**Workbook to Accompany**

**Maerowitz and Mauet’s**

**FUNDAMENTALS OF CALIFORNIA LITIGATION**

**FOR PARALEGALS**

## Seventh Edition

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**TO THE STUDENT**

Your textbook, **Fundamentals of California Litigation for Paralegals,** is intended to prepare you to begin your work as a legal assistant competently and confidently. It presents the procedural rules governing the civil litigation process and a system to help you use these rules to draft litigation documents. However, learning the rules and applying the knowledge are usually two different things. This workbook has been created to bridge the gap between knowledge and application. The workbook helps you to test your understanding of the concepts presented in the textbook and allows you to apply those concepts to a variety of litigation matters. In addition, the exercises in this workbook will give you practice in drafting litigation documents, including pleadings, motions, and discovery requests. You should keep copies of all the documents you draft in a notebook or stored in a separate file on your computer. As you work through the exercises you will begin to build a form file for use once you are in practice. This form file will become your litigation guide.

**HOW TO USE THIS WORKBOOK**

The workbook is divided into chapters that correspond to the textbook. As you work through the chapters of the text, work through the chapters of this workbook. Your instructor may assign some problems to be done before class and others to be done during class. Even if a particular problem is not assigned, you should read through the problem and consider possible answers; this will help you to better understand the rules and concepts presented in the text.

Some of the problems in this workbook are designed for in‑class discussion; however, most are intended for you to do at home. You will be able to do many of the problems using only the information in the main text. However, for others you will need to do additional research using the California Code of Civil Procedure, California Rules of Court, or California Evidence Code. The purpose of this research is to encourage you to become familiar with the California rules. By examining the specific state rules, you will become familiar with reading the important state law provisions. In addition, sometimes you will be asked to consult some of the more wide-known California secondary research sources, such as Weil and Brown, *Civil Procedure Before Trial*, or Witkins, *Summary of California Law*. These sources are valuable tools once you are in practice, and it would be helpful to become familiar with these sources before starting work as a litigation paralegal.

***TESTING YOUR COMPREHENSION***

Each chapter of this workbook is divided into five main parts. The first, "Testing Your Comprehension," consists of true‑false questions that test your knowledge of the rules and concepts covered in each chapter. Although these questions can be answered by referring to the main text, refrain from looking at the text until you have at least attempted to answer every question. This way you will know whether you have understood the main concepts in each chapter. An answer sheet is provided for your reference in the Appendix.

***APPLYING YOUR KNOWLEDGE***

The second part, "Applying Your Knowledge," consists of questions designed to stimulate your thinking about the concepts discussed in the text. Many of these questions cannot be answered by simply referring to the text. Rather, they may require you to apply the skills and rules you have learned in the chapter to different fact situations.

***PROJECTS FOR RESEARCH AND WRITING***

The third part, "Projects for Research and Writing," consists of a number of written assignments. As you do each assignment, place the assignment in your litigation guide. When you finish your litigation course, this collection of information, samples, models, and forms will be your reference guide in practice. Many sample forms are included on this disk. Other samples are reprinted in the Instructor’s Manual that accompanies this book and are available from your instructor.

***ONLINE LEGAL DATABASE RESEARCH***

The fourth part, “Online Legal Database Research,” consists of questions designed to provide you practice engaging in basic case law research. In order to answer each question, you will need to use an online legal database to locate various California cases.

***CALIFORNIA STATUTORY RESEARCH QUESTIONS***

The final part, “California Statutory Research Questions,” consists of questions designed to provide you practice engaging in basic statutory research. In order to answer each question, you will need to locate and navigate through various California statutes.

***HYPOTHETICALS***

In a file labeled “***cases***” are six hypothetical cases. When indicated, the facts in the cases should be used to help you complete the assignments. In addition, your instructor may give you additional assignments based upon some of the hypothetical cases.

***APPENDICES***

This workbook ends with three appendices. The first contains answers to the True-False questions and the California Statutory Research questions. The second appendix contains samples of many of the assignments that you are given in this workbook. You should refer to the samples in completing your assignments. The third appendix contains excerpts from some of the rules of civil procedure and evidence that are referred to in the textbook. These excerpts should be referred to when you are studying the rules in the text so that you can see the exact language used for each rule. Once you are in practice, you will be reading many rules of law. The excerpts in this appendix will give you practice in not just reading the summary of the law in your text, but the seeing exactly how the rules of law are written. The excerpts may also be used to assist you with the projects for legal research and writing in this workbook.

**HYPOTHETICAL CASES**

In several of the assignments you will be asked to use the facts found in one of the following hypothetical cases. The cases provide you with the basic facts; however, throughout the course your instructor may supplement these cases with additional facts and issues.

**1. SAMSON V. EMERALD’S CATERING**

Benjamin and Sara Samson decided to hold a large party at the country club near their home in order to raise money for a new pediatric wing of the local hospital. The Samsons hoped that during the evening, the guests that attended would make large donations to the hospital to be used for the new wing. The country club donated the space for the fundraiser, but advised the Samson’s that they did not have catering facilities to handle the large number of people the Samson’s wanted to invited. The Samson’s hired Emerald’s Catering, a company that specializes in large parties, to cater food for the party, decorate the room, provide party favors, and provide a musical band to entertain. A contract was signed that specified the date of the party, the food, entertainment and items to be provided, and the price to be paid. It further stipulated that a band would play for approximately five hours during the course of the party. One‑half of the total payment of $60,000 was made at the time the contract was signed. The other half was to be paid on the day of the party. Over 300 guests were invited to the fundraiser.

On the morning of the party, Mrs. Samson called Emerald’s Catering to confirm the arrival of the caterers. Mrs. Samson was assured that the caterers would arrive at approximately 5:00 p.m., one hour before the party was to begin. Mrs. Samson expressed concern that there might not be enough time to decorate and set up the food for the party. However, she was assured that since everything would be cooked ahead of time, there was no need to arrive any earlier.

When no one from Emerald’s catering had arrived by 5:30 p.m., Mrs. Samson called Emerald’s Catering, but there was no answer. She continued to make telephone calls but continued to receive no answer. At 7:00 p.m., with over 300 guests present, Mr. and Mrs. Samson apologized for there not being any food, band or decorations, and the guests left without making any donations. At approximately 7:30 p.m., the band and caterers arrived; however, the only people present were Mr. and Mrs. Samson and a few of their close friends.

Mr. and Mrs. Samson not only paid $30,000 to Emerald’s Catering, but they had spent $1500 on engraved invitations that were sent to all the guests. They are also very upset about the damage to their reputation in the community and the embarrassment caused them by the failure of Emerald’s Catering to perform. They believe their damages to be in excess of $30,000.

**2. SHAMROCK ENTERPRISES V. MCFARLAND**

Shamrock Enterprises runs a home delivery laundry service throughout Lincoln County. It is the only such service in the area. Rather than advertising, Shamrock obtains its customers through telephone solicitations. These solicitations ask the potential customer to sign up for either weekly or bi‑weekly laundry service. Once a customer signs up, the salesperson keeps a log of all the customers they are responsible for and makes periodic telephone calls to assure that their customers are satisfied with the service. Shamrock has been in business for more than ten years, and many of its customers have been with them this entire time.

Doris McFarland was an employee of Shamrock for five years. For the past two years, she was Shamrock's number one salesperson. Several months ago, Ms. McFarland left Shamrock's employment and started her own company called McFarland's Laundry Service. Shamrock has found out that, prior to her departure, Ms. McFarland took with her the names and addresses of all the customers she had previously solicited on behalf of Shamrock. Shamrock has also found out that approximately 70% of these customers have canceled their accounts with Shamrock. Shamrock believes that these customers have now signed on as customers of Ms. McFarland.

**3. KESTER V. MONROE'S GROCERY STORE**

Sidney Kester is a 65 year‑old computer operator. He routinely shops at Monroe's Grocery Store, which is very close to his home. Approximately two months ago, while shopping in the store, he slipped in the produce department and fractured his knee. Although he is recovering, he missed several weeks of work and his doctors advise him that he will probably need to use a cane for the rest of his life.

Mr. Kester does not know what he slipped on; but he does recall noticing that the produce manager was in the process of restocking many of the bins, and that crates filled several of the aisles. In one aisle in particular, he recalls noticing that several tomatoes had fallen from a crate onto the floor. Mr. Kester was in front of the lettuce bin at the time of the fall.

**4. GATSBY REALTY V. MASON**

Gatsby Realty owns and manages an apartment complex of 32 units. Derrick Mason is one of its tenants. Approximately 6 months ago, Mr. Mason advised Gatsby Realty that he had lost his job and could not make that month's rental payment on time, but he stated he could pay by the middle of the month. Gatsby Realty gave Mr. Mason permission to pay that one time on the 15th of the month. Mason paid one‑half of the rent on the 15th and did not pay the balance until the 30th of the month. Gatsby Realty did not say anything, but accepted the late rent.

For the next three months, Mr. Mason paid his rent, but usually not until at least the 20th of the month. This past month Mr. Mason told Gatsby Realty that he could not pay at all, but that he would like to pay this month's rent and next month's rent together. Gatsby Realty would like to start proceedings to have Mr. Mason evicted based upon nonpayment of rent.

**5. KING V. WOODS**

On March 25, Stella King was driving her automobile on her way to work when her car was hit by Dennis Woods. Ms. King was traveling in a northerly direction on Fifth Street. She has indicated that when she arrived at the intersection of Fifth and Hoover, she stopped at the red light. When the light turned green, she proceeded through the intersection. Mr. Woods was traveling in an easterly direction, and his car collided with Ms. King's car in the center of the intersection.

Neither Mr. Woods nor Ms. King were seriously injured. Ms. King suffered a broken wrist and back and shoulder pain. She was taken to Warren Community Hospital after the accident, where she was treated for her injuries and released. Mr. Woods suffered a few scrapes but did not need any medical treatment. Both cars were damaged extensively. Ms. King is a legal secretary and, due to her broken wrist, was out of work for over a month.

Mr. Woods is an inspector of construction sites. On the day of the accident, he was on his way to an inspection. He admitted to the police that he was in a hurry because he was late. However, he claims that he was not speeding and was already in the intersection when the light turned yellow.

Two eyewitnesses to the accident stopped their cars to give assistance. One eyewitness is Beverly Peters, the other Roberta Geller. Both women stayed until the police arrived and gave the police their accounts of the accident. Ms. Peters was directly behind Mr. Woods' car. She claims that Mr. Woods failed to slow down as the light turned yellow and instead sped up to beat the red light. Ms. Geller was in the car directly behind Ms. King and claims that, while she cannot be sure, she believes Ms. King may have started into the intersection before the light turned green.

**6. THOMAS V. CITY OF TANNERVILLE**

At approximately 9:20 p.m. in October of last year, two City of Tannerville police officers stopped a vehicle that was driven by Michael Thomas. The officers had pulled Thomas’s vehicle over because it had an expired license plate. When the officers approached the vehicle, Thomas got out of his car, and started to flee on foot. The two officers ran after him and, when he slipped and fell over some debris on the side of the road, the officers were able to grab him and keep him on the ground while they attempted to handcuff him. Thomas attempted to fight off the officers, but the officers were able to finally handcuff him, and get him into the back of the patrol car. After running a vehicle check, the officers discovered the car driven by Thomas had been stolen. Thomas was arrested for the stolen vehicle and assault on a police officer. Although Thomas had some scrapes on his face from where he had fallen, he was not taken to the hospital as the scrapes did not appear serious.

The criminal charges against Thomas have recently been dropped by the District Attorney’s office, due to some procedural problems. Last week the City of Tannerville received a complaint filed by Thomas for violation of his civil rights. The complaint alleges that Thomas is entitled to an award of damages under 42 U.S.C. § 1983 because the police officers used an unreasonable use of force during the arrest of Thomas. Thomas has filed in the Superior Court.

**CHAPTER ONE**

**INTRODUCTION TO LITIGATION**

***CHAPTER OBJECTIVES***

Civil litigation is governed by a detailed set of rules that are explained in each chapter of the text. However, before studying the rules that govern the specific aspects of litigation, you need to be familiar with the litigation process. This familiarity includes knowing where to find the law governing litigation matters, which courts handle particular types of litigation, and what remedies can be awarded to a plaintiff in a litigation action. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. What the differences are between civil litigation and other types of litigation
2. Where to find the law applicable to litigation matters
3. How the California court system is structured
4. How a case moves through the litigation process
5. What types of remedies an aggrieved party may seek from the court
6. What the paralegal's role is in the litigation process
7. What the ethical standards are that paralegals must follow

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter One by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | Civil litigation is the resolution of disputes between private parties through the court system. |
| 2. | T | F | A party filing an action in state court must follow the procedural rules of that particular court. |
| 3. | T | F | Criminal litigation is commenced by private parties. |
| 4. | T | F | Statutes are laws enacted by state or federal legislatures. |
| 5. | T | F | All laws enacted by Congress are found in the Federal Rules of Civil Procedure. |
| 6. | T | F | Only federal and state governments may enact statutes or codes. |
| 7. | T | F | Common law is never used in the United States today. |
| 8. | T | F | Litigation is commenced by the aggrieved party filing a complaint. |
| 9. | T | F | The aggrieved party filing a complaint is called the plaintiff and the party against whom the complaint is filed is called the respondent. |
| 10. | T | F | A complaint is always filed in the trial court. |
| 11. | T | F | On appeal, the appellate court may hear from witnesses and take new evidence. |
| 12. | T | F | A California municipal court can only hear cases that are for a money judgment in the amount of $25,000 or less. |
| 13. | T | F | If the appellate court disagrees with the trial court's judgment, the appellate court will reverse the decision. |
| 14. | T | F | Appeal to the Supreme Court in not automatic, but rather is discretionary with the Court. |
| 15. | T | F | Compensatory damages are given when the defendant's conduct is willful or malicious in order to punish the defendant. |
| 16. | T | F | If the legal remedy is inadequate to compensate the plaintiff fully, then the plaintiff may be able to obtain an equitable remedy. |
| 17. | T | F | An injunction is a legal remedy. |
| 18. | T | F | Under the federal court system, the trial court is called the United States District Court. |
| 19. | T | F | The communication between an attorney and client is confidential. |
| 20. | T | F | A paralegal may not represent a client in court or at a deposition. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. Mary Jane plays a popular character on a daytime soap opera. She recently has seen a commercial in which someone is imitating her voice and mannerisms as she uses them on the soap opera. She is offended by the commercial for two reasons: First, she believes that if someone is going to do a commercial which imitates here character, she should have a right to have been offered the opportunity to do the commercial and receive compensation for the commercial. Second, she believes the commercial is damaging to her reputation as the person doing the imitation does not do a particularly good job and she is afraid that others will associate the poor acting job with Mary Jane's performance on the soap opera. What remedies do you think Mary Jane can seek? If Mary Jane wanted to file suit in the Superior Court where your school is located, which court would she file in?

2. What is the path of a typical litigation case? Why do we have a formal set of rules of civil procedure to govern disputes?

3. Why is appeal to the California Supreme Court not automatic? Why do we limit the cases the Supreme Court will hear? Isn't justice better served by letting all cases be appealed to the Supreme Court?

4. Why must a paralegal work under the supervision of a lawyer? Are there any times when a paralegal does not need to work under the supervision of a lawyer?

5. Paralegals must always identify themselves as paralegals directly below their name on any correspondence. Why is this? Are there any ethical considerations?

6. Communication between an attorney and a client is confidential and privileged. Is communication between a paralegal and a client confidential and privileged? Why? What policies are we trying to foster by keeping certain communications confidential.

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. Litigation is governed by a formal set of rules which specify the procedure the parties must follow during each stage of the litigation. In order to familiarize yourself with the rules of procedure, locate a copy of the California Code of Civil Procedure. By referring to the front of the Code, you will note that the Code is divided into four parts, beginning with Part I, Of Courts of Justice. Identify the other three parts. What section numbers of the Code begin each part?

2. A chart in your textbook indicates the structure of the California court system. By reviewing the chart, you can visualize the relationship between the trial courts and appellate courts, and identify the courts by a specific name. However, in the larger counties, many of the trial courts have branch courts—such as the southeast branch, the northwest branch, etc. Does the county where your school is located have branch courts? If so, identify the branch courts, and the boundaries for each branch. If you are uncertain about where to locate the names of the branch courts, check to see if your County has a website that refers you to the Superior Court, or check your local telephone book under State Government.

3. As discussed in Chapter One, federal cases are commenced in the federal district court. Each state has at least one district court. How many district courts are in your state? If your school wanted to file a litigation action in federal court, which district court would it file in? Write these answers on a separate page, and place the answers in your litigation guide for future reference.

4. At the end of Chapter One, some of the ethical considerations that must be followed by paralegals are discussed. Make a list of the ethical considerations and place the list in your binder. Can you think of additional ethical considerations which should be included in your list?

5. The California legislature has enacted rules governing the regulation of the paralegal profession. Locate a copy of the rules, and make copies to place in your litigation guide.

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use an online legal research database to locate and analyze several court cases.

1. As discussed in Chapter One, court cases are decisions of the courts interpreting the law. Using online legal research database, locate a court case that addresses a particular legal issue. What was the court’s opinion on the issue? Do you think this opinion will be or has been used as a precedent to decide new controversies?
2. If a party loses in the appellate court, the losing party may petition the California Supreme Court for review. Locate a court case that petitioned and was successfully reviewed by the Supreme Court. Describe the case. Did the court affirm, affirm with modification, reverse, or reverse and remand the decision of the appellate court?
3. Ethical considerations underlie every aspect of the practice of law. Find a court case pertaining to the ethical obligations of paralegals. What rules enacted by the California state legislature, which regulates the paralegal profession, were violated? (If you are unable to locate a specific case dealing with the ethics of paralegals, simply research a case pertaining to ethics).

***California Statutory Research Questions***

* + - 1. Under the California Code of Civil Procedure, which section outlines the types of limited civil cases that a superior court of limited jurisdiction may hear?
      2. Search through Part 1, Title 1, of the California Code of Civil Procedure. Which section provides that in every county and city, there shall be an appellate division of the superior court consisting of three judges?
      3. Search through Part 1, Title 1, Chapter 3 of the California Code of Civil Procedure. Which section permits the California appellate courts to affirm, reverse, or modify any judgment or order appealed from by a party?

**CHAPTER TWO**

**INFORMAL FACT GATHERING**

**AND INVESTIGATION**

***CHAPTER OBJECTIVES***

Before a complaint or answer is filed, the facts giving rise to the particular grievance must be investigated. This initial investigation includes a number of informal steps that my be taken to obtain the facts necessary to file a complaint on behalf of your client or to defend against a complaint that has been filed against your client. Before beginning the exercises, review the specific objectives for this chapter of the test.

1. How to structure a factual investigation
2. Where to obtain the necessary facts to prove your client's positions
3. How to interview clients
4. When and how to gather documents that may be used as evidence
5. Where to locate witnesses
6. How to use the Internet to gather facts

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 2 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | Fact gathering should only be done by formal means after litigation begins. |
| 2. | T | F | CCP §128.7 provides that by presenting any pleading to the court, the attorney is certifying that the pleading is not improper or filed for a frivolous purpose after a reasonable inquiry under the circumstances. |
| 3. | T | F | A cause of action is a theory of recovery that entitles the plaintiff to recover against the defendant. |
| 4. | T | F | An affirmative defense is relief requested by the defendant which, if proven, entitles the defendant to recover something from the plaintiff. |
| 5. | T | F | One of the basic sources for informal investigation is the client. |
| 6. | T | F | When you first speak with a client you should identify yourself as a paralegal. |
| 7. | T | F | When interviewing a client you should never inquire about the client's financial background. |
| 8. | T | F | Statutes of limitation limit the time period in which an action may be brought against a defendant. |
| 9. | T | F | A subpoena is a written court order compelling a third party to produce evidence. |
| 10. | T | F | Witnesses may be interviewed only after a lawsuit is filed and may never be interviewed during informal fact investigation. |
| 11. | T | F | Potential sources for locating witnesses include the client, telephone directories, voter registration lists, and license bureaus. |
| 12. | T | F | One of the purposes of witness interview is to learn everything the witness knows or does not know that is relevant to a case. |
| 13. | T | F | It is never a good idea to try to pin a witness down to a particular fact during a witness interview. |
| 14. | T | F | Since some witnesses may be uncooperative, do not try to record the interview, but wait until after the interview to write down your thoughts and comments about the interview. |
| 15. | T | F | In some cases, it is a good idea to have the client's file reviewed by an appropriate expert. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. Why is it necessary to start with factual investigation, rather than to immediately start researching the law? Are there times when it may be better to research the law before you conduct your factual investigation? When would you want to research the law first?

2. What is the difference between informal and formal fact gathering? What are some of the ways you conduct informal fact gathering? Why is informal fact gathering preferable to formal fact gathering mechanisms?

3. What is the purpose of CCP §128.7. Is there a similar rule under the Federal Rules of Civil Procedure. What is the rule in federal court?

4. What is the purpose of a litigation chart? How do you find the elements to place on the litigation chart? Is a litigation chart equally useful to a defendant? Why?

5. What are some of the methods you can use to record a client interview? What methods do you think work best? What methods do you think work least well? Explain your answers.

6. Other than obtaining information, what are some of the goals of a client interview? How can you ensure that some of these goals are met during the interview?

7. There are a variety of interviewing techniques that may be used depending upon the nature of the interview and the character of the witness. What are the types of interviewing techniques that can be used? If you have a hostile witness, what type of question‑asking techniques should you use to ascertain information from an unwilling witness?

8. Besides asking questions, the interviewer must also be an effective listener. Listening can be both passive and active. Passive listening includes simple gestures such as nodding of the head, or noncommittal responses such as "I see" and "Please continue." Active listening requires the interviewer to directly respond to the client's statements. For example, the interviewer may summarize what he has heard from the client, or tell the client how he sympathizes with the client's position. When would you want to use passive listening techniques? When would active listening techniques work better?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. In the main text, you are given a sample litigation chart for a contract case. In this assignment you are asked to prepare a litigation chart based upon a claim of negligence. The elements for a claim for negligence are also found in the main text. For purposes of this assignment, assume the following facts:

You are assisting in the representation of the plaintiff in a personal injury action. The client has advised you that she was in an automobile accident while driving from home on her way to work one morning. After stopping at a stop sign, she proceeded through the intersection. A car coming from the opposite direction failed to stop and made a left-hand turn into the plaintiff's car. No injuries were sustained, but the plaintiff's car was badly damaged. A police report was made, and there were two bystanders who witnessed the accident. The lawyer has advised you that one possible claim the plaintiff has against the driver of the other car is negligence.

Based upon the information that you have been given, you should be able to complete all parts of your litigation chart with the exception of what formal discovery needs to be taken. Leave this part of the chart blank, but fill in all other parts of the chart.

**LITIGATION CHART**

Elements of Sources of Informal Fact Formal

Claims Proof Investigation Discovery

1. Negligence

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(d)

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2. After the client is interviewed, it is important to obtain the client's medical and employment records which will verify and provide evidence of the client's damages. Medical records will help verify the injuries sustained and the cost of treatment. Employment records will verify the time lost from work and the amount of compensation and benefits lost from being out of work.

Using hypothetical case number 3 in the front of your workbook, write a letter to Mr. Kester's employer requesting Mr. Kester's employment records to ascertain the number of days that Mr. Kester has been absent from work due to his accident. Draft the client authorization as well. You should follow the format set forth in the main text. A sample letter and authorization are also included in the appendix.

3. Using hypothetical case number 2, make a list of all potential witnesses who should be interviewed. If you are not certain where these witnesses can be located, how might you go about finding the witnesses? What information do you hope to obtain from the various witnesses?

4. Assume that Mr. Samson in hypothetical case number 1 is coming to your office for an interview. Using just the facts you know from the hypothetical, prepare a sample checklist for a client interview. Include in your sample checklist specific areas which you would like to question Mr. Samson about.

5. Using one of the websites identified in the text for locating witnesses, insert your name and determine whether you can locate your address and telephone number. If you can not locate your name, determine whether you can locate the address and telephone number of a friend or relatives.

6. One method of conducting informal fact investigation is by use of the Internet. Using the facts set forth in hypothetical number 1, conduct a search on the Internet to determine if there are any recent cases involving civil rights violations under 42 U.S.C. §1983, and list the cases you find. Identify the websites that you looked at to find your answer.

7. For this assignment, you will need to work with another classmate. Each of you should take turns conducting an interview using hypothetical number 5. The first student should play the role of Stella King. The second student should play Dennis Woods. (If necessary, the names can be changed to Steve King and Denise Woods.) Use the initial client interview form below to conduct the interview. Include additional questions as you deem appropriate. The student playing the role of King or Woods should add to the role any information needed to make the interview as realistic as possible.

**INITIAL CLIENT INTERVIEW**

A. Background

1. Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Spouse's name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. Telephone number:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

4. Children Ages

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_

5. Education background commencing with high school: (State name of institution, dates of attendance, and degree obtained)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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6. Employment background starting with the most recent job and going backward: (State employer, job title and dates of employment)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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7. Military service:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

8. Have you ever been arrested? \_\_\_\_\_\_\_ If yes, explain:\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

9. Income and assets:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

B. Nature of Claim/Liability

1. Reason for seeking legal advice:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Names of potential adverse parties:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. Date of incident:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

4. Have you discussed the incident with anyone else?\_\_\_\_\_\_If yes, with whom have you discussed this incident?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

5. Have you submitted any claim to your insurance carrier concerning

the incident: \_\_\_\_\_\_\_

When was the claim submitted?\_\_\_\_\_\_\_\_\_\_\_

Have you received any response? \_\_\_\_\_\_\_\_\_\_

Has anyone attempted to contact you to discuss the incident?\_\_\_\_\_\_\_

If so, who?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

6. Have you applied for worker's compensation?\_\_\_\_\_

When?\_\_\_\_\_\_

Any response?\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If so, what?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

C. Damages

1. What injuries did you sustain?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Were you treated for the injuries?\_\_\_\_\_\_\_\_\_\_

When?\_\_\_\_\_\_\_\_\_\_

3. Where did you receive treatment?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

4. Names of all doctors administering treatment: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

5. What treatment did you receive?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

6. Did you suffer any property damage?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

What damage?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

7. Pain and suffering?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

8. How has the injury affected your life?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

D. Parties

1. Identify all parties to the incident:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Information about other potential parties:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

E. Defenses and Counterclaims

1. Any potential claims by other parties against client?\_\_\_\_\_\_\_\_
2. If yes, what are the potential claims?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

F. Witnesses

1. Were there any witnesses to the incident?\_\_\_\_\_

If so, what are their names? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Addresses if known:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Were any statements by the witnesses given to anyone?\_\_\_\_\_\_

If so, to whom?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. Were any other parties injured to your knowledge?\_\_\_\_\_

If so, who was injured, and what was the extent of the injuries?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

G. Records/Physical Objects

1. Are there any records concerning the incident?\_\_\_\_\_\_

If so, what records exist? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Are there records that are not in the client's possession?\_\_\_\_\_

If so, where are the records located?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. Are there physical objects involved in the incident?\_\_\_\_\_\_\_

If so, what are the physical objects?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

H. Other Law Firms

1. Have other law firms been consulted?\_\_\_\_\_\_\_

If so, what other firms have been consulted? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I. Client's Goals

1. What disposition of the matter would the client ideally like to see? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. Complete these online research questions using an online legal research database by locating and analyzing several court cases.

1. As discussed in Chapter Two, facts are the collective pieces of information explaining your client’s version of what happened. Using an online legal research database, research a court case that interests you. What were some of the facts gathered by the counsel representing the plaintiff that warranted a claim for relief? Additionally, what were the facts that supported the affirmative defense of the defendant?
2. Recall, two of the more common causes of action that you will encounter are negligence and breach of contract. Locate a court cases dealing with a cause of action for negligence as well as a separate case dealing with a cause of action for breach of contract. In each case, what were the specific elements alleged by the plaintiff that merited a particular cause of action for negligence or breach of contract?

***California Statutory Research Questions***

* + - 1. Search through Part 1, Title 1, Chapter 6, of the California Code of Civil Procedure. Which section prevents a party from filing a motion with the primary purpose of causing unnecessary delay?
      2. Under the California Code of Civil Procedure, which section permits a court to impose sanctions against an attorney for, among other violations, denying a factual allegation that the attorney knows to be true?
      3. Under the California Code of Civil Procedure, which sections govern the time period (“statute of limitation”) for commencing actions for the recovery of real property?

**CHAPTER THREE**

**CASE EVALUATION AND STRATEGY**

***CHAPTER OBJECTIVES***

After the preliminary factual investigation is done, the lawyer must decide whether to take the case. If the lawyer decides to take the case, you will assist the lawyer with developing a litigation strategy and completing any pretrial requirements. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. How to establish the terms of the attorney‑client agreement
2. How a lawyer's fee is charged
3. What steps to take in planning the litigation
4. How to develop a litigation strategy
5. What prefiling requirements should be considered

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 3 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each questions before referring to the text.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | The terms of the attorney‑client relationship, if anticipated to incur fees in excess of $1,000, should be formally established with a written agreement. |
| 2. | T | F | A contingency fee arrangement is where the lawyer receives a percentage of the recovery received by the client. |
| 3. | T | F | A lawyer's fee includes out‑of‑pocket expenses incurred by a lawyer on behalf of the client. |
| 4. | T | F | A retainer is the hourly fee paid by the client to the lawyer. |
| 5. | T | F | A litigation plan is not necessary for most cases since you and the lawyer will already have defined the client's objectives after the initial client interview. |
| 6. | T | F | Statutory notice requirements must be complied with or else suit will be barred. |
| 7. | T | F | If a claim is based upon breach of contract, a notice to sue is never necessary. |
| 8. | T | F | If a contract contains an arbitration clause, the dispute must be submitted to arbitration. |
| 9. | T | F | Administrative procedures usually must be exhausted before claims may be brought in court against governmental bodies. |
| 10. | T | F | Minors and incompetents can sue either individually or through their legal guardians. |
| 11. | T | F | A person may never be deposed before a lawsuit is filed. |
| 12. | T | F | A demand letter should always be signed by the paralegals drafting the letter. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. What potential conflicts, if any, do you see between lawyers and their clients in contingency fee arrangements? If there is a potential for any conflict, why does California still permit contingency fee arrangements?

2. Why are ambiguities and omissions in attorney‑client agreements strictly construed against the lawyer?

3. This chapter has covered in extensive detail the establishment of the terms of the attorney‑client relationship. Why is it important for you, as a paralegal, to be familiar with this information?

4. If a fee is shared with another lawyer outside the principal lawyer's firm, why must this fact be disclosed to the client and the client’s permission obtained?

5. What is the purpose of an attorney's lien? Why do you think an attorney’s lien is important in contingency fee cases?

6. Once the lawyer decides to take the case, why is it good practice to have the client sign authorization forms to obtain records?

7. Why is it important for you and the lawyer to keep in close communication with the client?

8. What is meant by the phrase "theory of the case"? Why is it good practice to develop a theory of the case? How would you go about developing a theory of the case?

9. What are the steps which must be taken when planning discovery? What is the purpose of each step?

10. Why is it important to plan the settlement approach as part of the litigation planning?

11. Why do administrative remedies need to be exhausted before filing suit against a governmental agency?

12. A lis pendens gives notice to interested parties of a dispute involving an interest in real property or tangible personal property. Why may the notice be filed only after a lawsuit is filed?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. The terms of any attorney‑client relationship should be established in writing. Assume that your firm has decided to take on the representation of the Samsons in hypothetical number 1 on an hourly basis. Make a list of the types of information that should be included in any formal written agreement. It is not necessary to actually write up the agreement.

2. Having written your list of terms to include in the fee agreement, you should now write the hourly fee agreement letter. Unless instructed otherwise, for purposes of this assignment assume the following additional facts in writing the agreement: the total damages suffered by the Samsons were $27,000, the lawyer is charging a fee at the hourly rate of $140, and a retainer of $2,000 is required prior to representation of the client. Use the sample in the text at page 69 and the sample on the following page as guides for including all the necessary details. Although you are drafting the agreement, remember that the agreement should be prepared for the attorney's signature.

**FEE AGREEMENT LETTER**

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

As we discussed in my office yesterday, I have agreed to represent you in connection with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(insert what services the attorney will render).

Fees for representing you will be based on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

My present hourly rate is \_\_\_\_\_\_ per hour. You have agreed to provide a retainer of \_\_\_\_\_\_\_\_\_\_ prior to commencement of my representation of you.

In addition to my fee, there will also be certain costs expended on your case, such as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

You will be responsible for paying all such costs, regardless of the outcome in the case.

[insert information about the rendering of monthly statements and the use of the retainer]

Please confirm that this letter correctly reflects the terms of our agreement by singing and dating the enclosed copy of this letter on the spaces provided.

[insert any concluding information]

Sincerely.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[name of attorney]

[insert signature and date lines]

3. Once your law firm decides to accept the representation of the client, several steps must be taken to get the relationship off to a good start. These steps are discussed in the main text. Draft a list of these steps and place the list in your litigation guide. The list may then be used as a checklist once you are in practice to ensure that each step is carefully followed.

4. If the lawyer decides not to take a case, a letter declining representation should be sent to the client. Assume that your firm has decided to decline the representation of Mr. Kester in hypothetical number 3 and that the statute of limitations on personal injuries in your state is one year. The statute will run in exactly two months. Draft a letter to Mr. Kester declining representation. Remember, although you will be drafting the letter, the letter should be signed by the lawyer. You may use the letter in the appendix as a sample.

5. Assume that your firm is representing Derrick Mason in hypothetical number 4. What authorization forms should you have Mr. Mason sign? Draft a sample authorization form. You may use the authorizations contained in the main text and in the appendix as samples.

6. Prepare a list of the basic steps in a litigation plan. Put the list in your litigation guide and use the list as a checklist once you are in practice. Now, using Novelty Products, Inc. v. Gift Ideas, Inc. (Chapter 3, section E) as a sample, prepare a litigation plan for Shamrock Enterprises in hypothetical number 2.

