

ADMISSIBILITY OF FELONY CONVICTIONS IN A CIVIL ACTION



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FELONY CONVICTION IS ADMISSIBLE IN CIVIL CASE

Under California law, evidence of a felony conviction is admissible to impeach the credibility of a witness in a civil trial. Evid. Code § 788.

Plaintiff is moving to exclude the evidence of the prior felony conviction(s) pursuant to Evidence Code §352. Pursuant to that section, “prejudicial” does not mean the evidence is damaging to a party's case. Instead, it means “evoking an emotional response that has very little to do with the issue on which the evidence is offered. [Citation.]” (*Rufo v. Simpson* (2001) 86 Cal.App.4th 573, 597.) Evidence must be excluded under section 352 only if it is unduly prejudicial despite its legitimate probative value because it poses an intolerable risk to the fairness of the proceedings or the reliability of the outcome. (*Ibid.*) *Piscitelli v. Salesian Soc.* (2008)166 Cal.App.4th 1, 11 [Evidence of prior felony conviction 17 years earlier for child molestation admissible in civil action].

When a defendant in a *criminal* action seeks to suppress evidence of prior convictions, because of due process concerns, a stricter relevance standard is applied than in a *civil* case. *Robbins v. Wong*, (1994) 27 Cal. App. 4th 261, 273-74). As the *Robbins* court explained: “Given the significant distinctions between the rights enjoyed by criminal defendants and civil litigants, and the diminished level of prejudice attendant to felony impeachment in civil proceedings, it is not unreasonable to require different standards of admissibility in civil and criminal cases.” *Id.* at 273.

Thus, in determining whether a prior felony conviction is relevant in a civil case, a trial court may look for guidance to holdings in criminal cases, but may not consider them binding precedent. *Id.* at 274

In *Robbins*, a personal injury action arising out of an automobile collision, the Court of Appeal held that the trial court did *not* abuse its discretion by admitting evidence of a drug-related felony conviction of one of the plaintiff drivers (cocaine distribution). The conviction *was fifteen years old* at the time of trial. *Id.*

The plaintiff in *Robbins*, like plaintiffs here, sought to exclude evidence of the conviction on the ground that the conviction was too remote in time, had no relevance to the case and was prejudicial. Defendants argued, on the other hand, that it could be introduced to impeach the plaintiff's credibility because the drug-related offense was a crime of “moral turpitude.”

Although the appellate court determined that the trial court applied the wrong standard, which thereby benefited the plaintiff who sought to exclude the evidence, the trial court did balance the probative value against its prejudicial effect. The appellate court upheld the trial court's ruling that the evidence was properly admitted to impeach the defendant. The court specifically found that the trial court misapplied the stricter “moral turpitude” test to find that the conviction was relevant to the defendant's credibility, a test that is only to be applied in a criminal case.

The “moral turpitude test” as applied in *People v. Castro* (1985) 38 Cal. 3d 301, does not apply in civil cases. See: *Robbins*, 27 Cal. App. 4th at 275 (‘The [trial] court used the ‘moral turpitude test’ announced in *Castro*, even though, as we hold today, that threshold test is not required in a civil case.’).

Even if the more stringent “moral turpitude” test were applied here (erroneously), the result is the same: the Plaintiff's convictions are admissible.

A drug-related conviction, especially one like racketeering, which plaintiffs themselves admit, “was a serious one,” is a crime involving “moral turpitude” and therefore directly bears on a person's credibility and veracity. **Robbins**, 21 Cal. App. 4th at 268; *see also* **Castro**, *supra*, 38 Cal.3d at 317 (Possession of heroin for sale involves moral turpitude because there is intent to corrupt others).

Plaintiffs argue that the felony convictions should not be put before the jury because they are too remote in time to have any relevance. Plaintiffs are wrong. As shown above, the court in **Robbins** admitted evidence of a *fifteen-year old* conviction.

CONCLUSION: It is therefore respectfully requested that the Court deny the Plaintiff's motion in limine and allow the prior felony convictions to be used in this case and mentioned to the jury for the purposes of impeachment.

EXCLUDE REMOTE FELONY CONVICTION

“Sections 788 and 352 of the Evidence Code control the admission of felony convictions for impeachment. Together, they provide discretion to the trial judge to exclude evidence of prior felony convictions when their probative value on credibility is outweighed by the risk of undue prejudice. [Citation.]” (**People v. Muldrow** (1988) 202 Cal.App.3d 636, 644.) In exercising its discretion [in a criminal case], the trial court must consider four factors identified by our Supreme Court in **People v. Beagle** (1972) 6 Cal.3d 441, 453 (hereafter, “ **Beagle** ”): (1) Whether the prior conviction reflects adversely on an individual's honesty or veracity; (2) the nearness or remoteness in time of a prior conviction; (3) whether the prior conviction is for the same or substantially similar conduct to the charged offense; and (4) what the effect will be if the defendant does not testify out of fear of being prejudiced because of the impeachment by prior convictions. **People v. Mendoza** (2000) 78 Cal.App.4th 918, 925.

It is true, however, that the mandatory application of the requirements set forth in **Beagle** do not apply in a civil action. **Robbins v. Wong**, (1994) 27 Cal. App. 4th 261, 273-74.

However, the Court may still use the **Beagle** factors as a guideline. Although the criminal law factors are not binding in civil cases, they may serve as guidelines when determining whether evidence of a witness's felony conviction should be excluded under section 352. (**Robbins**, *supra*, 27 Cal.App.4th at pp. 273–274). **Piscitelli v. Salesian Soc.** (2008) 166 Cal.App.4th 1, 11. *see* **People v. Beagle**, *supra*, 6 Cal.3d at p. 453 [a conviction from “long before” should generally be excluded on the ground of remoteness, if followed by a legally blameless life]).

When conducting a 352/788 analysis at criminal trials, a witness's felony conviction that is remote in time might ordinarily have little or no bearing on the credibility of a witness who has since lived a commendable life, thereby moving the needle closer toward exclusion of the evidence under section 352. (**People v. Woodard** (1979) 23 Cal.3d 329, 336–337). **Piscitelli v. Salesian Soc.** (2008) 166 Cal.App.4th 1, 12.

CONCLUSION: In this matter Defendants’ felony conviction(s) are too remote and their admission would be more prejudicial than probative. There is no evidence that Defendant has not lead a “commendable life” or “legally blameless” life. It is therefore requested that this Court issue an order to preclude all witnesses and counsel from mentioning the prior convictions of the Defendant.