

# California Civil Procedure



# California Civil Procedure

FOURTH EDITION

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# Preface to Fourth Edition

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There have been numerous changes in the law of civil procedure since the publication of the THIRD EDITION of the CALIFORNIA CIVIL PROCEDURE casebook in 2012. The FOURTH EDITION reflects some of the more significant developments in constitutional amendments, procedural statutes, rules of court, and case law since 2012; and preserves materials from the previous editions that remain current and relevant.

The California statutes and Rules of Court discussed and quoted in the FOURTH EDITION are current as of July 1, 2016. The judicial decisions reproduced and analyzed are based on California Supreme Court opinions published through 62 Cal. 4th 1163 (2016), and on California Court of Appeal opinions officially published through 246 Cal. App. 4th 253 (2016).

# Preface to Third Edition

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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

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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

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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 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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