7. Demand letters are frequently used in contract cases. Assume that your firm represents Novelty Products, Inc. Using the facts in the main text, write a demand letter to Gift Ideas, Inc. Refer to the samples in the main text and in the appendix.

8. Before drafting any pleadings, a number of prefiling requirements must be considered. Make a checklist of all the necessary prefiling requirements, and place the checklist in our litigation guide for future reference.

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use online legal research database to locate and analyze several court cases.

1. As discussed in Chapter Three, dispositive motions are motions heard by the court at any stage of litigation before trial and have the effect of terminating the lawsuit without a trial. Locate a case in which a side succeeded in making a dispositive motion. What was the particular motion for? In your opinion, which facts were most important to the success of the motion?
2. Recall, a side’s position is frequently called the theory of the case. Research a court case of your interest. Based on the judge’s opinion, can you determine the winning side’s theory of the case?

***California Statutory Research Questions***

* + - 1. Search through Division 3, Article 8.5, of the California Business and Professions Code governing fee agreements. Which section requires all contingency fee agreements to be in writing and signed by both the attorney and the client?
      2. Under the California Code of Civil Procedure, which Part, Title and Chapter governs petitions to perpetrate testimony prior to filing a lawsuit?
      3. Search through Part 2, Title 3, of the California Code of Civil Procedure. Which section governs the appointment of legal representatives or guardians to litigate on behalf of a minor or incompetent person?

# CHAPTER FOUR

**PARTIES AND JURISDICTION**

## **CHAPTER OBJECTIVES**

Prior to commencing a lawsuit, research must be done to ascertain who should be made parties to the lawsuit and which court has jurisdiction over the lawsuit. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. Who may be a party to a lawsuit
2. How to identify the subject matter jurisdiction of federal courts
3. When a party may be compelled to defend an action in a particular court
4. What the differences are between federal and state court jurisdiction
5. How to determine in which court to file a lawsuit

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 4 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the test.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | Parties to an action may be individuals as well as entities such as partnerships and corporations. |
| 2. | T | F | When naming a partnership as a party to a lawsuit, do not name the individual partners as parties. |
| 3. | T | F | When naming a corporation as a party to a lawsuit, you should name the individual shareholders as parties to the lawsuit. |
| 4. | T | F | The plaintiff to the action must be the real party in interest. |
| 5. | T | F | An assignee is never the real party in interest in a lawsuit. |
| 6. | T | F | Subrogation occurs when one party becomes obligated to pay for the loss sustained by another. |
| 7. | T | F | A lawsuit must be brought by and against parties that have a legal capacity to sue or defend the action. |
| 8. | T | F | A plaintiff should join any party in the litigation if that party's presence is required to grant complete relief. |
| 9. | T | F | Permissive joinder of parties means that the joinder is allowed, but not required by the court. |
| 10. | T | F | The doctrine of intervention allows an interested party to join in a pending lawsuit even not originally named in the lawsuit. |
| 11. | T | F | Municipal courts in California may hear all types of cases. |
| 12. | T | F | Subject matter jurisdiction refers to the power of a court to hear particular matters. |
| 13. | T | F | Superior courts are courts of general jurisdiction. |
| 14. | T | F | The main limitation of superior court is that they cannot hear cases involving claims of $50,000 or less. |
| 15. | T | F | Federal district courts are courts of unlimited jurisdiction. |
| 16. | T | F | In federal court cases, subject matter jurisdiction must be plead in the complaint. |
| 17. | T | F | Removal is a procedure whereby the defendant may transfer a case filed in state court to federal district court. |
| 18. | T | F | A court does not need subject matter jurisdiction as long as the court has personal jurisdiction over the defendant. |
| 19. | T | F | In personam jurisdiction refers to the court’s power to personally bind the parties to the court’s judgment. |
| 20. | T | F | An in rem action involves property that is located in a foreign state. |
| 21. | T | F | Quasi in rem jurisdiction allows a plaintiff to use a defendant’s property to satisfy a claim as long as the property is in the state. |
| 22. | T | F | Due process is always a problem with the defendant is a resident of the forum state. |
| 23. | T | F | Service of process refers to the actual delivery of the legal document to the defendant. |
| 24. | T | F | Due process issues do not arise for plaintiffs since by initiating suit a plaintiff is considered to have voluntarily submitted to the court's jurisdiction. |
| 25. | T | F | Venue refers to the geographical district in which a lawsuit may be heard. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. Why may a legal entity be a party to a lawsuit without also naming an individual as a party? Are there times when you would want to name both the legal entity and an individual who is the owner of the legal entity as parties to a lawsuit? Identify a situation where you may want to name both the individual owner and the legal entity as parties.

2. Why do you need to determine the identity of the real party in interest before filing a lawsuit? How would you go about finding the identity of the real party in interest?

3. What are some of the issues which should be considered in determining whether a party should be joined in a lawsuit? What are the purposes of taking into account such issues? What should a court do if a party who should be joined in the lawsuit cannot be joined for some reason?

4. What is the meaning of limited jurisdiction in municipal court? How many municipal courts do you have in the jurisdiction where your school sits? Where are they located?

5. What actions does a federal court have original jurisdiction over? What does it mean to say that a federal court has original jurisdiction? Is original jurisdiction always required in federal court?

6. What is the difference between general and limited jurisdiction? Why is the distinction important?

7. What type of actions may be heard in superior court? Where is the superior court located in the jurisdiction where your school sits? Are there branch courts as well? If so, where are they located.

8. What are the different categories of actions for which diversity jurisdiction is proper? Give an example of each.

9. Why can domestic relations and probate matters only be raised in state courts and not in federal district courts? Are there some policy goals which are better fostered by having these matters heard in state court?

10. Actions filed in state court may be removed by a defendant to federal court within the 30 day period from the time the defendant had notice of the plaintiff's initial pleading. If an action could properly be brought in federal court, why is there any time limit within which a defendant must remove the action? If the plaintiff merely gave the defendant a copy of the state court pleading, but did not properly serve the defendant with the pleading, does the 30 day period still apply?

11. Why is it important for the court to have personal jurisdiction over the defendant? How does personal jurisdiction differ from subject matter jurisdiction?

1. In International Shoe Co. v. State of Washington, 326 U.S. 31 (1945), the Court held that where a corporation's "minimum contacts" in the forum state were such that being forced to defend a suit in that state would not offend "traditional notions of fair play and substantial justice," jurisdiction was proper. What do you think the Court meant by "minimum contacts"? Why is the Court concerned about there being sufficient minimum contacts?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. If the plaintiff wishes to file an action in federal district court, and there is not federal question jurisdiction, then the lawsuit may still be brought in federal court so long as there is diversity jurisdiction. On the top of a separate piece of paper, identify the three requirements for diversity jurisdiction. Under each requirement, list the specific elements of each requirement.

2. A defendant must have sufficient contacts with a state in order for the state to be able to exercise its jurisdiction over the defendant. Identify on a separate sheet of paper the contacts a defendant might have with a state which you believe may satisfy a minimum contacts analysis. You should attempt to brainstorm and come up with as many different contacts as you can. Be prepared to discuss these contacts in class.

3. Identify the superior court and municipal court that is closest to where your school is located. Identify which federal district court is the appropriate district court to hear matters in the jurisdiction where your school sits. Find out which circuit court would hear appeals from the federal district court in your jurisdiction. Place your work in your litigation guide.

4. Take a trip to a court that is closest to your school and find out the answers to the following:

(a) Assuming you knew the case number for a case filed in the court, what steps would you have to take to review the court file?

(b) If you only had the name of the plaintiff, how would you find out the case number for a case filed with the court?

(c) Where in the courthouse can you obtain copies of official court forms?

5. For each of the following situations, state whether you believe the defendant has sufficient minimum contacts with the state to allow the state to exercise personal jurisdiction over the defendant. Be prepared to justify your answers.

a. Defendant lives in California. While on vacation in Wyoming, Defendant was involved in an automobile accident with Plaintiff. Plaintiff resides in Utah. Defendant has never been to Utah, nor does Plaintiff do any business in Utah. Defendant had been to Wyoming only one other time, approximately five years ago. Can a court in Wyoming exercise jurisdiction over the Defendant? Can a court in Utah? Can a court in California?

b. Plaintiff runs a mail‑order greeting card business in Iowa. Plaintiff sent a catalogue to Defendant in the mail. Defendant, a resident of New Jersey, after receiving the catalogue placed an order with Plaintiff over the telephone. This was the first time that Defendant ever placed an order with Plaintiff, although Plaintiff previously had sent Defendant catalogues. Plaintiff shipped Defendant the cards, but Defendant has refused to pay. Can a court in Iowa exercise jurisdiction over Defendant? Can a court in New Jersey?

c. Defendant was on a business trip from Seattle, Washington to Orlando, Florida. While en route, the airplane on which Defendant was traveling made a scheduled stop in Dallas, Texas. Defendant, wanting to buy a newspaper at the Dallas airport before the flight resumed, stepped off the plane. He was immediately served with a summons and complaint requesting that he appear and defend an action in Dallas, Texas. The complaint was for breach of contract, based upon a contract that was entered into in Washington. Plaintiff was residing in Washington at the time the contract was entered into but has since moved to Dallas, Texas. Does the court in Texas have jurisdiction over the Defendant?

d. Defendant is a corporation that sells hair dryers. Defendant's principal place of business is Massachusetts and it is incorporated in Delaware. Defendant ships its hair dryers to ten regional distributors who thereafter ship the hair dryers to retail outlets within each distributor’s region. Plaintiff purchased a hair dryer at a retail outlet in Omaha, Nebraska. The hair dryer had been shipped from the regional distributor in Memphis, Tennessee. Plaintiff was injured by the hair dryer when the hair dryer malfunctioned. Can a court in Nebraska exercise jurisdiction over the Defendant? Can a court in Tennessee? Can a court in Massachusetts? Can a court in Delaware?

6. For each of the following exercises, determine whether the jurisdictional amount requirement of in excess of $25,000 is met, thereby allowing the plaintiff to file the action in superior court.

a. Plaintiff has one claim against one defendant for $20,000 in principal and $5,100 in interest.

b. Plaintiff has two claims against one defendant. One claim is for $20,000 and one claim is for $20,000.

c. Plaintiff has two claims against two defendants. The claims are two separate unrelated contracts. One claim is for $20,000, and one claim is for $15,000.

d. Plaintiff has two claims against three defendants. The claims all relate to the obligations of a partnership in which the defendants are all general partners. Each claim is for $30,000.

e. Two plaintiffs have a claim against one defendant based upon two separate contracts. Each plaintiff has a claim for $20,000 against the defendant.

7. Whenever you draft a complaint, you must be certain that you have named all proper and necessary parties. On a separate sheet of paper, make a checklist for yourself of the questions you must answer to determine whether you have the proper parties and whether additional parties are appropriate or necessary. Place the checklist in your binder for each reference when you begin drafting complaints.

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use an online legal database to locate and analyze several court cases.

1. As discussed in Chapter 4, in addition to private individuals, the parties to an action may be partnerships, unincorporated associations, sole proprietorships, corporations and public bodies. Using an online legal database, locate a court case in which a lawsuit was brought against a partnership. What was the case about? How did the court rule?
2. Recall, subrogation occurs when one party becomes obligated to pay for the loss sustained by another. Find a court case in which the court subrogated another party. As a result of the court’s ruling, what was the real party in interest obligated to pay?
3. Before filing any lawsuit, it is of the upmost importance to determine which court has the power to decide your case. Locate a case in which a lawsuit was filed but then prematurely dismissed because the court, where the case was filed, lacked subject matter jurisdiction.

***California Statutory Research Questions***

* + - 1. Under the California Code of Civil Procedure, which section requires that an action be brought in the name of the real party in interest?
      2. Search thought Part 2, Title 3, of the California Code of Civil Procedure. Which section permits persons to join in one action as plaintiffs if they have a claim, right, or interest adverse to the defendant in the controversy that is the subject of the lawsuit?
      3. Under the California Code of Civil Procedure, which section states that proper service constitutes the personal delivery of the summons and the complaint to the person that is to be served? Which section provides alternative manners of service?

CHAPTER FIVE

**PLEADINGS**

***CHAPTER OBJECTIVES***

The documents filed by the plaintiff to commence a lawsuit and the documents filed by the defendant in response to the lawsuit are called pleadings. The California Code of Civil Procedure states the types of pleadings that are permitted. The Code of Civil Procedure, along with the California Rules of Court and local rules of court, also govern the format and content of the pleadings. Chapter 5 of the text describes the types of pleadings that may be filed and the requirements that must be followed in drafting the pleadings. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. What the general requirements are for all pleadings
2. What needs to be contained in the caption of a complaint
3. How pleadings must be signed
4. What format requirements must be met
5. What rules apply to service and filing of pleadings
6. When you should amend or supplement a pleading

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 5 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | Pleadings are used by the plaintiff to start the litigation. |
| 2. | T | F | The only basic pleadings allowed in civil actions are complaints, demurrers, answer, and cross-complaints. |
| 3. | T | F | California is a fact pleading state. |
| 4. | T | F | There are no content requirements for complaints. |
| 5. | T | F | Unless otherwise ordered, all pleadings should be filed with the court clerk. |
| 6. | T | F | Pleadings filed in California superior court must be verified. |
| 7. | T | F | Recycled paper is required for all original papers filed with the court. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. What are the format requirements for every pleading? What is the purpose of each requirement?

2. Why would you use a judicial council form complaint? Are there advantages to using the form? Disadvantages?

3. What is a verified pleading? Why are some pleadings verified? Why aren’t all pleadings required to be verified?

4. In California, a claim by the defendant filed against the plaintiff is called a cross-complaint. What is this type of claim called in federal court? Identify the names in federal court for claims against co-defendants? Third-parties?

1. What is a certificate or affidavit of service? Why is it important to attach such a document to the end of the pleading?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. Using hypothetical number 3, draft a Caption on behalf of Mr. Kester against Monroe's Grocery Store. Be sure to include all the proper format requirements. Assume, unless you are instructed otherwise, that Monroe's Grocery Store is incorporated in the State of California.

2. Look at the website for the superior court closest to your school. Using the website, identify any special pleading rules that may be required by the Court.

3. Locate a copy of a sample pleading from the superior court closest to your school. Place the copy of the caption in your litigation guide.

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete this online research question, you will need to use an online legal database.

* As discussed in Chapter 5, in addition to stating the facts for each cause of action, each complaint or cross-complaint must also contain a demand for judgment for relief. Locate a case of your interest and investigate the rulings of the court on the plaintiff’s demand for judgment for relief. What were the demands proposed by the plaintiff and how did the court rule?

***California Statutory Research Questions***

1. Search through Part 2, Title 6, of the California Code of Civil Procedure. Which section provides the definition of ‘pleadings’?
2. Continue searching through Part 2, Title 6, of the California Code of Civil Procedure. In addition to the three elements that must be contained in the caption of every pleading—namely, the name of the court and county in which the action is brought, the title of the action and the names of all parties—what additional element is required in a limited civil case? In which section did you find your answer?
3. Under the California Rules of Court, which rule provides that all papers filed with the court must be prepared using a font that is 12-point or larger? Which rule requires the font style to be essentially equivalent to Courier, Times New Roman, or Arial?

CHAPTER SIX

**COMPLAINTS, ANSWERS AND CROSS-CLAIMS**

***CHAPTER OBJECTIVES***

As part of the litigation process, you will be involved in drafting complaints and answers. In addition, you may be involved in also drafting pleadings that make claims against the plaintiff as well as other parties. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. How to draft a complaint
2. How to identify parties in the complaint
3. What format to use for stating a cause of action
4. What the methods are for service of a summons and complaint
5. What pleadings the defendant may file in response to the complaint
6. How to draft an answer to a complaint

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 6 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | Venue needs to be alleged in the introductory paragraphs of the complaint. |
| 2. | T | F | All the proper legal elements to prove a cause of action must be stated in the complaint. |
| 3. | T | F | Each cause of action must be separately stated in the complaint. |
| 4. | T | F | A summons and complaint may be served on an individual living in California by mail alone. |
| 5. | T | F | Service of a summons and a complaint on a corporation may be made by serving any shareholder of the corporation. |
| 6. | T | F | If a complaint contains redundant, immaterial, impertinent, or scandalous matter, the proper response by the defendant is a motion to dismiss. |
| 7. | T | F | If a complaint is so vague or ambiguous that the defendant cannot respond to it, the defendant may file a demurrer. |
| 8. | T | F | A defendant may raise certain defenses either in the answer or by a demurrer. |
| 9. | T | F | As a general rule, the defendant must serve an answer to the complaint within 30 days after service. |
| 10. | T | F | An affirmative defense raises matters that are put in issue by the defendant's denial of the allegations in the complaint. |
| 11. | T | F | A defendant may file a cross-complaint against the plaintiff within the time the defendant has to answer the complaint. |
| 12. | T | F | A plaintiff does not need to reply to the defendant's cross-complaint since it will be assumed that the plaintiff denies all allegations of the cross-complaint. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. What are the essential components of every complaint required by the California Code of Civil Procedure?

2. In federal court, it is necessary to always include an allegation indicating the basis for federal court jurisdiction Why is such a requirement not necessary in state court?

3. In the main text, you have learned the difference between "notice pleading" and "fact pleading." Federal courts generally require "notice pleading." California courts require “fact pleading.” What is the difference?

4. Complaints must contain a “cause of action.” What is a cause of action? Why must a complaint contain at least one cause of action?

5. What is a "prayer for relief"? Why is it important to draft a prayer for relief carefully?

6. In California, the summons is a preprinted form that is filled out by the plaintiff and issued by the court. Why is it important to use the standard form?

7. Why is it improper for a party to a lawsuit to serve the summons and complaint on the defendant? Would it be proper for a husband to serve, on behalf of his plaintiff‑wife, the summons and complaint on the defendant? Would it be proper for a parent to serve the summons and complaint on behalf of a child? Would it make a difference if the parent is representing the child in court as the child's guardian?

8. Why is service on out-of-state defendants permissible by certified mail return receipt requested? Why can’t an in-state defendant be served in this manner?

9. Identify all the ways that service may be made of the summons and complaint upon individuals.

10. How long does the plaintiff have to serve the summons and complaint? Do fast-track rules change this time requirement? What is the purpose of the fast-track requirements?

11. What are the three types of responses that may be made to the allegations in a complaint? Give an example of each response.

12. When is a cross-complaint compulsory? What is the effect of the failure of the defendant to bring a compulsory cross-complaint?

13. What is meant by a "permissive cross-complaint"?

14. Why are some cross-complaints against defendants compulsory, but cross-complaints against other parties discretionary?

15. Why might a nonparty want to intervene into a lawsuit?

16. Why might a defendant wish to file a cross-complaint against third parties? Based upon hypothetical number 1, can you think of any nonparties whom the caterer may wish to file a cross-complaint against?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. Using hypothetical number 3, draft a Complaint on behalf of Mr. Kester against Monroe's Grocery Store. Be sure to include all the proper format requirements. Assume, unless you are instructed otherwise, that Monroe's Grocery Store is incorporated in the State of California.

2. Assume that your office is representing Gatsby Realty in hypothetical number 4. Obtain a copy of a summons by going to http://www.courts.ca.gov/forms.htm?filter=SUM or from your instructor. Fill out the summons completely on behalf of Gatsby Realty. Keep the summons in your litigation guide for future reference.

3. How a summons may be served depends on the entity being served. For each of the entities on the following page, identify how the summons may be served under both the federal rules and the rules of your state. Where the rules of your state are the same as the federal rules, make a notation on your chart. The federal rules for individuals are already filled out on the chart to be used as an example. The chart should be placed in your guide so you will have a diagram for easy reference once you are in practice.

**RULES FOR SERVING SUMMONS**

ENTITY FEDERAL RULES STATE RULES

Individuals 1. Personally

2. Leaving at residents

with person of suitable

age and discretion

3. On person's agent

4. On out‑of‑state

individuals as required

by federal or state

statutes

Infants and incompetents

Corporations,

partnerships,

and associations

Officers and agents of the

United States and local

governments

4. Before filing a complaint, a reasonable inquiry must be made into the laws and facts before a complaint may be brought. Assume that Shamrock Enterprises in hypothetical number 2 has contacted your law office to represent them in an action against Doris McFarland. What facts do you think should be investigated before a complaint is filed in order to satisfy the reasonable inquiry requirement?

5. After drafting your complaint for Kester in hypothetical number 3 against Monroe's Grocery Store, draft an answer to the complaint. Are there any other responses which might be appropriate? Identify the other responses that may be appropriate and the basis for such responses.

6. Draft as many affirmative defenses as you can think of for Doris McFarland in hypothetical number 2. Make sure that the affirmative defenses are in the proper form.

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use an online legal database to locate and analyze several court cases.

1. As discussed in Chapter 6, a default judgment may be requested in the event that a defendant fails to respond to the complaint. Accordingly, because default is always a possibility, you should be sure to draft the prayer for relief carefully. Find a court case in which a default judgment was rendered by the court. What was the complaint and prayer for relief issued by the plaintiff in this case?
2. Under CCP § 583.210, dismissal of the complaint is mandatory if the defendant has not been served with the summons and complaint within three years after the complaint has been filed. However, for time periods under three years, dismissal is discretionary with the court and thus it is important to always check your local court rules to ensure timeliness of service. Locate a court case in which the court dismissed the case because of timeliness of service. How many days after the filing of the complaint was the summons served?
3. Recall, compulsory cross-complaints are claims that a defendant is required to bring against the plaintiff. In general, such complaints are warranted if the claim arises out of the same transaction or occurrence on which the complaint is based. Investigate a court ruling over a defendant’s cross-complaint. What was the cross-complaint and how did the court rule?

***California Statutory Research Questions***

* + - 1. Search through Part 2 of the California Code of Civil Procedure. Which section lists the grounds under which a party may object, by demurrer or answer, to a complaint or cross-complaint? How many separate grounds for objection are listed in this section?
      2. Locate section 425.10 of the California Code of Civil Procedure. Barring the limited exception in subsection (b), what two things must be contained in every complaint or cross-complaint?
      3. Recall, the preferred method of serving the summons is by personal service. Assuming the summons cannot be personally delivered to the person to be served, which section of the California Code of Civil Procedure would you turn to for a list of alternative modes of service?
      4. Search through Part 2, Title 8, of the California Code of Civil Procedure. In general, how many years does a plaintiff have to serve a summons and complaint upon a defendant? In which section did you find your answer?

**CHAPTER SEVEN**

**SPECIAL PLEADINGS**

***CHAPTER OBJECTIVES***

In some instances, special pleadings are required in order to protect a non-party’s interest in the subject matter of the litigation or to ensure that the rights of a large group of individuals are protected. The exercises in this chapter are designed to give you practice in working with special pleadings. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. What the procedures are for a third-party stakeholder to deposit funds into court?
2. How a third-party can intervene into an action
3. When a class action lawsuit is possible
4. What the requirements are for bringing a class action lawsuit
5. How to amend a pleading once it is filed with the court
6. When a supplemental pleading is appropriate.

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 7 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | A party has a right to amend pleadings as many times as they would like without leave of court. |
| 2. | T | F | Courts may deny leave to amend if there is some actual prejudice to the opposing party. |
| 3. | T | F | A supplemental pleading alleges material facts that have occurred since the filing of the original pleading. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. Why is it a good idea to allege Doe defendants in a complaint? Are there times you wouldn’t include Doe defendants.

2. What does it mean to "toll" the statute of limitations? Why does a complaint "toll" the running of the statute of limitations? Does the filing of a complaint toll the statute of limitations in your state? If not, what more is required in order to toll the statute of limitations?

3. When is the amendment of a pleading a matter of right? When is leave of court required?

4. What is the difference between an amended pleading and a supplemental pleading?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. Using the Internet, locate information about a class action lawsuit including the nature of the action, the potential members of the class, and the court that the class action is pending. Try to locate a class action lawsuit that is pending in California.
2. Assume in hypothetical case No. 6 that, prior to fleeing the automobile, Michael Thomas hit a parked car and caused damage to the vehicle. Draft a complaint in intervention by the owner of the vehicle.

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use an online legal database to locate and analyze several court cases.

1. As discussed in Chapter 7, interpleader is the procedure under which a party, called a “stakeholder,” who is or may be subjected to double liability can resolve the claims. Find a court case in which a stakeholder was subjected to double liability as a result of the competing claims on a fund or property made by two or more claimants. What was the court’s response to the interpleader in deciding who was entitled to the fund or property and in what amounts?
2. Recall, intervention is the procedure by which a nonparty having an interest in a pending action can protect its rights by becoming an additional party and present a claim or defense. Find a case in which an intervention was allowed by the court. Was the party authorized to become an additional party because of an intervention of right or was it a permissive intervention?
3. Research a case involving a class action. What was the case about? What was the court’s opinion of the case? Additionally, can you determine why a class action was the preferred method of dealing with the claim?

***California Statutory Research Questions***

* + - 1. Search through Part 2, Title 3, of the California Code of Civil Procedure. Which section governs the types of interpleader actions?
      2. Continue searching through Part 2, Title 3, of the California Code of Civil Procedure. If a party has an interest in property that is the subject matter of a lawsuit, which section grants that party a right to intervene in the lawsuit?
      3. Search through Part 2, Title 6, of the California Code of Civil Procedure. Which section permits a court to postpone a trial, if necessary, in order to allow time for a party to amend a pleading?

CHAPTER EIGHT

**LAW AND MOTIONS**

***CHAPTER OBJECTIVES***

As part of the litigation process, you will be involved in drafting and responding to many pretrial motions. Although the local rules may modify the requirements and timing for different motions, there are some uniform requirements for all motions that you must be familiar with. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. What the general requirements are for all motions
2. How to obtain an extension of time and a continuance
3. When to serve motions
4. When there must be a substitution of parties
5. Why a case may be removed to federal court

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 8 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | All motions must be served on the opposing party by hand. |
| 2. | T | F | Following service of the motion, the originals of the notice and motion should be filed with the clerk of the court along with a proof of service. |
| 3. | T | F | The party bringing the motion is generally referred to as the moving party. |
| 4. | T | F | The party responding to a motion is generally referred to as the respondent (or responding party). |
| 5. | T | F | If a motion to extend time is made after the applicable time period has expired, the moving party must show good cause for granting the motion. |
| 6. | T | F | You do not need to follow the local rules governing motions so long as you follow the Code of Civil Procedure. |
| 7. | T | F | Under the federal rules, a motion must be made in writing. |
| 8. | T | F | As a matter of good practice, all documentation that accompanies a motion should be attached to and served with the motion. |
| 9. | T | F | A proof of service is a certificate that states that service on the other parties has been made in a proper manner. |
| 10. | T | F | The proof of service should never be attached to the motion. |
| 11. | T | F | A memorandum of points and authorities is the same as a declaration or affidavit. |
| 12. | T | F | Once a lawsuit is filed, there may not be a substitution of parties. |
| 13. | T | F | A notice for removal of an action from state court to federal court must be made within 30 days after the defendant receives notice of the plaintiff's initial pleading. |
| 14. | T | F | A verified petition is no longer required under the Federal Rules of Civil Procedure when a defendant wishes to remove an action from state court to federal court. |
| 15. | T | F | Once a notice of removal is filed, the parties must wait for an order from the court to effect the removal. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. What are the three basic items that all motions must contain?

2. As a general rule, CCP § 1005 provides that a motion must be served and filed at least 21 days in advance of the hearing. Why is it a good idea, when possible, to give more than the minimum notice required? Why might you want to check with the opposing counsel and agree upon a hearing date in advance of serving the motion?

3. What is a proof of service? Why must a proof of service be attached to the end of a motion?

4. How do you select a date for a hearing on the motion?

5. What is the purpose of attaching a memorandum of points and authorities to the motion? How should be contained in the memorandum of points and authorities?

6. What are the two choices that a respondent can make when served with a motion?

7. Why do judges sometimes issue tentative rulings?

8. What are the differences between a minute order and a written opinion and order of the court? What determines whether a judge will enter a “minute order” or whether a formal written opinion and order are necessary?

9. If a motion to extend time is made before the expiration of the applicable time period, the court may grant the motion for good cause. What grounds would constitute good cause for granting the motion?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. Using hypothetical number 6, prepare a Notice of Motion to reset a hearing date in the format set forth in exhibits 8.1 and 8.2 of the main text. Also, using the form on the following page, prepare the motion to reset the hearing date. The motion should be made on behalf of the City of Tannerville and should request that the court reset Thomas’s motion for discovery sanctions. Since the form does not list facts in support of the motion, you will need to think of specific facts which justify the court’s granting of the motion.

**NOTICE OF** **MOTION AND MOTION TO RESET HEARING DATE**

[insert correct form of caption]

Defendant \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ moves this Court for an order continuing the hearing on plaintiff’s motion for discovery sanctions, presently set for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ten days. This motion is based on the grounds that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorneys for

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Assume your firm represents Sydney Kester in hypothetical number 3 and that Monroe's Grocery Store has made a motion for additional time to answer. Assume also that the motion is set for three weeks from today in your local court. Prepare a statement of non-opposition and indicate that you will not be appearing to defendant's motion for additional time to answer. See the text for information on how to prepare this statement.

3. Assume your firm represents Monroe’s Grocery Store. Using hypothetical number 3, prepare a motion for additional time to answer on behalf of Monroe's Grocery Store. Follow the format set forth in Exhibit 8.4. For purposes of this assignment, assume the following additional facts: The attorney received the complaint yesterday and an answer is due in just over two weeks; the complaint alleges wrongful conduct by the defendant resulting in the plaintiff's injuries; the attorney needs time to investigate the claim and speak with employees of the defendant who may have knowledge of the incident; and at least two of the employees who may have knowledge of the incident are presently on vacation and will not be returning for another week; the attorney needs an additional 10 days in which to respond.

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use an online legal database to locate and analyze several court cases.

1. When opposing a motion, it is important to set out in the form of a memorandum of points and authorities the reasons for the opposition. In addition, it is essential to include case law and other authority that the judge should consider. Locate a court opinion in which a previous court case was considered. What was the previous case that was considered and how did it dictate the court’s judgment?
2. With respect to important motions, the judge may prepare a written opinion and order, explaining the reasons for the ruling. Find a court opinion on a motion in a civil case. What was the motion and how did the court rule?

***California Statutory Research Questions***

* + - 1. Recall, the California Rules of Court govern the form, notice and content of motions. Under the California Rules of Court, which rule provides that the Judicial Council has preempted all local rules relating to the form and format of papers filed to the court?
      2. Recall, one of the papers that must be filed in support of a motion is a memorandum of points and authorities. Under the California Rules of Court, which rule governs what must be contained in the memorandum?
      3. Search through Part 2, Title 14, of the California Code of Civil Procedure. Which section requires the court to grant a motion to extend time when all attorneys of record of the parties have agreed, in writing, to the extension?

**CHAPTER NINE**

**ATTACKING THE PLEADINGS**

***CHAPTER OBJECTIVES***

In Chapter 8 you learned the general requirements for all motions. In Chapter 9 you learned the many different types of motions that a party may bring before trial begins. The exercises in this portion of the workbook are designed to give you additional practice in both understanding and drafting the various litigation motions and the responses to the motions. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. How to draft a demurrer
2. When to file a motion to strike
3. When to use a motion for judgment on the pleadings

1. How to obtain a dismissal of a lawsuit
2. How to cure a default judgment
3. When consolidation and separation of trials may occur

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 9 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | A motion for judgment on the pleadings is made before the pleadings are closed. |
| 2. | T | F | A demurrer attacks the pleadings before an answer is filed. |
| 3. | T | F | A motion for summary adjudication of issues is appropriate only if all causes of action can be disposed of by the motion. |
| 4. | T | F | A motion for summary judgment must be accompanied by a separate statement of undisputed facts. |
| 5. | T | F | Dismissal of an action may be voluntary or involuntary. |
| 6. | T | F | A plaintiff has an absolute right to dismiss a complaint anytime before the commencement of trial. |
| 7. | T | F | A voluntary dismissal is without prejudice unless trial has started. |
| 8. | T | F | A plaintiff’s failure to prosecute the action can never be a basis for involuntary dismissal. |
| 9. | T | F | The plaintiff must wait for the defendant to answer before requesting a default judgment. |
| 10. | T | F | Consolidation may be ordered when different actions are pending in different courts. |
| 11. | T | F | There are only two grounds for the filing of a demurrer. |
| 12. | T | F | There are only two grounds for the filing of a motion to strike. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. What is a motion for judgment on the pleadings? How does a motion for judgment on the pleadings differ from a motion to dismiss?

2. There are two ways a plaintiff may obtain a voluntary dismissal of the complaint. What are the two ways?

3. What are the grounds for a general demurrer? What are the grounds for a special demurrer? Give an example of each.

4. What are the grounds for an involuntary dismissal?

5. Under what circumstances may a default judgment be entered by the clerk of the court? Why is it necessary to sometimes obtain a default judgment by the court?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. Assume that the Samsons in hypothetical number 1 have filed their complaint against Emerald’s Catering. However, before Emerald’s Catering files any papers, the Samsons decide to dismiss their complaint. Prepare the notice of request for dismissal on behalf of the Samsons. Use the judicial council form obtained at http://www.courts.ca.gov/forms.htm or from your instructor.

2. Assume that Emerald’s Catering has failed to respond to the complaint filed by the Samsons in hypothetical number 1. Prepare a request to enter default using a judicial council form.

3. In order to ensure that a default judgment will not be set aside, there are several steps that a plaintiff should take prior to seeking a default judgment. Make a list of the steps which the plaintiff should take, and include the list in your litigation guide.

4. In order for a complaint to withstand a challenge of a demurrer based upon a claim that the complaint fails to state a cause of action, each cause of action must state the proper legal elements. You can find these legal elements using a variety of secondary legal sources. One of the more popular sources is Witkins, Summary of California Law. Locate a copy of Witkins, Summary of California Law in your school library. Look up the elements necessary to allege a cause of action for breach of contract. Identify the page number(s) where these legal elements are located.

