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PROCEDURE
Third Edition

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CALIFORNIA CIVIL PROCEDURE

Third Edition

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MATTHEW  BENDER

PREFACE TO THIRD EDITION

There have been numerous changes in the law of civil procedure since the publication of the SECOND EDITION of the CALIFORNIA CIVIL PROCEDURE casebook in 2005. The THIRD EDITION reflects some of the more significant developments in constitutional amendments, procedural statutes, rules of court, and case law since 2005; and preserves materials from the FIRST and SECOND EDITIONS that remain current and relevant.

The California statutes and Rules of Court discussed and quoted in the THIRD EDITION are current as of March 1, 2012. The judicial decisions reproduced and analyzed are based on California Supreme Court opinions published through 53 Cal. 4th 735 (2012), and on California Court of Appeal opinions officially published through 192 Cal. App. 4th 1527 (2011).

PREFACE TO SECOND EDITION

There have been numerous changes in the law of civil procedure since the publication of the First Edition of the CALIFORNIA CIVIL PROCEDURE casebook in 1996. The Second Edition reflects some of the more significant developments in constitutional amendments, procedural statutes, rules of court, and case law, as of October 1, 2004. The Supreme Court of California has been particularly active in deciding civil procedure cases during the past eight years. The Second Edition discusses some of the more significant of these decisions, as well as numerous California Court of Appeal decisions. Likewise, the Judicial Council has been very active in revising the California Rules of Court. By comparison, the California Legislature has been somewhat less active in the area of civil procedure during this period, but what new laws it has enacted are very significant. These important procedural statutes are discussed or quoted in the Second Edition.

The judicial decisions reproduced and analyzed in the Second Edition are based on California Supreme Court opinions published through 34 Cal. 4th 366 (2004), and on California Court of Appeal opinions officially published through 111 Cal. App. 4th 1472 (2003).

PREFACE TO FIRST EDITION

The immediate purpose of these materials is to provide a vehicle for upperclass law students to explore the complexities of civil procedure as practiced in the California state courts. The ultimate goal is to increase the competency of future California attorneys with respect to their office and courtroom practice. California Civil Procedure is an intricate series of topics, spanning the spectrum from broad theories to detailed precepts. This book attempts to achieve a balance between general principles and specific rules, with emphasis on those areas of most importance to practitioners.

The organization and methodology employed are mostly traditional. Authorities were selected for reproduction based on their coverage of essential concepts whose application to future cases will require resolution of significant analytical and policy conflicts. Extensive textual analysis places each reproduced case or statute into broader context, as do frequent questions, notes, and observations. The purpose here is two-fold: to enhance coverage of the area under consideration and, more importantly, to stimulate both individual student reflection and classroom discussion.

Although students should find these materials quite helpful in understanding topics to which they were previously exposed, this book is not intended primarily as a review of first year civil procedure. The emphasis instead is often on those areas where California procedure departs from the general or federal rules. These materials do, however, make frequent comparisons to analogous Federal Rules of Civil Procedure and federal practice.

The arrangement of the topics largely reflects the sequence of considerations likely encountered in taking a typical civil case from the stages of initial client contact to commencement of the action in court, through pretrial preparation, trial proceedings, post-trial motions, and appellate review. This sequence need not be followed. Each chapter was developed as an independent topic, and can be assigned in whatever sequence seems appropriate to the instructor.

This book contains far more material than can comfortably be covered in a typical three-credit, one-semester course. The intent is to permit each teacher to structure his or her course by choosing among the full panoply of available topics. Some schools have limited their required civil procedure course to one semester. Those schools may wish to offer more extensive upperclass California Civil Procedure courses, perhaps one focusing on pretrial procedures and another on trial and appellate procedures. This book contains sufficient material for such comprehensive courses.

Chapters 1 and 2 are short chapters designed as the initial assignment for an introductory class. After that, several sequencing options are available for a one semester course. Instructors who wish to emphasize those areas of California Civil Procedure that are unique should assign Chapters 4 (Statutes of Limitations), 5 (Conflict of Laws), 8 (Preclusive Effects of Prior Judgments), sections of Chapter 9 discussing “Doe” defendant practice, sections of Chapter 10 dealing with new party cross-complaints and equitable indemnity, sections of Chapter 12 covering default judgments and arbitration, the new trial portions of Chapter 13, and Chapters 14 and 15. Instructors who desire to add some practical professional responsibility issues may add Chapter 3 to the beginning of this list.

Instructors who wish to emphasize more basic aspects of California civil procedure

PREFACE TO FIRST EDITION

may find the following sequence to their liking: Chapters 1 and 2, followed by assignments from Chapters 4 (Statutes of Limitations), 6 (The Proper Court), 8 (Preclusive Effects of Prior Judgments), 9 (Pleadings), 10 (Joinder), 11 (Discovery), and 13 (Trials). Instructors with the luxury of more than three credits or of two semesters may pick and choose among all these chapters as appropriate.

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March, 2012

TABLE OF CONTENTS

Chapter 1	INTRODUCTION TO CALIFORNIA CIVIL PROCEDURE	1
Chapter 2	SOURCES OF PROCEDURAL LAW	5
§ 2.01	A BRIEF HISTORY OF CALIFORNIA PROCEDURE	5
[A]	Justice in Frontier California	5
[B]	The Impact of the Fields on California Procedure	5
[C]	Subsequent History	6
§ 2.02	SOURCES OF CALIFORNIA PROCEDURAL LAWS	7
[A]	“Written Law”	7
[1]	The United States Constitution and Laws	7
[2]	The California Constitution	8
[3]	The California Code of Civil Procedure	9
[4]	California Rules of Court	9
	CALIFORNIA RULES OF COURT (2012)	10
	Rule 8.1105. <i>Publication of Appellate Opinions</i>	10
	Rule 8.1115. <i>Citation of Opinions</i>	11
	Rule 8.1120. <i>Requesting Publication of Unpublished Opinions</i>	11
	Rule 8.1125. <i>Requesting Depublication of Published Opinions</i>	12
[5]	Local Rules of Court	13
	<i>Tliche v. Van Quathem</i>	13
[a]	Local Rules “Not Inconsistent with State Law”	18
[b]	Case Management (“Fast Track”) Rules	19
[c]	Local Departmental Rules	20
[B]	“Unwritten” Law	20
[1]	Judicial Decisions	20
[2]	Learned Treatises	23
	<i>Earl W. Schott, Inc. v. Kalar</i>	23
[3]	Secondary Authorities	25
[4]	Law Revision Commission Official Comments	26
§ 2.03	THE CALIFORNIA JUDICIAL SYSTEM	26
[A]	California Trial Court Unification	26
[B]	The California Judicial System	27

Table of Contents

Chapter 3	CONSIDERATIONS BEFORE UNDERTAKING REPRESENTATION	33
§ 3.01	INTRODUCTORY NOTE ON PROFESSIONAL RESPONSIBILITY ISSUES	33
§ 3.02	LAWYERS' DUTIES TO THEIR CLIENTS	33
[A]	The Duty of Confidentiality	33
	Notes and Questions	34
[B]	The Duty of Loyalty — Conflicts of Interest	35
[C]	Taking Cases You Are Competent to Handle	38
§ 3.03	AVOIDING MERITLESS LITIGATION	39
	<i>Crowley v. Katleman</i>	39
	Notes and Questions on Frivolous Litigation	49
§ 3.04	FEES AND FEE AGREEMENTS	54
[A]	Fee Agreements, Generally	54
[B]	Statutory Limits on Contingent Fees	55
 Chapter 4	 STATUTES OF LIMITATIONS, LACHES, AND RELATED MATTERS	 57
§ 4.01	INTRODUCTORY NOTE	57
	Developments in the Law — Statutes of Limitations, 63 Harv. L. Rev. 1177, 1185–86 (1950)	57
	Ronald E. Mallen & Jeffrey M. Smith, Legal Malpractice	58
§ 4.02	ASCERTAINING APPLICABLE TIME LIMITATION PERIODS	60
[A]	Statutory Limitation Periods	60
[1]	Statutory Classifications	60
[2]	Categorizing Actions for Statute of Limitations Purposes	60
[3]	Statutory Overlap	62
[4]	Various Specific Statutes of Limitations in the Civil Procedure and Other Codes	63
[B]	Contractual Modification of Statutory Time Period	64
[1]	Contractual Extension of Statutory Limitation Period	64
[2]	Contractual Abridgement of Statutory Limitation Period	64
[C]	Legislative Modification of Statutory Time Periods	65
[1]	Abridgement of Time to Sue	65
[2]	Enlargement of Time to Sue	65
[D]	Calculation of Statutory Time Period	66
§ 4.03	ACCRUAL OF A CAUSE OF ACTION	67
[A]	The General California “Discovery” Rule	67
	<i>Jolly v. Eli Lilly & Company</i>	67
	<i>Fox v. Ethicon Endo-Surgery, Inc.</i>	75
	Notes and Questions Regarding Accrual and the Discovery Rule	83

Table of Contents

[B]	Developing Applications of the Discovery Rule	89
[1]	Judicial Evolution	89
	<i>Evans v. Eckelman</i>	89
	<i>Moreno v. Sanchez</i>	91
	Notes and Questions	98
[2]	Legislative Modification of the Discovery Rule	99
[a]	Various Legislative Approaches	99
[b]	Superseding Limitations	99
[c]	Legislative Expansion: Asbestos Exposure Litigation	100
[3]	Difficult Accrual Cases	102
[a]	Nuisance	102
[b]	Breach of Warranty	102
[c]	Injury to Property	103
[d]	Defamation	103
[e]	Other Difficult Accrual Cases	104
[f]	Wrongful Discharge from Employment	105
[g]	Continuous Accrual	105
[4]	Special Accrual Issues in Medical Negligence Actions Governed by CCP § 340.5	105
[a]	Section 340.5	105
[b]	Wrongful Death Cases	106
[c]	Actions by Minors	106
[C]	Extent of Harm Required for Accrual: Appreciable and Actual Harm . .	107
	<i>Poosh v. Philip Morris USA, Inc.</i>	108
	Notes and Questions Regarding <i>Poosh</i> and the “Double Injury Problem”	117
§ 4.04	TOLLING THE STATUTE OF LIMITATIONS	118
[A]	Introductory Note	118
[B]	Specific Bases for Tolling Limitations Periods	118
[1]	Statutory “Disability”	118
[a]	Limitations	118
[b]	Exceptions	119
[2]	Absence or Nonresidence of Defendant	119
[a]	Constitutionality of Section 351	121
[b]	Statutory Exceptions	122
[3]	Other Statutory Tolling Provisions	123
[4]	Professional Malpractice Statutes	123
[a]	Medical Malpractice	123
[b]	Legal Malpractice	124
[c]	Legal Malpractice: “Actual Injury”	124
[d]	Legal Malpractice: “Continuous Representation”	126

