

# MINNESOTA STATUTES 1953 ANNOTATIONS

1473

CLAIM AND DELIVERY 565.04

NOTE: Sections 561.11 to 561.15, are excepted from Rules of Civil Procedure insofar as they are inconsistent or in conflict therewith.

## 561.17 ACTION FOR WASTE

Liability of tenant for fire losses caused by negligence where the tenant covenants to surrender the premises in good condition; effect of "loss by fire." 35 MLR 603.

## REMEDIES FOR POSSESSION OF PROPERTY

### CHAPTER 565

#### CLAIM AND DELIVERY

##### 565.01 POSSESSION OF PERSONAL PROPERTY, HOW CLAIMED

Plaintiff's right to possession; plea of property in a stranger. 32 MLR 84.

Return of specific chattels. The courts have been traditionally reluctant to issue mandatory injunctions for the specific restitution of personalty wrongfully withheld, or for the specific performance of contracts relating to personalty. 34 MLR 147.

The action of replevin has been replaced with the statutory action for claim and delivery of personal property, the gist of which is to determine the right of possession of personal property or the title thereto. *A & A Credit Co. v Burquist*, 230 M 303, 41 NW(2d) 582.

##### 565.02 AFFIDAVIT

In claim and delivery where the original acquisition of possession by defendant is lawful, the subsequent demand and refusal by defendant to return the property, amounts, in the eyes of the law, to a wrongful taking, and the plaintiff has an election under section 542.06 to bring and maintain action in the county in which he resides. *A & A Credit Co. v Berquist*, 230 M 303, 41 NW(2d) 582.

##### 565.03 BONDS AND SURETIES

Obligation to mitigate damages by posting bond. 31 MLR 378.

##### 565.04 REQUISITION TO SHERIFF, SERVICE AND RETURN

In an action in replevin or claim and delivery the sheriff as such has authority only in his own county and has no authority to serve a requisition in a county other than his own and to take thereunder personal property located in a county other than his own. OAG Dec. 13, 1949 (390-A-21).