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use an online legal database to locate and analyze several court cases.

1. As discussed in Chapter 9, motions for judgment on pleadings determine if, based on the allegations in the pleadings, the moving party is entitled to judgment. Locate a court ruling on a motion for judgment on the pleadings. Did the plaintiff or defendant make the motion? Furthermore, under what ground(s) was the motion made?
2. Under most circumstances, once a trial starts the plaintiff may only obtain a voluntary dismissal by court order. Find a court case in which a voluntary dismissal was granted by the court. What claim was dismissed as a result of the voluntary dismissal? What reason(s) did the court give for granting such a dismissal?
3. In some cases, the court may consolidate separate cases for trial. Research a court case in which actions were consolidated by the court. What were the common questions of law or fact in each of the actions?

***California Statutory Research Questions***

* + - 1. Search through Part 2, Title 6, of the California Code of Civil Procedure. Which section requires a notice of motion to strike to specify a hearing date?
      2. Continue searching through Part 2, Title 6, of the California Code of Civil Procedure. Which section allows the court, on its own motion, to grant a motion for judgment on the pleadings?
      3. Now search through Part 2, Title 8, of the California Code of Civil Procedure. Which section permits the court to dismiss a lawsuit against the defendant for the plaintiff’s delay in prosecuting the defendant?

**CHAPTER TEN**

**SUMMARY JUDGMENTS**

***CHAPTER OBJECTIVES***

In Chapters 8 and 9 you learned about the basic format requirements and the type of motions that attack the pleadings in this case. In Chapter 10 you learned how to attack a case or defense based upon the merits, without the necessity of going to trial. The exercises in this portion of the workbook are designed to give you additional practice in both understanding and drafting summary judgment motions. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. When a motion for summary judgment is appropriate
2. What must be included in a motion for summary judgment
3. What response the opponent should make to a summary judgment motion
4. When to seek a summary adjudication
5. How to oppose a motion for summary judgment
6. What must be included in a separate statement

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 10 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | A motion for summary judgment may be made when there are no genuine disputes over any material facts. |
| 2. | T | F | A plaintiff may move for summary judgment 60 days after the defendant has appeared in the action. |
| 3. | T | F | A motion for summary adjudication of issues is appropriate only if all causes of action can be disposed of by the motion. |
| 4. | T | F | A motion for summary judgment must be accompanied by a separate statement of undisputed facts. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. What is a motion for summary judgment? How does a motion for summary judgment differ from a motion for summary adjudication?

1. A motion for summary judgment must be served on all other parties at least 28 days before the hearing date, increased to 33 days if served by mail. When does the responding party have to file a response? When does a reply need to be filed? Why do you think the court requires a longer period of time?

3. A moving party is entitled to summary judgment only if there is no genuine issue as to any “material fact.” What does this mean? In hypothetical number 1, what would constitute a genuine issue as to a material fact?

4. If a motion for summary judgment fails to show on its face that the movant is entitled to relief, theoretically the opposing party does not need to do anything. However, why is it good practice for the opposing party still to file an opposing memorandum?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. Prepare a motion for summary judgment on behalf of the Samsons against Emerald’s Catering in hypothetical number 1. Assume that the only defense Emerald’s Catering has raised in the lawsuit is that the staff had mixed up the time of the Samsons' party with the time of the party for another customer.

2. Using hypothetical number 6 prepare a separate statement of facts on behalf of Michael Thomas. For purposes of this assignment, you may assume whatever additional facts you need to assume to prevail on a motion for summary judgment.

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use an online legal database to locate and analyze several court cases.

1. As discussed in Chapter 10, a summary judgment is a judgment rendered by the court before trial. Locate a case in which a motion for summary judgment was made. What were the questions of law considered by the court?
2. Find a case in which a motion for summary adjudication was made. What cause of action or party was considered and disposed of by the court?

***California Statutory Research Questions***

* + - 1. Locate section 437c of the California Code of Civil Procedure, governing motions for summary judgment. Which subsection requires notice of the motion for summary judgment to be served on all other parties to the lawsuit at least 75 days before the time appointed for hearing?
      2. Under section 437c of the California Code of Civil Procedure, in responding to a motion for summary judgment, the opposing party must include a separate statement. What must be contained in this separate statement? Under which subsection did you find your answer?
      3. Under section 437c of the California Code of Civil Procedure, which subsection requires the moving party to reply to the opposing party’s response to the motion for summary judgment at least five days before the hearing on the motion?

**CHAPTER ELEVEN**

**PROVISIONAL REMEDIES**

***CHAPTER OBJECTIVES***

Provisional remedies are those remedies a plaintiff may receive prior to trial. Even though a plaintiff may be granted a remedy from the court, this does not mean that the plaintiff does not have to proceed to trial. Rather, the litigation process still continues. If the plaintiff should lose at trial, the plaintiff may be responsible to the defendant for any damages the defendant suffered as a result of the provisional remedy that was imposed. In chapter 11 you learned the different types of remedies that a plaintiff may want to seek against the defendant and the requirements for each remedy. Before beginning the exercises, review the specific objectives of this chapter of the text.

1. When you would use claim and delivery
2. Why a temporary restraining order or preliminary injunction may be necessary
3. How to obtain a temporary restraining order
4. When a plaintiff can make a motion for a preliminary injunction
5. When a writ of attachment may be obtained
6. How to obtain a lis pendens

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 11 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | A preliminary injunction may be issued only after notice is given to the adverse party. |
| 2. | T | F | An injunction is an equitable remedy. |
| 3. | T | F | A motion for a temporary restraining order may only be made if notice is given to the adverse party. |
| 4. | T | F | A motion for a temporary restraining order cannot be made unless the summons and complaint are also filed. |
| 5. | T | F | An application for a temporary restraining order should be combined with a request for a preliminary injunction. |
| 6. | T | F | A preliminary injunction may not be sought without requesting a temporary restraining order first. |
| 7. | T | F | An attachment is a way of seizing a defendant's property to satisfy a future judgment. |
| 8. | T | F | A writ of possession is an order to the sheriff to obtain possession of property and deliver it to the plaintiff. |
| 9. | T | F | An attachment is available only on tort claims. |
| 10. | T | F | One requirement for an attachment is that the amount owed the plaintiff must be unsecured. |
| 11. | T | F | A plaintiff may seek an attachment on a money claim personally owed by the defendant not arising from the defendant's business. |
| 12. | T | F | The plaintiff should draft the papers for an application for an attachment rather than using the judicial council forms. |
| 13. | T | F | When personal property of the plaintiff has been wrongfully detained, the plaintiff should consider seeking a writ of possession. |
| 14. | T | F | It is never possible to obtain a writ of possession ex parte. |
| 15. | T | F | The plaintiff does not need to show a right to possession in order to receive a writ of possession. |
| 16. | T | F | A lis pendens places a lien on property owned by the defendant. |
| 17. | T | F | A lis pendens gives notice that in the future the plaintiff may attempt to file a lawsuit involving real or personal property of the defendant. |
| 18. | T | F | A lis pendens notice is filed in the county office where the property is located. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. Identify the three types of injunctions, and explain how they differ.

1. Why are temporary restraining orders referred to as an "extraordinary procedure"?

3. What are the ways in which you can notify an opposing party that an application for a temporary restraining order is going to be made?

4. A temporary restraining order generally cannot be issued unless the applicant provides adequate security. Why is adequate security required? How can adequate security be given?

5. Would it be easier and less expensive for the plaintiff to simply wait until after receiving a judgment before attempting to attach the defendant's property? Why would a plaintiff want to seek an attachment?

6. Under what circumstances should a plaintiff seek to obtain a writ of possession?

1. What is the purpose of a lis pendens? How does the simple filing of such a notice help the plaintiff?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. Using the form on the following page, prepare a notice of motion for preliminary injunction on behalf of Shamrock in hypothetical number 2. You may use the sample at Exhibit 11.4 of the main text. Be creative in considering the grounds for the preliminary injunction and exactly what type of preliminary injunction you want to seek. Call your local court and find out which department the motion for preliminary injunction would be heard in and at what time.

**NOTICE OF MOTION PRELIMINARY INJUNCTION**

[Insert Proper Caption]

PLEASE TAKE NOTICE THAT on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, at \_\_\_\_ in Department \_\_\_ of the above entitled court located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Plaintiff Shamrock Enterprise will apply for a preliminary injunction enjoining the Defendant from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. This motion made on the grounds that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and is based upon this notice of motion and motion, the supporting declarations, the complaint filed in this action, and such other oral and documentary evidence as may be presented at the hearing on the motion.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney for Plaintiff

2. Prepare two checklists. One checklist should list the requirements for a temporary restraining order. The second checklist should list the requirements for a preliminary injunction. Review your local court rules to ascertain whether there are any special requirements for temporary restraining orders and preliminary injunctions. You can do this by either visiting your local law library to review the local court rules on file, or by visiting your local courthouse. Some local rules are also available on the court’s web site. The checklists should be placed in your litigation guide for future reference.

3. On a separate sheet of paper, list the rules for seeking an attachment or writ of possession; and place the paper in your litigation guide for future reference.

4. A lis pendens places a lien on property of the defendant. A lis pendens is often referred to as a notice of pending action. Review the Code of Civil Procedure and note any special rules for obtaining a lis pendens. Note these rules on a separate sheet of paper, and place the paper in your litigation guide for future reference.

5. Assume in hypothetical number 1 that the Samsons want to obtain an attachment against Emerald’s Catering. Prepare the Application for the Right to Attach using the appropriate judicial council form. Where appropriate, fill in the pertinent facts directly on the application. (Remember, judicial council forms can be obtained at http://www.courts.ca.gov/forms.htm)

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use an online legal database to locate and analyze several court cases.

1. Under proper circumstances a plaintiff may obtain a provision remedy, which would grant relief the plaintiff is requesting from the defendant, prior to trial. Using an online legal database, locate a court case in which a plaintiff successfully obtained a provisional remedy. Of those discussed in Chapter 11, what was the specific remedy that was obtained? How did the court determine the plaintiff warranted such a remedy?
2. Recall, the movant making the motion for a preliminary injunction must post a bond in an amount the court deems proper for the payment of costs and damages that may be incurred if the party is found to have been wrongly enjoined. Research a court case in which the movant did not succeed on the merits of his claims at trial, notwithstanding a preliminary injunction having been granted prior to the trial. Describe the case. What relief was obtained by the wrongly enjoined party?
3. Can you locate a court case in which, following the trial, a wrongful attachment was proven to have been formerly granted? What was the case about? What were the remedies for the wrongful attachment?

***California Statutory Research Questions***

* + - 1. Locate section 512.010 of the California Code of Civil Procedure. With which court must an application for a writ of possession be filed?
      2. Search through Part 2, Title 7, of the California Code of Civil Procedure. Which section governs the circumstances under which an injunction may be granted? Which section governs the circumstances under which an injunction cannot be granted?
      3. Search through Part 2, Title 6.5, of the California Code of Civil Procedure. Which section provides the requirements for the issuance of an attachment?

**CHAPTER TWELVE**

**EVIDENCE**

***CHAPTER OBJECTIVES***

Before you can properly assist the lawyer with a litigation matter, you must be familiar with the rules of evidence. To be admissible in court, evidence must be relevant, reliable, and real. Accordingly, one of your tasks will be to ensure that the evidence you accumulate in your investigation of the case meets these requirements, so that the evidence that supports your side’s position will be admissible in court. In addition, you must also be familiar with the rules of evidence, since failure to follow the rules could lead to the inadvertent disclosure of inadmissible evidence to opposing parties. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. What constitutes evidence
2. Why paralegals must be familiar with the rules of evidence
3. How to determine what evidence is relevant
4. What evidence is excluded based upon the hearsay rules
5. Whether hearsay evidence may be admissible under a hearsay

exception

1. When a witness is competent to testify
2. What evidence is protected from disclosure based upon a claim of

privilege

***TESTING YOUR COMPREHENSION***

Text your comprehension of Chapter 12 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | Evidentiary issues are questions of law. |
| 2. | T | F | If evidence is irrelevant, the evidence may still be admissible under special rules of relevancy. |
| 3. | T | F | All relevant evidence is admissible at trial. |
| 4. | T | F | Hearsay evidence is subject to exclusion at trial unless an exception to the hearsay rule applies. |
| 5. | T | F | A statement made by the declarant while testifying at trial is considered hearsay. |
| 6. | T | F | The hearsay rule does not apply to the actual oral testimony of the witness in court. |
| 7. | T | F | An admission of a party opponent is any statement made by any party to a lawsuit. |
| 8. | T | F | Prior statements by witnesses that were made under oath at a previous hearing are not hearsay. |
| 9. | T | F | Even if a witness is available, former testimony of a witness may be admissible evidence. |
| 10. | T | F | A statement made during or immediately after an event that describes or explains the event is admissible. |
| 11. | T | F | Under the public records exception to the hearsay rule, a witness must be called to lay a foundation for the record before the record will be admitted into evidence. |
| 12. | T | F | Under the California Evidence Code, a child is presumed incompetent to testify. |
| 13. | T | F | A person who can only communicate by gestures is presumed incompetent to testify. |
| 14. | T | F | A witness must have personal knowledge in order to be considered competent to testify. |
| 15. | T | F | The best evidence rule requires that the best evidence on every issue be presented. |
| 16. | T | F | Facts generally known within the particular geographic area may be judicially noticed. |
| 17. | T | F | Communications between a client and a paralegal are subject to the lawyer‑client privilege. |
| 18. | T | F | The lawyer‑client privilege does not apply if the services of a lawyer are sought to enable or aid one to commit or plan a crime or fraud. |
| 19. | T | F | In some instances, a lawyer’s opinions, mental impressions, and legal theories may be required to be disclosed to the opposing parties. |
| 20. | T | F | The work product privilege does not apply to materials prepared by a legal assistant. |
| 21. | T | F | The physician‑patient privilege only applies to parties to a lawsuit. |
| 22. | T | F | Confidential communications made by one spouse to the other during a marriage are protected from disclosure. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. What does it mean to say that evidentiary issues are questions of law? How do questions of law differ from questions of fact?

2. Why is it necessary for a paralegal to know the rules of evidence?

3. In determining whether to admit evidence under the general relevance test stated in the main text, the court will examine whether the evidence is “of consequence” to the issues in the action. What does it mean for the evidence to be “of consequence”? The court will also examine the “probative value” of the evidence. What does “probative value” mean?

1. Why are certain types of evidence excluded for extrinsic policy reasons? What are the types of evidence that are excluded for policy reasons?

5. Character evidence is only admissible in civil cases if character is an essential element of a claim or defense. Why is such evidence, if relevant under the general relevance tests, excluded when character is not an essential element of a claim or defense? Would the evidence of a defendant’s character be relevant to prove circumstantially how the defendant might have acted on a particular occasion? For example, suppose a witness is available to testify that the defendant has a reputation for daydreaming and the defendant therefore often does not watch where the defendant is going. Would this evidence be relevant to show that the defendant went through a red light and hit the plaintiff’s car? Would the evidence be admissible as character evidence?

6. Evidence of conduct routine enough to be considered a habit will be admissible. What is the difference between “character” and “habit” evidence?

7. Evidence of subsequent repairs is not admissible to prove negligence or fault, but may be admissible to prove feasibility of precautionary measures. If you were sitting as a juror and were instructed by the judge to not consider the evidence as proof of negligence, but only as to feasibility of the precautionary measures, do you think you could make this distinction? Should there be any concern by the defendant that the jury may use the evidence to place fault with the defendant for not taking the precautionary measures sooner?

8. What is "hearsay"? Why is hearsay evidence excluded from trial?

9. With respect to the hearsay rule, identify the three types of “statements” and give an example of each.

10. Why are prior statements by witnesses admissible evidence? What can the prior statements be used to prove?

11. Compare and contrast the admission of a party opponent exception to the hearsay rule with the declarations against interest exception.

12. Under the California Evidence Code, certain hearsay exceptions require that the witness be unavailable before the hearsay statement made by the witness will be admissible. When is a witness considered “unavailable”?

13. Compare and contrast the contemporaneous statement exception to the hearsay rule with the spontaneous exception.

14. What is the rationale for admitting hearsay evidence of a statement by a patient about the patient’s present or past medical condition? Why is such evidence considered reliable?

15. Identify the three types of records exceptions to the hearsay rule. How do these exceptions differ?

16. What is the difference between a “lay” witness and an “expert” witness? Are there matters that an expert witness can testify to that a lay witness cannot? Why is it necessary to use expert witnesses in some cases?

17. What are the general requirements needed before a witness is considered competent to testify?

18. Identify at least three ways that a witness can be impeached. Give an example of each.

19. Under what circumstances can a witness’ prior bad acts be admissible to impeach that witness?

20. What does it mean to “authenticate” an exhibit? Why do exhibits need to be authenticated? If you wanted to authenticate a photograph of an accident scene, how could the photograph be authenticated?

21. What is the difference between real evidence and demonstrative evidence?

Give an example of each.

22. Some business records require that a witness testify and authenticate the record. However, public records are considered self‑authenticating. Why are public records treated differently?

23. What are the three types of facts that may be judicially noticed?

24. What is the “best evidence rule”?

25. If a client seeks the services of a lawyer, but does not ultimately retain the lawyer, can the client still assert the lawyer‑client privilege and prevent the lawyer from disclosing the confidential communication? Or, is the lawyer free to disclose the communication since the lawyer was never actually retained?

26. Under the lawyer‑client privilege, the client is the holder of the privilege. That is, the client holds the right to prevent the attorney from disclosing the confidential communication and the client also has the right to waive the privilege and disclose the communication. Why is the privilege held only by the client, and not also by the lawyer?

27. What are the differences between the lawyer‑client privilege and the work product privilege? What is the purpose of having a work product privilege? The work product privilege is qualified. What does this mean?

28. Why are communications between spouses protected from disclosure? Can you think of situations where there should be exceptions to this privilege?

29. One of the requirements under the hearsay rule is that there be a statement. Does the term “statement” apply only to statements made by people? What about readings from meters or scientific instruments? Are these considered statements?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. The main text identifies ten specific hearsay exceptions. Make a chart including each of the hearsay exceptions. On the chart, indicate the requirements needed for each exception to apply. Be sure to include for each requirement whether the declarant must now be available. Place the chart in your litigation guide for future reference.

2. Locate a copy of the Federal Rules of Evidence. For each of the ten hearsay exceptions identified in the main text, locate the corresponding exception under the federal rules. Once you have identified the appropriate federal rules, prepare a chart comparing the requirements for each hearsay exception under the federal rules with the state rules. The purpose of preparing this chart is to give you a reference guide for hearsay exceptions. The chart should be placed in your litigation guide and referred to whenever you are confronted with a hearsay problem.

3. The main text identifies three of the more common privileges that may be asserted. Review the California Evidence Code and identify any other privileges that may exist.

4. Some statements are not considered hearsay because these statements are not being offered to prove the truth of the matter asserted in the statements. Thus, you must always ask yourself what is being proven by offering the statement. If the statement is not being used to prove the truth of the statement, but rather something else, then the statement is not hearsay. With these rules in mind, examine the following statements and determine whether the statements are hearsay. Be prepared to explain your answers.

a. Tom and Sally are killed in an automobile accident. A witness at the scene testifies that she heard Tom say, “the defendant’s car went through the red light.” The plaintiff wishes to use the statement to prove that the defendant was negligent. Is the statement hearsay?

b. Same situation as (a), except the statement is being used to prove that Tom was alive immediately following the accident. Is the statement hearsay?

c. A witness testifies that she heard John say, “I love Janet.” The statement is being used to prove that John loves Janet. Is the statement hearsay?

d. A witness testifies that she heard John say, “Janet has the most beautiful eyes in the world.” The statement is being used to prove that John loves Janet. Is the statement hearsay?

e. A witness testifies that she heard Alan say, “I am Felix the Cat.” The statement is being used to prove that Alan is insane. Is the statement hearsay?

5. For each of the following statements, identify which exception to the hearsay rule best applies. Be prepared to explain your answers.

1. Plaintiff testifies that she heard the defendant say, immediately after the accident, “I’m sorry my car hit you. I guess I didn’t see the light turn red in time.”

b. In a breach of contract action, defendant testifies at trial that he mailed the payment due plaintiff under the contract on April 25, 2003. Plaintiff now wants to use the deposition testimony of defendant where defendant testified that he could not remember if he ever mailed the payment to plaintiff.

c. Witness testifies that the declarant told her “I am not feeling very well.”

d. Plaintiff has brought an action against the pilot of a helicopter, for damage to the plaintiff’s car. Witness testifies at the trial that she was looking out her kitchen window when she saw the helicopter spin several times before landing on the ground. She said to her husband: “Gee, look at that helicopter spin. It looks like the pilot is losing control of it.”

e. The plaintiff has sued her health club and exercise instructor for injuries to her back caused while she was being shown by the instructor how to use certain exercise equipment. Defendant calls a witness to testify that she heard Betty Thomas say, “I had told the plaintiff several days before the incident that I was able to collect a lot of money from the same health club by faking an injury to my back.” Betty Thomas is now unavailable.

f. Jennifer Dorsey was injured at school when another child pushed Jennifer into a wall. The May 22, 2007 records of the school nurse indicate that “On May 22, 2007, I examined Jennifer Dorsey for an injury caused during recess. She appeared to have a scraped elbow and bruises on her back and shoulder. She had limited mobility of her index finger on her right hand and I suggested that her mother be called so that Jennifer could be taken to a physician and treated for a possible broken finger.”

6. Assume that you are a paralegal in the law firm representing Stella King in hypothetical number 5. The following documents are in your firm’s files. For each document, identify whether there is any claim of privilege that may be made and, if so, which privilege.

a. Medical records from Stella King’s personal physician concerning a broken leg Stella King had suffered five years prior to the accident.

b. The hospital admittance report for Ms. King at Warren Community Hospital for the day of the accident.

c. Ms. King’s personnel records from her employer.

d. A memorandum from you to the attorney responsible for the matter in your firm.

e. A letter from the client to the attorney responsible for the matter in your firm.

f. A letter from the attorney for Mr. Woods to your firm.

g. A memorandum from Ms. King to the attorney in your firm giving a detailed narration of the facts.

h. A copy of a letter signed by you to Ms. King.

i. A note from the attorney to the attorney’s secretary regarding the scheduling of depositions.

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use an online legal database to locate and analyze several court cases.

1. Recall, for evidence to be properly admissible it must first meet the general relevance test. Research a court case dealing with a breach of contract. Based on the court’s opinion, what evidence was relevant and of consequence in demonstrating that the defendant breached the contract?
2. Common sense and experience tells us that a person is likely to act consistently with the kind of person he or she really is. Locate a court case in which evidence proving a party’s character traits or habits significantly affected the opinion of the court. What was the case about? What evidence was used?
3. As discussed in Chapter 12, the hearsay rule traditionally guarantees reliability by the personal presence of the declarant at trial, under oath, and subject to cross-examination by the opposing parties. Find a court case in which a statement(s), admissible as a result of hearsay exception rules, significantly affected the opinion of the court. Describe the case. Of those discussed in Chapter 12, what exception(s) do you believe admitted such a statement(s) in court?

***California Statutory Research Questions***

* + - 1. Locate the California Evidence Code. Under the Code, which section provides the general relevance rule that no evidence is admissible unless the evidence is relevant?
      2. Under the California Evidence Code, which section would you use if you were arguing that relevant evidence should be excluded because its probative value is substantially outweighed by its risk of prejudice?
      3. Search through Division 9 of the California Evidence Code. Which section provides the general rule that evidence of a person’s character is inadmissible to prove that on a particular occasion the person acted in accordance with that character?
      4. Under the California Evidence Code, which section defines hearsay? Which sections govern the exceptions to the rule against hearsay?

**CHAPTER 13**

**INTRODUCTION TO DISCOVERY**

***CHAPTER OBJECTIVES***

To ascertain facts concerning the incidents in a lawsuit, lawyers and paralegals use several discovery devices. Each of the discovery devices serves a different purpose and is used at a different stage in the lawsuit. Properly conducted discovery helps both sides determine the strengths and weaknesses of their positions, and prevents trials by surprise. Since discovery is a significant part of any litigation, you must be familiar with the different types of discovery to assist the lawyer with the factual investigation. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. What discovery devices you may use to obtain facts
2. How you may use computers for litigation support
3. What the paralegal’s role is in discovery
4. When to use different discovery devices
5. What is the scope of the discovery
6. What electronic information is discoverable

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 13 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | Computers may be used to assist lawyers and paralegals in conducting research. |
| 2. | T | F | Computers may be used to locate information about parties or witnesses. |
| . | T | F | Only evidence that may be admissible at trial may be obtained in discovery. |
| 4. | T | F | A written statement made by a nonparty witness that is in the possession of an adversary is discoverable. |
| 5. | T | F | Statements made by a party to the party's own lawyer are not discoverable. |
| 6. | T | F | Relevance for discovery purposes is very narrow. |
| 7. | T | F | Liability insurance policies may not be discoverable. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. What is the purpose of sending interrogatories to an adverse party? What type of information is most effectively obtained by interrogatories?

2. In chapter 12 you learned that only relevant evidence may be admissible at trial. However, in this chapter, you have learned that for discovery purposes, relevance is defined as any information that "appears reasonably calculated to lead to the discovery of admissible evidence." Thus, even if the information requested is not relevant, the information may still be discoverable if the information is reasonably calculated to lead to the discovery of admissible evidence. Why is more latitude given for discovery purposes than for admission of evidence at trial?

3. Evidence of liability insurance is not admissible in evidence to prove fault or lack of fault. Yet, liability insurance is discoverable. Why is this information discoverable if the information cannot be admitted into evidence?

4. What sanctions are available against a party who does not abide by discovery orders?

5. Some discovery devices are permitted to be used only against parties; others may be used against parties and nonparties alike. What discovery devices are permitted only against parties? How can you obtain discovery against nonparties?

6. Some discovery devices require the moving party to show "good cause." What does this mean?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. Part of the strategy for discovery is to have a good discovery plan that outlines the order in which your side's discovery will proceed and the information your side expects to receive from each discovery device. Assume that your law firm represents Shamrock Enterprises in hypothetical number 2. Prepare a discovery plan for Shamrock Enterprises. The discovery plan should outline the order in which discovery should proceed and indicate the types of information your side expects to obtain from each of the discovery devices.

2. Local court rules sometimes have special rules governing discovery. Are there local rules governing discovery in your jurisdiction?

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use an online research database to locate and analyze several court cases.

1. Research a court case of your interest. Using your knowledge of the various discovery methods available, determine which discovery methods may have been used prior to the trial. You may want to consider the following: did copies of records, documents and other tangible items used as evidence affect the court’s opinion? If so, the party may have issued a written request to produce such evidence during the discovery stage. Additionally, you may notice admitted facts that influenced the decision of the court. Accordingly, the party may have issued a written statement forcing the opposing party to admit or deny particular facts during the discovery stage.
2. Research a court case of your interest. Describe the case. What facts were most important in establishing a winning case for the winning side? Remember, obtaining such facts should be the focal point of your discovery strategy.

***California Statutory Research Questions***

* + - 1. Search through Part 4, Title 4, Chapter 13, of the California Code of Civil Procedure, which governs written interrogatories. When may the plaintiff generally propound interrogatories to a party? When may the defendant propound interrogatories to a party?
      2. Under the California Code of Civil Procedure, which sections govern oral depositions that occur inside California?
      3. Under the California Code of Civil Procedure, which section permits the court, upon motion, to limit the scope of discovery if the burden or expense of the discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence?

**CHAPTER FOURTEEN**

**DISCOVERY**

***CHAPTER OBJECTIVES***

In Chapter 14 you learned about the various discovery devices that you may use to obtain facts in a lawsuit. Each device serves a different purpose, and has its own format and timing requirements that must be followed. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. How to draft the different forms of written discovery
2. When to use interrogatories
3. What type of documents can be obtained through document requests
4. When to exchange expert witness information
5. When a discovery motion may be necessary

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 10 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

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| 1. | T | F | Interrogatories are oral questions presented by one party to another party. |
| 2. | T | F | A party has 30 days to respond to written interrogatories. |
| 3. | T | F | A party sending the interrogatories is sometimes referred to as the propounding party. |
| 4. | T | F | Interrogatories may only be served on parties to the lawsuit. |
| 5. | T | F | A request to produce may be used to compel responses to interrogatories. |
| 6. | T | F | A physical or mental examination of a party can be obtained if the party's physical or mental condition is in issue. |
| 7. | T | F | If a party does not agree to voluntarily submit to a physical, a court order must be obtained. |
| 8. | T | F | Requests to admit are written statements that force a party to admit or deny facts or a document's genuineness. |
| 9. | T | F | The identity of experts who are expected to be called as witnesses at trial is not discoverable. |
| 10. | T | F | The party responding to interrogatories must respond to each interrogatory separately with either an answer or an objection. |
| 11. | T | F | A party answering interrogatories never has an obligation to supplement interrogatory responses. |
| 12. | T | F | Interrogatory answers must be signed and sworn to by the person making them. |
| 13. | T | F | A party is not obligated to produce documents that are not in the party's actual control. |
| 14. | T | F | A party does not need to serve a written response to a document request if the party is going to produce the requested documents. |
| 15. | T | F | Responses to requests to produce are usually due within 30 days of service of the request. |
| 16. | T | F | If a document contains both privileged and unprivileged material, the entire document does not need to be produced. |
| 17. | T | F | Requests to admit facts and the genuineness of documents apply only to parties. |
| 18. | T | F | After a request to admit has been served on a party, that party must serve a response within 30 days, or the party waives all objections to the request to admit. |
| 19. | T | F | If a party fails to respond to discovery, the party requesting discovery may make a motion to compel. |
| 20. | T | F | Protective orders restrict discovery from one party to another. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. What is the purpose of sending interrogatories to an adverse party? What type of information is most effectively obtained by interrogatories?

2. Interrogatories which ask for "opinions," "contentions relating to facts," or the "application of law to fact" are usually proper interrogatory requests. However, interrogatories that ask for matters about the law are not proper interrogatory requests. Why is this? Shouldn't a party be permitted to find out what the other side thinks the law is?

3. There are three basic kinds of experts: testifying experts, consulting experts, and informally consulted experts. How are they different? Why is there a qualified privilege for the work done by consulting experts?

4. Request to produce documents and other physical or tangible evidence usually falls into three categories. What are they?

5. When drafting a request to produce documents, the request must identify the documents with "reasonable particularity." What does this mean? How can you draft a request with reasonable particularity if you do not know what the documents are that you are seeking?

6. When responding to document requests, it is a good idea to keep a copy of all documents submitted to the opposing side. Why should you keep copies of what was submitted?

7. Documents which are produced to the opposing side, and which the opposing side produced to you, are usually number stamped (sometimes referred to as "Bate stamped"). What is the purpose of numbering the documents? In what ways is the numbering helpful during the litigation?

8. Requests to produce apply only to parties in the action. How can a party obtain documents that are in the possession of nonparty witnesses?

9. If you are asked to attend a production of documents produced by the other party, what steps should you take before reviewing the documents which will be produced?

10. If the discovery sought is annoying, embarrassing, oppressive, unduly burdensome, or unduly expensive, what can the responding party do?

11. If a party fails to answer or gives evasive or incomplete answers to proper discovery, what can the other party do?

12. Why is a court order needed before a physical or mental examination of a party is ordered? What must the party requesting the examination prove before an examination will be ordered?

13. There are four basic responses permitted when a party is served with a Request to Admit. What are the permitted responses?

14. If a party fails to answer or gives evasive or incomplete answers to proper discovery, what can the other party do?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. Assume that your law firm has undertaken the representation of Sidney Kester in hypothetical number 3. Draft a set of interrogatories to be sent to Monroe's Grocery Store. Include in the interrogatories the topics outlined at pages 260-261 of the main text.

2. There are several grounds for objecting to interrogatories. Some of those grounds are identified in the main text. Make a list of the proper grounds for objections to interrogatories. Include on the list the grounds set forth in the text. Place the list in your litigation guide. The list can then be referred to whenever you are asked to respond to interrogatories.

3. Assume that your law firm has been retained to represent Doris McFarland in hypothetical number 2. Draft a document request to be sent to Shamrock Enterprises. Remember to draft the request with "reasonable particularity" so as to satisfy the requirements of the Code of Civil Procedure.

4. The main text has discussed the five major types of discovery devices. Although the rules discussed are the rules under the California Code of Civil Procedure, similar rules exist for federal court as well. Using the forms on the following pages, prepare two charts outlining the rules for both the federal and state courts. Each chart should identify the discovery device, the time in which responses are due to the discovery (or in the case of depositions, the amount of notice required in advance of the deposition), any limits on the number which can be propounded (i.e. only 30 interrogatories), and whether the responses must be made under oath. To assist you with locating the federal rules, the appropriate federal rule is indicated. Copies of the charts may then be placed in your litigation guide and referred to once you are in practice.

**FEDERAL DISCOVERY RULES**

**INTERROGATORIES (Rule 33)**

Response Due Limits on Number Type of Responses Comments

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**REQUEST TO PRODUCE (Rule 34)**

Response Due Limits on Number Type of Response Comments

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**REQUESTS FOR ADMISSIONS (Rule 36)**

Response Due Limits on Number Type of Response Comments

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**ORAL DEPOSITIONS (Rule 30)**

Timing Response Required Objections Comments

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**MEDICAL EXAMINATIONS (Rule 35)**

Response Due Limits on Number Type of Response Comments

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**CALIFORNIA DISCOVERY RULES UNDER THE CODE OF CIVIL PROCEDURE**

**INTERROGATORIES (Section \_\_)**

Response Due Limits on Number Type of Response Comments

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**REQUEST TO PRODUCE (Section\_\_)**

Response Due Limits on Number Type of Response Comments

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**REQUESTS FOR ADMISSIONS (Section \_\_)**

Resonse Due Limits on Number Type of Response Comments

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**ORAL DEPOSITIONS (Section \_\_)**

Timing Response Required Objections Comments

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**MEDICAL EXAMINATIONS (Section \_\_)**

Response Due Limits on Number Type of Response Comments

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5. Requests to admit are usually served at the end of the discovery stage. However, where the issues are fairly simple and straightforward, it may be useful to serve a set of requests for admissions early in the case to ascertain whether there is any dispute with respect to the main facts. In hypothetical number 1, the Samsons have a claim against Emerald’s Catering for breach of contract. Draft a set of requests for admissions that Sara and Benjamin Samson may serve on Emerald’s Catering. Your instructor has a sample form available in the Instructor’s Manual that accompanies these materials, if needed.