Table of Contents

[5]	Servicemembers Civil Relief Act	127
[6]	The Federal “Savings” Statute	127
[7]	Equitable Tolling of Statutes of Limitations	128
	<i>Garabedian v. Skochko</i>	128
	<i>Prudential-LMI Commercial Insurance v. Superior Court</i>	135
	Notes and Questions Regarding Equitable Tolling	143
[8]	Estoppel and Other Equitable Tolling Doctrines	146
	<i>Muraoka v. Budget Rent-a-Car, Inc.</i>	146
	<i>Bernson v. Browning-Ferris Industries Of California, Inc.</i>	150
	Notes and Questions Regarding Estoppel	154
[9]	Tolling and Class Actions	156
	<i>Jolly v. Eli Lilly And Company</i>	157
	Notes and Questions	161
[10]	Relation Back Doctrine and Cross-Complaints	161
	<i>Sidney v. Superior Court</i>	162
	Notes and Questions	165
§ 4.05	COMMENCEMENT OF AN ACTION	167
[A]	Generally	167
[B]	Choice of Law	167
[C]	Prerequisites to Filing Complaint	167
	[1] Medical Malpractice Prelitigation Notice	167
	[a] The 90-Day Tolling Provision	168
	[b] Judicial Interpretations	168
[D]	Actions Against Public Entities and Employees	169
	[1] Claim-Filing Requirements of California Government Claims Act	169
	<i>Phillips v. Desert Hospital District</i>	171
	[2] Purposes of Government Claims Act	178
	[3] Government Claims Act Doctrine of Substantial Compliance	179
	[a] Substantial Compliance, Generally	179
	[b] Limits to Substantial Compliance	179
	[c] Minimum Requirements of a Claim	180
	[d] New Allegations in Complaint	182
	[e] Scope of Doctrine	184
	[f] Cross-Complaints	184
	[4] Government Claims Act and Estoppel	185
	[5] Government Claims Act Tolling Provisions	185
[E]	Notices, Claims and Other Prerequisites	186
	[1] Notice to Prospective Defendant	187
	[2] Demand Requirements	188
	[3] Certificate of Merit	188
	[4] Notice and Claim Prerequisite	189

Table of Contents

[5]	Security for Costs	190
[F]	Statutes of Limitations in Federal Courts	191
[G]	Procedural Aspects of Statutes of Limitations	192
[1]	Affirmative Defense	192
[2]	Pleading Statutes of Limitations	193
[3]	Procedural Devices for Invoking Statute of Limitations	194
§ 4.06	EXHAUSTION OF ADMINISTRATIVE REMEDIES	194
[A]	The Exhaustion Requirement	194
	<i>Department Of Personnel Administration v. Superior Court</i>	194
	Notes and Questions Regarding Exhaustion of Administrative Remedies	199
[B]	Exceptions to the Exhaustion Requirement	202
[C]	Waiver	203
[D]	Exhaustion and Primary Jurisdiction	204
§ 4.07	THE DOCTRINE OF LACHES	205
[A]	Elements of Defense	205
[1]	In General	205
[2]	Unreasonable Delay	206
[3]	Prejudice	208
[B]	Actions to Which Laches Is Applicable	209
[C]	Manner of Asserting Laches	211
Chapter 5	CALIFORNIA CONFLICT OF LAWS DOCTRINE	213
§ 5.01	INTRODUCTORY NOTE	213
§ 5.02	AN OVERVIEW OF THE HISTORICAL EVOLUTION OF CHOICE-OF- LAW THEORIES	214
[A]	The First and Second Restatements	214
	William M. Richman and William L. Reynolds, Understanding Conflict of Laws	215
[B]	California and the Restatements	227
§ 5.03	GOVERNMENT INTEREST ANALYSIS AND TORT CASES IN CALIFORNIA	227
[A]	An Introduction to Interest Analysis	227
	Robert A. Sedler, the Governmental Interest Approach to Choice of Law: An Analysis and a Reformulation	228
[B]	False Conflicts	232
	<i>Hurtado v. Superior Court</i>	232
	Notes and Questions Regarding <i>Hurtado</i> and False Conflicts	237
[C]	True Conflicts	243
	<i>Bernhard v. Harrah's Club</i>	243
	Notes and Questions Regarding <i>Bernhard</i> and True Conflicts	249

Table of Contents

[D]	Comparative Impairment	251
[1]	Resolving True Conflicts	251
[a]	Professor Currie's Pure Interest Analysis Approach	251
[b]	The California Approach	251
[2]	Professor Baxter's Comparative Impairment Analysis	252
	William F. Baxter, Choice of Law and the Federal System	252
	More Notes and Questions Regarding <i>Bernhard</i> and Comparative Impairment	257
[E]	Further Development of Comparative Impairment	258
[1]	Supreme Court Fine-Tuning	258
	<i>Offshore Rental Co. v. Continental Oil Co.</i>	258
	<i>Kearney v. Salomon Smith Barney, Inc.</i>	265
	Notes and Questions	273
[2]	Lower Court Application	275
[a]	<i>Zimmerman v. Allstate Ins. Co.</i>	275
	Notes and Questions Regarding <i>Zimmerman v.</i> <i>Allstate Ins. Co.</i>	276
[b]	<i>Denham v. Farmers Insurance Co.</i>	276
	Notes and Questions Regarding <i>Denham v. Farmers</i> <i>Insurance Co.</i>	277
[3]	Other States' Doctrines for Torts	277
[a]	Are the Approaches Really Different in Practice?	277
[b]	Commentary on Interest Analysis	277
§ 5.04	CALIFORNIA CHOICE-OF-LAW DOCTRINE IN CONTRACT CASES	278
[A]	Choice-of-Law Agreements	278
	<i>Nedlloyd Lines B.V. v. Superior Court</i>	278
	<i>Guardian Savings And Loan Assn. v. MD Associates</i>	287
	Notes and Questions on California Choice-Of-Law Agreements . . .	293
[B]	Conflicts Analysis When No Choice-of-Law Agreement	298
	<i>Stonewall Surplus Lines Ins. Co. v. Johnson Controls, Inc.</i>	298
	Notes and Questions Regarding Contracts Conflicts Analysis in the Absence of a Choice-Of-Law Agreement	305
[C]	Notes on the Restatement (Second) Conflict of Laws and Contract Issues	310
[1]	The Second Restatement, Generally	310
	Restatement, Second, Conflict of Laws	310
	Notes and Questions Regarding the Second Restatement	313
[2]	Statutory Directives	314
§ 5.05	STATUTES OF LIMITATIONS AND CHOICE OF LAW	315
[A]	Introductory Note	315
	<i>McCann v. Foster Wheeler LLC</i>	315

Table of Contents

	Notes and Questions	325
[B]	The California Borrowing Statute	327
	Notes and Comments Regarding California’s Borrowing Statute . . .	327
§ 5.06	MISCELLANEOUS CHOICE-OF-LAW APPLICATIONS	328
[A]	Corporations	328
[1]	Government Interest Analysis	328
[2]	The “Internal Affairs” Doctrine	329
[B]	Family Law Matters	329
[1]	Community Property	329
[2]	Marriage	330
[3]	Dissolution of Marriage	330
[4]	Child Custody	330
[5]	Child and Spousal Support	330
[C]	Class Actions	331
[D]	Choice-of-Law Doctrine in Federal Courts	331
[E]	Waiver	332
Chapter 6	THE PROPER COURT	333
§ 6.01	SUBJECT MATTER JURISDICTION	333
[A]	Introductory Note	333
[B]	Superior Court Jurisdiction	333
[1]	Trial Court Unification	333
[2]	“Limited” vs. “Unlimited” Civil Cases	334
[a]	Limited Civil Case	334
[b]	Reclassification	334
[c]	Amount in Controversy	335
[d]	Judgment Below Classification Minimum Amount	335
[e]	Small Claims Court	336
[f]	Probate Court	336
[C]	Court vs. Administrative Tribunal Jurisdiction	336
[1]	Exclusive Agency Jurisdiction	336
[a]	Agricultural Labor Relations Board (ALRB)	336
[b]	Alcoholic Beverage Control (ABC) Board	337
[c]	Public Employment Relations Board (PERB)	337
[d]	Public Utilities Commission (PUC)	337
[e]	Workers’ Compensation Appeals Board (WCAB)	338
[f]	State Bar Court	338
[2]	Jurisdiction to Determine Jurisdictional Issues	338
[a]	Exhaustion of Administrative Remedies	338
[b]	Primary Jurisdiction	339
[3]	No Waiver of Jurisdictional Defense	339

Table of Contents

§ 6.02	PERSONAL JURISDICTION	339
[A]	Personal Jurisdiction, Generally	339
	<i>Cassiar Mining Corp. v. Superior Court</i>	340
	Notes and Questions	345
[B]	Due Process	348
[1]	“Minimum Contacts”	348
[2]	“Reasonableness” Factors	349
[3]	Transient Jurisdiction	349
[4]	The “Effects” Test	350
[5]	Nonresident Parent Corporations	351
[a]	The Alter Ego and Agency Theories	351
[b]	Representative Services Doctrine	353
[6]	Recent Decisions	353
[a]	<i>Snowney v. Harrah’s Entertainment, Inc.</i>	354
[b]	<i>Bridgestone Corp. v. Superior Court</i>	355
[c]	<i>Hunt v. Superior Court</i>	355
[d]	<i>Edmunds v. Superior Court</i>	355
[e]	Other Recent Decisions	356
[C]	Raising the Personal Jurisdiction Defense	356
	CALIFORNIA CODE OF CIVIL PROCEDURE (2012)	357
	Section 418.10. Motion to Quash Service of Summons or to	
	Stay or Dismiss Action; Procedure	357
	Section 418.11. Appearance for Ex Parte Relief or	
	Provisional Remedy; Not General Appearance Nor Waiver of	
	Motion Rights	358
	Section 1014. Appearance Defined, Right to Notices Before and After	
	Appearance	358
[1]	Waivable Due Process Right	358
[a]	General Appearance	358
[b]	Federal Procedure Compared	359
[c]	Forum Selection Clauses	360
[2]	Appellate Review	360
[a]	Writ of Mandate	361
[b]	Federal Review Compared	361
§ 6.03	VENUE	361
[A]	Statutory Venue	361
	<i>Brown v. Superior Court</i>	361
[1]	General Venue Rules and Exceptions	367
[a]	Actions Involving Real Property	368
[b]	Actions Against Public Officials and Entities	368
[c]	Personal Injury Actions	369

Table of Contents

[d]	Dissolution of Marriage	369
[e]	Actions Against Corporations and Associations	369
[f]	Contract Actions	370
[g]	Other Venue Exceptions	370
[h]	Residence Defined	370
[2]	Mixed Actions	370
[a]	The “Main Relief” Rule	370
[b]	Venue Follows the Transitory Cause of Action	371
[c]	Mixed Action Rules: Multiple Causes and Single Defendant	371
[d]	Mixed Action Rules: Multiple Defendants and Causes of Actions	371
[3]	Venue Puzzles	372
[4]	Importance of Complaint	373
[a]	Misjoined Defendants	373
[b]	Declaratory Relief	373
[5]	Venue in Limited Civil Cases	374
[B]	Raising Improper Venue	374
[1]	Motion to Transfer	374
[a]	Federal Rules Compared	374
[b]	Waiver of Wrong Venue Objection	374
[c]	Jurisdictional Venue	374
[2]	Effect of Motion to Transfer	375
[a]	Suspension of Jurisdiction	375
[b]	Appellate Review	375
[c]	Transfer to Proper Court	375
[3]	Change of Venue for Convenience of Witnesses, Etc.	375
[a]	Federal Procedure Compared	376
[b]	Transfer to Convenient Court	376
[c]	Time for Motion	376
[d]	Necessity of Specific Factual Showing	376
[e]	Payment of Fees	377
[4]	Removal statute	377
[5]	Coordination statutes	378
[C]	Contractual Venue Provisions	378
§ 6.04	SERVICE OF PROCESS	379
[A]	Introductory Note on Manner of Service	379
[B]	Service Within California	380
	<i>Bein v. Brechtel-jochim Group, Inc.</i>	380
	<i>Olvera v. Olvera</i>	383
[1]	Personal Service	390
[2]	Substituted Service	390
[a]	On Individuals	390

