. Bernheim, 58 CA 404) If the sheriff or other officer holding personal property under writ of attachment or execution is made a defendant in an action for possession of that property, the officer will deliver the property to the coroner under Claim and Delivery proceedings upon service of a copy of the writ and undertaking covering such officer. An officer so relinquishing the attached property has the duty to object to the plaintiff's undertaking on the Claim and Delivery as agent of the creditor, unless relieved from that duty. (Noble v. Desmond, 72 CA 330; CCP 995.910-995.960)

Tangible personal property in the possession or under the control of the judgment debtor or in the custody of the levying officer is subject to a levy under attachment or execution notwithstanding that the property is subject to the claim and delivery proceeding. The property may not be sold or otherwise disposed of under the attachment or execution levy until the action under which the claim and delivery was made is finally determined.

A receiver appointed by a state court is not entitled to take possession from the officer unless a redelivery bond has been given. (Miller v. Superior Court, 63 CA 1