6. California has form interrogatories that you may use instead of drafting your own set of interrogatories. Using hypothetical number 3, draft a set of interrogatories on behalf of Monroe's Grocery Store, to be sent to Sydney Kester using the appropriate form interrogatories.

7. In addition to drafting discovery requests, as a paralegal you will also need to draft responses to discovery requests. Exchange with a classmate the interrogatories you have drafted in assignment number 2. Respond to the interrogatories that have been drafted by your classmate. Remember that each interrogatory must be responded to separately. Include all appropriate objections to the interrogatories.

8. Assume in hypothetical number 3 that Sidney Kester has failed to respond to the interrogatories that you have drafted. Draft a declaration indicating that the parties have met, in good faith, and attempted to resolve the discovery dispute.

9. Knowing how to respond and object to document requests is very important. Failure to object to a document request may cause a waiver of your client's evidentiary privileges. Assume that Dennis Woods in hypothetical number 5 has served the following document request on Stella King. Respond to the document request, making all appropriate objections.

[caption]

**DEFENDANT DENNIS WOODS' REQUEST TO PRODUCE**

**DOCUMENTS TO PLAINTIFF STELLA KING**

Defendant Woods requests that plaintiff Stella King produce the documents and things listed below:

1. All documents reflecting, referring to, or otherwise relating to the injuries sustained as a result of the accident that is the subject of the instant lawsuit.

2. All documents reflecting, referring to, or otherwise relating to plaintiff's medical condition for the past five years.

3. All documents reflecting, referring to, or otherwise relating to plaintiff's driving record for the past five years.

4. All documents reflecting, referring to, or otherwise relating to any statements obtained from witnesses of the accident that is the subject of the instant lawsuit.

5. All documents reflecting, referring to, or otherwise relating to any damages claims by plaintiff as a result of the accident that is the subject of the instant lawsuit.

6. All documents reflecting, referring to, or otherwise relating to the time plaintiff lost from work as a result of the accident that is the subject of the instant lawsuit.

7. All correspondence between plaintiff and any other person or entity regarding the instant lawsuit.

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use an online legal database to locate and analyze several court cases.

1. Research a court case of your interest. After reading the court’s opinion on the case, list a few sample interrogatory questions that you believe each side may have or should have drafted during the written discovery stage that preceded before the trial.
2. Locate a court case in which the court’s decision was significantly affected by a party’s request to produce documents or other physical or tangible evidence. Describe the case. In what way did the produced evidence influence the court’s opinion?
3. As discussed in Chapter 14, the physical and mental condition of a party can be a critical fact affecting both liability and damages. Locate a personal injury case in which a party’s condition was an essential fact in the case. What was the case about? In what way did the party’s condition influence the outcome of the case?

***California Statutory Research Questions***

* + - 1. Search through Part 4, Title 4, Chapter 13, of the California Code of Civil Procedure, governing written interrogatories. If a party wishes to propound more than 35 interrogatories to another party, the propounding party must attach a declaration for additional discovery. Which section provides a sample form of this declaration?
      2. Which section of the California Code of Civil Procedure permits a party to respond to an interrogatory by objecting to it?
      3. Locate Part 4, Title 4, Chapter 14, of the California Code of Civil Procedure, governing requests to produce documents. When may a plaintiff make a request to produce documents and other physical or tangible evidence? When may the defendant make a request to produce documents and other physical or tangible evidence?

**CHAPTER FIF****TEEN**

**DEPOSITIONS**

***CHAPTER OBJECTIVES***

Depositions are the discovery tool that is used to directly ask questions and receive answers from other parties and witnesses. Before beginning the exercises, review the specific objectives for this chapter of the text.

* Why a party may want to take a deposition
* How to prepare a witness for deposition
* What questions to ask a witness in a deposition
* Who can attend a deposition
* How to prepare a deposition summary in different ways
* When it is necessary to serve a deposition subpoena

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 15 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

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| --- | --- | --- | --- |
| 1. | T | F | Depositions may only take place in a conference room at a courthouse. |
| 2. | T | F | A deposition of an adverse party may never be taken before responses to interrogatories are received. |
| 3. | T | F | Although a paralegal may attend a deposition, only the lawyer may take the deposition or defend a witness at the deposition. |
| 4. | T | F | A deposition of a nonparty may be conducted anywhere. |
| 5. | T | F | A witness can be required to attend a deposition anywhere in the state. |
| 6. | T | F | Videotaping of a deposition may only be done if the witness agrees to be videotaped. |
| 7. | T | F | Parties do not have a right to attend a deposition of the adverse party. |
| 8. | T | F | A deponent can never be commanded to produce documents at a deposition. |
| 9. | T | F | If a deposition is going to be taken, notices of the deposition must be served on every other party to the action. |
| 10. | T | F | A deposition transcript is a written record of the questions, answers and objections during the deposition. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. Why must a deposition be taken in the presence of someone authorized to administer oaths and who can stenographically record the testimony?

2. If a witness resides outside the geographical limits for taking a deposition within the county in which the action arises, where can the deposition take place?

3. What are the six steps that must be taken after the time and place of the deposition has been determined?

4. What are the different methods for summarizing a deposition? Explain each method.

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. Whenever a deposition will be taken, the party taking the deposition must give notice of the deposition to every party to the action. Assume that your law firm represents Gatsby Realty in hypothetical number 4. Draft a notice of deposition to take the deposition of Derrick Mason using the form on the following page. Use the examples in the main text and in the appendix as a guide.

**NOTICE OF DEPOSITION**

Michael Sobel

Roberts, Williams, and Stevenson

2345 Woodbine Street

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,\_\_\_\_\_\_\_\_

Attorneys for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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To:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Please take notice that :

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Dates:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Michael Sobel

Attorney for Plaintiff

2. Witnesses need to be served with a subpoena in order to compel them to attend a deposition. Assume in hypothetical number 5 that Dennis Woods wants to subpoena Karen Blake, the custodian of records for Warren Community Hospital, the hospital that treated Stella King for her injuries. Be sure to include a request for all the relevant documents. Use the appropriate judicial council form.

3. As part of the preparation for a deposition, an outline is usually made of the topics that need to be covered in the deposition. Prepare an outline for an attorney taking the deposition of Sidney Kester in hypothetical number 3.

4. It is common practice to prepare witnesses for their depositions in advance of the date of the deposition. Lawyers and paralegals usually use a checklist, covering the items discussed in the main text, to prepare the witness. Using the information contained in the main text, draft a checklist of matters to be covered with a witness in advance of the deposition. The checklist should be included in your litigation guide for future reference.

5. One of the tasks that a paralegal often performs is the summarizing of deposition testimony. On the following pages is an excerpt from the deposition of Sidney Kester. Summarize the deposition testimony using each of the methods discussed in the main text.

**EXAMINATION OF SIDNEY KESTER**

Q. Would you please state your name for the record?

A. Sidney Alan Kester.

Q. Mr. Kester, have you ever had your deposition taken before?

A. Yes.

Q. How many times?

A. Once.

Q. So you understand the procedure a little bit and you have had an opportunity to speak with your counsel about the procedure?

A. Yes.

Q. Let me briefly explain to you what is going to take place today, and I won't go into great detail. I am going to ask you a series of questions to which you will be required to give answers. Everything that we say is going to be taken down by the reporter, and it will be later typed up in a booklet form. You will have an opportunity to read it and make any changes or corrections that you deem necessary. However, I must caution you that in the event you do make any changes, we'll be permitted to comment upon those changes at the time of trial. Do you understand that?

A. Yes.

Q. Is there any reason why your deposition cannot go forward today?

A. No.

Q. You are not under any medication which impairs your ability to remember?

A. No.

Q. What is your present address?

A. 300 Wetherly Street.

Q. How long have you lived at that address?

A. Fifteen years.

Q. Are you employed?

A. Yes.

Q. Where are you employed?

A. Simon Electronics.

Q. What is your position at Simon Electronics?

A. Computer operator.

Q. How long have you been a computer operator?

A. Ten years.

Q. Prior to that time, were you employed?

A. Yes. Also by Simon Electronics.

Q. What was your position prior to computer operator?

A. Data processor.

Q. How long were you employed as a data processor?

A. Approximately nine years.

Q. What was the purpose of your visit to Monroe's Grocery Store on the day of your accident?

A. I went in to pick up a few things that I needed for dinner that night. I had been to the market the day before, but I had forgotten to pick up lettuce, tomatoes, and a few other things I wanted to make a salad. I was having my son and his wife, along with my little grandson, over for dinner that night. I always make a big salad when they come over.

Q. Approximately what time of day was this?

A. It was around 4:00 p.m. I had just gotten off work, and I had decided to stop at the store before going home.

Q. How many times had you previously shopped at Monroe's Grocery Store?

A. Oh, many times. The store is only about half mile from my house. I've been going there at least once a week for the past ten years.

Q. Have you ever had any accidents in any other stores that you have shopped in?

A. Well, not that I can recall at the moment.

Q. Where did the fall in Monroe's Grocery Store take place?

A. In the produce department.

Q. Did you notice anything unusual about the produce department prior to the fall?

A. I recall that the produce manager was in the process of restocking many of the bins. And, when I went to pick up the tomatoes, I noticed that several of the tomatoes had fallen on the ground. The tomatoes looked like they had just been restocked, so I assumed that the bin was so full that some of the tomatoes fell to the ground.

Q. Where in the produce department did your fall occur?

A. In front of the lettuce bin.

Q. How close is the lettuce bin to the tomatoes?

A. Not that close. They are about two aisles apart.

Q. Did you notice anything on the floor by the lettuce bin?

A. No. But as I said before, there were crates in all the aisles. And there was a crate near the lettuce bin. I don't think the lettuce bin had been restocked yet.

Q. What happened after your fall?

A. Well, as soon as it happened, the produce manager came rushing over to see how I was doing.

Q. Do you remember the name of the produce manager?

A. Yes. His name is Jim. I've seen him there before, but I do not know his last name.

Q. Did Jim say anything to you?

A. He asked if I was o.k. I told him that I thought I was, but then I had a hard time getting up.

Q. What happened next?

A. Jim helped me get up and took me to an office in the back of the store. At the time, I told the store manager that I did not think I would need to see a doctor. The store manager insisted on calling an ambulance when it was clear that I would not be able to walk on my right leg.

Q. Did an ambulance come?

A. Yes. They took me to Clearview Community Hospital.

Q. What happened after you went to the Hospital?

A. I was taken to the Emergency Room. A nurse came by to have me fill out some papers.

Q. What papers were these?

A. They were the hospital admitting papers, things like name, address, social security number, and information about medical insurance.

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use an online legal database to locate and analyze several court cases.

1. As a paralegal, before a deposition it is important to discuss and outline how the lawyer will take a particular deposition. Research a court case of your interest. Using your knowledge of the important facts that were considered in the judge’s written opinion, how would you have advised the lawyer to approach the deposition prior to the trial of this case? Be sure to consider the information each side needs to obtain.

***California Statutory Research Questions***

* + - 1. Locate section 2025.010 of the California Code of Civil Procedure, governing oral depositions that occur in California. Under this section, who are the persons that may be deposed?
      2. Under section 2025.210 of the California Code of Civil Procedure, when may a plaintiff generally serve a deposition notice? When may the defendant serve a deposition notice?
      3. Which section of the California Code of Civil Procedure permits a party who is to be deposed to move for a protective order that prevents the deposition from being taken?

**CHAPTER SIXTEEN**

**SETTLEMENTS**

***CHAPTER OBJECTIVES***

Since the majority of cases are settled before trial, the purpose of this chapter is to acquaint you with the settlement process. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. When to use a settlement brochure
2. How to draft a settlement agreement
3. What the different types of settlement agreements are
4. How to enforce a settlement agreement

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 16 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | A settlement brochure should never contain medical reports of the plaintiff’s injuries. |
| 2. | T | F | Settlement agreements should be in writing and signed by each party. |
| 3. | T | F | If a case is settled, the lawsuit is usually dismissed with prejudice. |
| 4. | T | F | A release operates as a discharge of all claims against the parties to the release as well as any persons against whom the same claims are or could have been asserted. |
| 5. | T | F | A release is used only if there is a partial settlement of the lawsuit. |
| 6. | T | F | A covenant not to sue does not discharge any parties. |
| 7. | T | F | Contribution is a theory for apportioning liability among joint tortfeasors. |
| 8. | T | F | A covenant not to sue prevents a nonsettling defendant from later bringing a contribution claim against the settling defendant after a final judgment. |
| 9. | T | F | Under a structured settlement, the plaintiff receives periodic payments rather than one lump settlement sum. |
| 10. | T | F | Once a case is settled, a court order is always necessary to dismiss the case. |
| 11. | T | F | A stipulation for dismissal with prejudice bars the plaintiff from refiling the claim later. |
| 12. | T | F | An offer of judgment under Code of Civil Procedure Section 998 can be used once settlement negotiations break down. |
| 13. | T | F | An offer of judgment may be made anytime at least ten days before trial. |
| 14. | T | F | Offers of settlement are admissible at trial to prove liability. |
| 15. | T | F | A settlement agreement may be enforced in a separate contract action. |
| 16. | T | F | An insurer should notify the insured of all settlement offers. |
| 17. | T | F | The wronged party may enforce a settlement agreement by making a motion to enforce the settlement agreement. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. What are the three basic steps for settling a case?

2. What is a settlement brochure? Why is a settlement brochure useful?

3. Why should a defendant insist upon obtaining a dismissal of the lawsuit with prejudice in the event of a settlement?

4. Why is it necessary for a settlement agreement to clearly state whether the settlement is a release or a covenant not to sue?

5. What is a structured settlement? What are the advantages of such a settlement to a plaintiff? To the defendant?

6. What is the purpose of a CCP § 998 offer?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. Using the form on the following page and the sample in the main text, prepare a Release on behalf of the parties in hypothetical number 5. Unless instructed otherwise, assume that the parties have agreed to settle the lawsuit by Dennis Woods paying Stella King $15,000. A copy of the Release should be placed in your litigation guide.

**RELEASE**

In consideration of the sum of $\_\_\_\_\_\_\_\_\_\_, which Plaintiff\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_acknowledges receiving, Plaintiff \_\_\_\_\_\_\_\_\_\_\_\_\_\_agrees

to release Defendant\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and his\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

from all claims, suits, or actions in any form or on any basis, because of anything that was done or not done at any time, on account of the following:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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As a result of this collision, Plaintiff has brought suit against Defendant for damages. Defendant has denied both liability and the claimed extent of damages. This release is a compromise settlement between Plaintiff\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and Defendant\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

This agreement is a release and shall operate as a total discharge of any claims Plaintiff has or may have arising out of the above occurrence against this Defendant and any other persons.

Plaintiff\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and Defendant\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_also

expressly agree to terminate any actions that have been filed, particularly a claim by this Plaintiff against this Defendant currently filed as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Plaintiff and this Defendant agree to execute a Stipulation of Dismissal, with prejudice, and file it with the Clerk of the above Court, thereby terminating that action in its entirety, within seven days of the execution of this agreement.

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Plaintiff

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Defendant

2. Using hypothetical number 4, prepare a Covenant Not to Sue on behalf of the parties. Unless instructed otherwise, assume that the parties have agreed to settle their dispute by Mason’s payment of all past due rent to Gatsby Realty. A copy of the Covenant Not to Sue should be placed in your litigation guide.

3. Using the form on the following page, prepare a stipulation of dismissal for the parties in hypothetical number 2.

[caption]

**STIPULATION OF DISMISSAL**

Plaintiff \_\_\_\_\_\_\_\_\_\_\_\_\_\_and Defendant \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ agree to

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney for Plaintiff

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney for Defendant

4. California Code of Civil Procedure section 998 provides that a party defending a claim can serve an offer of judgment upon the opposing party. A similar rule exists in Federal Court. Find the applicable federal rule and identify the rule. Are there any differences between the federal rule and California’s rule?

5. Using hypothetical number 2, draft an offer of judgment on behalf of Doris McFarland to send to Shamrock Enterprises.

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use an online legal database to locate and analyze several court cases.

1. Locate a case with joint tortfeasors. What was the case about? What was the court’s opinion on the case? Does the theory of contribution arise in the court’s opinion?
2. As discussed in Chapter 16, either party can serve an offer of judgment upon the opposing party more than ten days before the trial. Accordingly, parties must consider carefully their chances of obtaining a more favorable judgment before refusing any offer. Research a court case in which the court decided that a party, who previously refused an offer of judgment, should be responsible for the offering party’s costs incurred from the time of the offer. Describe the case. What was the court’s decision?

***California Statutory Research Questions***

* + - 1. Locate section 998 of the California Code of Civil Procedure, governing offers of judgment. Which subsection provides that the offer of judgment must be in writing?
      2. Recall, under CCP § 998(c), if an offer is refused and a judgment following trial is the same or less favorable to the refusing party, the refusing party becomes responsible for the offering party’s “costs.” Under this section, which type of actions are excluded from this rule?

**CHAPTER SEVENTEEN**

**TRIAL PREPARATION, TRIAL,**

**AND APPEAL**

***CHAPTER OBJECTIVES***

As a paralegal you will be involved in all aspects of trial preparation. In addition, you will assist the lawyer at trial and with any post‑trial work. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. How to draft a pretrial memorandum
2. How to organize litigation files for trial
3. What items must be included in a trial notebook
4. Why developing a theory of the case is important
5. How to prepare witnesses for trial
6. How to prepare exhibits for trial
7. What the paralegal’s role is during trial
8. What tasks must be performed if a party files an appeal

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 17 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | Deviations from the pretrial order are always allowed at trial. |
| 2. | T | F | Any omissions or inaccuracies in the pretrial order do not need to be corrected. |
| 3. | T | F | A jury chart is used to record where each juror is sitting in the jury box during trial. |
| 4. | T | F | Voir dire examination is when specific questions are asked of the prospective jurors. |
| 5. | T | F | A witness who is not a party to the lawsuit must be served with a subpoena to appear at trial. |
| 6. | T | F | If a witness is bias, the lawyer must use a peremptory challenge to strike the prospective juror from the jury panel. |
| 7. | T | F | Nonparty witnesses must sit through the entire trial until they are called to testify. |
| 8. | T | F | In closing arguments the lawyers summarize the evidence that has been presented and explain why the judge or jury should rule in a particular way. |
| 9. | T | F | After the plaintiff’s case‑in‑chief, the defendant has the opportunity to present rebuttal evidence. |
| 10. | T | F | Once the jury renders a judgment in favor of one party, the case is automatically closed. |
| 11. | T | F | Jury instructions should be drafted before trial. |
| 12. | T | F | Witnesses should not be permitted to review their previous deposition transcripts prior to trial. |
| 13. | T | F | After the direct examination has been prepared, it is a good idea to review with the witness the areas that the lawyer anticipates the cross‑examination will cover. |
| 14. | T | F | Photographs should be enlarged in advance of trial so that the photographs are easier for the jury to see. |
| 15. | T | F | Prejudicial errors that may provide grounds for appeal include evidence that was improperly denied or admitted. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. Why do many cases settle during the trial preparation state of the litigation?

2. What is a pretrial conference? What is the purpose of the pretrial conference?

3. Why is the first step in trial preparation the organization of files? In what categories should the files be organized?

4. Why is voir dire examination of the prospective jurors important?

5. Identify the different methods by which trial material may be organized.

6. What does “theory of the case” mean? Why is a theory of the case important?

7. How does witness preparation for trial differ from witness preparation for discovery?

8. Why do all nonparty witnesses need to be served with a subpoena to testify at trial? Why is it good practice to serve even friendly nonparty witnesses with a subpoena? Should parties to a lawsuit be served with a subpoena to appear at trial?

9. Explain the various stages of trial and the purpose of each stage.

10. What is the purpose of a peremptory challenge? Why is the number of peremptory challenges each side is given limited?

11. Why is it a good idea to visit the courtroom a few days before trial?

12. Why is it necessary for you to avoid speaking with any of the jurors during a trial?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. You have been asked by the attorney to help prepare hypothetical case number 5, King v. Woods, for trial. Your office represents Stella King. The firm’s files contain the following documents. Determine how the documents should be organized, using the method found on page 395 of the main text.

a. Police report

b. Witness statement of Beverly Peters

c. Witness statement of Roberta Geller

d. March 25 hospital admitting report

e. Complaint by King against Woods

f. Answer by Woods and counterclaim against King

g. Answer by King to counterclaim filed by Woods

h. Correspondence between counsel for King and counsel for Woods

i. Retainer agreement

j. Legal research

k. Diagram of intersection

l. Map of vicinity surrounding the intersection

m. Authorizations for releases of records signed by Ms. King

n. Medical bills, invoices, receipts

o. Interrogatory requests and responses

p. Document requests and responses

q. Requests for admissions and responses

r. Documents produced by Woods to King

s. Photographs of damage to both cars

t. Motion papers and responses

u. Deposition transcripts

v. Subpoenas

w. Attorney and paralegal notes

x. Correspondence between King and her counsel

y. Pretrial order

z. Personnel records of King

2. As indicated in the main text, the appellate process is governed by a detailed set of court rules. Careful attention must be given to all deadlines in order to avoid a forfeiture of your client's rights. In the main text, a chart is provided that indicates some of the important dates to be aware of during the course of an appeal. Assume that a judgment has been entered in hypothetical number 6 in favor of the plaintiff on December 4, 2007. Prepare an appellate process chart identifying the date when all items are due.

3. Assume in hypothetical number 2 that Doris McFarland obtained a jury verdict in her favor, and the court entered judgment on the verdict. Prepare a notice of appeal on behalf of Shamrock Enterprises. Unless otherwise instructed, you may be creative with the grounds that you choose for the appeal so long as the grounds would be sufficient to allow Shamrock Enterprises to appeal.

4. As part of your trial preparation, you will need to serve all nonparties with a subpoena for trial. These witnesses often do not sit through the entire trial, but rather are "on-call." Assume in hypothetical number 3 that your firm intends to call Keith Arrington as a witness on behalf of Mr. Kester at trial. Mr. Arrington has agreed to attend the trial upon notification from you. Send a letter to Mr. Arrington asking him to acknowledge his agreement to be on-call. You may use the letter in the appendix as a sample.

5. A trial chart shows each element of the claim and the witnesses and exhibits that will prove each of the required elements. On the following page is a sample chart that the Samsons may be using in hypothetical number 1. Fill in the appropriate witnesses and exhibits.

**TRIAL CHART -- PLAINTIFF**

Elements of claim Witnesses and exhibits

(First Cause of Action -- Contract)

a. Contract made

b. Def. executed contract

c. Pl. performed

d. Def. breached contract

e. Pl. damages

6. After a jury renders its verdict, or the judge rules in favor of a party, a judgment must be entered. In some cases, the judge will prepare the judgment. However, in most cases the judge asks the prevailing party to prepare the judgment. The judgment should include the identity of the parties, the names of their respective counsel, and the exact relief obtained. If the judgment awards money to one of the parties, the exact amount awarded must be included in the judgment. Assume in hypothetical number 5 that Stella King obtained a judgment against Dennis Woods for $18,000. Prepare the judgment on behalf of Ms. King. You may follow the format of the judgment provided in the appendix.

7. As a paralegal, you may be called upon by the lawyer to prepare the direct examination questions for a witness. Assume that your firm represents Derrick Mason in hypothetical number 4. Prepare the direct examination questions that the lawyer should ask Mr. Mason at trial.

8. Keeping track of exhibits is an important part of the trial process. Assume that the lawyer for Sidney Kester in hypothetical number 3 uses the following exhibits at trial, and the rulings made are indicated in parentheses. Prepare an exhibit chart using the example in the main text as a model. If needed, your instructor has a sample chart available in the Instructor’s Manual that accompanies your text. The column marked EV (for evidence) will only be checked if the item of evidence is admitted.

a. Hospital admitting report for Sidney Kester (admitted)

b. Treating physician reports (a‑e) (admitted)

c. Pay check stub (refused)

d. Internal memo from Monroe employee to supervisor (admitted)

e. Defendant’s response to requests for admissions (admitted)

f. Witness statement of bystander Charles Winter (withdrawn)

g. Photograph of injury (refused)

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use an online legal database to locate and analyze several court cases.

1. As discussed in Chapter 17, in conjunction with trial preparations, as a paralegal you may be asked to assist the lawyer in developing a theory of the case. Research a court case of your interest. With your understanding of how the case transpired, for each side how would you have advised the lawyer when developing their theory of the case before the trial?
2. Recall, as a paralegal there are many ethical considerations to be mindful of during trial. Research a court case dealing with ethics. Describe the case. What were the ethical issues that arose in the case?
3. Locate a court case in which a party who had previously lost in trial court appealed the case to an appellate court. What was the case about? Which court acted as the appellate court? What was the court’s decision?

***California Statutory Research Questions***

* + - 1. Search through Part 1, Title 3, of the California Code of Civil Procedure. In civil actions before a jury, how many persons must serve on the jury?
      2. Locate section 225 of the California Code of Civil Procedure. Under this section, for what reasons may a prospective juror be challenged for cause?
      3. Which section of the California Code of Civil Procedure provides that a party need not give a reason for exercising a peremptory challenge, and that the court shall exclude any juror challenged peremptorily?

**CHAPTER EIGHTEEN**

**ENFORCEMENT OF JUDGMENTS**

***CHAPTER OBJECTIVES***

Once a judgment has been obtained, it may be necessary to take steps to enforce the judgment against the debtor. These steps will help to ensure that the client's rights are protected; and they will maximize the possibility of obtaining quick and full recovery on the judgment. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. How to draft a demand letter
2. Why you should record an abstract of judgment
3. When a writ of execution is required
4. What the differences are between a till tap, a keeper, and a bank levy
5. How to locate assets of the debtor

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 18 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | An abstract of judgment places a lien on all real property owned by the debtor. |
| 2. | T | F | The procedures for enforcing a judgment are governed by state law. |
| 3. | T | F | An abstract of judgment is not effective if the property has been sold after the abstract has been recorded. |
| 4. | T | F | A writ of execution is a motion made by the judgment creditor to levy upon assets of the debtor. |
| 5. | T | F | Upon issuance of a writ of execution, the judgment creditor can transfer the writ to the sheriff, marshal, or other agency, with instructions to levy upon certain assets of the judgment debtor. |
| 6. | T | F | If you would like the law enforcement agent to go into a business and collect any cash or checks that are in the register or that come into the business while the law enforcement agent is present, you should instruct the agent to install a keeper. |
| 7. | T | F | Wage garnishment is a direction to the employer of the judgment debtor to withhold a certain amount of money from each paycheck of the debtor for a limited period of time. |
| 8. | T | F | Discovery cannot be taken from a debtor after a judgment is entered. |
| 9. | T | F | Upon notice of a bank levy, the bank will turn over all funds in the debtor's account up to ten days after the notice is received by the bank. |
| 10. | T | F | A writ of execution is required in order to obtain information about the assets of a debtor. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. Why is it a good idea to send the debtor a demand letter for payment? What do you hope to accomplish by sending such a letter?

2. What are the drawbacks to using an abstract of judgment to enforce a judgment? Even with these drawbacks, why is it still a good idea to record an abstract of judgment?

3. The text discusses enforcement of judgments entered in California courts. Are there similar rules for federal court judgments? Review rule 69 of the Federal Rules of Civil Procedure to determine what rules apply to enforcement of judgments in federal court. What does that rule state?

4. What are the three types of levies discussed in the main text? Explain how they differ.

5. What are the advantages and disadvantages of a till tap? When would a till tap not be an effective procedure to use to enforce a judgment?

6. If property of a debtor is seized to satisfy a judgment and the property is sold at an execution sale, why are any excess funds obtained as a result of the sale returned to the judgment debtor? If the property that is seized is worth more than the amount of the debt, wouldn't it encourage debtors to pay their debts before seizure if they knew that the excess funds would go to the judgment creditor instead?

7. If the judgment debtor is an individual who does not own his or her own business, what methods can be used to enforce the judgment?

8. What are the disadvantages of taking the oral examination of the judgment debtor? What can you do to help eliminate some of the disadvantages?

9. Why is it a good idea to first check with the client in attempting to locate assets of the debtor? What information might the client have that would assist in locating assets?

10. Why do you need to know the location of assets of the debtor in order to enforce the judgment?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. One of the first steps that should be taken with respect to the enforcement of a judgment is to send a demand letter to the debtor. Assume that in hypothetical number 1 the Samsons obtained a judgment against Emerald’s Catering for $18,000. Send a demand letter for payment on behalf of the Samsons to Emerald’s Catering.

2. Assume that Stella King in hypothetical number 5 has obtained a judgment against Dennis Woods for $35,000. Locate the proper form for an abstract of judgment and prepare an abstract of judgment to record against Mr. Woods. A copy of the completed abstract of judgment should be placed in your litigation guide.

3. A writ of execution is the process used to enforce a judgment for the payment of money. Using hypothetical number 2, prepare a writ of execution on behalf of Shamrock Enterprises against Doris McFarland for the amount of $150,000 using the proper judicial council form.

4. Assume that you are asked to enforce the judgment by Shamrock Enterprises against Doric McFarland. Identify, in order of preference, all steps that you would take. Be prepared to discuss in class the basis for your preference of the steps listed.

5. The law enforcement agency must be given directions in order for it to enforce a judgment. Most law enforcement agencies have preprinted forms on which the instructions may be written. Alternatively, a letter specifically detailing the instructions may be sent to the law enforcement agency. Your instructor has a preprinted form available in the Instructor’s Manual to accompany your text, if needed. Insert the instructions you believe are appropriate for enforcing a judgment by the Samsons in hypothetical number 1 against Emerald’s Catering.

6. Prepare a list of the steps that you can take to locate assets of the debtor. Place this list in your litigation guide for future reference.

7. One of the tasks you may be asked to perform in enforcing a judgment is to prepare written interrogatories to send to the judgment debtor in an attempt to locate assets of the debtor. Assume that Stella King in hypothetical number 5 has obtained a judgment against Dennis Woods for $35,000. Prepare a set of written questions that can be sent to Mr. Woods. Be sure to include questions that deal with each of the following topics: Identity of the Debtor, Employment, Cash, Bank Accounts, Other Assets, Insurance, Personal and Real Properties, Loans and Other Obligations, Accounts Receivable.

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use an online legal database to locate and analyze several court cases.

1. Locate a court case in which the court’s judgment enforced an abstract of judgment on a party. Describe the case. On what type of property was the lien placed?
2. Research a court case in which the court’s judgment ordered a writ of execution to levy upon the assets of the debtor in order to satisfy the judgment. Describe the case. Of those discussed in Chapter 18, what type of levy was enforced?
3. Research a court case in which the court’s judgment enforced a wage garnishment. Describe the case. What was the amount of money withheld from each paycheck of the debtor as a result of the judgment? Additionally, for what period of time was the wage garnishment enforced?

***California Statutory Research Questions***

* + - 1. Search through Part 2 of the California Code of Civil Procedure. Which sections govern judgment liens on real property? Which sections govern judgment liens on personal property?
      2. Search through Part 2, Title 9, Division 2, of the California Code of Civil Procedure. Which section lists the types of property that are not subject to a writ of execution?
      3. Under the California Code of Civil Procedure, which sections govern the enforcement of nonmoney judgments?

**CHAPTER NINETEEN**

**ALTERNATIVE DISPUTE RESOLUTION**

***CHAPTER OBJECTIVES***

Although your litigation training focuses primarily on the resolution of civil disputes through the court system, there are several alternatives to litigation. In Chapter 14 you learned about these alternatives. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. What are the differences between arbitration and mediation
2. How to submit a claim to private arbitration
3. Why parties may wish to arbitrate a claim
4. When parties must arbitrate their disputes

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 19 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | Nonjudicial arbitration is usually paid for by the parties. |
| 2. | T | F | Arbitration through the court system is referred to as non-judicial arbitration. |
| 3. | T | F | The American Arbitration Association ("AAA") is a private agency that administers arbitrations between parties. |
| 4. | T | F | Mediation is the informal resolution of a dispute between the parties. |
| 5. | T | F | In mediation, the parties choose a person who will give legal advice and render a decision in favor of one party. |
| 6. | T | F | The parties may never mediate their dispute prior to an arbitration hearing. |
| 7. | T | F | In order to have an arbitration administered through the AAA, the parties must have an arbitration provision in the contract that is in dispute. |
| 8. | T | F | Arbitration with the AAA is commenced by the filing of a demand for arbitration. |
| 9. | T | F | Arbitration decisions rendered through the AAA are binding. |
| 10. | T | F | After the arbitration hearings are closed, the arbitrator has 30 days in which to render an award. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. What are some of the advantages of arbitration?

2. What are some of the disadvantages of arbitration?

3. Are there some cases that may not be as good to arbitrate and should proceed through the court system instead? What type of cases are better suited for court litigation than arbitration?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned from the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. Assume in hypothetical number 1 that the contract provided that all disputes were to be submitted to binding arbitration administered by the American Arbitration Association. Prepare the Demand for Arbitration. You may use the sample in the textbook as a guide.

2. In California, judicial arbitration is mandatory for certain types of cases when the dollar amount in controversy is below a specified amount. Review the main text and the California Code of Civil Procedure, and identify both the types of cases that are subject to arbitration as well as the jurisdictional limit of the amount in controversy.

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use an online legal databse to locate and analyze several court cases.

1. As discussed in Chapter 19, if the court determines that the amount in controversy will not exceed $50,000 for each plaintiff, the case must be submitted to judicial arbitration. Locate a case in which the dispute was brought to an arbitration proceeding. Describe the case. What was the ruling of the arbitrator? What was the arbitration award?