Table of Contents

[b]	On Entities	391
[c]	Federal Rules	391
[3]	Publication	391
[a]	Reasonable Diligence	392
[b]	Proof of Diligence	392
[c]	Due Process	392
[d]	“Actual Notice”	392
[4]	Service By Mail Within California	393
[C]	Service in Another State	393
	<i>In Re The Marriage Of Tusinger</i>	393
[1]	Service Options	395
[2]	“Other Evidence”	395
[a]	<i>Taylor-Rush v. Multitech Corp.</i>	395
[b]	<i>Dill v. Berquist Construction Co.</i>	396
[c]	<i>Cruz v. Fagor America, Inc.</i>	397
[3]	Service by Mail	398
[4]	Due Process and Service by Mail	398
[5]	Substituted Service on Agent Within California	398
[a]	Corporations and Other Entities	398
[b]	Contract	398
[c]	Implied Agent	399
[d]	Alternative Methods	399
[D]	Service Outside the United States	399
[1]	International Service Agreements	399
[a]	Hague Service Convention	399
[b]	Inter-American Convention	401
[2]	Service When No Treaty Applies	401
[E]	Procedures for Asserting Lack of Proper Service	401
[1]	Motion to Quash	401
[a]	Burden of Proof	401
[b]	Effect of Granted Motion	402
[c]	Appellate Review	402
[d]	Federal Rules	402
[2]	Time Limits on Service of Process	402
[a]	Mandatory Dismissal	402
[b]	Discretionary Dismissal	403
[c]	Court Rules	403
[3]	Summons	403
[4]	Process Servers	403
[5]	Proof of Service	403
[6]	Special Service Statutes	404

Table of Contents

[7]	Federal Incorporation of State Laws	404
§ 6.05	FORUM NON CONVENIENS	404
[A]	Relevant Factors Under the California Doctrine	404
	<i>Stangvik v. Shiley Incorporated</i>	404
[1]	Adequate Alternative Forum	414
[a]	Unfavorable Change in Law	415
[b]	No Remedy Exception	415
[2]	Plaintiff's Residence	416
[3]	Dismissal vs. Stay	416
[4]	Procedures for Raising Forum Non Conveniens	417
[a]	Before General Appearance	417
[b]	After General Appearance	417
[c]	Procedures Compared	417
[5]	Balance of Convenience Factors	417
[B]	Forum Selection Agreements	418
	<i>Cal-State Business Products & Services, Inc. v. Ricoh</i>	418
	Notes and Questions on Forum Selection Agreements	425
Chapter 7	PROVISIONAL REMEDIES	429
§ 7.01	ATTACHMENT AND RELATED PREJUDGMENT REMEDIES	429
[A]	Writ of Attachment	429
	<i>Western Steel And Ship Repair, Inc. v. RMI, Inc.</i>	429
[1]	The Attachment Law (CCP § 482.010 <i>et seq.</i>)	433
[2]	Attachment Limitations	433
[a]	Attachment Limited to Certain Claims	434
[b]	Attachment Limited to Certain Property	434
[c]	"Substantive" Limitations on Attachment	435
[d]	Undertakings	435
[e]	<i>Ex Parte</i> Writ of Attachment	435
[3]	Attachment Procedures	436
[a]	<i>Ex Parte</i> Attachment Procedures	436
[b]	Attachment Procedure on Noticed Hearing	436
[4]	Claim of Exemption Procedure	437
[a]	Personal Property	437
[b]	Real Property; Homesteads	438
[5]	Nonresident Attachment	438
[a]	Purpose	439
[b]	Due Process Issues	439
[B]	Other Provisional Remedies	439
[1]	Temporary Protective Orders	439
[2]	Claim and Delivery	440

Table of Contents

[3]	Receivership	440
[4]	Temporary Restraining Order	440
[5]	Contractual Arbitration	441
[6]	Lis Pendens	441
	<i>Kirkeby v. Superior Court</i>	441
[a]	The Lis Pendens Notice	446
[b]	Effect of Lis Pendens	447
[c]	Motion to Expunge	447
[d]	Lis Pendens a Provisional Remedy?	447
[e]	Due Process Issues	448
[f]	Availability of Lis Pendens	448
[C]	Official Forms and Other Resources	449
[1]	California Judicial Council Forms	449
[2]	California Law Revision Commission Comments	449
§ 7.02	PRELIMINARY INJUNCTIVE RELIEF	449
[A]	Preliminary Injunctions	449
	California Code of Civil Procedure § 527 (2012)	449
	<i>Abba Rubber Company v. Seaquist</i>	451
[1]	Preliminary Injunctions, Generally	459
[2]	Preliminary Injunctions: Interim Harm	459
[a]	Irreparable Injury	459
[b]	Threatened Harm	460
[c]	Governmental Entity Applicant	460
[d]	Special Statutes	460
[3]	Preliminary Injunctions: Undertaking	461
[a]	Sufficiency of Undertaking	461
[b]	Federal Rules Compared	461
[c]	When Undertaking Not Required	462
[d]	Waiver of Undertaking	462
[B]	Temporary Restraining Orders (TRO)	462
[1]	TRO Prerequisites	462
[2]	TRO Procedural Safeguards	463
[a]	Duration	463
[b]	Enforcement	463
[3]	Anti-Suit Injunctions	463
Chapter 8	PRECLUSIVE EFFECTS OF PRIOR JUDGMENTS . . .	465
§ 8.01	INTRODUCTORY NOTE ON RES JUDICATA AND COLLATERAL ESTOPPEL	465
§ 8.02	RES JUDICATA (CLAIM PRECLUSION)	466
[A]	The Primary Rights Doctrine	466

Table of Contents

	<i>Holmes v. David H. Bricker, Inc.</i>	466
	<i>Slater v. Blackwood</i>	468
	<i>Sawyer v. First City Financial Corp.</i>	471
	Notes and Questions on Primary Rights Analysis	479
[1]	A Historical Analysis	480
	Walter W. Heiser, California's Unpredictable Res Judicata (Claim Preclusion) Doctrine	480
[2]	Cause of Action	483
[3]	Primary Rights Determined by Precedent	484
[4]	Primary Rights distinguished from Theories of Recovery	484
[a]	Importance of Harm Suffered?	484
[b]	<i>Sawyer</i> : Tort vs. Contract?	485
[c]	Importance of Same Injury?	486
[5]	Primary Rights v. Remedies	487
[6]	Inherent Ambiguity of the Primary Rights Theory	487
	<i>Takahashi v. Board Of Education</i>	488
	Notes and Questions Regarding <i>Takahashi v. Board of Education</i> and Primary Rights	495
[7]	The Declaratory Judgment Exception to Primary Rights Doctrine . . .	498
[B]	Conduct Which Violates Both State and Federal Laws	499
[1]	Introductory Note	499
[2]	One or Two Primary Rights?	499
[C]	Res Judicata and Pendent Claims	500
[1]	Introductory Note	500
	<i>Koch v. Hankins</i>	500
	Notes and Questions Regarding Pendent Claims	504
[2]	State Claim Not Raised	506
[D]	Primary Rights vs. Restatement Doctrine	507
[1]	Introductory Note	507
[2]	Federal-State Recognition of Judgments	508
[a]	Prior State Judgment in Federal Courts	508
[b]	Prior Federal Judgment in California Courts	509
[E]	Compulsory Cross-Complaints and Res Judicata	509
[1]	The Compulsory Cross-Complaint Statutes	509
[2]	Transactional Standard	510
[a]	Impact on Primary Rights Doctrine?	510
[b]	Should California Abandon Primary Rights?	511
[F]	The Requirement of Final Judgment on the Merits	511
[1]	Final Judgment, California Rule	511
[2]	Final Judgment, Federal Rule	511
[3]	California Interpretations of Final Judgment	512

Table of Contents

[a]	Claim vs. Issue Preclusion	512
[b]	Final Interlocutory Judgment	512
[c]	Successive Judgments	512
[d]	Inconsistent Judgments	512
[4]	Decision on the Merits	513
[a]	Default Judgment?	513
[b]	Summary Judgment?	513
[c]	General Demurrer?	514
[d]	Stipulated Judgments and Consent Judgments?	514
[e]	Voluntary Dismissal?	514
[6]	Claim Preclusive Effect of Non-Judicial Tribunal Decision	515
[a]	Administrative Agency Decisions	515
[b]	Contractual Arbitration	515
[c]	Judicial Arbitration	516
[7]	Sister State Judgments	516
[a]	Res Judicata Effect	516
[b]	Enforcement of Sister State Judgments	517
[8]	Pleading, Proof, and Waiver of Res Judicata	517
[a]	Raising Claim Preclusion	517
[b]	Raising Issue Preclusion	517
[c]	Raising Res Judicata in Appellate Court	518
[d]	Raising Failure to Plead Compulsory Cross-Complaint	518
[e]	Proof of Res Judicata	518
[f]	Estopped to Assert Res Judicata	518
[g]	Special Trial of Res Judicata Defense	519
[G]	Another Action Pending	519
[1]	Plea in Abatement	519
[2]	Exclusive Concurrent Jurisdiction	519
[3]	Anti-Suit Injunctions	520
§ 8.03	COLLATERAL ESTOPPEL (ISSUE PRECLUSION)	521
[A]	Introductory Note	521
[B]	The California Collateral Estoppel Doctrine	521
	<i>Sutphin v. Speik</i>	521
	<i>Frommhagen v. Board Of Supervisors</i>	526
[1]	Collateral Estoppel Doctrine, Generally	531
[a]	The Basic California Prerequisites	533
[b]	Public Policy Considerations	533
[c]	The “Public Interest” Exception	534
[2]	What is an “Identical Issue” for Purposes of Collateral Estoppel? . . .	534
[a]	Identical Issues: “Issue” vs. “Legal Theory”	535
[b]	Different Historical Transaction	536

