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# Torts

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# Torts

## Torts; privileged publications--exceptions

Civil Code § 47 (amended).  
AB 529 (Epple); 1991 STAT. Ch. 432

Under existing law, a publication or broadcast made in any legislative proceeding, judicial proceeding, or other proceeding authorized by law and reviewable by writ of mandate is privileged.<sup>1</sup> Existing law excepts from the privilege an allegation in a pleading filed for marital dissolution or separation concerning persons against whom affirmative relief is not sought.<sup>2</sup> Chapter 432 additionally exempts any communication made in furtherance of an act of intentional destruction of physical evidence<sup>3</sup> undertaken for the purpose of depriving a litigant of the use of the evidence.<sup>4</sup>

*BAM*

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1. CAL. CIV. CODE § 47 (West Supp. 1991) (amended by Chapter 432). *See* CAL. CIV. PROC. CODE §§ 1084-1097 (West 1980 & Supp. 1991) (defining and outlining the procedure for issuing a writ of mandate).

2. CAL. CIV. CODE § 47(b)(1) (West Supp. 1991) (amended by Chapter 432). However, if the pleading is sworn to or the affidavit is verified, and made without malice, by one having reasonable and probable cause for believing the truth of the allegation, or if the allegation is material and relevant to the issues in the action, then it is privileged. *Id.* Under existing law, the privilege does not extend to the tort of malicious prosecution. *Silberg v. Anderson*, 50 Cal. 3d 205, 216, 786 P.2d 365, 371, 266 Cal. Rptr. 638, 644 (1990).

3. *See* CAL. CIV. CODE § 47(b)(2) (amended by Chapter 432) (defining physical evidence as evidence specified in section 250 of the Evidence Code or evidence that is property of any type specified in section 2031 of the Code of Civil Procedure). *See* CAL. EVID. CODE § 250 (West 1966) (definition of a writing); CAL. CIV. PROC. CODE § 2031 (West Supp. 1991) (permitting a party to serve another party with a request to identify documents, papers, books, accounts, letters, photographs, objects, and other tangible things in its possession, custody, or control).

4. CAL. CIV. CODE § 47(b)(2) (amended by Chapter 432). Chapter 432 applies although the content of the communication is the subject of a subsequent publication or broadcast which is privileged pursuant to this section. *Id.* *See* *Smith v. Superior Court*, 151 Cal. App. 3d 491, 496, 198 Cal. Rptr. 829, 832 (1984) (recognizing a new tort based upon the intentional destruction of evidence). *See generally* Solum, *Truth and Uncertainty: Legal Control of the Destruction of Evidence*, 36 EMORY L. J. 1085 (1987) (discussing both civil and criminal options for dealing with the intentional destruction of evidence).