***California Statutory Research Questions***

1. Locate section 1141.10 of the California Code of Civil Procedure. When members of the State Bar volunteer to serve as arbitrators, how much compensation are they expected to receive?
2. Recall the disincentives, discussed in the main text, for parties to elect a trial de novo after receiving an adverse arbitration award. Under section 1141.21 of the California Code of Civil Procedure, in what circumstance would the court not order the party electing the new trial to pay the other party certain costs and fees?
3. Locate Section 1280 of the California Code of Civil Procedure, what is the definition of a “neutral arbitrator?”

**CHAPTER TWENTY**

**SOCIAL MEDIA IN LITIGATION**

***CHAPTER OBJECTIVES***

As technology has changed so have litigation techniques. Given the explosion of social media sites, it did not take long for the use of social media to find its way into civil litigation. Before beginning the exercises, review the specific objectives for this chapter of the text.

* How to use social media for discovery
* How to use social media sites for evidence in court
* How trials may be affected by social media sites
* What problems to be aware of when accessing social media sites
* What are the ethical obligations in using social media sites in litigation

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 20 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | T | F | Social media is the use of technology such as the internet or your telephone to communicate in a socially interactive manner. |
| 2. | T | F | If an opposing party posts something on a social media site, you can feel free to respond to the post because all the information is public. |
| 3. | T | F | Facebook pages are all protected sites so you can never use information you find on Facebook in a litigation action. |
| 4. | T | F | Social media sites are just useful in family law cases. |
| 5. | T | F | A client’s information that is posted on a social media site may not be accessed by the adverse party, or used in court in any way. |
| 6. | T | F | Social media sites are now often the subject of requests for documents and information in interrogatories. |
| 7. | T | F | Courts will always require social media sites to hand over information contained on a user’s personal site pursuant to a subpoena. |

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text. If you need more space for some of the questions, use a separate sheet of paper.

1. How can social media sites be used to aid the discovery process?

2. Assuming the evidence you obtain from social media sites is relevant, what must you ascertain in order to ensure that the evidence is admissible in court?

3. As a paralegal, what are some of the ethical obligations that you need to be aware of in both using and posting on social media sites?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned from the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, place the projects in your litigation guide for future reference.

1. Just as traditional electronically stored information has been the subject of discovery requests, social media sites are also now often the subject of requests for documents and information. Accordingly, your discovery may be enhanced by including in your discovery requests questions related to social media sites. Prepare a sample interrogatory to an adverse party that includes questions about the client’s activity on social media sites.

***Online Legal Database Research***

The ability to efficiently locate former court cases, which illustrate the court’s interpretation of various laws, is an invaluable skill for paralegals when consulting litigation matters. To complete these online research questions, you will need to use an online legal database to locate and analyze several court cases.

1. As discussed in Chapter 20, evidence garnered from social media sites, if admissible, may find its way to the courtroom. Locate a court case in which the judge’s opinion was significantly affected by evidence obtained from a social media site. What was the case about? What was the evidence acquired from a social media site?
2. Are there any cases that discuss the ethical use of social media? If you cannot find a case in California, are there cases in other states?

***California Statutory Research Questions***

* + - 1. Recall, pursuant to section 1987.2(c) of the California Code of Civil Procedure, an adverse party may make a motion to quash a subpoena from the court of California “for personally identifying information” contained on an internet service site. Which section of the California Code of Civil Procedure defines “personally identifying information?” How many categories of “personally identifying information” are listed in that section?

**APPENDIX I**

Appendix I contains the answers to the True-False questions as well as the California Statutory Research questions in your Workbook. You should refrain from looking at the answers prior to answering the questions. If you do not go over the answers in class, explanations for all the answers can be found in your textbook.

**Chapter 1 Chapter 2 Chapter 3 Chapter 4**

1. True 1. False 1. True 1. True

2. True 2. True 2. True 2. False

3. False 3. True 3. False 3. False

4. True 4. False 4. False 4. True

5. False 5. True 5. False 5. False

6. False 6. True 6. True 6. True

7. False 7. False 7. False 7. True

8. True 8. True 8. True 8. True

9. False 9. True 9. True 9. True

10.True 10. False 10. False 10. True

11. False 11. True 11. False 11. False

12. True 12. True 12. False 12. True

13. True 13. False 13. True

14. True 14. False 14. False

15. False 15. True 15. False

16. True 16. True

17. False 17. True

18. True 18. False

19. True 19. True

20. True 20. False

21. True

22. False

23. True

24. True

25. True

**Chapter 5 Chapter 6 Chapter 7 Chapter 8**

1. True 1. False 1. False 1. False

2. True 2. True 2. True 2. True

3. True 3. True 3. True 3. True

4. False 4. False 4. True

5. True 5. False 5. True

6. False 6. True 6. False

7. True 7. True 7. True

8. True 8. True

9. True 9. True

10. False 10. False

11. True 11. False

12. False 12. False

13. True

14. True

15. False

**Chapter 9 Chapter 10 Chapter 11 Chapter 12**

1. False 1. True 1. True 1. True 20. False

2. True 2. True 2. True 2. False 21, False

3. False 3. False 3. False 3. False 22. True

4. True 4. True 4. True 4. True

6. True 5. True 5. False

7. True 6. False 6. True

8. False 7. True 7. False

9. False 8. True 8. True

10. False 9. False 9. False

11. False 10. True 10. True

12. True 11. False 11. False

12. False 12. False

13. False 13. False

14. False 14. True

15. False 15. False

16. True 16. True

17. False 17. True

18. True 18. True

19. False

**Chapter 13 Chapter 14 Chapter 15 Chapter 16**

1. True 1. True 1. False 1. False

2. True 2. True 2. False 2. True

3. False 3. True 3. True 3. True

4. True 4. True 4. False 4. True

5. True 5. False 5. False 5. False

6. False 6. True 6. False 6. True

7. False 7. True 7. False 7. True

8. True 8. False 8. False

9. False 9. True 9. True

10. True 10. True 10. False

11. False 11. True

12. True 12. True

13. True 13. True

14. False 14. False

15. True 15. True

16. False 16. True

17. True 17. True

18. True

19. True

20. True

**Chapter 17 Chapter 18 Chapter 19 Chapter 20**

1. False 1. True 1. True 1. True

2. False 2. True 2. False 2. False

3. True 3. False 3. True 3. True

4. True 4. False 4. True 4. False

5. True 5. True 5. False 5. False

6. False 6. False 6. False 6. True

7. False 7. True 7. False 7. False

8. True 8. False 8. True

9. False 9. False 9. True

10. False 10. False 10.True

11. True

12. False

13. True

14. True

15. True

***Answers to California Statutory Research Questions***

**Chapter 1**

1. CCP § 86.
2. CCP § 77(a).
3. CCP § 43.

**Chapter 2**

1. CCP § 128.7(b)(1).
2. CCP § 128.7(c).
3. CCP §§ 315–330.

**Chapter 3**

1. Cal. Bus. & Prof. § 6147(a).
2. Part 4, Title 4, Chapter 19 of the California Code of Civil Procedure.
3. CCP § 372.

**Chapter 4**

1. CCP § 367.
2. CCP § 378(a)(2).
3. CCP § 415.10 (personal delivery); CCP § 415.20 (alternative manners of service).

**Chapter 5**

1. CCP § 420 (“The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the Court.”).
2. In a limited civil case, the caption of every pleading must also state that the case is a limited civil case. CCP § 422.30(b).
3. CRC 2.104 (font size); CRC 2.105 (font style).

**Chapter 6**

1. CCP § 430.10. CCP § 430.10 lists nine separate grounds upon which a party may object, via demurrer or answer, to a complaint or cross-complaint. *See* CCP § 430.10 (a)–(i).
2. Under CCP § 425.10(a), each complaint or cross-complaint must contain both (1) a statement of the facts constituting the cause of action and (2) a demand for judgment for relief to which the pleader claims to be entitled.
3. CCP § 415.20.
4. A plaintiff has three years to serve a summons and complaint upon a defendant. CCP § 583.210(a).

**Chapter 7**

1. CCP § 386.
2. CCP § 387(b).
3. CCP § 473(a)(2).

**Chapter 8**

1. CRC 3.20(a).
2. CRC 3.1113(b) (“The memorandum must contain a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced.”).
3. CCP § 1054(b).

**Chapter 9**

1. CCP § 435(b)(2).
2. CCP § 438(b)(2).
3. CCP § 583.410(a).

**Chapter 10**

1. CCP § 437c(a).
2. The separate statement, included in the opposing party’s opposition papers to a motion for summary judgment, must contain responses to each of the material facts contended by the moving party to be undisputed. In each response, the opposing party must either agree or disagree that those facts are undisputed. CCP § 437c(b)(3).
3. CCP § 437c(b)(4).

**Chapter 11**

1. An application for a writ of possession must be filed with the court in which the action, seeking possession of personal property, was brought. CCP § 512.010(a).
2. CCP § 526(a)(1)–(7) (circumstances under which an injunction may be granted); CCP § 526(b)(1)–(5) (circumstances under which an injunction cannot be granted).
3. CCP § 483.010.

**Chapter 12**

1. Cal. Evid. Code § 350.
2. Cal. Evid. Code § 352.
3. Cal. Evid. Code § 1101(a).
4. Cal. Evid. Code § 1200 (definition of hearsay). Cal. Evid. Code §§ 1220–1390 (exceptions to the hearsay rule).

**Chapter 13**

1. The plaintiff may propound interrogatories either 10 days after the service of the summons or appearance by the party, whichever comes sooner. CCP § 2030.020(b). The defendant may propound interrogatories at any time. CCP § 2030.020(a).
2. CCP § 2025.010–2025.620.
3. CCP § 2017.020(a).

**Chapter 14**

1. CCP § 2030.050.

1. CCP § 2030.210(a)(3).
2. The plaintiff may make a request to produce documents 10 days after the service of the summons or any time after appearance by the party to whom the request is directed. CCP § 2031.020(b). The defendant may make a request to produce documents at any time. CCP § 2031.020(a).

**Chapter 15**

1. The person deposed may be either (1) a natural person, (2) an organization, (3) a partnership or (4) a governmental agency. CCP § 2025.010.
2. A plaintiff may serve a deposition notice either 20 days after the service of the summons or after appearance by the defendant. CCP § 2025.210(b). The defendant may serve a deposition notice after the defendant has been served or after the defendant has appeared, whichever occurs first. CCP § 2025.210(a).
3. CCP § 2025.420(b)(1).

**Chapter 16**

1. CCP § 998(b).
2. CCP § 998 does not apply to either (1) an offer that is made by a plaintiff in an eminent domain action or (2) any enforcement action brought in the name of the people by the State of California by the Attorney General or a district attorney. CCP § 998(g)(1)–(2).

**Chapter 17**

1. In civil actions, a trial jury may consist of 12 persons or any number less than 12, if the parties agree to the number. CCP § 220.
2. A prospective juror may be challenged for cause for one of the following reasons: (A) general disqualification, (B) implied bias, and (C) actual bias. CCP § 225(3)(b)(1).
3. CCP § 226(b).

**Chapter 18**

1. CCP §§ 697.310–697.410 (judgment lien on real property); CCP §§ 697.510–697.670 (judgment lien on personal property).
2. CCP § 699.720.
3. CCP §§ 712.010–717.010.

**Chapter 19**

1. Members of the State Bar who volunteer their services are expected to receive no compensation whenever possible. CCP § 1141.10(b)(3).
2. When “the court finds in writing and upon motion that the imposition of these costs and fees would create a substantial economic hardship as not to be in the interest of justice.” CCP § 1141.21(a)(1).
3. “‘Neutral arbitrator’ means an arbitrator who is (1) selected jointly by the parties or by the arbitrators selected by the parties or (2) appointed by the court when the parties or the arbitrators selected by the parties fail to select an arbitrator who was to be selected jointly by them.” CCP § 1280(d).

**Chapter 20**

1. CCP § 1798.79.8 of the California Code of Civil Procedure defines “personally identifying information.” *See* CCP § 1987.2(c). Eight categories of “personally identifying information” are listed. CCP § 1798.79.8(b)(1)–(8).

**APPENDIX II**

Appendix II contains sample forms and letters to assist you with the Projects for Legal Research and Writing in the workbook. The documents are in the order you will use then in the workbook. The following documents are included:

Demand Letter

Letter for School Records

Authorization for Release of School Records

Summons

Letter Re: Deposition Dates

Notice of Deposition

Letter Re: Rescheduled Deposition Date

Application for Temporary Restraining Order and Preliminary Injunction

Order for Temporary Restraining Order

On Call Letter to Trial Witness

Judgment

Notice of Appeal

Writ of Execution

**Preprinted forms available from www.courts.ca.gov**

Deposition Subpoena

Notice of Levy

Application and Order

Abstract of Judgment

**DEMAND LETTER**

Ms. Betsy Severing

President

Emerald’s Catering, Inc.

17051 Vinson Blvd.

Los Angeles, California

Re: Sara and Benjamin Samson

Dear Ms. Severing:

This office represents Sara and Benjamin Samson. We are advised that on or about May 15, 2017, you entered into a written contract with the Samsons, whereby you agreed to cater the food for a fundraising event to be held on June 15, 2017 and to provide party favors, and a musical band to entertain the guests. One half of the total payment of $15,000 was made at the time the contract was signed. As you are aware, Emerald’s Catering was supposed to arrive at the Fairview County Club at 5:30 p.m. No one from your company arrived until 7:30 p.m., after the time the guests had already gone home.

As a result of such conduct, the Samsons have sustained damages in the amount of at least $15,000 paid to Emerald’s Catering, $500 paid for the engraved invitations, as well as the extreme embarrassment that this entire matter has caused them. The Samsons are willing to accept, at this time, $15,500 as a complete and final settlement of all claims that the Samsons have against Emerald’s Catering.

This letter and the offer contained herein are not to be used as evidence of any kind. The offer settle at this time is made in the spirit of compromise only. It is not an indication of the damages suffered by my client, and all such damages are hereby reserved. In the event litigation becomes necessary, the full extent of all damages suffered by my client will be sought.

Sincerely,

Chris Harris

**LETTER FOR SCHOOL RECORDS**

Records Administrator

University of Southern California

University Park

Los Angeles, California 90007

Re: Stella King

Dear Sir/Madam:

Our office represents Stella King for personal injuries sustained in an automobile accident on March 25, 2021. We understand that Ms. King attended the University from September 2008 through June 2012. She obtained a bachelor's degree in art sciences and graduated with honors. Verification of this information may be useful to us in our preparation for trial. Accordingly, please provide us with a copy of Ms. King's transcripts indicating the course work taken, grades received, and degree awarded. Enclosed is Ms. King's signed authorization to release the records to us.

Sincerely,

Victoria Kelley

**AUTHORIZATION FOR RELEASE OF SCHOOL RECORDS**

TO: The Records Administrator

You are hereby authorized to release a copy of my transcripts for all course work completed between the years 2008 through 2012 to Victoria Kelley or her representative. The authorization is effective immediately and remains in effect until such time as you receive written notice of my revocation of the authorization.

Stella King

[Notary Acknowledgment]

**LETTER RE: DEPOSITION DATES**

Robert Lubow, Esq.

Schwimmer, Freeman & Chan

1800 N. Central Place

Los Angeles, California 90024

Re: Shamrock Enterprises v. McFarland

Dear Mr. Lubow:

Mr. Bender would like to schedule the deposition of your client, Doris McFarland. Mr. Bender is available on October 14, 15 and 28. Please let me know prior to September 7 which dates are convenient for you and your client. If we fail to hear from you, Mr. Bender will simply notice the deposition for one of the above dates.

Very truly yours,

Janice Baldwin

Legal Assistant to James Bender

James Bender, Esq.

Sullivan & Bergman

101 N. Langley Blvd. Penthouse

Encino, California 91821

Attorneys for Plaintiff

Superior Court of the State of California

For the County of Los Angeles

SHAMROCK ENTERPRISES

Plaintiff Case No. C09‑3263

v. **NOTICE OF DEPOSITION**

DORIS MCFARLAND

Defendant

PLEASE TAKE NOTICE that, pursuant to Section 2025.010 of the Code of Civil Procedure, plaintiff will take the deposition of Doris McFarland on October 15, 2020 in the law offices of Sullivan & Bergman, located at 101 N. Langley Blvd. Penthouse, Encino, California. The deposition will take place before a notary public authorized by law to administer oaths and take depositions.

Dated: August 28, 2020 Sullivan & Bergman

by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

James Bender

**LETTER RE: RESCHEDULED DEPOSITION DATE**

Robert Lubow, Esq.

Schwimmer, Freeman & Chan

1800 N. Central Place

Los Angeles, California

Re: Shamrock Enterprises v. McFarland

Dear Mr. Lubow:

This confirms our telephone conversation on October 4, 2020 wherein you advised me that Ms. McFarland is unavailable for her deposition presently scheduled for October 15, 2020. We have agreed that the deposition will take place on October 28, 2020 at our offices. You have agreed that Ms. McFarland will appear at that time for her deposition, and that it is not necessary for us to serve her with a new notice of deposition.

Very truly,

Janice Baldwin

Legal Assistant to James Bender

James Bender, Esq.

Sullivan & Bergman

101 N. Langley Blvd. Penthouse

Encino, California 91821

Attorneys for Plaintiff

Superior Court of the California

For the County of Los Angeles

SHAMROCK ENTERPRISES

Plaintiff Case No. C09‑3263

v. **APPLICATION FOR TEMPORARY**

**RESTRAINING ORDER AND**

DORIS MCFARLAND **PRELIMINARY INJUNCTION**

Defendant

Plaintiff Shamrock Enterprises applies for a temporary restraining order and requests that a hearing for a preliminary injunction be set. In support of its application, plaintiff states:

1. Plaintiff will suffer an immediate and irreparable injury unless this application for a temporary restraining order is granted.

2. In support of its application for a preliminary injunction and a hearing date, plaintiff states:

(a) Defendant is engaged in the business of home laundry delivery service. Plaintiff is engaged in a competing business.

(b) Plaintiff believes that defendant has used the customer list of plaintiff to gain an unfair advantage for defendant.

(c) Unless further restrained from contacting any of the plaintiff's customers, plaintiff will incur irreparable injury.

(d) A preliminary injunction will not injure or inconvenience the defendant.

4. In support of this application, plaintiff incorporates by reference the allegations of the verified complaint and the facts as set forth in the witness affidavits attached as Exhibits A through C.

5. Plaintiff's attorney certificate, showing that the defendant was given notice of the date and time of this application, is attached hereto as Exhibit D.

6. Plaintiff is ready to provide security in such amount as the court determines is necessary to cover the costs and expenses incurred by the defendant in the event the defendant is found to have been erroneously restrained and enjoined.

WHEREFORE, plaintiff requests that the court enter a temporary restraining order against defendant and set a hearing for a temporary restraining order at the earliest practical time.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney for Plaintiff

James Bender, Esq.

Sullivan & Bergman

101 N. Langley Blvd. Penthouse

Encino, California 91821

Attorneys for Plaintiff

Superior Court of California

For the County of Los Angeles

SHAMROCK ENTERPRISES

Plaintiff Case No. C09‑3263

v. **ORDER FOR TEMPORARY**

**RESTRAINING ORDER AND**

DORIS MCFARLAND **PRELIMINARY INJUNCTION**

Defendant

This cause being heard on the application of plaintiff for a temporary restraining order and preliminary injunction, the plaintiff appeared after notice was given to the defendant. Defendant did not appear. Having considered the briefed complaint, witness affidavits, and the attorney's certificate attached as exhibits to plaintiff's motion,

THE COURT FINDS:

1 Plaintiff's threatened injury as described in the verified complaint is irreparable because in the event contact is made by defendant of plaintiff's customers, plaintiff could be damaged by a loss of business from such customers.

2. Notice of this application was given to the defendant since there was minimal risk of immediate irreparable injury as a result of notice being given to the defendant.

THE COURT ORDERS

1. The defendant is hereby restrained from contacting any of the customers of plaintiff known by the defendant to be customers of plaintiff.

2. This order shall remain in effect until September 8, 2020, at 5:00 p.m.

3. A hearing on plaintiff's motion for a preliminary injunction is set for September 8, 2020, at 2:00 p.m. and the defendant is hereby ordered to appear in this courtroom at that time.

4. A copy of this order, along with copies of the complaint, summons, motion, and supporting documentation, shall be served forthwith on the defendant.

SO ORDERED:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Judge

Date: September 3, 2020

Time: 2:00 p.m.

**ON‑CALL LETTER TO TRIAL WITNESS**

Ms. Sally Becker

818 N. Sycamore Lane

Davis, California 95136

Re: Shamrock Enterprises v. McFarland

Dear Ms. Becker:

On July 2, 2020 you were served with a subpoena to appear in the Superior Court on August 30, 2020 at 9:00 a.m. to testify as a witness at the trial in the above matter. Rather than attend the entire trial, if you prefer we will telephone you when your testimony is needed. We will give you at least 24 hours' advance notice. Please confirm your availability and agreement to attend the trial when called by signing the enclosed copy of this letter and returning it to me in the enclosed self‑addressed stamped envelope. If we do not receive your signed agreement, it will be necessary for you to appear on August 30, 2020 as indicated in the subpoena.

If you should have any questions, please do not hesitate to call.

Sincerely,

Janice Baldwin

Legal Assistant

Michael Sobel

Roberts, Williams, and Stevenson

2345 Woodbine Street

Los Angeles, California 90312

Attorneys for Plaintiff

Superior Court of the State of California

For the County of Los Angeles

GATSBY REALTY

Plaintiff Case No. 15347

v. **JUDGMENT**

DERRICK MASON

Defendant

This matter came on regularly for trial on November 17, 2020, the Honorable Henry Lester, judge, presiding. Michael Sobel, of Roberts, Williams, and Stevenson, appeared on behalf of Plaintiff Gatsby Realty ("Gatsby"), and Patrick Keely of Sorenson and Keely, appeared on Defendant Derrick Mason ("Mason"). Oral and documentary evidence was presented by both parties and the matter was submitted to this Court for decision.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment is hereby awarded to Gatsby and against Mason and that Mason be required to quit the premises forthwith. In addition, judgment is entered in favor of Gatsby in the sum of $3,000, plus costs of suit.

Dated: November 19, 2020

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Judge of the Superior Court

Alisa Howard

Baker, Hodges & Howard

1800 N. Ventura Blvd.

Los Angeles, California 90063

Attorneys for Plaintiff

Superior Court of the State of California

For the County of Los Angeles

SIDNEY KESTER

Plaintiff Case No. 13857

**NOTICE OF APPEAL**

v.

MONROE'S GROCERY STORE

Defendant

PLEASE TAKE NOTICE that plaintiff Sidney Kester hereby appeals from the judgment entered against him on June 1, 2020. This appeal is based upon the grounds that plaintiff was not allowed to admit certain evidence at trial all to the prejudice of plaintiff.

Dated: June 30, 2020 Baker, Hodges & Howard

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Alisa Howard

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Plaintiff(s) CASE NUMBER

Benjamin Samson and Sara Samson CV: 09-07832

vs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**WRIT OF EXECUTION**

Emerald’s Catering, Inc.

Defendant(s)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TO THE SHERIFF OF LOS ANGELES COUNTY

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a judgment was entered in the above entitled action in favor of:

Benjamin and Sara Samson

As Judgment Creditor and against

Betsy’s Parties, Inc.

As Judgment Debtor, for:

$ 7,000.00 Principal,

$ 375.00 Attorney Fees,

$ 100.00 Interest, and

$ 25.00 Costs, making a total amount of

$ 7,500.00 JUDGMENT AS ENTERED

*(see next page)* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WHEREAS, according to an affidavit and/or memorandum of costs after judgment filed herein, it appears that further sums have accrued since the entry of judgment, to wit:

$ 70.00 accrued interest, and

$ 15.00 accrued costs, making a total of

$ 85.00 ACCRUED COSTS AND ACCRUED INTEREST

Credit must be given for payments and partial satisfaction in the amount of $ Not applicable which is to be credited against the total accrued costs and accrued interest, with any excess credited against the judgment as entered, leaving a net balance of:

$ 7,585.00 ACTUALLY DUE on the date of the issuance of this writ of which

$ 7,500.00 is due on the judgment as entered, and bears interest at seven percent per annum, in the amount of $1.44 per day, from the date of issuance of this write, to which must be added the commissions and costs of the officer executing this writ.

You are directed to satisfy the following judgment, with interest and costs and your costs and disbursements, out of (1) the personal property of the judgment debtor(s), not exempt from execution, and if sufficient personal property cannot be found, then out of his (their) real property, or (2) if the judgment is a lien on real property, then out of the real property belonging to the debtor(s) on the date the abstract of judgment was filed under CCP 674, or on any date thereafter. Unless this writ is served on the debtor(s) at the same time of levy, you are also directed to give him (them) notice by mail (at address(es) given below) of any levy of execution under this writ, and to make return of the writ with what you have done endorsed on it not less than 10 days nor more than 60 days after you receive it.

*(If your levy is against earnings, the return must be made*

*within 90 days as provided in CCP 682.3)*

(Page 2)

**APPENDIX III**

**SELECTIVE PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE AND CALIFORNIA CODE OF EVIDENCE**

FOR EDUCATIONAL PURPOSES ONLY. PLEASE USE AN ONLINE LEGAL DATABSE FOR CURRENT AND COMPLETE PROVISIONS.

**Chapter 5.5. Small Claims Courts**

[**116.110.**](javascript:submitCodesValues('116.110.','4.1.5.1','1990','1305','3',%20'id_85cbe832-6387-11dc-9192-eb04d71366b8'))This chapter shall be known and may be cited as “The Small Claims Act.”

*(Added by Stats. 1990, Ch. 1305, Sec. 3. Note: Prior to 1991, this subject matter was in Chapter 5A, comprising Sections 116 to 117.24.)*

[**116.120.**](javascript:submitCodesValues('116.120.','4.1.5.1','1998','931','37',%20'id_8e1c7f1f-291e-11d9-8231-adff999f5ee6')) The Legislature hereby finds and declares as follows:

(a) Individual minor civil disputes are of special importance to the parties and of significant social and economic consequence collectively.

(b) In order to resolve minor civil disputes expeditiously, inexpensively, and fairly, it is essential to provide a judicial forum accessible to all parties directly involved in resolving these disputes.

(c) The small claims divisions have been established to provide a forum to resolve minor civil disputes, and for that reason constitute a fundamental element in the administration of justice and the protection of the rights and property of individuals.

(d) The small claims divisions, the provisions of this chapter, and the rules of the Judicial Council regarding small claims actions shall operate to ensure that the convenience of parties and witnesses who are individuals shall prevail, to the extent possible, over the convenience of any other parties or witnesses.

*(Amended by Stats. 1998, Ch. 931, Sec. 37. Effective September 28, 1998.)*

[**116.130.**](javascript:submitCodesValues('116.130.','4.1.5.1','2003','449','4',%20'id_8e1c7f21-291e-11d9-8231-adff999f5ee6'))In this chapter, unless the context indicates otherwise:

(a) “Plaintiff” means the party who has filed a small claims action. The term includes a defendant who has filed a claim against a plaintiff.

(b) “Defendant” means the party against whom the plaintiff has filed a small claims action. The term includes a plaintiff against whom a defendant has filed a claim.

(c) “Judgment creditor” means the party, whether plaintiff or defendant, in whose favor a money judgment has been rendered.

(d) “Judgment debtor” means the party, whether plaintiff or defendant, against whom a money judgment has been rendered.

(e) “Person” means an individual, corporation, partnership, limited liability partnership, limited liability company, firm, association, or other entity.

(f) “Individual” means a natural person.

(g) “Party” means a plaintiff or defendant.

(h) “Motion” means a party’s written request to the court for an order or other action. The term includes an informal written request to the court, such as a letter.

(i) “Declaration” means a written statement signed by an individual which includes the date and place of signing, and a statement under penalty of perjury under the laws of this state that its contents are true and correct.

(j) “Good cause” means circumstances sufficient to justify the requested order or other action, as determined by the judge.

(k) “Mail” means first-class mail with postage fully prepaid, unless stated otherwise.

*(Amended by Stats. 2003, Ch. 449, Sec. 4. Effective January 1, 2004.)*

[**116.140.**](javascript:submitCodesValues('116.140.','4.1.5.1','1991','915','2',%20'id_8e1e05c3-291e-11d9-8231-adff999f5ee6'))The following do not apply in small claims actions:

(a) Subdivision (a) of Section 1013 and subdivision (b) of Section 1005, on the extension of the time for taking action when notice is given by mail.

(b) Title 6.5 (commencing with Section 481.010) of Part 2, on the issuance of prejudgment attachments.

*(Added by Stats. 1991, Ch. 915, Sec. 2.)*

**ARTICLE 2. Small Claims Court** [116.210 - 116.270] (Article 2 added by Stats. 1990, Ch. 1305, Sec. 3. )

**116.210.** In each superior court there shall be a small claims division. The small claims division may be known as the small claims court.

*(Amended by Stats. 2002, Ch. 784, Sec. 30. Effective January 1, 2003.)*

**116.220.** (a) The small claims court has jurisdiction in the following actions:

(1) Except as provided in subdivisions (c), (e), and (f), for recovery of money, if the amount of the demand does not exceed five thousand dollars ($5,000).

(2) Except as provided in subdivisions (c), (e), and (f), to enforce payment of delinquent unsecured personal property taxes in an amount not to exceed five thousand dollars ($5,000), if the legality of the tax is not contested by the defendant.

(3) To issue the writ of possession authorized by Sections 1861.5 and 1861.10 of the Civil Code if the amount of the demand does not exceed five thousand dollars ($5,000).

(4) To confirm, correct, or vacate a fee arbitration award not exceeding five thousand dollars ($5,000) between an attorney and client that is binding or has become binding, or to conduct a hearing de novo between an attorney and client after nonbinding arbitration of a fee dispute involving no more than five thousand dollars ($5,000) in controversy, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code.

(5) For an injunction or other equitable relief only when a statute expressly authorizes a small claims court to award that relief.

(b) In any action seeking relief authorized by paragraphs (1) to (4), inclusive, of subdivision (a), the court may grant equitable relief in the form of rescission, restitution, reformation, and specific performance, in lieu of, or in addition to, money damages. The court may issue a conditional judgment. The court shall retain jurisdiction until full payment and performance of any judgment or order.

(c) Notwithstanding subdivision (a), the small claims court has jurisdiction over a defendant guarantor as follows:

(1) For any action brought by a natural person against the Registrar of the Contractors’ State License Board as the defendant guarantor, the small claims jurisdictional limit stated in Section 116.221 shall apply.

(2) For any action against a defendant guarantor that does not charge a fee for its guarantor or surety services, if the amount of the demand does not exceed two thousand five hundred dollars ($2,500).

(3) For any action brought by a natural person against a defendant guarantor that charges a fee for its guarantor or surety services, if the amount of the demand does not exceed six thousand five hundred dollars ($6,500).

(4) For any action brought by an entity other than a natural person against a defendant guarantor that charges a fee for its guarantor or surety services or against the Registrar of the Contractors’ State License Board as the defendant guarantor, if the amount of the demand does not exceed four thousand dollars ($4,000).

(d) In any case in which the lack of jurisdiction is due solely to an excess in the amount of the demand, the excess may be waived, but any waiver is not operative until judgment.

(e) Notwithstanding subdivision (a), in any action filed by a plaintiff incarcerated in a Department of Corrections and Rehabilitation facility, the small claims court has jurisdiction over a defendant only if the plaintiff has alleged in the complaint that he or she has exhausted his or her administrative remedies against that department, including compliance with Sections 905.2 and 905.4 of the Government Code. The final administrative adjudication or determination of the plaintiff’s administrative claim by the department may be attached to the complaint at the time of filing in lieu of that allegation.

(f) In any action governed by subdivision (e), if the plaintiff fails to provide proof of compliance with the requirements of subdivision (e) at the time of trial, the judicial officer shall, at his or her discretion, either dismiss the action or continue the action to give the plaintiff an opportunity to provide that proof.

(g) For purposes of this section, “department” includes an employee of a department against whom a claim has been filed under this chapter arising out of his or her duties as an employee of that department.

(Amended by Stats. 2009, Ch. 468, Sec. 1. (AB 712) Effective January 1, 2010.)

**116.221.** In addition to the jurisdiction conferred by Section 116.220, the small claims court has jurisdiction in an action brought by a natural person, if the amount of the demand does not exceed ten thousand dollars ($10,000), except as otherwise prohibited by subdivision (c) of Section 116.220 or subdivision (a) of Section 116.231.

(Amended by Stats. 2018, Ch. 92, Sec. 41. (SB 1289) Effective January 1, 2019.)

**116.222.** If the action is to enforce the payment of a debt, the statement of calculation of liability shall separately state the original debt, each payment credited to the debt, each fee and charge added to the debt, each payment credited against those fees and charges, all other debits or charges to the account, and an explanation of the nature of those fees, charges, debits, and all other credits to the debt, by source and amount.

*(Added by Stats. 2005, Ch. 618, Sec. 3. Effective January 1, 2006.)*

**116.223.**  (a) The Legislature hereby finds and declares as follows:

(1) There is anticipated to be an unprecedented number of claims arising out of nonpayment of residential rent that occurred between March 1, 2020, and June 30, 2021, related to the COVID-19 pandemic.

(2) These disputes are of special importance to the parties and of significant social and economic consequence collectively as the people of the State of California grapple with the health, economic, and social impacts of the COVID-19 pandemic.

(3) It is essential that the parties have access to a judicial forum to resolve these disputes expeditiously, inexpensively, and fairly.

(4) It is the intent of the Legislature that landlords of residential real property and their tenants have the option to litigate disputes regarding rent which is unpaid for the time period between March 1, 2020, and June 30, 2021, in the small claims court. It is the intent of the Legislature that the jurisdictional limits of the small claims court not apply to these disputes over COVID-19 rental debt.