Table of Contents

[c]	Change in Factual Circumstance	537
[d]	Scrutiny of Facts Necessary	539
[e]	Different Legal Context	540
[f]	Different Standards of Proof	541
[3]	Issues Actually Litigated and Determined	541
[a]	“Issues” vs. “Theories”	541
[b]	Identifying Issues “Actually Litigated and Determined”	544
[c]	Collateral Estoppel Effect of Default Judgment	545
[d]	Retraxit	546
[e]	Stipulated Judgments	547
[f]	Need for Clearer Collateral Estoppel Guidelines	547
[4]	Issue “Necessarily Decided” in Prior Proceeding	548
[a]	The “Necessary” Requirement, Generally	548
[b]	The Alternative Grounds Rule	548
[5]	Issues of Law	549
[C]	Collateral Estoppel and Mutuality	549
[1]	Introductory Note on Mutuality	549
[2]	Mutuality Doctrine Rejected	550
[3]	Offensive Nonmutual Collateral Estoppel	550
[4]	Collateral Estoppel Effect of Noncourt Proceedings	553
[a]	Administrative Agency Decisions	553
[b]	Contractual Arbitration	554
[5]	Final Judgment for Purposes of Collateral Estoppel	555
[a]	Settlement Pending Appeal	555
[b]	Administrative Agency Decisions	556
§ 8.04	PRIVITY	556
	<i>Dyson v. State Personnel Board</i>	556
	Notes and Questions Regarding Privy	563
§ 8.05	LAW OF THE CASE; JUDICIAL ESTOPPEL	571
[A]	Law of the Case Doctrine	571
	<i>Clemente v. State Of California</i>	571
	Notes and Questions Regarding Law of the Case	577
[B]	Judicial Estoppel Doctrine	578
Chapter 9	STATING CLAIMS AND DEFENSES: PLEADINGS . . .	581
§ 9.01	INTRODUCTORY NOTE	581
§ 9.02	THE COMPLAINT	582
[A]	Pleading Ultimate Facts	582
	<i>Semole v. Sansoucie</i>	582
	Notes and Questions on the Sufficiency of the Complaint	585
[B]	Heightened Specificity Requirements in Pleading	587

Table of Contents

[1]	Pleading Fraud	588
[2]	Pleading Other Disfavored Causes of Action	589
[C]	Inconsistent and Alternative Pleading	589
	<i>Shepard & Morgan v. Lee & Daniel, Inc.</i>	589
	Notes and Questions on Inconsistent Pleading Allegations	590
[D]	Prayer for Relief	591
[1]	In General	591
[2]	Statement of Damages	591
[3]	Special Pleading Rules for Punitive Damages	591
[a]	Prepleading Requirements: “Substantial Probability that the Plaintiff will Prevail”	592
[b]	Are Prepleading Requirements Necessary?	594
§ 9.03	AMENDMENTS	595
[A]	Introductory Note	595
[B]	Amended Complaints and the Relation Back Doctrine	596
	<i>Honig v. Financial Corporation Of America</i>	596
[1]	Liberal Amendment Policy	599
[a]	Amended Pleadings, Generally	599
[b]	Amendments to Conform to Proof	600
[c]	Amendment After Demurrer Sustained	601
[2]	The Relation Back Doctrine	602
[a]	New Cause of Action Permitted	602
[b]	The “Same General Set of Facts” Requirement	602
[c]	Fictitious Defendants	604
[d]	Should the California Court Adopt a More Pragmatic Approach?	604
[e]	New Plaintiffs	604
[3]	Amendments to Correct Naming Mistakes	605
§ 9.04	CALIFORNIA’S FICTITIOUS (“DOE”) DEFENDANT PRACTICE	607
[A]	Introductory Note	607
[1]	Federal Rule 15(c)	607
(c)	<i>Relation Back of Amendments.</i>	607
[2]	California’s Doe Defendant Practice	608
[3]	Evolution of the California Doctrine	608
	<i>Streicher v. Tommy’s Electric Co.</i>	609
	<i>General Motors Corp. v. Superior Court</i>	614
	Notes and Questions	623
[B]	Requirements for the Use of California’s Doe Defendant Practice	624
[1]	Timely Filed Original Complaint	624
[2]	Ignorance of the Defendant’s “Name”	625
[a]	Ignorance of the Defendant’s Actual Name	625
[b]	Ignorance of the Facts Giving Rise to the Cause of Action	625

Table of Contents

[c]	Ignorance That the Law Provides a Cause of Action	626
[d]	The Requirement of Actual Ignorance	627
[3]	Pleading “Ignorance”	632
[a]	Ignorance Must Be Pled in Original Complaint	632
[b]	Is Failure to Plead “Ignorance” Curable by Amendment?	632
[4]	The Relation Back Doctrine	633
[a]	Requirements	633
[b]	New Causes of Action	634
[5]	Service Within Three Years	634
[a]	Mandatory Dismissal	634
[b]	Discretionary Dismissal	634
[6]	Other Limitations on Section 474	635
[a]	Government Claim Act	635
[b]	Fast Track and Fictitious Defendant Practice	636
[7]	Practical Considerations	636
[C]	Federal Rule 15(c) Compared	641
[1]	Federal Rule 15(c)(1)(C)	641
[2]	Federal Rule 15(c)(1)(A)	641
§ 9.05	THE DEMURRER	642
[A]	Introductory Note	642
[1]	General and Special Demurrers	642
[2]	Procedures	643
[3]	Federal Rules Compared	644
[B]	Standards for General Demurrers	644
[1]	General Demurrer Assumes Truth of Allegations	644
[2]	Judicial Notice	645
	<i>Dryden v. Tri-Valley Growers</i>	645
[a]	Mandatory Judicial Notice	647
[b]	Permissive Judicial Notice	648
[c]	Judicial Notice of Court Records	648
[3]	Judicial Council Form Complaints	649
[4]	Demurrer vs. Answer	650
[C]	Amendment After Sustained Demurrer	650
	<i>Careau & Co. v. Security Pacific Business Credit, Inc.</i>	650
	Notes and Questions Regarding Sustained Demurrer and Leave to Amend	655
§ 9.06	MOTIONS RELATED TO PLEADINGS	656
[A]	Motion to Strike	656
[1]	Grounds	656
[2]	Procedures	657
[3]	Motion to Strike Pursuant to “Anti-SLAPP” Statute	657

Table of Contents

[B]	Motion for Judgment on the Pleadings	658
[1]	Grounds	658
[2]	Judgment on the Pleadings and Summary Judgment	659
[3]	Partial Judgment on the Pleadings	660
[4]	Leave to Amend	660
§ 9.07	THE ANSWER	661
[A]	Introductory Note	661
[B]	Denials	661
[1]	Failure to Deny Constitutes an Admission	661
[2]	General vs. Specific Denials	662
[3]	Functions of the Answer	662
[C]	Raising “New Matter”	662
	<i>Hulsey v. Koehler</i>	663
[1]	Affirmative Defenses	666
[2]	What Constitutes “New Matter”?	667
[D]	Verification of the Answer	668
§ 9.08	CROSS-COMPLAINTS	668
[A]	Introductory Note	668
[B]	Compulsory and Permissive Cross-Complaints	669
	<i>Currie Medical Specialties, Inc. v. Newell Bowen</i>	669
	<i>Crocker National Bank v. Emerald</i>	671
[1]	Compulsory Cross-Complaint	674
[a]	“Related Cause of Action”	675
[b]	Time For Filing	675
[c]	Res Judicata Compared	675
[2]	Cross-Complaint vs. Affirmative Defense	676
[a]	General Distinctions	676
[b]	Setoff	677
[c]	Equitable Indemnity	677
[d]	Statutes of Limitations	677
Chapter 10	JOINDER OF PARTIES AND CLAIMS	679
§ 10.01	PERMISSIVE JOINDER OF PARTIES AND CLAIMS	679
[A]	Permissive Joinder of Plaintiffs	679
[B]	Permissive Joinder of Defendants	680
	<i>Farmers Insurance Exchange v. Adams</i>	680
	Notes and Questions Regarding Permissive Joinder	681
[C]	Permissive Joinder of Claims	683
§ 10.02	COMPULSORY JOINDER OF PARTIES	683
	<i>Sierra Club, Inc. v. California Coastal Commission</i>	683
	Notes and Questions Regarding Compulsory Joinder	686

Table of Contents

§ 10.03	INTERPLEADER	689
[A]	California Interpleader Requirements and Procedures	689
[B]	Federal Interpleader	690
§ 10.04	NEW PARTY CROSS-COMPLAINTS AND EQUITABLE INDEMNITY	691
[A]	Cross-Complaints Adding New Parties	691
	<i>American Motorcycle Assn. v. Superior Court</i>	691
	Notes and Questions Regarding New Party Cross-Complaints	699
[B]	Equitable Indemnity	700
[1]	Introductory Note	700
	<i>Bracket v. State Of California</i>	701
	<i>Abbott Ford, Inc. v. Superior Court</i>	704
[2]	Effect of Good Faith Settlement	717
[a]	First, an easy hypothetical	717
[b]	Now for a real case	717
[c]	A more difficult real case	717
[d]	The Prejudgment Interest Complication	718
[e]	Complications in Calculating Offset Credits	718
[3]	Good Faith Settlement Determination	719
[a]	Relevant Factors	719
[b]	Valuation Problems	720
[c]	Evidentiary Basis	721
[d]	Allocation of Settlement Amounts in Complex Litigation	721
[e]	Total Equitable Indemnity	722
[f]	Rights of Settling Defendant	722
[g]	Which Parties Bound?	722
[4]	Fair Responsibility Act of 1986	723
[5]	Statute of Limitations	726
[6]	Contractual and Statutory Indemnity	726
[a]	Express Contractual Indemnity	726
[b]	Implied Contractual Indemnity	726
[c]	Statutory Indemnity	727
[7]	Equitable Indemnity in Non-Negligence Actions	727
[a]	Strict Liability and Intentional Torts	727
[b]	Contract Actions	727
[c]	Public Policy Limitations	728
[8]	Contribution	728
[9]	Sliding Scale Agreements and Other Untraditional Settlements	729
[a]	Sliding Scale Agreements	729
[b]	Conditional Settlements	730
[c]	Structured Settlements	730
[10]	Good Faith Settlement Procedures	730

Table of Contents

[11]	Indemnity in Federal Courts	731
[a]	Federal Common Law Doctrine of Contribution	731
[b]	Comparison of Federal and California Approaches	732
§ 10.05	INTERVENTION	733
[A]	The California Requirements	733
	<i>Simpson Redwood Co. v. State Of California</i>	733
[1]	Permissive Intervention	736
[a]	<i>Bustop v. Superior Court</i>	737
[b]	<i>People ex rel. Rominger v. County of Trinity</i>	737
[c]	<i>Mary R. v. B. & R. Corp.</i>	738
[d]	Direct Interest?	738
[e]	Discretion	739
[2]	Intervention of Right	740
[a]	Statutory Prerequisites of CCP § 387(b)	740
[b]	Special Statutes	740
[B]	Intervention Procedures	741
[1]	Status of Intervener	741
[a]	Costs and Attorney Fees	741
[b]	Statute of Limitations	741
[c]	Diligent Service and Prosecution	742
[2]	Timely Application	743
[a]	Intervention Possible at Any Time	743
[b]	Aggrieved Person May Intervene and Appeal	743
[c]	Unreasonable Delay	743
[3]	Intervention Application Procedure	743
[a]	Leave of Court Required	744
[b]	Appellate Review	744
[C]	Federal Intervention Rules	744
[1]	Intervention of Right	744
[2]	Permissive Intervention	745
§ 10.06	CAPACITY, REAL PARTY IN INTEREST AND STANDING	745
[A]	Capacity	745
[1]	Disability	745
[a]	Minors and Incompetents	745
[b]	Corporations	746
[2]	Entity Status of Organizations	747
[a]	Partnerships and Other Unincorporated Associations	747
[b]	Estates	747
[3]	Raising the Capacity Issue	747
[4]	Capacity in Federal Court	748
[B]	Real Party in Interest and Standing	748

Table of Contents

[1]	The General California Doctrine	748
	<i>Tinsley v. Palo Alto Unified School District</i>	748
	Notes and Questions Regarding Real Party in Interest/Standing Doctrine	752
[2]	Statutory Exceptions	753
[a]	Personal Representatives and Trustees	754
[b]	Homeowner Associations	754
[c]	Other Statutory Exceptions	754
[3]	Standing vs. Real Party in Interest	755
[a]	Purposes	755
[b]	More Than One Real Party?	755
[4]	Taxpayer Lawsuits	755
[a]	Liberal Construction	756
[b]	Restrictions on Taxpayer Suits	756
[c]	Liberal Standing	757
[d]	Taxpayer Suits in Federal Courts	757
[5]	Federal Standing and Real Party Doctrines	757
[a]	Real Party Rule	757
[b]	Article III Standing Requirements	758
[c]	Federal Standing Requirements in State Courts	758
[C]	Survival of Actions	759
[1]	Legislative Revision	759
[2]	Survival Statutes	759
[a]	Decedent's Cause of Action	759
[b]	Cause of Action Against Decedent	759
§ 10.07	CLASS ACTIONS	760
[A]	General California Requirements	760
[1]	Introductory Note	760
[a]	No Comprehensive Class Action Statute	760
[b]	Prerequisites	761
	<i>Richmond v. Dart Industries, Inc.</i>	761
[2]	The "Ascertainable Class" Requirement	769
[a]	"Community of Interest" Intertwined	769
[b]	Broad Consumer Classes	769
[3]	The Community of Interest Requirement	770
[a]	Common Questions of Law or Fact Must Predominate Over Individual Issues	770
[b]	Class Action Treatment Must Result in Substantial Benefits to Both the Litigants and the Court	772
[c]	The Class Representative Must Adequately Represent the Interests of the Class	773

Table of Contents

[B]	Class Action Procedures	776
[1]	Introductory Note	776
[2]	Raising the Class Action Issue	777
[a]	Raising the Issue by Demurrer	777
[b]	Class Action Discovery	777
[3]	Class Determination Prior to Liability Decision	777
[4]	Appellate Review of Class Determination	778
[a]	Federal Approach Compared	778
[b]	Problems with California Rule	779
[C]	Notice to Class Members	779
[1]	Notice Requirements, Generally	779
[2]	Nature of Required Notice: Individual vs. Publication	779
[a]	Notice to Permit “Opt Out”	780
[b]	Federal Notice Rule Not Binding	780
[c]	Due Process Concerns	781
[3]	Who Pays the Cost of Class Notice	781
[a]	Cost Allocation Factors?	781
[b]	Federal Rule Compared	781
[c]	Appellate Review	782
[4]	Right to Opt Out of Class	782
[a]	Due Process Concerns	782
[b]	Determination of Opt Out Right	783
[5]	Settlement	783
[a]	Court Approval Required	783
[b]	The Notice Requirement	784
[c]	Conflicts of Interest	785
[D]	Class Action Remedies	785
[1]	Fluid Class Recovery	785
[a]	Supreme Court Endorsement	786
[b]	Legislative Endorsement	788
[c]	Controversial Remedy	789
[2]	Attorney Fees	789
[3]	Incentive Payments to Class Representatives	790
 Chapter 11 DISCOVERY		793
§ 11.01	CALIFORNIA DISCOVERY PRINCIPLES	793
[A]	Introductory Note	793
[B]	Coverage of the Civil Discovery Statutes	793
[1]	General Coverage	793
[2]	Limited Civil Cases	794
[3]	Small Claims Court	794

Table of Contents

[4]	Post-Judgment Discovery	794
[5]	Arbitration	794
[C]	Scope of Discovery under the Act, Generally	794
	<i>Pacific Telephone & Telegraph Co. v. Superior Court</i>	795
	Notes and Questions Regarding Scope of Discovery	799
[D]	Protection of Privileged Information	800
[1]	Privilege, Generally	800
[2]	Absolute Privileges	801
[3]	The Attorney-Client Privilege	801
	<i>Costco Wholesale Corp. v. Superior Court</i>	801
	Notes and Questions Regarding Attorney-Client Privilege	807
[4]	The Physician-Patient Privilege	810
	<i>Torres v. Superior Court</i>	810
	Notes and Questions Regarding the Physician-Patient Privilege	813
[5]	Qualified Privileges	814
[6]	The Right of Privacy	814
	<i>Valley Bank Of Nevada v. Superior Court</i>	814
	<i>Babcock v. Superior Court</i>	816
[a]	Consumer Records	821
[b]	Tax Returns	821
[c]	Medical Records	821
[d]	Sexual History	822
[e]	Memberships	822
[f]	Personnel Information	823
[g]	Employment Records	823
[h]	Private Settlement Agreements	823
[i]	Financial Condition in Punitive Damages Claims	824
[E]	Protection of Attorney's Work Product	824
[1]	Introductory Note	824
[2]	Absolute Work Product Protection	825
	<i>Nacht & Lewis Architects, Inc. v. Superior Court</i>	825
	<i>BP Alaska Exploration, Inc. v. Superior Court</i>	827
	Notes and Questions Regarding Absolute Work Product Protection	829
[3]	Comparison to Federal Work Product Doctrine	830
[a]	Expanded work product protection	830
[b]	Absolute protection of opinion documents	830
[c]	Inadvertent Disclosure of Privileged Information	830
[4]	Qualified Work Product Protection	831
	<i>In Re Jeanette H.</i>	831
	Notes and Questions Regarding Qualified Work Product	

Table of Contents

	Protection	835
§ 11.02	INDIVIDUAL DISCOVERY DEVICES	836
[A]	Interrogatories	836
[1]	Introductory Note	836
[2]	Types of Written Interrogatories	836
[a]	Contention Interrogatories	836
[b]	Continuing Interrogatories	837
[3]	Responses to Interrogatories	837
[a]	Responses, Generally	837
[b]	Time	837
[c]	Protective Order	837
[d]	Reasonable Effort	838
[e]	Oath	838
[f]	Inaccurate Response	838
[g]	Objections	839
[4]	Compelling Further Responses	839
[B]	Inspections	839
[1]	Demands for Inspections of Items Controlled by a Party	839
[a]	Inspection Procedures	839
[b]	Inspection Requirements	840
[c]	Electronically Stored Information	841
[2]	Inspections of Items Not Controlled by a Party	842
[a]	Deposition Subpoenas	842
[b]	Inspections	843
[C]	Depositions	843
[1]	Oral Depositions in California	843
[a]	Deponents	843
[b]	Time	844
[c]	Place of Deposition	845
[d]	Deposition Officer	845
[2]	Procedures during Depositions	845
[a]	Record and Transcript	845
[b]	Examination of Deponent	846
[c]	Objections and Protective Orders	846
[3]	Use of Depositions at Trial	847
[a]	Party vs. Nonparty	847
[b]	Videotape Depositions	847
[4]	Oral Depositions in Another State	847
[5]	Oral Depositions in Another Country	848
[6]	Written Depositions	849
[D]	Medical Examinations	849

Table of Contents

[1]	Noticed Examination of Plaintiff in Personal Injury Action	849
[a]	Conduct of the Examination	849
	<i>Abex Corp. v. Superior Court</i>	850
	Notes and Questions Regarding Conduct of Examinations	852
[b]	Exchange of Examination Reports	853
[c]	Court Ordered Examinations	853
	<i>Vinson v. Superior Court</i>	854
	Notes and Questions Regarding Mental Examinations	859
[d]	Other Limits on Examinations	860
[E]	Exchange of Information About Trial Experts	860
[1]	Expert Witness Disclosures	860
	<i>Schreiber v. Estate of Kiser</i>	860
	Notes and Questions Regarding Expert Witness Disclosures	865
[2]	Withdrawal of Designated Expert	866
[3]	Testimony of Undesignated Experts	868
[a]	Limited Right to Call Undesignated Expert	868
[b]	Failure to Comply with Expert Disclosure Requirements	868
[c]	Augmentation of Expert List	870
[F]	Requests for Admissions	870
	<i>Cembrook v. Superior Court</i>	871
	Notes and Questions Regarding Requests for Admissions	874
§ 11.03	ENFORCEMENT OF DISCOVERY REQUESTS	875
[A]	Introductory Note	875
[B]	Sanctions	877
	<i>Collison & Kaplan v. Hartunian</i>	877
	Notes and Questions Regarding Sanctions	882
[C]	Appellate Review of Sanctions Orders	885
Chapter 12	RESOLUTION OF CASES BEFORE TRIAL	887
§ 12.01	SUMMARY JUDGMENT	887
[A]	Introductory Note	887
[1]	Moving Party's Initial Burden	888
[2]	California's Burden-Shifting Approach	888
[B]	California Summary Judgment Procedure	890
	<i>Gaggero v. Yura</i>	890
	<i>Juge v. County Of Sacramento</i>	895
	Notes and Questions on Summary Judgment	902
§ 12.02	DEFAULT JUDGMENT	908
[A]	Introductory Note	908
[1]	Generally	908
[2]	Relief Limited to Demand	908

Table of Contents

[3]	General Procedures	909
[B]	Entry of Default	909
[C]	Obtaining Default Judgments	910
[1]	Clerk's Judgment	910
[a]	Clerk's Judgment Authorized in Certain Contract Actions	910
[b]	Clerk's Judgment May Include Interest and Costs	910
[c]	Authority to Enter Clerk's Judgment Narrowly Construed	910
[2]	Court Judgment	911
[3]	Procedures for Court's Default Judgment	911
[a]	Prove-up Hearing	911
[b]	Use of Affidavits and Declarations	912
[4]	Statutory Restrictions on Default Judgments	912
[5]	Time Restrictions	912
[a]	Time to Respond	912
[b]	Time to Request Default	913
[c]	Statement of Damages	913
	<i>Schwab v. Rondel Homes, Inc.</i>	913
	Notes and Questions Regarding Default Judgments in Personal Injury Actions	917
[D]	Problems Caused by Amendments to the Complaint	920
[1]	Does an Amended Complaint Require Defendant to File an Amended Answer?	920
[2]	Does an Amended Complaint Open the Default?	921
[E]	Res Judicata Effect of Default Judgment	921
[F]	Default Judgments in Federal Courts	922
[G]	Relief from Default Judgments	922
[1]	Introductory Note	922
	<i>Olvera v. Olvera</i>	922
	<i>Beeman v. Burling</i>	923
	Notes and Questions Regarding Relief from Default Judgments . .	929
[2]	Relief Sought Within Six Months	932
[a]	Six Months Limitation	932
[b]	Reasonable Time Limitation	932
[3]	Excusable vs. Inexcusable Neglect or Mistake	933
[a]	Examples of Excusable Neglect	934
[b]	Examples of Inexcusable Neglect or Mistake	935
[c]	Inexcusable Neglect of Attorney Not Imputed to Client When Positive Misconduct	936
[d]	Imposition of Conditions When Granting Relief	937
[4]	Relief Sought After Six Months	937
[a]	Equitable Relief	937