(b) (1) Notwithstanding paragraph (1) of subdivision (a) Section 116.220, Section 116.221, or any other law, the small claims court has jurisdiction in any action for recovery of COVID-19 rental debt, as defined in Section 1179.02, and any defenses thereto, regardless of the amount demanded.

(2) In an action described in paragraph (1), the court shall reduce the damages awarded for any amount of COVID-19 rental debt sought by payments made to the landlord to satisfy the COVID-19 rental debt, including payments by the tenant, rental assistance programs, or another third party pursuant to paragraph (3) of subdivision (a) of Section 1947.3 of the Civil Code.

(3) An action to recover COVID-19 rental debt, as defined in Section 1179.02, brought pursuant to this subdivision shall not be commenced before August 1, 2021.

(c) Any claim for recovery of COVID-19 rental debt, as defined in Section 1179.02, shall not be subject to Section 116.231, notwithstanding the fact that a landlord of residential rental property may have brought two or more small claims actions in which the amount demanded exceeded two thousand five hundred dollars ($2,500) in any calendar year.

(d) This section shall remain in effect until July 1, 2025, and as of that date is repealed.

*(Amended by Stats. 2021, Ch. 2, Sec. 9. (SB 91) Effective January 29, 2021. Repealed as of July 1, 2025, by its own provisions.)*

**116.310.** (a) No formal pleading, other than the claim described in Section 116.320 or 116.360, is necessary to initiate a small claims action.

(b) The pretrial discovery procedures described in Section 2019.010 are not permitted in small claims actions.

*(Amended by Stats. 2004, Ch. 182, Sec. 7. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**116.320.** (a) A plaintiff may commence an action in the small claims court by filing a claim under oath with the clerk of the small claims court in person, by mail, by facsimile transmission if authorized pursuant to Section 1010.5, or by electronic means as authorized by Section 1010.6.

(b) The claim form shall be a simple nontechnical form approved or adopted by the Judicial Council. The claim form shall set forth a place for (1) the name and address of the defendant, if known; (2) the amount and the basis of the claim; (3) that the plaintiff, where possible, has demanded payment and, in applicable cases, possession of the property; (4) that the defendant has failed or refused to pay, and, where applicable, has refused to surrender the property; and (5) that the plaintiff understands that the judgment on his or her claim will be conclusive and without a right of appeal.

(c) The form or accompanying instructions shall include information that the plaintiff (1) may not be represented by an attorney, (2) has no right of appeal, and (3) may ask the court to waive fees for filing and serving the claim on the ground that the plaintiff is unable to pay them, using the forms approved by the Judicial Council for that purpose.

*(Amended by Stats. 2007, Ch. 738, Sec. 4. Effective January 1, 2008.)*

**116.330.** (a) When a claim is filed, the clerk shall schedule the case for hearing and shall issue an order directing the parties to appear at the time set for the hearing with witnesses and documents to prove their claim or defense. The case shall be scheduled for hearing no earlier than 20 days but not more than 70 days from the date of the order.

(b) In lieu of the method of setting the case for hearing described in subdivision (a), at the time a claim is filed the clerk may do all of the following:

(1) Cause a copy of the claim to be mailed to the defendant by any form of mail providing for a return receipt.

(2) On receipt of proof that the claim was served as provided in paragraph (1), issue an order scheduling the case for hearing in accordance with subdivision (a) and directing the parties to appear at the time set for the hearing with witnesses and documents to prove their claim or defense.

(3) Cause a copy of the order setting the case for hearing and directing the parties to appear, to be served upon the parties by any form of mail providing for a return receipt.

*(Amended by Stats. 2005, Ch. 706, Sec. 4. Effective January 1, 2006.)*

**116.340.** (a) Service of the claim and order on the defendant may be made by any one of the following methods:

(1) The clerk may cause a copy of the claim and order to be mailed to the defendant by any form of mail providing for a return receipt.

(2) The plaintiff may cause a copy of the claim and order to be delivered to the defendant in person.

(3) The plaintiff may cause service of a copy of the claim and order to be made by substituted service as provided in subdivision (a) or (b) of Section 415.20 without the need to attempt personal service on the defendant. For these purposes, substituted service as provided in subdivision (b) of Section 415.20 may be made at the office of the sheriff or marshal who shall deliver a copy of the claim and order to any person authorized by the defendant to receive service, as provided in Section 416.90, who is at least 18 years of age, and thereafter mailing a copy of the claim and order to the defendant’s usual mailing address.

(4) The clerk may cause a copy of the claim to be mailed, the order to be issued, and a copy of the order to be mailed as provided in subdivision (b) of Section 116.330.

(b) Service of the claim and order on the defendant shall be completed at least 15 days before the hearing date if the defendant resides within the county in which the action is filed, or at least 20 days before the hearing date if the defendant resides outside the county in which the action is filed.

(c) Proof of service of the claim and order shall be filed with the small claims court at least five days before the hearing.

(d) Service by the methods described in subdivision (a) shall be deemed complete on the date that the defendant signs the mail return receipt, on the date of the personal service, as provided in Section 415.20, or as established by other competent evidence, whichever applies to the method of service used.

(e) Service shall be made within this state, except as provided in subdivisions (f) and (g).

(f) The owner of record of real property in California who resides in another state and who has no lawfully designated agent in California for service of process may be served by any of the methods described in this section if the claim relates to that property.

(g) A nonresident owner or operator of a motor vehicle involved in an accident within this state may be served pursuant to the provisions on constructive service in Sections 17450 to 17461, inclusive, of the Vehicle Code without regard to whether the defendant was a nonresident at the time of the accident or when the claim was filed. Service shall be made by serving both the Director of the California Department of Motor Vehicles and the defendant, and may be made by any of the methods authorized by this chapter or by registered mail as authorized by Section 17454 or 17455 of the Vehicle Code.

(h) If an action is filed against a principal and his or her guaranty or surety pursuant to a guarantor or suretyship agreement, a reasonable attempt shall be made to complete service on the principal. If service is not completed on the principal, the action shall be transferred to the court of appropriate jurisdiction.

*(Amended by Stats. 2005, Ch. 706, Sec. 5. Effective January 1, 2006.)*

**116.360.** (a) The defendant may file a claim against the plaintiff in the same action in an amount not to exceed the jurisdictional limits stated in Sections 116.220, 116.221, and 116.231. The claim need not relate to the same subject or event as the plaintiff’s claim.

(b) The defendant’s claim shall be filed and served in the manner provided for filing and serving a claim of the plaintiff under Sections 116.330 and 116.340.

(c) The defendant shall cause a copy of the claim and order to be served on the plaintiff at least five days before the hearing date, unless the defendant was served 10 days or less before the hearing date, in which event the defendant shall cause a copy of the defendant’s claim and order to be served on the plaintiff at least one day before the hearing date.

*(Amended by Stats. 2006, Ch. 167, Sec. 4. Effective January 1, 2007.)*

**116.370.** (a) Venue and court location requirements in small claims actions shall be the same as in other civil actions. The court may prescribe by local rule the proper court locations for small claims actions.

(b) A defendant may challenge venue or court location by writing to the court and mailing a copy of the challenge to each of the other parties to the action, without personally appearing at the hearing.

(c) In all cases, including those in which the defendant does not either challenge venue or court location or appear at the hearing, the court shall inquire into the facts sufficiently to determine whether venue and court location are proper, and shall make its determination accordingly.

(1) If the court determines that the action was not commenced in the proper venue, the court, on its own motion, shall dismiss the action without prejudice, unless all defendants are present and agree that the action may be heard. If the court determines that the action was not commenced in the proper court location, the court may transfer the action to a proper location pursuant to local rule.

(2) If the court determines that the action was commenced in the proper venue and court location, the court may hear the case if all parties are present. If the defendant challenged venue or court location and all parties are not present, the court shall postpone the hearing for at least 15 days and shall notify all parties by mail of the court’s decision and the new hearing date, time, and place.

*(Amended by Stats. 2002, Ch. 806, Sec. 4. Effective January 1, 2003.)*

**116.390.** (a) If a defendant has a claim against a plaintiff that exceeds the jurisdictional limits stated in Sections 116.220, 116.221, and 116.231, and the claim relates to the contract, transaction, matter, or event which is the subject of the plaintiff’s claim, the defendant may commence an action against the plaintiff in a court of competent jurisdiction and request the small claims court to transfer the small claims action to that court.

(b) The defendant may make the request by filing with the small claims court in which the plaintiff commenced the action, at or before the time set for the hearing of that action, a declaration stating the facts concerning the defendant’s action against the plaintiff with a true copy of the complaint so filed by the defendant against the plaintiff. The defendant shall cause a copy of the declaration and complaint to be personally delivered to the plaintiff at or before the time set for the hearing of the small claims action.

(c) In ruling on a motion to transfer, the small claims court may do any of the following: (1) render judgment on the small claims case prior to the transfer; (2) not render judgment and transfer the small claims case; (3) refuse to transfer the small claims case on the grounds that the ends of justice would not be served. If the small claims action is transferred prior to judgment, both actions shall be tried together in the transferee court.

(d) When the small claims court orders the action transferred, it shall transmit all files and papers to the transferee court.

(e) The plaintiff in the small claims action shall not be required to pay to the clerk of the transferee court any transmittal, appearance, or filing fee unless the plaintiff appears in the transferee court, in which event the plaintiff shall be required to pay the filing fee and any other fee required of a defendant in the transferee court. However, if the transferee court rules against the plaintiff in the action filed in that court, the court may award to the defendant in that action the costs incurred as a consequence of the transfer, including attorney’s fees and filing fees.

*(Amended by Stats. 2006, Ch. 167, Sec. 5. Effective January 1, 2007.)*

**PART 2. OF CIVIL ACTIONS**

**TITLE 1. OF THE FORM OF CIVIL ACTIONS**

**307.** There is in this State but one form of civil actions for the enforcement or protection of private rights and the redress or prevention of private wrongs.

*(Enacted 1872.)*

**308.** In such action the party complaining is known as the plaintiff, and the adverse party as the defendant.

*(Enacted 1872.)*

309. A question of fact not put in issue by the pleadings may be tried by a jury, upon an order for the trial, stating distinctly and plainly the question of fact to be tried; and such order is the only authority necessary for a trial.

*(Enacted 1872.)*

**TITILE 3. PARTIES**

**PERMISSIVE JOINDER**

**378.** (a) All persons may join in one action as plaintiffs if:

(1) They assert any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or

(2) They have a claim, right, or interest adverse to the defendant in the property or controversy which is the subject of the action.

(b) It is not necessary that each plaintiff be interested as to every cause of action or as to all relief prayed for. Judgment may be given for one or more of the plaintiffs according to their respective right to relief.

*(Amended by Stats. 1971, Ch. 244.)*

**379.** (a) All persons may be joined in one action as defendants if there is asserted against them:

(1) Any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or

(2) A claim, right, or interest adverse to them in the property or controversy which is the subject of the action.

(b) It is not necessary that each defendant be interested as to every cause of action or as to all relief prayed for. Judgment may be given against one or more defendants according to their respective liabilities.

(c) Where the plaintiff is in doubt as to the person from whom he or she is entitled to redress, he or she may join two or more defendants, with the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined between the parties.

*(Amended by Stats. 1975, Ch. 1241.)*

**379.5.** When parties have been joined under Section 378 or 379, the court may make such orders as may appear just to prevent any party from being embarrassed, delayed, or put to undue expense, and may order separate trials or make such other order as the interests of justice may require.

*(Added by Stats. 1971, Ch. 244.)*

**INTERPLEADER**

**386.** (a) A defendant, against whom an action is pending upon a contract, or for specific personal property, may, at any time before answer, upon affidavit that a person not a party to the action makes against him, and without any collusion with him, a demand upon such contract, or for such property, upon notice to such person and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount claimed on the contract, or delivering the property or its value to such person as the court may direct; and the court may, in its discretion, make the order; or such defendant may file a verified cross-complaint in interpleader, admitting that he has no interest in such amount or such property claimed, or in a portion of such amount or such property and alleging that all or such portion of the amount or property is demanded by parties to such action or cross-action and apply to the court upon notice to such parties for an order to deliver such property or portion thereof or its value to such person as the court shall direct. And whenever conflicting claims are or may be made upon a person for or relating to personal property, or the performance of an obligation, or any portion thereof, such person may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims. The order of substitution may be made and the action of interpleader may be maintained, and the applicant or interpleading party be discharged from liability to all or any of the conflicting claimants, although their titles or claims have not a common origin, or are not identical but are adverse to and independent of one another.

(b) Any person, firm, corporation, association or other entity against whom double or multiple claims are made, or may be made, by two or more persons which are such that they may give rise to double or multiple liability, may bring an action against the claimants to compel them to interplead and litigate their several claims.

When the person, firm, corporation, association or other entity against whom such claims are made, or may be made, is a defendant in an action brought upon one or more of such claims, it may either file a verified cross-complaint in interpleader, admitting that it has no interest in the money or property claimed, or in only a portion thereof, and alleging that all or such portion is demanded by parties to such action, and apply to the court upon notice to such parties for an order to deliver such money or property or such portion thereof to such person as the court shall direct; or may bring a separate action against the claimants to compel them to interplead and litigate their several claims. The action of interpleader may be maintained although the claims have not a common origin, are not identical but are adverse to and independent of one another, or the claims are unliquidated and no liability on the part of the party bringing the action or filing the cross-complaint has arisen. The applicant or interpleading party may deny liability in whole or in part to any or all of the claimants. The applicant or interpleading party may join as a defendant in such action any other party against whom claims are made by one or more of the claimants or such other party may interplead by cross-complaint; provided, however, that such claims arise out of the same transaction or occurrence.

(c) Any amount which a plaintiff or cross-complainant admits to be payable may be deposited by him with the clerk of the court at the time of the filing of the complaint or cross-complaint in interpleader without first obtaining an order of the court therefor. Any interest on amounts deposited and any right to damages for detention of property so delivered, or its value, shall cease to accrue after the date of such deposit or delivery.

(d) A defendant named in a complaint to compel conflicting claimants to interplead and litigate their claims, or a defendant named in a cross-complaint in interpleader, may, in lieu of or in addition to any other pleading, file an answer to the complaint or cross-complaint which shall be served upon all other parties to the action and which shall contain allegations of fact as to his ownership of or other interest in the amount or property and any affirmative defenses and relief requested. The allegations in such answer shall be deemed denied by all other parties to the action, unless otherwise admitted in the pleadings.

(e) Except in cases where by the law a right to a jury trial is now given, conflicting claims to funds or property or the value thereof so deposited or delivered shall be deemed issues triable by the court, and such issues may be first tried. In the event the amount deposited shall be less than the amount claimed to be due by one or more of the conflicting claimants thereto, or in the event the property or the value thereof delivered is less than all of the property or the value thereof claimed by one or more of such conflicting claimants, any issues of fact involved in determining whether there is a deficiency in such deposit or delivery shall be tried by the court or a jury as provided in Title 8 (commencing with Section 577) of Part 2 of this code.

(f) After any such complaint or cross-complaint in interpleader has been filed, the court in which it is filed may enter its order restraining all parties to the action from instituting or further prosecuting any other proceeding in any court in this state affecting the rights and obligations as between the parties to the interpleader until further order of the court.

*(Amended by Stats. 1975, Ch. 670.)*

**386.1.** Where a deposit has been made pursuant to Section 386, the court shall, upon the application of any party to the action, order such deposit to be invested in an insured interest-bearing account. Interest on such amount shall be allocated to the parties in the same proportion as the original funds are allocated.

*(Amended by Stats. 1979, Ch. 173.)*

**386.5.** Where the only relief sought against one of the defendants is the payment of a stated amount of money alleged to be wrongfully withheld, such defendant may, upon affidavit that he is a mere stakeholder with no interest in the amount or any portion thereof and that conflicting demands have been made upon him for the amount by parties to the action, upon notice to such parties, apply to the court for an order discharging him from liability and dismissing him from the action on his depositing with the clerk of the court the amount in dispute and the court may, in its discretion, make such order.

*(Added by Stats. 1953, Ch. 328.)*

386.6. (a) A party to an action who follows the procedure set forth in Section 386 or 386.5 may insert in his motion, petition, complaint, or cross complaint a request for allowance of his costs and reasonable attorney fees incurred in such action. In ordering the discharge of such party, the court may, in its discretion, award such party his costs and reasonable attorney fees from the amount in dispute which has been deposited with the court. At the time of final judgment in the action the court may make such further provision for assumption of such costs and attorney fees by one or more of the adverse claimants as may appear proper.

(b) A party shall not be denied the attorney fees authorized by subdivision (a) for the reason that he is himself an attorney, appeared in pro se, and performed his own legal services.

*(Amended by Stats. 1974, Ch. 273.)*

**INTERVENTION**

**387.** (a) For purposes of this section:

(1) “Defendant” includes a cross-defendant.

(2) “Plaintiff” includes a cross-complainant.

(b) An intervention takes place when a nonparty, deemed an intervenor, becomes a party to an action or proceeding between other persons by doing any of the following:

(1) Joining a plaintiff in claiming what is sought by the complaint.

(2) Uniting with a defendant in resisting the claims of a plaintiff.

(3) Demanding anything adverse to both a plaintiff and a defendant.

(c) A nonparty shall petition the court for leave to intervene by noticed motion or ex parte application. The petition shall include a copy of the proposed complaint in intervention or answer in intervention and set forth the grounds upon which intervention rests.

(d) (1) The court shall, upon timely application, permit a nonparty to intervene in the action or proceeding if either of the following conditions is satisfied:

(A) A provision of law confers an unconditional right to intervene.

(B) The person seeking intervention claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person’s ability to protect that interest, unless that person’s interest is adequately represented by one or more of the existing parties.

(2) The court may, upon timely application, permit a nonparty to intervene in the action or proceeding if the person has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both.

(e) If leave to intervene is granted by the court, the intervenor shall do both of the following:

(1) Separately file the complaint in intervention, answer in intervention, or both.

(2) Serve a copy of the order, or notice of the court’s decision or order, granting leave to intervene and the pleadings in intervention as follows:

(A) A party to the action or proceeding who has not yet appeared shall be served in the same manner for service of summons pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2.

(B) A party who has appeared in the action or proceeding, whether represented by an attorney or not represented by an attorney, shall be served in the same manner for service of summons pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2, or in the manner provided by Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(f) Within 30 days after service of a complaint in intervention or answer in intervention, a party may move, demur, or otherwise plead to the complaint in intervention or answer in intervention in the same manner as to an original complaint or answer.

*(Amended by Stats. 2017, Ch. 131, Sec. 1. (AB 1693) Effective January 1, 2018.)*

**388.** In an action brought by a party for relief of any nature other than solely for money damages where a pleading alleges facts or issues concerning alleged pollution or adverse environmental effects which could affect the public generally, the party filing the pleading shall furnish a copy to the Attorney General of the State of California. The copy shall be furnished by the party filing the pleading within 10 days after filing.

*(Repealed and added by Stats. 1992, Ch. 178, Sec. 26. Effective January 1, 1993.)*

**COMPULSORY JOINDER**

**389.** (a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

(b) If a person as described in paragraph (1) or (2) of subdivision (a) cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person’s absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person’s absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder.

(c) A complaint or cross-complaint shall state the names, if known to the pleader, of any persons as described in paragraph (1) or (2) of subdivision (a) who are not joined, and the reasons why they are not joined.

(d) Nothing in this section affects the law applicable to class actions.

*(Amended by Stats. 1971, Ch. 244.)*

**389.5.** When, in an action for the recovery of real or personal property, or to determine conflicting claims thereto, a person not a party to the action but having an interest in the subject thereof makes application to the court to be made a party, it may order him to be brought in by the proper amendment.

*(Added by Stats. 1957, Ch. 1498.)*

**TITLE 5. JURISDICTION AND SERVICE OF PROCESS**

**CHAPTER 1. JURISDICTION AND FORUM**

**Article 1. Jurisdiction**

**410.10.** A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

*(Added by Stats. 1969, Ch. 1610.)*

**410.30.** (a) When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just.

(b) The provisions of Section 418.10 do not apply to a motion to stay or dismiss the action by a defendant who has made a general appearance.

*(Amended by Stats. 1972, Ch. 601. Note: This version was suspended from Sept. 22, 1986, until Jan. 1, 1992, during operation of the temporary amendment by Stats. 1986, Ch. 968.)*

**Article 2. Forum**

**410.40.** Any person may maintain an action or proceeding in a court of this state against a foreign corporation or nonresident person where the action or proceeding arises out of or relates to any contract, agreement, or undertaking for which a choice of California law has been made in whole or in part by the parties thereto and which (a) is a contract, agreement, or undertaking, contingent or otherwise, relating to a transaction involving in the aggregate not less than one million dollars ($1,000,000), and (b) contains a provision or provisions under which the foreign corporation or nonresident agrees to submit to the jurisdiction of the courts of this state.

This section applies to contracts, agreements, and undertakings entered into before, on, or after its effective date; it shall be fully retroactive. Contracts, agreements, and undertakings selecting California law entered into before the effective date of this section shall be valid, enforceable, and effective as if this section had been in effect on the date they were entered into; and actions and proceedings commencing in a court of this state before the effective date of this section may be maintained as if this section were in effect on the date they were commenced.

*(Added by Stats. 1992, Ch. 615, Sec. 5. Effective January 1, 1993.)*

**CHAPTER 4. SERVICE OF SUMMONS**

**413.10.** Except as otherwise provided by statute, a summons shall be served on a person:

(a) Within this state, as provided in this chapter.

(b) Outside this state but within the United States, as provided in this chapter or as prescribed by the law of the place where the person is served.

(c) Outside the United States, as provided in this chapter or as directed by the court in which the action is pending, or, if the court before or after service finds that the service is reasonably calculated to give actual notice, as prescribed by the law of the place where the person is served or as directed by the foreign authority in response to a letter rogatory. These rules are subject to the provisions of the Convention on the “Service Abroad of Judicial and Extrajudicial Documents” in Civil or Commercial Matters (Hague Service Convention).

*(Amended by Stats. 1984, Ch. 191, Sec. 1.)*

**413.20.** If a summons is served by mail pursuant to this chapter, the provisions of Section 1013 that extend the time for exercising a right or doing an act shall not extend any time specified in this title.

*(Added by Stats. 1969, Ch. 1610.)*

**413.30.** Where no provision is made in this chapter or other law for the service of summons, the court in which the action is pending may direct that summons be served in a manner which is reasonably calculated to give actual notice to the party to be served and that proof of such service be made as prescribed by the court.

*(Added by Stats. 1969, Ch. 1610.)*

**414.10.** A summons may be served by any person who is at least 18 years of age and not a party to the action.

*(Added by Stats. 1969, Ch. 1610.*

**415.10.** A summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served. Service of a summons in this manner is deemed complete at the time of such delivery.

The date upon which personal delivery is made shall be entered on or affixed to the face of the copy of the summons at the time of its delivery. However, service of a summons without such date shall be valid and effective.

*(Amended by Stats. 1976, Ch. 789.)*

**415.20.** (a) In lieu of personal delivery of a copy of the summons and complaint to the person to be served as specified in Section 416.10, 416.20, 416.30, 416.40, or 416.50, a summons may be served by leaving a copy of the summons and complaint during usual office hours in his or her office or, if no physical address is known, at his or her usual mailing address, other than a United States Postal Service post office box, with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. When service is effected by leaving a copy of the summons and complaint at a mailing address, it shall be left with a person at least 18 years of age, who shall be informed of the contents thereof. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

(b) If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, as specified in Section 416.60, 416.70, 416.80, or 416.90, a summons may be served by leaving a copy of the summons and complaint at the person’s dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

(c) Notwithstanding subdivision (b), if the only address reasonably known for the person to be served is a private mailbox obtained through a commercial mail receiving agency, service of process may be effected on the first delivery attempt by leaving a copy of the summons and complaint with the commercial mail receiving agency in the manner described in subdivision (d) of Section 17538.5 of the Business and Professions Code.

*(Amended by Stats. 2017, Ch. 129, Sec. 1. (AB 1093) Effective January 1, 2018.)*

**415.21.** (a) Notwithstanding any other law, any person shall be granted access to a gated community or a covered multifamily dwelling for a reasonable period of time for the sole purpose of performing lawful service of process or service of a subpoena upon displaying a current driver’s license or other identification, and one of the following:

(1) A badge or other confirmation that the individual is acting in the individual’s capacity as a representative of a county sheriff or marshal, or as an investigator employed by an office of the Attorney General, a county counsel, a city attorney, a district attorney, or a public defender.

(2) Evidence of current registration as a process server pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code or of licensure as a private investigator pursuant to Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code.

(b) This section shall only apply to a gated community or a covered multifamily dwelling that is staffed at the time service of process is attempted by a guard or other security personnel assigned to control access to the community or dwelling.

(c) For purposes of this section, “covered multifamily dwelling” means either of the following:

(1) An apartment building, including a timeshare apartment building not considered a place of public accommodation or transient lodging, with three or more dwelling units.

(2) A condominium, including a timeshare condominium not considered a place of public accommodation or transient lodging, with four or more dwelling units.

*(Amended by Stats. 2019, Ch. 12, Sec. 1. (AB 622) Effective January 1, 2020.)*

**415.30.** (a) A summons may be served by mail as provided in this section. A copy of the summons and of the complaint shall be mailed (by first-class mail or airmail, postage prepaid) to the person to be served, together with two copies of the notice and acknowledgment provided for in subdivision (b) and a return envelope, postage prepaid, addressed to the sender.

(b) The notice specified in subdivision (a) shall be in substantially the following form:

(Title of court and cause, with action number, to be inserted by the sender prior to mailing)

**416.10, 416.20, 416.30, 416.40, or 416.50**, a summons may be served by leaving a copy of the summons and complaint during usual office hours in his or her office or, if no physical address is known, at his or her usual mailing address, other than a United States Postal Service post office box, with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. When service is effected by leaving a copy of the summons and complaint at a mailing address, it shall be left with a person at least 18 years of age, who shall be informed of the contents thereof. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

(b) If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, as specified in Section 416.60, 416.70, 416.80, or 416.90, a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

**NOTICE**

(a) A summons may be served by mail as provided in **Section 415.30.** A copy of the summons and of the complaint shall be mailed (by first-class mail or airmail, postage prepaid) to the person to be served, together with two copies of the notice and acknowledgment provided for in subdivision (b) and a return envelope, postage prepaid, addressed to the sender.

(b) The notice specified in subdivision (a) shall be in substantially the following form:

(Title of court and cause, with action number, to be inserted by the sender prior to mailing)

**NOTICE**

To:(Here state the name of the person to be served.)

This summons is served pursuant to Section 415.30 of the California Code of Civil Procedure. Failure to complete this form and return it to the sender within 20 days may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons upon you in any other manner permitted by law. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, this form must be signed in the name of such entity by you or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. Section 415.30 provides that this summons is deemed served on the date of execution of an acknowledgment of receipt of summons.

|  |
| --- |
| Signature of sender |

**ACKNOWLEDGMENT OF RECEIPT OF SUMMONS**

This acknowledges receipt on (insert date) of a copy of the summons and of the complaint at (insert address).

|  |
| --- |
| Date:(Date this acknowledgement is executed) |
|  |
| Signature of person acknowledging receipt, with title if acknowledgment is made on behalf of another person |

(c) Service of a summons pursuant to this section is deemed complete on the date a written acknowledgement of receipt of summons is executed, if such acknowledgement thereafter is returned to the sender.

(d) If the person to whom a copy of the summons and of the complaint are mailed pursuant to this section fails to complete and return the acknowledgement form set forth in subdivision (b) within 20 days from the date of such mailing, the party to whom the summons was mailed shall be liable for reasonable expenses thereafter incurred in serving or attempting to serve the party by another method permitted by this chapter, and, except for good cause shown, the court in which the action is pending, upon motion, with or without notice, shall award the party such expenses whether or not he is otherwise entitled to recover his costs in the action.

(e) A notice or acknowledgment of receipt in form approved by the Judicial Council is deemed to comply with this section.

*(Added by Stats. 1969, Ch. 1610.)*

**415.40** A summons may be served on a person outside this state in any manner provided by this article or by sending a copy of the summons and of the complaint to the person to be served by first-class mail, postage prepaid, requiring a return receipt. Service of a summons by this form of mail is deemed complete on the 10th day after such mailing.

*(Amended by Stats. 1982, Ch. 249, Sec. 1.)*

**415.45.** (a) A summons in an action for unlawful detainer of real property may be served by posting if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in any manner specified in this article other than publication and that:

(1) A cause of action exists against the party upon whom service is to be made or he is a necessary or proper party to the action; or

(2) The party to be served has or claims an interest in real property in this state that is subject to the jurisdiction of the court or the relief demanded in the action consists wholly or in part

in excluding such party from any interest in such property.

(b) The court shall order the summons to be posted on the premises in a manner most likely to give actual notice to the party to be served and direct that a copy of the summons and of the complaint be forthwith mailed by certified mail to such party at his last known

address.

(c) Service of summons in this manner is deemed complete on the 10th day after posting and mailing.

(d) Notwithstanding an order for posting of the summons, a summons may be served in any other manner authorized by this article, except publication, in which event such service shall supersede any posted summons.

*(Amended by Stats. 1978, Ch. 625.)*

**415.50.** (a) A summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner specified in this article and that either:

(1) A cause of action exists against the party upon whom service is to be made or he or she is a necessary or proper party to the action.

(2) The party to be served has or claims an interest in real or personal property in this state that is subject to the jurisdiction of the court or the relief demanded in the action consists wholly or in part in excluding the party from any interest in the property.

(b) The court shall order the summons to be published in a named newspaper, published in this state, that is most likely to give actual notice to the party to be served. If the party to be served resides or is located out of this state, the court may also order the summons to be published in a named newspaper outside this state that is most likely to give actual notice to that party. The order shall direct that a copy of the summons, the complaint, and the order for publication be forthwith mailed to the party if his or her address is ascertained before expiration of the time prescribed for publication of the summons. Except as otherwise provided by statute, the publication shall be made as provided by Section 6064 of the Government Code unless the court, in its discretion, orders publication for a longer period.

(c) Service of a summons in this manner is deemed complete as provided in Section 6064 of the Government Code.

(d) Notwithstanding an order for publication of the summons, a summons may be served in another manner authorized by this chapter, in which event the service shall supersede any published summons.

(e) As a condition of establishing that the party to be served cannot with reasonable diligence be served in another manner specified in this article, the court may not require that a search be

conducted of public databases where access by a registered process server to residential addresses is prohibited by law or by published policy of the agency providing the database, including, but not limited to, voter registration rolls and records of the Department of

Motor Vehicles.

*(Amended by Stats. 2003, Ch. 449, Sec. 8. Effective January 1, 2004.)*

**415.95.** (a) A summons may be served on a business organization, form unknown, by leaving a copy of the summons and complaint during usual office hours with the person who is apparently in charge of the office of that business organization, and by thereafter mailing a copy of the summons and complaint by first-class mail, postage prepaid, to the person to be served at the place where a copy of the summons and complaint was left. Service of a summons in this manner

is deemed complete on the 10th day after the mailing.

(b) Service of a summons pursuant to this section is not valid for a corporation with a registered agent for service of process listed with the Secretary of State.

*(Added by Stats. 2003, Ch. 128, Sec. 2. Effective January 1, 2004.)*

**416.10.** A summons may be served on a corporation by delivering a copy of the summons and the complaint by any of the following methods:

(a) To the person designated as agent for service of process as provided by any provision in Section 202, 1502, 2105, or 2107 of the Corporations Code (or Sections 3301 to 3303, inclusive, or Sections 6500 to 6504, inclusive, of the Corporations Code, as in effect on December 31, 1976, with respect to corporations to which they remain applicable).

(b) To the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, a general manager, or a person authorized by the corporation to receive service of process.

(c) If the corporation is a bank, to a cashier or assistant cashier or to a person specified in subdivision (a) or (b).

(d) If authorized by any provision in Section 1701, 1702, 2110, or 2111 of the Corporations Code (or Sections 3301 to 3303, inclusive, or Sections 6500 to 6504, inclusive, of the Corporations Code, as in effect on December 31, 1976, with respect to corporations to which

they remain applicable), as provided by that provision.

*(Amended by Stats. 2006, Ch. 567, Sec. 7. Effective January 1, 2007.)*

**416.20.** A summons may be served on a corporation that has forfeited its charter or right to do business, or has dissolved, by delivering a copy of the summons and of the complaint:

(a) To a person who is a trustee of the corporation and of its stockholders or members; or

(b) When authorized by any provision in Sections 2011 or 2114 of the Corporations Code (or Sections 3301 to 3303, inclusive, or Sections 6500 to 6504, inclusive, of the Corporations Code as in effect on December 31, 1976, with respect to corporations to which they remain applicable), as provided by such provision.

*(Amended by Stats. 1977, Ch. 235.)*

**416.30.** A summons may be served on a joint stock company or association by delivering a copy of the summons and of the complaint as provided by Section 416.10 or 416.20.

*(Added by Stats. 1969, Ch. 1610.)*

**416.40.** A summons may be served on an unincorporated association (including a partnership) by delivering a copy of the summons and of the complaint:

(a) If the association is a general or limited partnership, to the person designated as agent for service of process in a statement filed with the Secretary of State or to a general partner or the

general manager of the partnership;

(b) If the association is not a general or limited partnership, to the person designated as agent for service of process in a statement

filed with the Secretary of State or to the president or other head of the association, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a general manager, or a person authorized by the association to receive service of process;

(c) When authorized by Section 18220 of the Corporations Code, as provided by that section.

*(Amended by Stats. 2004, Ch. 178, Sec. 3. Effective January 1, 2005.)*

**416.50.** (a) A summons may be served on a public entity by delivering a copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or other head of its

governing body.

(b) As used in this section, "public entity" includes the state and any office, department, division, bureau, board, commission, or agency of the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state.