Table of Contents

	<i>Rappleyea v. Campbell</i>	937
[b]	Extrinsic Fraud or Mistake	943
[c]	Intrinsic Fraud or Mistake	944
[d]	Viability of Extrinsic/Intrinsic Distinction	944
[5]	Void Judgments	945
[a]	Judgment Void on Its Face	945
[b]	Judgment Valid on Its Face But Otherwise Void	945
[c]	Validity of Sister State Judgments	946
[6]	Independent Action in Equity	946
[7]	Relief from Default Judgment in Federal Courts	946
§ 12.03	INVOLUNTARY DISMISSALS	947
[A]	Introduction	947
[B]	Mandatory Dismissals for Lack of Prosecution	948
[1]	Failure to Serve the Action within Three Years of Filing	948
[a]	Effect of Amended Complaint	949
[b]	Statutory Tolling Provisions	949
[c]	Extensions of the Three-Year Limit	950
	<i>Brookview Condominium Owners' Assn. v. Heltzer</i>	
	<i>Enterprises-Brookview</i>	950
	Notes and Questions	956
[2]	Failure to Bring the Case to Trial within Five Years	956
[a]	When Action is "Brought to Trial"	956
[b]	Plaintiff's Motion for Preference	957
[c]	Statutory Exceptions to Mandatory Dismissal	957
	<i>Nye v. 20th Century Insurance Co.</i>	958
	Notes and Questions	960
[3]	Failure to Bring the Case to New Trial within Three Years	962
[C]	Discretionary Dismissals for Lack of Prosecution	963
[1]	Failure to Serve Defendant within Two Years	963
[a]	Excusable Delay	963
[b]	Prejudice Not Required	964
[c]	Prejudice Presumed	965
[2]	Failure to Bring the Case to Trial within Two Years	965
[a]	Discretionary Dismissal Rules	965
[b]	Discretionary Dismissal for Failure to Appear	966
[c]	Discretionary Dismissal and Attorney Negligence	966
[d]	Mandatory Relief From Dismissal Under CCP § 473(b)	967
[3]	Failure to Bring the Case to New Trial within Two Years	968
[D]	Involuntary Dismissals under Fast Track Rules	969
[1]	Introductory Note on Fast Track Rules	969
	Government Code § 68616 (2012)	969

Table of Contents

[2]	Dismissal and Other Fast Track Sanctions	971
[E]	Involuntary Dismissals on Other Statutory Grounds	971
§ 12.04	VOLUNTARY DISMISSAL	972
	<i>Zapanta v. Universal Care, Inc.</i>	972
	Notes and Questions Regarding Voluntary Dismissal	976
§ 12.05	SETTLEMENT	977
[A]	Settlement Issues	977
[1]	Conflict of Interests Among Attorney, Court, and Client	977
[2]	Conflict of Interest Between Party and Party's Insurer	979
[3]	Authority to Settle	979
[4]	Judgment by Stipulation	980
[5]	Offer to Allow Judgment	981
[6]	Effect of Good Faith Settlement in Multi-Party Litigation	982
[7]	Structured Settlements	982
[8]	Negotiation Techniques	983
§ 12.06	ARBITRATION	983
[A]	Contractual Arbitration	983
	<i>Moncharsh v. Heily & Blase</i>	983
[1]	Scope of Judicial Review of Arbitration Award	993
[a]	When Do Arbitrators "Exceed Their Powers" within the Meaning of CCP § 1286.2(a)(4)?	993
	<i>Advanced Micro Devices, Inc. v. Intel Corp.</i>	993
	Notes and Questions Regarding Arbitrators' Powers	998
[b]	Do Arbitrators "Exceed Their Powers" When They Order Injunctive Relief?	1001
[c]	Statutory Rights Exception to Rule of Arbitral Finality	1002
[2]	Standard of Judicial Review Determined by the Agreement	1003
	<i>Cable Connection, Inc. v. DirecTV, Inc.</i>	1003
	Notes and Questions Regarding <i>Cable Connection</i>	1007
[3]	Scope of Arbitration Is Determined by the Agreement	1007
[4]	Forfeiture of Right to Arbitrate by Failure to Timely Demand Arbitration	1008
[5]	Waiver of Right to Compel Arbitration	1009
[a]	Necessity of Petition to Compel Arbitration and Request for Stay	1009
[b]	Appealability of Order on Petition to Compel Arbitration	1010
[6]	Validity of Arbitration Agreement	1010
[a]	Who Determines the Validity of the Arbitration Agreement	1011
[b]	Unconscionable Arbitration Agreements	1012
[c]	Class Arbitration Waivers	1013
[d]	Mandatory Employment Arbitration Agreements	1014

Table of Contents

	<i>Armendariz v. Foundation Health Psychcare Services, Inc.</i> . . .	1014
	Notes and Questions Regarding Mandatory Employment	
	Arbitration Agreements	1019
[7]	Disqualification of Arbitrator	1021
[a]	Appointment of Arbitrator	1021
[b]	Disclosures and Disqualification	1021
[c]	Effect of Arbitrator Bias on Award	1021
[8]	Other Contractual Arbitration Statutes	1022
[a]	Special California Arbitration Statutes	1022
[b]	The Federal Arbitration Act	1022
[B]	Judicial Arbitration	1023
[1]	Introductory Note	1023
[2]	Judicial Arbitration Award Becomes an Unappealable Judgment if No Trial Requested	1024
[3]	Cases Subject to Judicial Arbitration	1025
[4]	Sanctions for Failure to Participate in Judicial Arbitration	1025
[5]	Limited Authority to Challenge Arbitration Award When No Trial Requested	1026
[6]	Arbitrator Must Determine All Issues	1027
[7]	Effect of Request for Trial de Novo in Multi-party Litigation	1027
Chapter 13	TRIAL PROCEEDINGS AND POST-TRIAL MOTIONS	1029
§ 13.01	INTRODUCTORY NOTE	1029
[A]	The Jury Trial Influence	1029
[B]	Pretrial Proceedings	1029
[1]	Delay Reduction and Case Management Rules	1029
[2]	Pretrial Conferences	1030
[3]	Trial Continuances Disfavored	1031
[C]	Disqualification of the Trial Judge	1032
[1]	Challenge for Cause: Disqualification for Actual or Perceived Bias	1032
[a]	Statutory Grounds for Disqualification	1032
[b]	Constitutional Grounds for Disqualification	1033
[2]	Peremptory Challenge	1034
§ 13.02	TRIAL BY JURY	1036
[A]	Right to Trial by Jury	1036
	<i>C & K Engineering Contractors v. Amber Steel Co.</i>	1036
[1]	Constitutional Right to Jury Trial in California Courts	1041
[a]	The Legal/Equitable Dichotomy	1041
[b]	Actions Involving Both Legal and Equitable Issues	1042
[c]	Other Forms of Historical Analysis	1042

Table of Contents

[d]	Constitutional Right to Jury Trial Not a Static Right	1042
[e]	Statutory Right to Jury Trial	1043
[2]	Waiver of Right to Jury Trial	1043
[a]	Waiver Not Irrevocable	1044
[b]	Contractual Waiver in Advance of Litigation	1044
[3]	The Federal Constitutional Right to Jury Trial in Federal Courts . . .	1045
	Understanding Civil Procedure	1045
[B]	Selection of the Jury	1049
[1]	Selection of Trial Jury Panel	1049
[2]	Voir Dire in Civil Jury Trials	1049
[3]	Challenges to Individual Jurors	1050
[a]	Challenges for Cause	1050
[b]	Peremptory Challenges	1050
[c]	Constitutional Limitations on Exercise of Peremptory Challenges	1051
[d]	Permissible Scope of Voir Dire	1051
[C]	The Trial Process	1051
[1]	The Order of Proceedings	1051
[2]	The California Evidence Code	1051
[3]	Burden of Proof and Related Issues	1052
[4]	Expedited Jury Trials	1052
[5]	Trial Techniques	1053
[D]	Advising the Jury	1053
[1]	Comments by the Judge	1053
[2]	Closing Argument	1054
	<i>Sabella v. Southern Pacific Co.</i>	1054
	<i>Gallagher v. Municipal Court</i>	1061
[a]	Scope of Proper Argument	1062
[b]	Ethical Considerations	1064
[c]	When Does Improper Argument Require Reversal?	1064
[3]	Jury Instructions	1065
[a]	Right to a Jury Instruction	1065
[b]	Content of Jury Instructions	1067
[c]	Jury Instructions Procedure	1067
[E]	Jury Verdicts	1068
[1]	Types of Verdicts	1068
[a]	Nonunanimous Verdicts	1068
[b]	General Verdicts vs. Special Verdicts	1069
[c]	When Special Verdicts Are Recommended or Required	1069
[d]	General Verdict Accompanied by Special Findings	1070
§ 13.03	TRIAL WITHOUT A JURY	1070

Table of Contents

[A]	Order of Proceedings	1070
[B]	Motion for Judgment	1071
[C]	Statement of Decision	1071
§ 13.04	JUDICIAL SUPERVISION OF JURY DECISIONS	1073
[A]	Nonsuit and Directed Verdict	1073
[1]	Nonsuit upon Completion of Plaintiff’s Evidence	1073
[2]	Nonsuit Upon Completion of Opening Statement	1074
[3]	Directed Verdict	1075
[4]	Motion for Mistrial	1075
[B]	Judgment Notwithstanding the Verdict (JNOV)	1076
	<i>Clemmer v. Hartford Insurance Co.</i>	1076
[1]	JNOV vs. New Trial Order	1079
[2]	Partial JNOV	1079
[3]	Time Limits for JNOV Motion	1079
[4]	JNOV Motions Integrally Related to New Trial Motions	1080
[5]	Judgment as a Matter of Law (JNOV) in Federal Court	1080
[C]	Impeachment of Verdict for Juror Misconduct	1081
	<i>Smoketree-Lake Murray, Ltd. v. Mills Concrete Construction Co.</i>	1081
	<i>Moore v. Preventive Medicine Medical Group, Inc.</i>	1087
	Notes and Questions Regarding Impeachment of Verdict	1092
[1]	Impeachment for Reliance on Juror Expertise or Other Outside Evidence	1095
[a]	Exposure to Outside Information	1095
[b]	Jurors’ Personal Experiences	1096
[c]	Improper Chance Verdicts	1097
[d]	Juror Inattentiveness	1098
[2]	Presumption of Prejudice When Jury Misconduct Proven	1098
[3]	Juror Misconduct During Voir Dire	1099
[4]	Impeachment of Verdicts in Federal Court	1100
[D]	Motion for New Trial	1101
[1]	Introductory Note	1101
	<i>Sanchez-Corea v. Bank Of America</i>	1102
	<i>Dominguez v. Pantalone</i>	1110
	Notes and Questions Regarding New Trial Orders	1113
[2]	Motion for New Trial: Procedures	1114
[a]	Aggrieved Party Must File Motion	1114
[b]	New Trial Motion and Declarations Must Be Timely Filed	1114
[c]	The New Trial Order Must State Grounds and Specify Reasons	1115
[d]	60-Day Limit on Trial Court’s Power to Decide Motion	1117
[3]	Motion for New Trial: Grounds	1118
[a]	Statutory Grounds Exclusive	1118