*(Added by Stats. 1969, Ch. 1610.)*

**416.60.** A summons may be served on a minor by delivering a copy of the summons and of the complaint to his parent, guardian, conservator, or similar fiduciary, or, if no such person can be found with reasonable diligence, to any person having the care or control of such minor or with whom he resides or by whom he is employed, and to the minor if he is at least 12 years of age.

*(Amended by Stats. 1972, Ch. 579.)*

**416.70.** A summons may be served on a person (other than a minor) for whom a guardian, conservator, or similar fiduciary has been appointed by delivering a copy of the summons and of the complaint to his guardian, conservator, or similar fiduciary and to such person, but, for good cause shown, the court in which the action is pending may dispense with delivery to such person.

*(Amended by Stats. 1972, Ch. 579.)*

**416.80.** When authorized by Section 12 of the Elections Code, a summons may be served as provided by that section.

*(Amended by Stats. 2009, Ch. 140, Sec. 38. (AB 1164) Effective January 1, 2010.)*

**416.90.** A summons may be served on a person not otherwise specified in this article by delivering a copy of the summons and of the complaint to such person or to a person authorized by him to receive service of process.

*(Added by Stats. 1969, Ch. 1610.)*

**TITLE 6. OF THE PLEADINGS IN CIVIL ACTIONS**

**420.** The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the Court.

*(Enacted 1872.)*

**421.**  The forms of pleading in civil actions, and the rules by which the sufficiency of the pleadings is to be determined, are those prescribed in this Code.

*(Enacted 1872.)*

**422.10.** The pleadings allowed in civil actions are complaints, demurrers, answers, and cross-complaints.

*(Added by Stats. 1971, Ch. 244.)*

**422.30.** (a) Every pleading shall contain a caption setting forth:

(1) The name of the court and county in which the action is brought.

(2) The title of the action.

(b) In a limited civil case, the caption shall state that the case is a limited civil case, and the clerk shall classify the case accordingly.

*(Amended by Stats. 2002, Ch. 784, Sec. 60. Effective January 1, 2003.)*

**422.40.** In the complaint, the title of the action shall include the names of all the parties; but, except as otherwise provided by statute or rule of the Judicial Council, in other pleadings it is

sufficient to state the name of the first party on each side with an appropriate indication of other parties.

*(Added by Stats. 1971, Ch. 244.)*

**425.10.** (a) A complaint or cross-complaint shall contain both of the following:

(1) A statement of the facts constituting the cause of action, in ordinary and concise language.

(2) A demand for judgment for the relief to which the pleader claims to be entitled. If the recovery of money or damages is demanded, the amount demanded shall be stated.

(b) Notwithstanding subdivision (a), where an action is brought to recover actual or punitive damages for personal injury or wrongful death, the amount demanded shall not be stated, but the complaint shall comply with Section 422.30 and, in a limited civil case, with subdivision (b) of Section 70613 of the Government Code.

*(Amended by Stats. 2005, Ch. 75, Sec. 32. Effective July 19, 2005. Operative January 1, 2006, by Sec. 156 of Ch. 75.)*

**425.11.** (a) As used in this section:

(1) "Complaint" includes a cross-complaint.

(2) "Plaintiff" includes a cross-complainant.

(3) "Defendant" includes a cross-defendant.

(b) When a complaint is filed in an action to recover damages for personal injury or wrongful death, the defendant may at any time request a statement setting forth the nature and amount of damages being sought. The request shall be served upon the plaintiff, who shall serve a responsive statement as to the damages within 15 days. In the event that a response is not served, the defendant, on notice to the plaintiff, may petition the court in which the action is pending to order the plaintiff to serve a responsive statement.

(c) If no request is made for the statement referred to in subdivision (b), the plaintiff shall serve the statement on the defendant before a default may be taken.

(d) The statement referred to in subdivision (b) shall be served in the following manner:

(1) If a party has not appeared in the action, the statement shall

be served in the same manner as a summons.

(2) If a party has appeared in the action, the statement shall be served upon the party's attorney, or upon the party if the party has appeared without an attorney, in the manner provided for service of a summons or in the manner provided by Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(e) The statement referred to in subdivision (b) may be combined with the statement described in Section 425.115.

*(Amended by Stats. 2006, Ch. 538, Sec. 63.5. Effective January 1, 2007.)*

**425.115.** (a) As used in this section:

(1) "Complaint" includes a cross-complaint.

(2) "Plaintiff" includes a cross-complainant.

(3) "Defendant" includes a cross-defendant.

(b) The plaintiff preserves the right to seek punitive damages

pursuant to Section 3294 of the Civil Code on a default judgment by serving upon the defendant the following statement, or its substantial equivalent:

NOTICE TO:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Insert name of defendant or cross-defendant)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ reserves the right to seek

(Insert name of plaintiff

or cross-complainant)

$ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in punitive damages

(Insert dollar amount)

when\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_seeks a judgment in the suit filed against you.

(Insert name of plaintiff

or cross-complainant)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Insert name of attorney or party (Date)

appearing in propria persona)

(c) If the plaintiff seeks punitive damages pursuant to Section 3294 of the Civil Code, and if the defendant appears in the action, the plaintiff shall not be limited to the amount set forth in the statement served on the defendant pursuant to this section.

(d) A plaintiff who serves a statement on the defendant pursuant to this section shall be deemed to have complied with Sections 425.10 and 580 of this code and Section 3295 of the Civil Code.

(e) The plaintiff may serve a statement upon the defendant pursuant to this section, and may serve the statement as part of the statement required by Section 425.11.

(f) The plaintiff shall serve the statement upon the defendant pursuant to this section before a default may be taken, if the motion for default judgment includes a request for punitive damages.

(g) The statement referred to in subdivision (b) shall be served by one of the following methods:

(1) If the party has not appeared in the action, the statement shall be served in the same manner as a summons pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.

(2) If the party has appeared in the action, the statement shall be served upon his or her attorney, or upon the party if he or she has appeared without an attorney, either in the same manner as a summons pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 or in the manner provided by Chapter 5 (commencing with Section 1010) of Title 14.

*(Amended by Stats. 2005, Ch. 706, Sec. 12. Effective January 1, 2006.)*

**425.12.** (a) The Judicial Council shall develop and approve official forms for use in trial courts of this state for any complaint, cross-complaint or answer in any action based upon personal injury, property damage, wrongful death, unlawful detainer, breach of contract or fraud.

(b) The Judicial Council shall develop and approve an official form for use as a statement of damages pursuant to Sections 425.11 and 425.115.

(c) In developing the forms required by this section, the Judicial Council shall consult with a representative advisory committee which shall include, but not be limited to, representatives of the plaintiff's bar, the defense bar, the public interest bar, court administrators and the public. The forms shall be drafted in nontechnical language and shall be made available through the office of the clerk of the appropriate trial court.

*(Amended by Stats. 1995, Ch. 796, Sec. 4. Effective January 1, 1996.)*

**425.13.** (a) In any action for damages arising out of the professional negligence of a health care provider, no claim for punitive damages shall be included in a complaint or other pleading unless the court enters an order allowing an amended pleading that includes a claim for punitive damages to be filed. The court may allow the filing of an amended pleading claiming punitive damages on a motion by the party seeking the amended pleading and on the basis of the supporting and opposing affidavits presented that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim pursuant to Section 3294

of the Civil Code. The court shall not grant a motion allowing the filing of an amended pleading that includes a claim for punitive damages if the motion for such an order is not filed within two years after the complaint or initial pleading is filed or not less than nine months before the date the matter is first set for trial, whichever is earlier.

(b) For the purposes of this section, "health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider.

*(Amended by Stats. 1988, Ch. 1205, Sec. 1.)*

**425.14.** No claim for punitive or exemplary damages against a religious corporation or religious corporation sole shall be included in a complaint or other pleading unless the court enters an order allowing an amended pleading that includes a claim for punitive or exemplary damages to be filed. The court may allow the filing of an amended pleading claiming punitive or exemplary damages on a motion by the party seeking the amended pleading and upon a finding, on the basis of the supporting and opposing affidavits presented, that the plaintiff has established evidence which substantiates that plaintiff will meet the clear and convincing standard of proof under Section 3294 of the Civil Code.

Nothing in this section is intended to affect the plaintiff's right to discover evidence on the issue of punitive or exemplary damages.

*(Added by Stats. 1988, Ch. 1410, Sec. 1.)*

**425.15.** (a) No cause of action against a person serving without compensation as a director or officer of a nonprofit corporation described in this section, on account of any negligent act or

omission by that person within the scope of that person's duties as a director acting in the capacity of a board member, or as an officer acting in the capacity of, and within the scope of the duties of, an officer, shall be included in a complaint or other pleading unless the court enters an order allowing the pleading that includes that claim to be filed after the court determines that the party seeking to file the pleading has established evidence that substantiates the claim. The court may allow the filing of a pleading that includes that claim following the filing of a verified petition therefor accompanied by the proposed pleading and supporting affidavits stating the facts upon which the liability is based. The court shall order service of the petition upon the party against whom the action is proposed to be filed and permit that party to submit opposing affidavits prior to making its determination. The filing of the petition, proposed pleading, and accompanying affidavits shall toll the running of any applicable statute of limitations until the final determination of the matter, which ruling, if favorable to the

petitioning party, shall permit the proposed pleading to be filed.

(b) Nothing in this section shall affect the right of the plaintiff to discover evidence on the issue of damages.

(c) Nothing in this section shall be construed to affect any action against a nonprofit corporation for any negligent action or omission of a volunteer director or officer occurring within the scope of the person's duties.

(d) For the purposes of this section, "compensation" means remuneration whether by way of salary, fee, or other consideration for services rendered. However, the payment of per diem, mileage, or other reimbursement expenses to a director or officer shall not constitute compensation.

(e) (1) This section applies only to officers and directors of nonprofit corporations that are subject to Part 2 (commencing with Section 5110), Part 3 (commencing with Section 7110), or Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code that are organized to provide charitable, educational, scientific, social, or other forms of public service and that are exempt from federal income taxation under Section 501(c)

(1), except any credit union, or Section 501(c)(4), 501(c)(5), 501(c) (7), or 501(c)(19) of the Internal Revenue Code.

(2) This section does not apply to any corporation that unlawfully restricts membership, services, or benefits conferred on the basis of political affiliation, age, or any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code.

*(Amended by Stats. 2007, Ch. 568, Sec. 16. Effective January 1, 2008.)*

**425.16.** (a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b) (1) A cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(c) (1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney’s fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney’s fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney’s fees and costs if that cause of action is brought pursuant to Section 6259, 11130, 11130.3, 54960, or 54960.1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney’s fees and costs pursuant to subdivision (d) of Section 6259, or Section 11130.5 or 54960.5, of the Government Code.

(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) As used in this section, “act in furtherance of a person’s right of petition or free speech under the United States or California Constitution in connection with a public issue” includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court’s discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(h) For purposes of this section, “complaint” includes “cross-complaint” and “petition,” “plaintiff” includes “cross-complainant” and “petitioner,” and “defendant” includes “cross-defendant” and “respondent.”

(i) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

(j) (1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by e-mail or facsimile, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.

(2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.

*(Amended by Stats. 2014, Ch. 71, Sec. 17. (SB 1304) Effective January 1, 2015.)*

**425.17.** (a) The Legislature finds and declares that there has been a disturbing abuse of Section 425.16, the California Anti-SLAPP Law, which has undermined the exercise of the constitutional rights of freedom of speech and petition for the redress of grievances, contrary to the purpose and intent of Section 425.16. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process or Section 425.16.

(b) Section 425.16 does not apply to any action brought solely in the public interest or on behalf of the general public if all of the following conditions exist:

(1) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. A claim for attorney's fees, costs, or penalties does not constitute greater or different relief for purposes of this subdivision.

(2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons.

(3) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter.

(c) Section 425.16 does not apply to any cause of action brought against a person primarily engaged in the business of selling or leasing goods or services, including, but not limited to, insurance, securities, or financial instruments, arising from any statement or conduct by that person if both of the following conditions exist:

(1) The statement or conduct consists of representations of fact about that person's or a business competitor's business operations, goods, or services, that is made for the purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial transactions in, the person's goods or services, or the statement or conduct was made in the course of delivering the person's goods or services.

(2) The intended audience is an actual or potential buyer or customer, or a person likely to repeat the statement to, or otherwise influence, an actual or potential buyer or customer, or the

statement or conduct arose out of or within the context of a regulatory approval process, proceeding, or investigation, except where the statement or conduct was made by a telephone corporation in the course of a proceeding before the California Public Utilities Commission and is the subject of a lawsuit brought by a competitor, notwithstanding that the conduct or statement concerns an important public issue.

(d) Subdivisions (b) and (c) do not apply to any of the following:

(1) Any person enumerated in subdivision (b) of Section 2 of Article I of the California Constitution or Section 1070 of the

Evidence Code, or any person engaged in the dissemination of ideas or expression in any book or academic journal, while engaged in the gathering, receiving, or processing of information for communication to the public.

(2) Any action against any person or entity based upon the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, political, or artistic

work, including, but not limited to, a motion picture or television program, or an article published in a newspaper or magazine of general circulation.

(3) Any nonprofit organization that receives more than 50 percent of its annual revenues from federal, state, or local government grants, awards, programs, or reimbursements for services rendered.

(e) If any trial court denies a special motion to strike on the grounds that the action or cause of action is exempt pursuant to this section, the appeal provisions in subdivision (i) of Section 425.16 and paragraph (13) of subdivision (a) of Section 904.1 do not apply to that action or cause of action.

*(Amended by Stats. 2011, Ch. 296, Sec. 36.5. (AB 1023) Effective January 1, 2012.)*

**425.18.** (a) The Legislature finds and declares that a SLAPPback is distinguishable in character and origin from the ordinary malicious prosecution action. The Legislature further finds and declares that a SLAPPback cause of action should be treated differently, as provided in this section, from an ordinary malicious prosecution action because a SLAPPback is consistent with the Legislature's intent to protect the valid exercise of the constitutional rights of free speech and petition by its deterrent effect on SLAPP (strategic lawsuit against public participation) litigation and by its restoration of public confidence in participatory democracy.

(b) For purposes of this section, the following terms have the following meanings:

(1) "SLAPPback" means any cause of action for malicious prosecution or abuse of process arising from the filing or maintenance of a prior cause of action that has been dismissed pursuant to a special motion to strike under Section 425.16.

(2) "Special motion to strike" means a motion made pursuant to Section 425.16.

(c) The provisions of subdivisions (c), (f), (g), and (i) of Section 425.16, and paragraph (13) of subdivision (a) of Section 904.1, shall not apply to a special motion to strike a SLAPPback.

(d) (1) A special motion to strike a SLAPPback shall be filed within any one of the following periods of time, as follows:

(A) Within 120 days of the service of the complaint.

(B) At the court's discretion, within six months of the service of the complaint.

(C) At the court's discretion, at any later time in extraordinary cases due to no fault of the defendant and upon written findings of the court stating the extraordinary case and circumstance.

(2) The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(e) A party opposing a special motion to strike a SLAPPback may file an ex parte application for a continuance to obtain necessary discovery. If it appears that facts essential to justify opposition to that motion may exist, but cannot then be presented, the court shall grant a reasonable continuance to permit the party to obtain affidavits or conduct discovery or may make any other order as may be just.

(f) If the court finds that a special motion to strike a SLAPPback is frivolous or solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(g) Upon entry of an order denying a special motion to strike a SLAPPback claim, or granting the special motion to strike as to some but less than all causes of action alleged in a complaint containing a SLAPPback claim, an aggrieved party may, within 20 days after service of a written notice of the entry of the order, petition an appropriate reviewing court for a peremptory writ.

(h) A special motion to strike may not be filed against a SLAPPback by a party whose filing or maintenance of the prior cause of action from which the SLAPPback arises was illegal as a matter of law.

(i) This section does not apply to a SLAPPback filed by a public entity.

*(Added by Stats. 2005, Ch. 535, Sec. 2. Effective October 5, 2005.)*

**425.50.** (a) An allegation of a construction-related accessibility claim in a complaint, as defined in subdivision (a) of Section 55.52 of the Civil Code, shall state facts sufficient to allow a reasonable person to identify the basis of the violation or violations supporting the claim, including all of the following:

(1) A plain language explanation of the specific access barrier or barriers the individual encountered, or by which the individual alleges he or she was deterred, with sufficient information about the location of the alleged barrier to enable a reasonable person to identify the access barrier.

(2) The way in which the barrier denied the individual full and equal use or access, or in which it deterred the individual, on each particular occasion.

(3) The date or dates of each particular occasion on which the claimant encountered the specific access barrier, or on which he or she was deterred.

(4) (A) Except in complaints that allege physical injury or damage to property, a complaint filed by or on behalf of a high-frequency litigant shall also state all of the following:

(i) Whether the complaint is filed by, or on behalf of, a high-frequency litigant.

(ii) In the case of a high-frequency litigant who is a plaintiff, the number of complaints alleging a construction-related accessibility claim that the high-frequency litigant has filed during the 12 months prior to filing the complaint.

(iii) In the case of a high-frequency litigant who is a plaintiff, the reason the individual was in the geographic area of the defendant’s business.

(iv) In the case of a high-frequency litigant who is a plaintiff, the reason why the individual desired to access the defendant’s business, including the specific commercial, business, personal, social, leisure, recreational, or other purpose.

(B) As used in this section “high-frequency litigant” has the same meaning as set forth in subdivision (b) of Section 425.55.

(b) (1) A complaint alleging a construction-related accessibility claim, as those terms are defined in subdivision (a) of Section 55.3 of the Civil Code, shall be verified by the plaintiff. A complaint filed without verification shall be subject to a motion to strike.

(2) A complaint alleging a construction-related accessibility claim filed by, or on behalf of, a high-frequency litigant shall state in the caption “ACTION SUBJECT TO THE SUPPLEMENTAL FEE IN GOVERNMENT CODE SECTION 70616.5.”

(c) A complaint alleging a construction-related accessibility claim shall be signed by at least one attorney of record in the attorney’s individual name, or, if the party is not represented by an attorney, shall be signed by the party. By signing the complaint, the attorney or unrepresented party is certifying that, to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(d) A court may, after notice and a reasonable opportunity to respond, determine whether subdivision (c) has been violated and, if so, impose sanctions as provided in Section 128.7 for violations of subdivision (b) of Section 128.7.

(e) Nothing in this section shall limit the right of a plaintiff to amend a complaint under Section 472, or with leave of the court under Section 473. However, an amended pleading alleging a construction-related accessibility claim shall be pled as required by subdivision (a).

(f) The determination whether an attorney is a high-frequency litigant shall be made solely on the basis of the verified complaint and any other publicly available documents. Notwithstanding any other law, no party to the proceeding may conduct discovery with respect to whether an attorney is a high-frequency litigant.

(g) This section shall become operative on January 1, 2013.

*(Amended by Stats. 2015, Ch. 755, Sec. 5. (AB 1521) Effective October 10, 2015.)*

**426.10.** As used in this article:

(a) "Complaint" means a complaint or cross-complaint.

(b) "Plaintiff" means a person who files a complaint or cross-complaint.

(c) "Related cause of action" means a cause of action which arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause of action which the plaintiff alleges in his complaint.

*(Added by Stats. 1971, Ch. 244.)*

**426.30.** (a) Except as otherwise provided by statute, if a party against whom a complaint has been filed and served fails to allege in a cross-complaint any related cause of action which (at the time of serving his answer to the complaint) he has against the plaintiff, such party may not thereafter in any other action assert against the plaintiff the related cause of action not pleaded.

(b) This section does not apply if either of the following are established:

(1) The court in which the action is pending does not have jurisdiction to render a personal judgment against the person who failed to plead the related cause of action.

(2) The person who failed to plead the related cause of action did not file an answer to the complaint against him.

*(Added by Stats. 1971, Ch. 244.)*

**426.40.** This article does not apply if any of the following are established:

(a) The cause of action not pleaded requires for its adjudication the presence of additional parties over whom the court cannot acquire jurisdiction.

(b) Both the court in which the action is pending and any other court to which the action is transferrable pursuant to Section 396 are prohibited by the federal or state constitution or by a statute from entertaining the cause of action not pleaded.

(c) At the time the action was commenced, the cause of action not pleaded was the subject of another pending action.

*(Added by Stats. 1971, Ch. 244.)*

**426.50.** A party who fails to plead a cause of action subject to the requirements of this article, whether through oversight, inadvertence, mistake, neglect, or other cause, may apply to the court for leave to amend his pleading, or to file a cross-complaint, to assert such cause at any time during the course of the action. The court, after notice to the adverse party, shall grant, upon such terms as may be just to the parties, leave to amend the pleading, or to file the cross-complaint, to assert such cause if the party who failed to plead the cause acted in good faith. This subdivision shall be liberally construed to avoid forfeiture of causes of action.

*(Added by Stats. 1971, Ch. 244.)*

**426.60.** (a) This article applies only to civil actions and does not apply to special proceedings.

(b) This article does not apply to actions in the small claims court.

(c) This article does not apply where the only relief sought is a declaration of the rights and duties of the respective parties in an action for declaratory relief under Chapter 8 (commencing with Section 1060) of Title 14 of this part.

*(Added by Stats. 1971, Ch. 244.)*

**426.70.** (a) Notwithstanding subdivision (a) of Section 426.60, this article applies to eminent domain proceedings.

(b) The related cause of action may be asserted by cross-complaint in an eminent domain proceeding whether or not the party asserting such cause of action has presented a claim in compliance with Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the

Government Code to the plaintiff in the original eminent domain proceeding.

*(Added by Stats. 1975, Ch. 1240.)*

**430.10.** The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds:

(a) The court has no jurisdiction of the subject of the cause of action alleged in the pleading.

(b) The person who filed the pleading does not have the legal capacity to sue.

(c) There is another action pending between the same parties on the same cause of action.

(d) There is a defect or misjoinder of parties.

(e) The pleading does not state facts sufficient to constitute a cause of action.

(f) The pleading is uncertain. As used in this subdivision, “uncertain” includes ambiguous and unintelligible.

(g) In an action founded upon a contract, it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct.

(h) No certificate was filed as required by Section 411.35.

*(Amended by Stats. 2020, Ch. 370, Sec. 35. (SB 1371) Effective January 1, 2021.)*

**430.20.** A party against whom an answer has been filed may object, by demurrer as provided in Section 430.30, to the answer upon any one or more of the following grounds:

(a) The answer does not state facts sufficient to constitute a defense.

(b) The answer is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible.

(c) Where the answer pleads a contract, it cannot be ascertained from the answer whether the contract is written or oral.

*(Added by Stats. 1971, Ch. 244.)*

**430.30.** (a) When any ground for objection to a complaint, cross-complaint, or answer appears on the face thereof, or from any matter of which the court is required to or may take judicial notice, the objection on that ground may be taken by a demurrer to the pleading.

(b) When any ground for objection to a complaint or cross-complaint does not appear on the face of the pleading, the objection may be taken by answer.

(c) A party objecting to a complaint or cross-complaint may demur and answer at the same time.

*(Added by Stats. 1971, Ch. 244.)*

**430.40.** (a) A person against whom a complaint or cross-complaint has been filed may, within 30 days after service of the complaint or cross-complaint, demur to the complaint or cross-complaint.

(b) A party who has filed a complaint or cross-complaint may, within 10 days after service of the answer to his pleading, demur to the answer.

*(Added by Stats. 1971, Ch. 244.)*

**430.41** (a) Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. If an amended complaint, cross-complaint, or answer is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a demurrer to the amended pleading.

(1) As part of the meet and confer process, the demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies. The party who filed the complaint, cross-complaint, or answer shall provide legal support for its position that the pleading is legally sufficient or, in the alternative, how the complaint, cross-complaint, or answer could be amended to cure any legal insufficiency.

(2) The parties shall meet and confer at least five days before the date the responsive pleading is due. If the parties are not able to meet and confer at least five days prior to the date the responsive pleading is due, the demurring party shall be granted an automatic 30-day extension of time within which to file a responsive pleading, by filing and serving, on or before the date on which a demurrer would be due, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer. The 30-day extension shall commence from the date the responsive pleading was previously due, and the demurring party shall not be subject to default during the period of the extension. Any further extensions shall be obtained by court order upon a showing of good cause.

(3) The demurring party shall file and serve with the demurrer a declaration stating either of the following:

(A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.

(B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

(4) A determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer.

(b) A party demurring to a pleading that has been amended after a demurrer to an earlier version of the pleading was sustained shall not demur to any portion of the amended complaint, cross-complaint, or answer on grounds that could have been raised by demurrer to the earlier version of the complaint, cross-complaint, or answer.

(c) If a court sustains a demurrer to one or more causes of action and grants leave to amend, the court may order a conference of the parties before an amended complaint or cross-complaint or a demurrer to an amended complaint or cross-complaint, may be filed. If a conference is held, the court shall not preclude a party from filing a demurrer and the time to file a demurrer shall not begin until after the conference has concluded. This section does not prohibit the court from ordering a conference on its own motion at any time or prevent a party from requesting that the court order a conference to be held.

(d) This section does not apply to the following civil actions:

(1) An action in which a party not represented by counsel is incarcerated in a local, state, or federal correctional institution.

(2) A proceeding in forcible entry, forcible detainer, or unlawful detainer.

(e) (1) In response to a demurrer and prior to the case being at issue, a complaint or cross-complaint shall not be amended more than three times, absent an offer to the trial court as to such additional facts to be pleaded that there is a reasonable possibility the defect can be cured to state a cause of action. The three-amendment limit shall not include an amendment made without leave of the court pursuant to Section 472, provided the amendment is made before a demurrer to the original complaint or cross-complaint is filed.

(2) Nothing in this section affects the rights of a party to amend its pleading or respond to an amended pleading after the case is at issue.

(f) Nothing in this section affects appellate review or the rights of a party pursuant to Section 430.80.

(g) If a demurrer is overruled as to a cause of action and that cause of action is not further amended, the demurring party preserves its right to appeal after final judgment without filing a further demurrer.

*(Amended by Stats. 2020, Ch. 36, Sec. 15. (AB 3364) Effective January 1, 2021.)*

**430.50.** (a) A demurrer to a complaint or cross-complaint may be taken to the whole complaint or cross-complaint or to any of the causes of action stated therein.

(b) A demurrer to an answer may be taken to the whole answer or to any one or more of the several defenses set up in the answer.

*(Added by Stats. 1971, Ch. 244.)*

**430.60.** A demurrer shall distinctly specify the grounds upon which any of the objections to the complaint, cross-complaint, or answer are taken. Unless it does so, it may be disregarded.

*(Added by Stats. 1971, Ch. 244.)*

**430.70.** When the ground of demurrer is based on a matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, such matter shall be specified in the demurrer, or in the supporting points and authorities for the purpose of invoking

such notice, except as the court may otherwise permit.

*(Added by Stats. 1971, Ch. 244.)*

**430.80.** (a) If the party against whom a complaint or cross-complaint has been filed fails to object to the pleading, either by demurrer or answer, that party is deemed to have waived the objection unless it is an objection that the court has no jurisdiction of the subject of the cause of action alleged in the pleading or an objection that the pleading does not state facts sufficient to constitute a cause of action.

(b) If the party against whom an answer has been filed fails to demur thereto, that party is deemed to have waived the objection unless it is an objection that the answer does not state facts

sufficient to constitute a defense.

*(Amended by Stats. 1983, Ch. 1167, Sec. 2.)*

**430.90.** (a) Where the defendant has removed a civil action to federal court without filing a response in the original court and the case is later remanded for improper removal, the time to respond shall be as follows:

(1) If the defendant has not generally appeared in either the original or federal court, then 30 days from the day the original court receives the case on remand to move to dismiss the action pursuant to Section 583.250 or to move to quash service of summons or to stay or dismiss the action pursuant to Section 418.10, if the court has not ruled on a similar motion filed by the defendant prior to the removal of the action to federal court.

(2) If the defendant has not filed an answer in the original court, then 30 days from the day the original court receives the case on remand to do any of the following:

(A) Answer the complaint.

(B) Demur or move to strike all or a portion of the complaint if: (i) an answer was not filed in the federal court, and (ii) a demurrer or motion to strike raising the same or similar issues was not filed and ruled upon by the original court prior to the removal of the action to federal court or was not filed and ruled upon in federal court prior to the remand. If the demurrer or motion to strike is denied by the court, the defendant shall have 30 days to answer the complaint unless an answer was filed with the demurrer or motion to strike.

(b) For the purposes of this section, time shall be calculated from the date of the original court's receipt of the order of remand.

*(Added by Stats. 1995, Ch. 796, Sec. 5. Effective January 1, 1996.)*

**431.10.** (a) A material allegation in a pleading is one essential tothe claim or defense and which could not be stricken from the pleading without leaving it insufficient as to that claim or defense.

(b) An immaterial allegation in a pleading is any of the following:

(1) An allegation that is not essential to the statement of a claim or defense.

(2) An allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense.

(3) A demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint.

(c) An "immaterial allegation" means "irrelevant matter" as that term is used in Section 436.

*(Amended by Stats. 1986, Ch. 540, Sec. 2.)*

**431.20.** (a) Every material allegation of the complaint or cross-complaint, not controverted by the answer, shall, for the purposes of the action, be taken as true.

(b) The statement of any new matter in the answer, in avoidance or constituting a defense, shall, on the trial, be deemed controverted by the opposite party.

*(Added by Stats. 1971, Ch. 244.)*

**431.30.** (a) As used in this section:

(1) "Complaint" includes a cross-complaint.

(2) "Defendant" includes a person filing an answer to a cross-complaint.

(b) The answer to a complaint shall contain:

(1) The general or specific denial of the material allegations of the complaint controverted by the defendant.

(2) A statement of any new matter constituting a defense.

(c) Affirmative relief may not be claimed in the answer.

(d) If the complaint is subject to Article 2 (commencing with Section 90) of Chapter 5.1 of Title 1 of Part 1 or is not verified, a general denial is sufficient but only puts in issue the material

allegations of the complaint. If the complaint is verified, unless the complaint is subject to Article 2 (commencing with Section 90) of Chapter 5.1 of Title 1 of Part 1, the denial of the allegations shall be made positively or according to the information and belief of the defendant. However, if the cause of action is a claim assigned to a third party for collection and the complaint is verified, the denial of the allegations shall be made positively or according to the information and belief of the defendant, even if the complaint is subject to Article 2 (commencing with Section 90) of Chapter 5.1 of Title 1 of Part 1.

(e) If the defendant has no information or belief upon the subject sufficient to enable him or her to answer an allegation of the complaint, he or she may so state in his or her answer and place his

or her denial on that ground.

(f) The denials of the allegations controverted may be stated by reference to specific paragraphs or parts of the complaint; or by express admission of certain allegations of the complaint with a

general denial of all of the allegations not so admitted; or by denial of certain allegations upon information and belief, or for lack of sufficient information or belief, with a general denial of all allegations not so denied or expressly admitted.

(g) The defenses shall be separately stated, and the several defenses shall refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished.

*(Amended by Stats. 2003, Ch. 149, Sec. 8. Effective January 1, 2004.)*

**431.40.** (a) Any provision of law to the contrary notwithstanding, in any action in which the demand, exclusive of interest, or the value of the property in controversy does not exceed one thousand dollars ($1000), the defendant at his option, in lieu of demurrer or other answer, may file a general written denial and a brief statement of any new matter constituting a defense.

(b) Nothing in this section excuses the defendant from complying with the provisions of law applicable to a cross-complaint, and any cross-complaint of the defendant shall be subject to the requirements applicable in any other action.

(c) The general written denial described in subdivision (a) shall be on a blank available at the place of filing and shall be in a form prescribed by the Judicial Council. This form need not be verified.

*(Amended by Stats. 1977, Ch. 93.)*

**431.50.** In an action to recover upon a contract of insurance wherein the defendant claims exemption from liability upon the ground that, although the proximate cause of the loss was a peril insured against, the loss was remotely caused by or would not have occurred but for a peril excepted in the contract of insurance, the defendant shall in his answer set forth and specify the peril which was the proximate cause of the loss, in what manner the peril excepted contributed to the loss or itself caused the peril insured against, and if he claims that the peril excepted caused the peril insured against, he shall in his answer set forth and specify upon what premises or at what place the peril excepted caused the peril insured against.

*(Added by Stats. 1971, Ch. 244.)*

**431.70.** Where cross-demands for money have existed between persons at any point in time when neither demand was barred by the statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in the answer the defense of payment in that the two demands are compensated so far as they equal each other, notwithstanding that an independent action asserting the person's claim would at the time of filing the answer be barred by the statute of limitations. If the cross-demand would otherwise be barred by the statute of limitations, the relief accorded under this section shall not exceed the value of the relief granted to the other party. The defense provided by this section is not available if the cross-demand is barred for failure to assert it in a prior action under Section 426.30. Neither person can be deprived of the benefits of this section by the assignment or death of the other. For the purposes of this section, a money judgment is a "demand for money" and, as applied to a money judgment, the demand is barred by the statute of limitations when enforcement of the judgment is barred under Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9.

*(Amended by Stats. 1982, Ch. 497, Sec. 32. Operative July 1, 1983, by Sec. 185 of Ch. 497.)*

**437c.** (a) (1) A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct.

(2) Notice of the motion and supporting papers shall be served on all other parties to the action at least 75 days before the time appointed for hearing. If the notice is served by mail, the required 75-day period of notice shall be increased by 5 days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required 75-day period of notice shall be increased by two court days.

(3) The motion shall be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise. The filing of the motion shall not extend the time within which a party must otherwise file a responsive pleading.

(b) (1) The motion shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. The supporting papers shall include a separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement may in the court’s discretion constitute a sufficient ground for denying the motion.

(2) An opposition to the motion shall be served and filed not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise. The opposition, where appropriate, shall consist of affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken.

(3) The opposition papers shall include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating if the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court’s discretion, for granting the motion.

(4) A reply to the opposition shall be served and filed by the moving party not less than five days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise.

(5) Evidentiary objections not made at the hearing shall be deemed waived.