Table of Contents

[b]	Motion an Exercise of Discretion	1119
[c]	Insufficiency of the Evidence	1119
[d]	Excessive Damages and Conditional New Trial Orders (Remittitur)	1120
[e]	Newly Discovered Evidence	1122
[f]	Accident or Surprise	1123
[g]	Jury Misconduct and Other Irregularities	1123
[4]	Federal Court New Trial Motions Compared	1123
[a]	Federal Grounds	1123
[b]	Federal Procedures	1125
Chapter 14	JUDGMENTS AND ENFORCEMENT OF JUDGMENTS	1127
§ 14.01	INTRODUCTORY NOTE ON JUDGMENTS AND ENFORCEMENT OF JUDGMENTS	1127
[A]	Introduction to Securing and Enforcing Judgments	1127
[B]	General Statutory Guidance on Judgments and Remedies	1127
§ 14.02	INTEREST	1128
[A]	Introductory Note on Postjudgment and Prejudgment Interest	1128
	<i>Stein v. Southern California Edison Co.</i>	1128
[B]	Prejudgment Interest	1132
[1]	Civil Code § 3287(a)	1132
[a]	<i>Levy-Zentner Co. v. Southern Pacific Transportation Co.</i>	1132
[b]	<i>Polster, Inc. v. Swing</i>	1133
[c]	<i>Cassinovs v. Union Oil Co.</i>	1133
[d]	Policy Conflict	1134
[e]	Effect of Unliquidated Cross-Complaint	1134
[f]	Public Entities	1135
[g]	Suspension	1135
[h]	Administrative Agency Awards	1135
[2]	Civil Code § 3288: Prejudgment Interest in Non-Contract Actions	1136
[a]	Prudent Practice	1136
[b]	No Interest on Noneconomic Damages Under § 3288	1136
[c]	Application of § 3288 in Nonjury Cases	1137
[3]	Civil Code § 3291	1137
[4]	Effect of Good Faith Settlement	1138
[5]	Prejudgment Interest in a Breach of Contract Action	1138
[a]	Liquidated Damages	1138
[b]	Unliquidated Damages	1138
[c]	Rate of Prejudgment Interest	1138
§ 14.03	RECOVERY OF ATTORNEY FEES	1139

Table of Contents

[A]	Introductory Note on the American Rule and Exceptions	1139
[B]	Attorney Fee Awards Based on Contract	1140
	<i>Moallem v. Coldwell Banker Commercial Group, Inc.</i>	1140
[1]	Code of Civil Procedure § 1021	1144
[2]	Civil Code § 1717	1144
[a]	Civil Code § 1717 Limited to Actions “On a Contract”	1144
[b]	Apportionment of Award in Combined Actions	1144
[c]	Civil Code § 1717 May Apply Although Contract Unenforceable	1145
[3]	Recovery of Attorney Fees by Nonsignatory	1147
[4]	Liability of Nonsignatory for Attorney Fees	1147
[5]	“Prevailing Party” under Civil Code § 1717	1147
[a]	Problems in Determining Prevailing Party Status	1148
[b]	When No Prevailing Party	1148
[c]	<i>Hsu v. Abbata</i>	1148
[d]	Prevailing Party for Costs	1150
[6]	Effect of Dismissal of Action on Recovery of Attorney Fees Under § 1717	1151
[7]	Must a Fee Award Await Final Disposition of Substantive Rights? .	1153
[8]	Relationship Between Civil Code § 1717 and CCP § 998	1154
[9]	Procedure for Claiming Attorney Fees Based on a Contract	1154
[a]	Noticed Motion Procedure	1154
[b]	Calculation of Fee Amount	1154
[C]	Attorney Fee Awards Based on Judge-Made Equitable Theories	1155
[1]	The Common Fund Theory	1155
[a]	General Doctrine	1155
[b]	Common Fund Theory Distinguished from Other Judge-Made Exceptions	1156
[c]	Common Fund Theory Distinguished from Private Attorney General Statute	1157
[2]	The Substantial Benefit Theory	1157
[3]	The Equitable Private Attorney General Theory	1158
[4]	The Tort of Another Doctrine	1158
[5]	Exceptions Based on Equitable Theories in the Federal Courts	1158
[a]	Federal “Common Fund” Doctrine	1158
[b]	Federal “Bad Faith” Doctrine	1159
[D]	Attorney Fees Awarded as an Element of Damages	1159
[E]	Attorney Fee Awards Based on Statutory Authority	1160
[1]	Code of Civil Procedure Section 1021.5	1160
	<i>Beasley v. Wells Fargo Bank</i>	1160
	Notes and Questions Regarding CCP § 1021.5	1166

Table of Contents

[2]	Other State Statutory Authority for an Award of Attorney Fees . . .	1167
[3]	Criteria For an Award Under CCP § 1021.5	1168
[a]	“Important Right”	1168
[b]	“Significant Benefit”	1169
[c]	“Financial Burden of Private Enforcement”	1170
[d]	“Necessity of Private Enforcement”	1172
[4]	Determining the Successful Party Under CCP § 1021.5	1172
[a]	Necessity of Causal Connection Between Lawsuit and Result Achieved	1172
[b]	Successful Party Need Not Prevail on Every Claim	1174
[5]	Limited Discretion to Deny Fee Award When Statutory Criteria Satisfied	1175
[a]	Limited Discretion to Deny Fees to Prevailing Plaintiff	1175
[b]	Limited Discretion to Award Fees to Prevailing Defendant	1175
[c]	Policy Reasons for Limited Discretion	1176
[d]	Suits Involving Public Entities	1176
[F]	Calculating the Amount of the Attorney Fee Award	1176
[1]	The Lodestar Method	1176
[2]	Calculating the Lodestar Amount	1177
[a]	Reasonable Hourly Rate	1177
[b]	Proof of Market Rate	1178
[3]	The Lodestar Multiplier	1178
[a]	Examples of Lodestar Multiplier	1179
[b]	Federal Approach to Lodestar Multiplier	1180
[c]	Independent California Rule	1180
[d]	Policy Considerations	1180
[e]	Use of Negative Multiplier to Reflect Partial Success	1181
[G]	Appellate Attorney Fee Awards	1181
[H]	Procedure for Obtaining Attorney Fees Based on Statute	1181
[1]	Pleading and Procedure	1181
[a]	Pleading of Fee Request Not Required	1181
[b]	Collateral Matter	1182
[2]	Noticed Motion Procedure	1182
§ 14.04	RECOVERY OF COSTS BY PREVAILING PARTY	1182
[A]	Introductory Note	1182
	CALIFORNIA CODE OF CIVIL PROCEDURE (2012)	1182
	Section 1032. Recovery of costs by prevailing party as matter of right.	1182
	Section 1033.5. Items allowable as costs	1183
	CALIFORNIA RULES OF COURT (2012)	1185
	Rule 3.1700. Prejudgment costs	1185

Table of Contents

[B]	Prevailing Party Under CCP § 1032	1186
[1]	<i>McLarand, Vasquez & Partners, Inc. v. Downey Sav. & Loan Assn.</i>	1186
[2]	<i>Goodman v. Lozano</i>	1186
[3]	Voluntary Dismissals	1187
[C]	Multiple Parties	1187
[D]	Certain Costs Recoverable as a Matter of Right; Others as a Matter of Discretion	1188
[1]	Costs Allowable of Right	1188
[2]	Discretionary Costs	1188
[3]	Costs Must Be Reasonably Necessary	1189
	<i>Science Applications Int’l Corp. v. Superior Court</i>	1189
	Notes and Questions on “Reasonably Necessary” Costs	1192
[4]	Special Cost Statutes	1192
[E]	Procedures for Claiming and Contesting Costs	1193
[F]	Recovery of Costs of Enforcing Judgment	1193
[G]	Effect of Statutory Offers to Compromise on Recovery of Costs	1194
[1]	Introductory Note on CCP § 998	1194
	CALIFORNIA CODE OF CIVIL PROCEDURE (2012)	1194
	Section 998. Withholding or augmenting costs following rejection or acceptance of offer to allow judgment	1196
	<i>Stallman v. Bell</i>	1196
	<i>Poster v. Southern California Rapid Transit Dist.</i>	1202
	Notes and Questions Regarding Recovery of Costs Under CCP § 998	1206
[2]	What Constitutes A More Favorable Judgment?	1210
[a]	Is An Award of Costs or Attorney Fees Included?	1210
[b]	Other Additions and Subtractions	1211
[3]	Consequences of Failure to Obtain a More Favorable Judgment . . .	1212
[a]	Effect on Award of Costs and Expert Witness Expenses	1212
[b]	Prejudgment Interest	1212
[4]	Section 998 Inapplicable to Certain Proceedings	1213
[H]	Recovery of Costs in Federal Court	1214
[1]	Costs	1214
[2]	Offers of Judgment	1214
§ 14.05	RELIEF FROM FINAL JUDGMENT	1214
[A]	Introductory Note	1214
	<i>Kulchar v. Kulchar</i>	1215
	Notes and Questions Regarding Relief from Final Judgment	1219
§ 14.06	ENFORCEMENT OF JUDGMENTS	1224
[A]	Introductory Note	1224

Table of Contents

	<i>Kahn v. Berman</i>	1224
[B]	Procedures for Enforcement of Judgments	1230
[1]	Entry of Judgment	1230
[2]	Abstract of Judgment	1231
[3]	Judgment Lien	1231
[a]	Effect of Judgment Lien	1231
[b]	Priorities	1231
[4]	Execution and Levy	1232
[a]	Writ of Execution	1232
[b]	Execution Lien	1233
[c]	Execution and Levy on Personal Property	1233
[5]	Exemptions	1234
[a]	Property Subject to Enforcement	1234
[b]	Personal Property Exemptions	1234
[c]	Homestead Exemptions, Generally	1235
[d]	Homestead Exemptions: Two Types Overlap	1235
[e]	Homestead Exemptions: Two Types Distinguished	1235
[f]	Homestead Exemptions: Procedures	1236
[g]	Homestead Exemptions: History and Policy	1236
[h]	Homestead Exemptions: Various Questions	1237
[6]	Wage Garnishment	1237
[a]	Wage Garnishment Procedures	1237
[b]	Exemptions	1238
[c]	Restrictions on Employer	1238
[7]	Enforcement of Judgments Against Public Entities	1238
[a]	Duty of Local Public Entity to Pay Judgments	1238
[b]	Duty of State with Respect to Payment of Judgments	1239
[c]	Judgment Against Public Employee	1239
[8]	Debtor Examinations and Other Discovery Devices	1239
[a]	Debtor's Examination	1240
[9]	Creditors' Suits and Other Miscellaneous Creditors' Remedies	1240
[a]	Creditors' Suits	1240
[b]	Other Creditors' Remedies	1241
[C]	Third-Party Claims	1241
[D]	Enforcement of Injunctions and Other Nonmoney Judgments	1241
	<i>In Re Feiock</i>	1241
	Notes and Questions on the Use of Contempt Proceedings to Enforce Nonmoney Judgments	1244
[E]	Satisfaction of Judgment	1248
[F]	Independent Action on Judgment	1248
[1]	Alternative Method to Extend Enforceable Life of Judgment	1249

Table of Contents

[2]	Ten-Year Limitation Period	1249
[G]	Effect of Appeal on Enforcement of Money Judgment	1249
[H]	Enforcement of Sister State Judgments	1250
	<i>Silbrico Corp. v. Raanan</i>	1250
	Notes and Questions Regarding Enforcement of Sister State Judgments	1254
Chapter 15	APPEALS AND WRITS	1259
§ 15.01	APPEALS	1259
[A]	Appealable Judgments and Orders	1259
	CALIFORNIA CODE OF CIVIL PROCEDURE (2012)	1259
	Section 904.1. <i>Appealable judgments and orders.</i>	1259
	<i>UAP-Columbus JV 3261 32 v. Nesbitt</i>	1260
	<i>Morehart v. County Of Santa Barbara</i>	1267
[1]	The One-Final-Judgment-Rule	1274
[a]	Certain Nonfinal Decisions Appealable	1274
[b]	The Problem of Bifurcated Trials	1274
[c]	Finality Determined by Substance of Decree	1275
[2]	Statutory Bases for Appeals	1276
[3]	Judge-Made Exceptions to Statutory One-Final-Judgment-Rule . . .	1276
[a]	Ruling on Collateral Matter	1276
[b]	Judgment Final as to One Party	1278
[c]	Order Determining Separate and Independent Issues	1279
[4]	Untimely Appeals	1280
[a]	Late Appeals	1280
[b]	Premature Appeals	1281
[5]	Appealability of Orders	1282
[a]	Appealability of Postjudgment Orders Under CCP § 904.1(a)(2) .	1283
[b]	Judicial Interpretations of CCP § 904.1(a)(2)	1283
[c]	Order Must “Neither Add nor Subtract” from Judgment	1284
[d]	New Trial and JNOV Orders	1284
[6]	Appealable Judgments in Federal Courts	1285
[a]	Federal Final Judgment Rule	1285
[b]	Federal Collateral Order Doctrine	1285
[c]	Federal Rule 54(b)	1286
[B]	Standing to Appeal	1287
[1]	Voluntary Dismissal?	1287
[2]	Remittitur?	1288
[3]	Prevailing Party?	1288
[4]	Moot Appeal?	1288
[C]	Timeliness of Appeals	1289

Table of Contents

[1]	Time Limitations for Appeals	1289
[a]	General Time Limits	1289
[b]	Extensions for Postjudgment Motions	1290
[c]	Cross-Appeals	1291
[d]	Cross-Appeal When Both Sides Aggrieved	1291
[e]	Protective Cross-Appeals	1291
[2]	Time Limitations for Federal Appeals	1292
[D]	Scope of Appellate Review	1292
	<i>In Re Marriage Of Ananeh-Firempong</i>	1292
[1]	Scope of Appellate Review Determined by Record	1298
[a]	Adequate Record for Appellate Review	1298
[b]	Statement of Decision	1299
[c]	Complete Record of Proceedings	1301
[d]	Preserving Error for Appeal	1301
[e]	Offer of Proof	1302
[2]	Standards of Appellate Review	1303
[a]	Substantial Evidence Rule	1303
[b]	Independent (De Novo) Review	1304
[c]	Abuse of Discretion	1305
[d]	Scope of Appellate Review in Federal Court	1307
[e]	Administrative Mandamus	1308
[E]	The Prejudicial Error Rule	1308
	<i>Soule v. General Motors Corp.</i>	1308
	Notes and Questions Regarding the Prejudicial Error Rule	1316
[F]	Stays Pending Appeal	1320
	CODE OF CIVIL PROCEDURE (2012)	1320
	Section 916(a). Stay on perfection of appeal.	1320
	Section 917.1(a). Appeal from money judgment; undertaking to stay enforcement.	1320
[1]	General Rule and General Exceptions	1320
[a]	Undertaking Required	1320
[b]	Discretionary Stays	1321
[2]	When General Rule Applicable	1321
[3]	Procedure for Obtaining Stay	1321
[4]	Purposes of Stays	1322
[5]	Writ of Supersedeas	1322
[G]	The Appellate Procedure	1322
[1]	Designating the Record on Appeal	1322
[2]	Applications and Motions	1323
[3]	Appellate Briefs	1323
[a]	Formal Requirements	1324

Table of Contents

[b]	Practical Guides	1324
[4]	Oral Argument	1324
[5]	Decision, Rehearing, Remittitur	1325
[a]	Submission and Decision	1325
[b]	Rehearing	1326
[c]	Costs	1326
[d]	Sanctions	1327
[e]	Remittitur	1327
[f]	Appellate Review of “Limited Civil” Cases	1328
[6]	Review by California Supreme Court	1328
[a]	General Procedure	1329
[b]	Discretionary Review	1329
[c]	Petition for Review	1329
[d]	Effect of Denial of Petition for Review	1329
[e]	Options When Petition Granted	1330
[7]	Publication and Depublication of Appellate Court Opinions	1330
[a]	Supreme Court Opinions	1330
[b]	Publication Procedures	1331
[c]	Depublication by Supreme Court Order	1331
[d]	Citation of Unpublished Opinions Prohibited	1332
[8]	Stipulated Reversals	1333
§ 15.02	EXTRAORDINARY WRITS	1334
[A]	Introductory Notes	1334
[1]	Writs, Generally	1334
[2]	Appeals	1334
[3]	Extraordinary Writs	1334
[4]	Primer on Extraordinary Writ Practice	1335
[a]	“Writ”	1335
[b]	Parties Involved	1335
[c]	Types of Writs	1335
[d]	“Alternative” and “Peremptory” Writs	1335
[e]	“Statutory” Writs	1336
[f]	“Common Law” Writs	1337
[g]	“Extraordinary” Remedy	1337
[B]	Types of Extraordinary Writs	1338
[1]	Writ of Mandate	1338
[a]	Functions	1338
[b]	Ministerial Act	1338
[c]	Controls Discretion	1338
[d]	Writ Issued Against Nonjudicial Entities	1338
[2]	Writ of Prohibition	1339

Table of Contents

[a]	Threatened Acts	1339
[b]	Jurisdictional Writ	1339
[3]	Writ of Certiorari	1340
[a]	Prerequisites	1340
[b]	Contempt Review	1340
[4]	Writ of Supersedeas	1340
[5]	Selecting the Appropriate Writ	1341
[a]	Flexible Approach	1341
[b]	May an Improper Appeal Be Treated as a Writ?	1341
[c]	Precision Unnecessary	1342
[C]	Writ Prerequisites and Procedures	1342
	<i>Omaha Indemnity Company v. Superior Court</i>	1342
	<i>Brandt v. Superior Court</i>	1347
	<i>Sav-On Drugs, Inc. v. Superior Court</i>	1348
	<i>Palma v. U.S. Industrial Fasteners, Inc.</i>	1348
[1]	Basic Writ Prerequisites	1353
[a]	Inadequate Remedy at Law	1353
[b]	Irreparable Injury	1355
[c]	Beneficial Interest	1356
[2]	Additional Writ Criteria	1356
[a]	Nonstatutory Criteria	1356
[b]	Alternative Writ Issuance	1356
[3]	Proper Court for Writ	1357
[4]	Review of Writ Decisions	1357
[5]	Alternative vs. Peremptory Writ	1358
[a]	Choice of Writ Procedure	1358
[b]	Peremptory Writ in the First Instance	1358
[c]	Practical Dilemma	1359
[d]	Procedure After Issuance of Alternative Writ	1359
[6]	Time Limitations for Filing Writ Petitions	1360
[a]	Statutory Writs	1360
[b]	Nonstatutory Writs	1360
[7]	Res Judicata	1360
[a]	Law of the Case	1361
[b]	Effect of Summary Denial	1361
[8]	Practical Considerations	1361
[a]	Practice Guides	1361
[b]	Responsive Pleading	1361
[9]	Most Writs Denied	1362
[10]	Discretion Revisited	1362
[a]	Writ Use Widely Available	1362

Table of Contents

[b]	Discretionary?	1363
[D]	Extraordinary Writs in Federal Courts	1364
[1]	Statutory Authority	1364
[2]	Judicial Hostility	1364
[a]	Limited Mandamus Use Authorized by United States Supreme Court	1364
[b]	Mandamus Use by Ninth Circuit	1365
§ 15.03	ADMINISTRATIVE MANDAMUS	1365
[A]	Introductory Note	1365
[B]	General Prerequisites	1365
Code of Civil Procedure § 1094.5 (2012)	1365	
<i>Anton v. San Antonio Community Hospital</i>	1366	
[1]	Administrative Mandamus, Generally	1377
[a]	Exclusive Means of Judicial Review	1377
[b]	Review of Nongovernment Decisions	1377
[2]	Decisions Subject to Administrative Mandamus	1377
[a]	What Constitutes Evidentiary Hearing?	1378
[b]	What Constitutes Agency Discretion?	1378
[c]	Adjudicative vs. Legislative Decision?	1379
[3]	Administrative vs. Traditional Mandamus	1380
[a]	When Is Traditional Mandamus Applicable?	1380
[b]	When Is Administrative Mandamus Applicable?	1380
[c]	Which Type of Review Is More Advantageous?	1380
[4]	Other Prerequisites to Administrative Mandamus	1381
[a]	Finality	1381
[b]	Traditional Mandamus Prerequisites	1381
[C]	Nature of Judicial Review by Administrative Mandamus	1382
[1]	Scope of Judicial Review under § 1094.5(b)	1382
[a]	Fair Trial	1382
[b]	Sufficiency of Agency Findings	1382
[2]	Nature of Judicial Review under § 1094.5(c)	1383
[a]	The Independent Judgment Standard	1383
[b]	Complete Record	1384
[c]	The Substantial Evidence Standard	1384
[d]	Trial De Novo?	1385
[e]	New Evidence	1385
[3]	The Fundamental Vested Right Test	1386
[a]	General Distinction Possible?	1386
[b]	Some Classification Problems	1388
[c]	Exceptions	1390
[d]	Quasi-Legislative Decisions	1391

Table of Contents

[e]	Constitutional Basis	1391
[f]	Criticisms	1391
[g]	Repudiation of Specific Holding in <i>Anton</i>	1392
[D]	Administrative Mandamus Procedures	1392
[1]	Statutes of Limitations for Administrative Mandamus	1392
[2]	The Writ Petition	1392
[3]	Remedies Available Through Administrative Mandamus	1393
[a]	Judgment, Generally	1393
[b]	Money Damages	1393
[4]	Appellate Review	1393
Table of Cases		TC-1
Index		I-1