(6) Except for subdivision (c) of Section 1005 relating to the method of service of opposition and reply papers, Sections 1005 and 1013, extending the time within which a right may be exercised or an act may be done, do not apply to this section.

(7) An incorporation by reference of a matter in the court’s file shall set forth with specificity the exact matter to which reference is being made and shall not incorporate the entire file.

(c) The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact.

(d) Supporting and opposing affidavits or declarations shall be made by a person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavits or declarations. An objection based on the failure to comply with the requirements of this subdivision, if not made at the hearing, shall be deemed waived.

(e) If a party is otherwise entitled to summary judgment pursuant to this section, summary judgment shall not be denied on grounds of credibility or for want of cross-examination of witnesses furnishing affidavits or declarations in support of the summary judgment, except that summary judgment may be denied in the discretion of the court if the only proof of a material fact offered in support of the summary judgment is an affidavit or declaration made by an individual who was the sole witness to that fact; or if a material fact is an individual’s state of mind, or lack thereof, and that fact is sought to be established solely by the individual’s affirmation thereof.

(f) (1) A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.

(2) A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment. A party shall not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court unless that party establishes, to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion.

(g) Upon the denial of a motion for summary judgment on the ground that there is a triable issue as to one or more material facts, the court shall, by written or oral order, specify one or more material facts raised by the motion that the court has determined there exists a triable controversy. This determination shall specifically refer to the evidence proffered in support of and in opposition to the motion that indicates that a triable controversy exists. Upon the grant of a motion for summary judgment on the ground that there is no triable issue of material fact, the court shall, by written or oral order, specify the reasons for its determination. The order shall specifically refer to the evidence proffered in support of and, if applicable, in opposition to the motion that indicates no triable issue exists. The court shall also state its reasons for any other determination. The court shall record its determination by court reporter or written order.

(h) If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due.

(i) If, after granting a continuance to allow specified additional discovery, the court determines that the party seeking summary judgment has unreasonably failed to allow the discovery to be conducted, the court shall grant a continuance to permit the discovery to go forward or deny the motion for summary judgment or summary adjudication. This section does not affect or limit the ability of a party to compel discovery under the Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4).

(j) If the court determines at any time that an affidavit was presented in bad faith or solely for the purpose of delay, the court shall order the party who presented the affidavit to pay the other party the amount of the reasonable expenses the filing of the affidavit caused the other party to incur. Sanctions shall not be imposed pursuant to this subdivision except on notice contained in a party’s papers or on the court’s own noticed motion, and after an opportunity to be heard.

(k) Unless a separate judgment may properly be awarded in the action, a final judgment shall not be entered on a motion for summary judgment before the termination of the action, but the final judgment shall, in addition to any matters determined in the action, award judgment as established by the summary proceeding provided for in this section.

(l) In an action arising out of an injury to the person or to property, if a motion for summary judgment is granted on the basis that the defendant was without fault, no other defendant during trial, over plaintiff’s objection, may attempt to attribute fault to, or comment on, the absence or involvement of the defendant who was granted the motion.

(m) (1) A summary judgment entered under this section is an appealable judgment as in other cases. Upon entry of an order pursuant to this section, except the entry of summary judgment, a party may, within 20 days after service upon him or her of a written notice of entry of the order, petition an appropriate reviewing court for a peremptory writ. If the notice is served by mail, the initial period within which to file the petition shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the initial period within which to file the petition shall be increased by two court days. The superior court may, for good cause, and before the expiration of the initial period, extend the time for one additional period not to exceed 10 days.

(2) Before a reviewing court affirms an order granting summary judgment or summary adjudication on a ground not relied upon by the trial court, the reviewing court shall afford the parties an opportunity to present their views on the issue by submitting supplemental briefs. The supplemental briefs may include an argument that additional evidence relating to that ground exists, but the party has not had an adequate opportunity to present the evidence or to conduct discovery on the issue. The court may reverse or remand based upon the supplemental briefs to allow the parties to present additional evidence or to conduct discovery on the issue. If the court fails to allow supplemental briefs, a rehearing shall be ordered upon timely petition of a party.

(n) (1) If a motion for summary adjudication is granted, at the trial of the action, the cause or causes of action within the action, affirmative defense or defenses, claim for damages, or issue or issues of duty as to the motion that has been granted shall be deemed to be established and the action shall proceed as to the cause or causes of action, affirmative defense or defenses, claim for damages, or issue or issues of duty remaining.

(2) In the trial of the action, the fact that a motion for summary adjudication is granted as to one or more causes of action, affirmative defenses, claims for damages, or issues of duty within the action shall not bar any cause of action, affirmative defense, claim for damages, or issue of duty as to which summary adjudication was either not sought or denied.

(3) In the trial of an action, neither a party, a witness, nor the court shall comment to a jury upon the grant or denial of a motion for summary adjudication.

(o) A cause of action has no merit if either of the following exists:

(1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded.

(2) A defendant establishes an affirmative defense to that cause of action.

(p) For purposes of motions for summary judgment and summary adjudication:

(1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The defendant or cross-defendant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto.

(2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto.

(q) In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review.

(r) This section does not extend the period for trial provided by Section 1170.5.

(s) Subdivisions (a) and (b) do not apply to actions brought pursuant to Chapter 4 (commencing with Section 1159) of Title 3 of Part 3.

(t) Notwithstanding subdivision (f), a party may move for summary adjudication of a legal issue or a claim for damages other than punitive damages that does not completely dispose of a cause of action, affirmative defense, or issue of duty pursuant to this subdivision.

(1) (A) Before filing a motion pursuant to this subdivision, the parties whose claims or defenses are put at issue by the motion shall submit to the court both of the following:

(i) A joint stipulation stating the issue or issues to be adjudicated.

(ii) A declaration from each stipulating party that the motion will further the interest of judicial economy by decreasing trial time or significantly increasing the likelihood of settlement.

(B) The joint stipulation shall be served on any party to the civil action who is not also a party to the motion.

(2) Within 15 days of receipt of the stipulation and declarations, unless the court has good cause for extending the time, the court shall notify the stipulating parties if the motion may be filed. In making this determination, the court may consider objections by a nonstipulating party made within 10 days of the submission of the stipulation and declarations.

(3) If the court elects not to allow the filing of the motion, the stipulating parties may request, and upon request the court shall conduct, an informal conference with the stipulating parties to permit further evaluation of the proposed stipulation. The stipulating parties shall not file additional papers in support of the motion.

(4) (A) A motion for summary adjudication made pursuant to this subdivision shall contain a statement in the notice of motion that reads substantially similar to the following: “This motion is made pursuant to subdivision (t) of Section 437c of the Code of Civil Procedure. The parties to this motion stipulate that the court shall hear this motion and that the resolution of this motion will further the interest of judicial economy by decreasing trial time or significantly increasing the likelihood of settlement.”

(B) The notice of motion shall be signed by counsel for all parties, and by those parties in propria persona, to the motion.

(5) A motion filed pursuant to this subdivision may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment.

(u) For purposes of this section, a change in law does not include a later enacted statute without retroactive application.

*(Amended by Stats. 2016, Ch. 86, Sec. 22. (SB 1171) Effective January 1, 2017.)*

**438.** (a) As used in this section:

(1) "Complaint" includes a cross-complaint.

(2) "Plaintiff" includes a cross-complainant.

(3) "Defendant" includes a cross-defendant.

(b) (1) A party may move for judgment on the pleadings.

(2) The court may upon its own motion grant a motion for judgment on the pleadings.

(c) (1) The motion provided for in this section may only be made on one of the following grounds:

(A) If the moving party is a plaintiff, that the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to

constitute a defense to the complaint.

(B) If the moving party is a defendant, that either of the following conditions exist:

(i) The court has no jurisdiction of the subject of the cause of action alleged in the complaint.

(ii) The complaint does not state facts sufficient to constitute a cause of action against that defendant.

(2) The motion provided for in this section may be made as to either of the following:

(A) The entire complaint or cross-complaint or as to any of the causes of action stated therein.

(B) The entire answer or one or more of the affirmative defenses set forth in the answer.

(3) If the court on its own motion grants the motion for judgment on the pleadings, it shall be on one of the following bases:

(A) If the motion is granted in favor of the plaintiff, it shall be based on the grounds that the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint.

(B) If the motion is granted in favor of the defendant, that either of the following conditions exist:

(i) The court has no jurisdiction of the subject of the cause of action alleged in the complaint.

(ii) The complaint does not state facts sufficient to constitute a cause of action against that defendant.

(d) The grounds for motion provided for in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. Where the motion is based on a matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, the matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit.

(e) No motion may be made pursuant to this section if a pretrial conference order has been entered pursuant to Section 575, or within 30 days of the date the action is initially set for trial, whichever is later, unless the court otherwise permits.

(f) The motion provided for in this section may be made only after one of the following conditions has occurred:

(1) If the moving party is a plaintiff, and the defendant has already filed his or her answer to the complaint and the time for the plaintiff to demur to the answer has expired.

(2) If the moving party is a defendant, and the defendant has already filed his or her answer to the complaint and the time for the defendant to demur to the complaint has expired.

(g) The motion provided for in this section may be made even though either of the following conditions exist:

(1) The moving party has already demurred to the complaint or answer, as the case may be, on the same grounds as is the basis for the motion provided for in this section and the demurrer has been overruled, provided that there has been a material change in applicable case law or statute since the ruling on the demurrer.

(2) The moving party did not demur to the complaint or answer, as the case may be, on the same grounds as is the basis for the motion provided for in this section.

(h) (1) The motion provided for in this section may be granted with or without leave to file an amended complaint or answer, as the case may be.

(2) Where a motion is granted pursuant to this section with leave to file an amended complaint or answer, as the case may be, then the court shall grant 30 days to the party against whom the motion was granted to file an amended complaint or answer, as the case may be.

(3) If the motion is granted with respect to the entire complaint or answer without leave to file an amended complaint or answer, as the case may be, then judgment shall be entered forthwith in accordance with the motion granting judgment to the moving party.

(4) If the motion is granted with leave to file an amended complaint or answer, as the case may be, then the following procedures shall be followed:

(A) If an amended complaint is filed after the time to file an amended complaint has expired, then the court may strike the complaint pursuant to Section 436 and enter judgment in favor of that defendant against that plaintiff or a plaintiff.

(B) If an amended answer is filed after the time to file an amended answer has expired, then the court may strike the answer pursuant to Section 436 and proceed to enter judgment in favor of

that plaintiff and against that defendant or a defendant.

(C) Except where subparagraphs (A) and (B) apply, if the motion is granted with respect to the entire complaint or answer with leave to file an amended complaint or answer, as the case may be, but an amended complaint or answer is not filed, then after the time to file an amended complaint or answer, as the case may be, has expired, judgment shall be entered forthwith in favor of the moving party.

(i) (1) Where a motion for judgment on the pleadings is granted with leave to amend, the court shall not enter a judgment in favor of a party until the following proceedings are had:

(A) If an amended pleading is filed and the moving party contends that pleading is filed after the time to file an amended pleading has expired or that the pleading is in violation of the court's prior ruling on the motion, then that party shall move to strike the pleading and enter judgment in its favor.

(B) If no amended pleading is filed, then the party shall move for entry of judgment in its favor.

(2) All motions made pursuant to this subdivision shall be made pursuant to Section 1010.

(3) At the hearing on the motion provided for in this subdivision, the court shall determine whether to enter judgment in favor of a particular party.

*(Amended by Stats. 1994, Ch. 493, Sec. 2. Effective September 12, 1994.)*

**TITLE 4. CIVIL DISCOVERY ACT**

**2016.010** This title may be cited as the “Civil Discovery Act.”

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2016.020.** As used in this title:

(a) "Action" includes a civil action and a special proceeding of a civil nature.

(b) "Court" means the trial court in which the action is pending, unless otherwise specified.

(c) "Document" and "writing" mean a writing, as defined in Section 250 of the Evidence Code.

(d) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(e) "Electronically stored information" means information that is stored in an electronic medium.

*(Amended by Stats. 2009, Ch. 5, Sec. 3. Effective June 29, 2009.)*

**2016.030.** Unless the court orders otherwise, the parties may by written stipulation modify the procedures provided by this title for any method of discovery permitted under Section 2019.010.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2016.040.** A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2016.050.** Sections 1011 and 1013 applies to any method of discovery or service of a motion provided for in this title.

*(Amended by Stats. 2017, Ch. 64, Sec. 2. (SB 543) Effective January 1, 2018.)*

**2016.060.** When the last day to perform or complete any act provided for in this title falls on a Saturday, Sunday, or holiday as specified in Section 10, the time limit is extended until the next

court day closer to the trial date.

*(Added by Stats. 2004, Ch. 182, Sec. 23.5. Effective January 1, 2005. Operative July 1, 2005, by Secs. 62 and 64 of Ch. 182.)*

**2016.070.** This title applies to discovery in aid of enforcement of a money judgment only to the extent provided in Article 1 (commencing with Section 708.010) of Chapter 6 of Title 9 of Part 2.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2016.080.** (a) If an informal resolution is not reached by the parties, as described in Section 2016.040, the court may conduct an informal discovery conference upon request by a party or on the court’s own motion for the purpose of discussing discovery matters in dispute between the parties.

(b) If a party requests an informal discovery conference, the party shall file a declaration described in Section 2016.040 with the court. Any party may file a response to a declaration filed pursuant to this subdivision. If a court is in session and does not grant, deny, or schedule the party’s request within 10 calendar days after the initial request, the request shall be deemed denied.

(c) (1) If a court grants or orders an informal discovery conference, the court may schedule and hold the conference no later than 30 calendar days after the court granted the request or issued its order, and before the discovery cutoff date.

(2) If an informal discovery conference is granted or ordered, the court may toll the deadline for filing a discovery motion or make any other appropriate discovery order.

(d) If an informal discovery conference is not held within 30 calendar days from the date the court granted the request, the request for an informal discovery conference shall be deemed denied, and any tolling period previously ordered by the court shall continue to apply to that action.

(e) The outcome of an informal discovery conference does not bar a party from filing a discovery motion or prejudice the disposition of a discovery motion.

(f) This section does not prevent the parties from stipulating to the timing of discovery proceedings as described in Section 2024.060.

(g) This section shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2023, deletes or extends that date.

*(Amended by Stats. 2018, Ch. 92, Sec. 44. (SB 1289) Effective January 1, 2019. Repealed as of January 1, 2023, by its own provisions.)*

**2016.090.** (a) The following shall apply only to a civil action upon an order of the court following stipulation by all parties to the action:

(1) Within 45 days of the order of the court, a party shall, without awaiting a discovery request, provide to the other parties an initial disclosure that includes all of the following information:

(A) The names, addresses, telephone numbers, and email addresses of all persons likely to have discoverable information, along with the subjects of that information, that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

(B) A copy, or a description by category and location, of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

(C) Any agreement under which an insurance company may be liable to satisfy, in whole or in part, a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(D) Any agreement under which a person, as defined in Section 175 of the Evidence Code, may be liable to satisfy, in whole or in part, a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Only those provisions of an agreement that are material to the terms of the insurance, indemnification, or reimbursement are required to be included in the initial disclosure. Material provisions include, but are not limited to, the identities of parties to the agreement and the nature and limits of the coverage.

(2) A party shall make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its initial disclosures because it has not fully investigated the case, because it challenges the sufficiency of another party’s disclosures, or because another party has not made its disclosures.

(3) A party that has made its initial disclosures, as described in paragraph (1), or that has responded to another party’s discovery request, shall supplement or correct a disclosure or response in the following situations:

(A) In a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect and the additional or corrective information has not otherwise been made known to the other parties during the disclosure or discovery process.

(B) As ordered by the court.

(4) A party’s obligations under this section may be enforced by a court on its own motion or the motion of a party to compel disclosure.

(5) A party’s disclosures under this section shall be verified under penalty of perjury as being true and correct to the best of the party’s knowledge.

(b) Notwithstanding subdivision (a), this section does not apply to the following actions:

(1) An unlawful detainer action, as defined in Section 1161.

(2) An action in the small claims division of a court, as defined in Section 116.210.

*(Added by Stats. 2019, Ch. 836, Sec. 1. (SB 17) Effective January 1, 2020.)*

**Oral Depositions**

**2025.010.** Any party may obtain discovery within the scope delimited by Chapter 2 (commencing with Section 2017.010), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

*(Amended by Stats. 2016, Ch. 86, Sec. 41. (SB 1171) Effective January 1, 2017.)*

**Written Interrogatories**

**2030.010.** (a) Any party may obtain discovery within the scope delimited by Chapter 2 (commencing with Section 2017.010), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by propounding to any other party to the action written interrogatories to be answered under oath.

(b) An interrogatory may relate to whether another party is making a certain contention, or to the facts, witnesses, and writings on which a contention is based. An interrogatory is not objectionable because an answer to it involves an opinion or contention that relates to fact or the application of law to fact, or would be based on information obtained or legal theories developed in anticipation of litigation or in preparation for trial.

*(Amended by Stats. 2015, Ch. 303, Sec. 42. (AB 731) Effective January 1, 2016.)*

**2030.020.** (a) A defendant may propound interrogatories to a party to the action without leave of court at any time.

(b) A plaintiff may propound interrogatories to a party without leave of court at any time that is 10 days after the service of the summons on, or appearance by, that party, whichever occurs first.

(c) Notwithstanding subdivision (b), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, a plaintiff may propound interrogatories to a party without leave of court at any time that is five days after service of the summons on, or appearance by, that party, whichever occurs first.

(d) Notwithstanding subdivisions (b) and (c), on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to propound interrogatories at an earlier time.

*(Amended by Stats. 2007, Ch. 113, Sec. 7. Effective January 1, 2008.)*

**2030.030.** (a) A party may propound to another party either or both of the following:

(1) Thirty-five specially prepared interrogatories that are relevant to the subject matter of the pending action.

(2) Any additional number of official form interrogatories, as described in Chapter 17 (commencing with Section 2033.710), that are relevant to the subject matter of the pending action.

(b) Except as provided in Section 2030.070, no party shall, as a matter of right, propound to any other party more than 35 specially prepared interrogatories. If the initial set of interrogatories does not exhaust this limit, the balance may be propounded in subsequent sets.

(c) Unless a declaration as described in Section 2030.050 has been made, a party need only respond to the first 35 specially prepared interrogatories served, if that party states an objection to the balance, under Section 2030.240, on the ground that the limit has been exceeded.

**2030.040.** (a) Subject to the right of the responding party to seek a protective order under Section 2030.090, any party who attaches a supporting declaration as described in Section 2030.050 may propound a greater number of specially prepared interrogatories to another party if this greater number is warranted because of any of the following:

(1) The complexity or the quantity of the existing and potential issues in the particular case.

(2) The financial burden on a party entailed in conducting the discovery by oral deposition.

(3) The expedience of using this method of discovery to provide to the responding party the opportunity to conduct an inquiry, investigation, or search of files or records to supply the information sought.

(b) If the responding party seeks a protective order on the ground that the number of specially prepared interrogatories is unwarranted, the propounding party shall have the burden of justifying the number of these interrogatories.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2030.050.** Any party who is propounding or has propounded more than 35 specially prepared interrogatories to any other party shall attach to each set of those interrogatories a declaration containing substantially the following:

DECLARATION FOR ADDITIONAL DISCOVERY

I, \_\_\_\_\_\_\_\_\_\_, declare:

1. I am (a party to this action or proceeding appearing in propria persona) (presently the attorney for \_\_\_\_\_\_\_\_\_\_, a party to this action or proceeding).

2. I am propounding to \_\_\_\_\_\_\_\_\_\_ the attached set of interrogatories.

3. This set of interrogatories will cause the total number of specially prepared interrogatories propounded to the party to whom they are directed to exceed the number of specially prepared

interrogatories permitted by Section 2030.030 of the Code of Civil Procedure.

4. I have previously propounded a total of \_\_\_\_\_\_\_\_\_\_ interrogatories to this party, of which \_\_\_\_\_\_\_\_\_\_ interrogatories were not official form interrogatories.

5. This set of interrogatories contains a total of \_\_\_\_\_\_\_\_\_\_ specially prepared interrogatories.

6. I am familiar with the issues and the previous discovery conducted by all of the parties in the case.

7. I have personally examined each of the questions in this set of interrogatories.

8. This number of questions is warranted under Section 2030.040 of the Code of Civil Procedure because \_\_\_\_\_\_\_\_\_\_. (Here state each factor described in Section 2030.040 that is relied on, as well as the reasons why any factor relied on is applicable to the instant

lawsuit.)

9. None of the questions in this set of interrogatories is being propounded for any improper purpose, such as to harass the party, or the attorney for the party, to whom it is directed, or to cause unnecessary delay or needless increase in the cost of litigation.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this declaration was executed on \_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature)

Attorney for\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**2030.060.** (a) A party propounding interrogatories shall number each set of interrogatories consecutively.

(b) In the first paragraph immediately below the title of the case, there shall appear the identity of the propounding party, the set number, and the identity of the responding party.

(c) Each interrogatory in a set shall be separately set forth and identified by number or letter.

(d) Each interrogatory shall be full and complete in and of itself. No preface or instruction shall be included with a set of interrogatories unless it has been approved under Chapter 17 (commencing with Section 2033.710).

(e) Any term specially defined in a set of interrogatories shall be typed with all letters capitalized wherever that term appears.

(f) No specially prepared interrogatory shall contain subparts, or a compound, conjunctive, or disjunctive question.

(g) An interrogatory may not be made a continuing one so as to impose on the party responding to it a duty to supplement an answer to it that was initially correct and complete with later acquired information.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2030.070.** (a) In addition to the number of interrogatories permitted by Sections 2030.030 and 2030.040, a party may propound a supplemental interrogatory to elicit any later acquired information bearing on all answers previously made by any party in response to interrogatories.

(b) A party may propound a supplemental interrogatory twice before the initial setting of a trial date, and, subject to the time limits on discovery proceedings and motions provided in Chapter 8

(commencing with Section 2024.010), once after the initial setting of a trial date.

(c) Notwithstanding subdivisions (a) and (b), on motion, for good cause shown, the court may grant leave to a party to propound an additional number of supplemental interrogatories.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2030.080.** (a) The party propounding interrogatories shall serve a copy of them on the party to whom the interrogatories are directed.

(b) The propounding party shall also serve a copy of the interrogatories on all other parties who have appeared in the action. On motion, with or without notice, the court may relieve the party

from this requirement on its determination that service on all other parties would be unduly expensive or burdensome.

**2030.090.** (a) When interrogatories have been propounded, the responding party, and any other party or affected natural person or organization may promptly move for a protective order. This motion shall be accompanied by a meet and confer declaration under Section 2020.040.

(b) The court, for good cause shown, may make any order that justice requires to protect any party or other natural person or organization from unwarranted annoyance, embarrassment, or

oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the set of interrogatories, or particular interrogatories in the set, need not be answered.

(2) That, contrary to the representations made in a declaration submitted under Section 2030.050, the number of specially prepared interrogatories is unwarranted.

(3) That the time specified in Section 2030.260 to respond to the set of interrogatories, or to particular interrogatories in the set, be extended.

(4) That the response be made only on specified terms and conditions.

(5) That the method of discovery be an oral deposition instead of interrogatories to a party.

(6) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a certain way.

(7) That some or all of the answers to interrogatories be sealed and thereafter opened only on order of the court.

(c) If the motion for a protective order is denied in whole or in part, the court may order that the party provide or permit the discovery against which protection was sought on terms and conditions that are just.

(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order under this section, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

2030.210. (a) The party to whom interrogatories have been propounded shall respond in writing under oath separately to each interrogatory by any of the following:

(1) An answer containing the information sought to be discovered.

(2) An exercise of the party’s option to produce writings.

(3) An objection to the particular interrogatory.

(b) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the propounding party.

(c) Each answer, exercise of option, or objection in the response shall bear the same identifying number or letter and be in the same sequence as the corresponding interrogatory. The text of that interrogatory need not be repeated, except as provided in paragraph (6) of subdivision (d).

(d) In order to facilitate the discovery process:

(1) Except as provided in paragraph (5), upon request by the responding party, the propounding party shall provide the interrogatories in an electronic format to the responding party within three court days of the request.

(2) Except as provided in paragraph (5), upon request by the propounding party after receipt of the responses to the interrogatories, the responding party shall provide the responses in an electronic format to the propounding party within three court days of the request.

(3) A party may provide the interrogatories or responses to the interrogatories requested pursuant to paragraphs (1) and (2) in any format agreed upon by the parties. If the parties are unable to agree on a format, the interrogatories or responses to interrogatories shall be provided in plain text format.

(4) A party may transmit the interrogatories or responses to the interrogatories requested pursuant to paragraphs (1) and (2) by any method agreed upon by the parties. If the parties are unable to agree on a method of transmission, the interrogatories or responses to interrogatories shall be transmitted by electronic mail to an email address provided by the requesting party.

(5) If the interrogatories or responses to interrogatories were not created in an electronic format, a party is not required to create the interrogatories or response to interrogatories in an electronic format for the purpose of transmission to the requesting party.

(6) A responding party who has requested and received the interrogatories in an electronic format pursuant to paragraph (1) shall include the text of the interrogatory immediately preceding the response.

*(Amended by Stats. 2019, Ch. 190, Sec. 1. (AB 1349) Effective January 1, 2020.)*

**2030.220.** (a) Each answer in a response to interrogatories shall be as complete and straightforward as the information reasonably available to the responding party permits.

(b) If an interrogatory cannot be answered completely, it shall be answered to the extent possible.

(c) If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain

the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2030.230.** If the answer to an interrogatory would necessitate the preparation or the making of a compilation, abstract, audit, or summary of or from the documents of the party to whom the interrogatory is directed, and if the burden or expense of preparing or making it would be substantially the same for the party propounding the interrogatory as for the responding party, it is a sufficient answer to that interrogatory to refer to this section and to specify the writings from which the answer may be derived or ascertained. This specification shall be in sufficient detail to

permit the propounding party to locate and to identify, as readily as the responding party can, the documents from which the answer may be ascertained. The responding party shall then afford to the propounding party a reasonable opportunity to examine, audit, or inspect these documents and to make copies, compilations, abstracts, or summaries of them.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2030.240**. (a) If only a part of an interrogatory is objectionable, the remainder of the interrogatory shall be answered.

(b) If an objection is made to an interrogatory or to a part of an interrogatory, the specific ground for the objection shall be set forth clearly in the response. If an objection is based on a claim of privilege, the particular privilege invoked shall be clearly stated. If an objection is based on a claim that the information sought is protected work product under Chapter 4 (commencing with Section 2018.010), that claim shall be expressly asserted.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2030.250.** (a) The party to whom the interrogatories are directed shall sign the response under oath unless the response contains only objections.

(b) If that party is a public or private corporation, or a partnership, association, or governmental agency, one of its officers or agents shall sign the response under oath on behalf of that party. If the officer or agent signing the response on behalf of that party is an attorney acting in that capacity for the party, that party waives any lawyer-client privilege and any protection for work product under Chapter 4 (commencing with Section 2018.010) during any subsequent discovery from that attorney concerning the identity of the sources of the information contained in the response.

(c) The attorney for the responding party shall sign any responses that contain an objection.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2030.260.** (a) Within 30 days after service of interrogatories, the party to whom the interrogatories are propounded shall serve the original of the response to them on the propounding party, unless on motion of the propounding party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response.

(b) Notwithstanding subdivision (a), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the party to whom the interrogatories are propounded shall have five days from the date of service to respond, unless on motion of the propounding party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response.

(c) The party to whom the interrogatories are propounded shall also serve a copy of the response on all other parties who have appeared in the action. On motion, with or without notice, the court may relieve the party from this requirement on its determination that service on all other parties would be unduly expensive or burdensome.

*(Amended by Stats. 2007, Ch. 113, Sec. 8. Effective January 1, 2008.)*

**2030.270.** (a) The party propounding interrogatories and the responding party may agree to extend the time for service of a response to a set of interrogatories, or to particular interrogatories in a set, to a date beyond that provided in Section 2030.260.

(b) This agreement may be informal, but it shall be confirmed in a writing that specifies the extended date for service of a response.

(c) Unless this agreement expressly states otherwise, it is effective to preserve to the responding party the right to respond to any interrogatory to which the agreement applies in any manner specified in Sections 2030.210, 2030.220, 2030.230, and 2030.240.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2030.280.** (a) The interrogatories and the response thereto shall not be filed with the court.

(b) The propounding party shall retain both the original of the interrogatories, with the original proof of service affixed to them, and the original of the sworn response until six months after final disposition of the action. At that time, both originals may be destroyed, unless the court on motion of any party and for good cause shown orders that the originals be preserved for a longer period.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2030.290.** If a party to whom interrogatories are directed fails to serve a timely response, the following rules apply:

(a) The party to whom the interrogatories are directed waives any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

(1) The party has subsequently served a response that is in substantial compliance with Sections 2030.210, 2030.220, 2030.230, and 2030.240.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

(b) The party propounding the interrogatories may move for an order compelling response to the interrogatories.

(c) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If a party then fails to obey an order compelling answers, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

2030.300 (a) On receipt of a response to interrogatories, the propounding party may move for an order compelling a further response if the propounding party deems that any of the following apply:

(1) An answer to a particular interrogatory is evasive or incomplete.

(2) An exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate.

(3) An objection to an interrogatory is without merit or too general.

(b) (1) A motion under subdivision (a) shall be accompanied by a meet and confer declaration under Section 2016.040.

(2) In lieu of a separate statement required under the California Rules of Court, the court may allow the moving party to submit a concise outline of the discovery request and each response in dispute.

(c) Unless notice of this motion is given within 45 days of the service of the verified response, or any supplemental verified response, or on or before any specific later date to which the propounding party and the responding party have agreed in writing, the propounding party waives any right to compel a further response to the interrogatories.

(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(e) If a party then fails to obey an order compelling further response to interrogatories, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of, or in addition to, that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

*(Amended by Stats. 2018, Ch. 317, Sec. 3. (AB 2230) Effective January 1, 2019. Section operative January 1, 2020, pursuant to Sec. 6, Stats. 2018, Ch. 317.)*

**2030.310.** (a) Without leave of court, a party may serve an amended answer to any interrogatory that contains information subsequently discovered, inadvertently omitted, or mistakenly stated in the initial interrogatory. At the trial of the action, the propounding party or any other party may use the initial answer under Section 2030.410, and the responding party may then use the amended answer.

(b) The party who propounded an interrogatory to which an amended answer has been served may move for an order that the initial answer to that interrogatory be deemed binding on the responding party for the purpose of the pending action. This motion shall be accompanied by a meet and confer declaration under Section 2020.040.

(c) The court shall grant a motion under subdivision (b) if it determines that all of the following conditions are satisfied:

(1) The initial failure of the responding party to answer the interrogatory correctly has substantially prejudiced the party who propounded the interrogatory.

(2) The responding party has failed to show substantial justification for the initial answer to that interrogatory.

(3) The prejudice to the propounding party cannot be cured either by a continuance to permit further discovery or by the use of the initial answer under Section 2030.410.

(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to deem binding an initial answer to an interrogatory, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**Inspection, Copying, Testing, Sampling, and Production of Documents, Electronically Stored Information, Tangible Things, Land, and Other Property**

**2031.010.** (a) Any party may obtain discovery within the scope delimited by Chapter 2 (commencing with Section 2017.010), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by inspecting, copying, testing, or sampling documents, tangible things, land or other property, and electronically stored information in the possession, custody, or control of any other party to the action.

(b) A party may demand that any other party produce and permit the party making the demand, or someone acting on the demanding party’s behalf, to inspect and to copy a document that is in the possession, custody, or control of the party on whom the demand is made.

(c) A party may demand that any other party produce and permit the party making the demand, or someone acting on the demanding party’s behalf, to inspect and to photograph, test, or sample any tangible things that are in the possession, custody, or control of the party on whom the demand is made.

(d) A party may demand that any other party allow the party making the demand, or someone acting on the demanding party’s behalf, to enter on any land or other property that is in the possession, custody, or control of the party on whom the demand is made, and to inspect and to measure, survey, photograph, test, or sample the land or other property, or any designated object or operation on it.

(e) A party may demand that any other party produce and permit the party making the demand, or someone acting on the demanding party’s behalf, to inspect, copy, test, or sample electronically stored information in the possession, custody, or control of the party on whom demand is made.

*(Amended by Stats. 2016, Ch. 86, Sec. 42. (SB 1171) Effective January 1, 2017.)*

**2031.020.** (a) A defendant may make a demand for inspection, copying, testing, or sampling without leave of court at any time.

(b) A plaintiff may make a demand for inspection, copying, testing, or sampling without leave of court at any time that is 10 days after the service of the summons on, or appearance by, the party to whom the demand is directed, whichever occurs first.

(c) Notwithstanding subdivision (b), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, a plaintiff may make a demand for inspection, copying, testing, or sampling without leave of court at any time that is five days after service of the summons on, or appearance by, the party to whom the demand is directed, whichever occurs first.

(d) Notwithstanding subdivisions (b) and (c), on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to make a demand for inspection, copying, testing, or sampling at an earlier time.

*(Amended by Stats. 2009, Ch. 5, Sec. 5. Effective June 29, 2009.)*

**2031.030.** (a) (1) A party demanding inspection, copying, testing, or sampling shall number each set of demands consecutively.

(2) A party demanding inspection, copying, testing, or sampling of electronically stored information may specify the form or forms in which each type of electronically stored information is to be produced.

(b) In the first paragraph immediately below the title of the case, there shall appear the identity of the demanding party, the set number, and the identity of the responding party.

(c) Each demand in a set shall be separately set forth, identified by number or letter, and shall do all of the following:

(1) Designate the documents, tangible things, land or other property, or electronically stored information to be inspected, copied, tested, or sampled either by specifically describing each individual item or by reasonably particularizing each category of item.

(2) Specify a reasonable time for the inspection, copying, testing, or sampling that is at least 30 days after service of the demand, unless the court for good cause shown has granted leave to

specify an earlier date. In an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the demand shall specify a reasonable time for the inspection, copying, testing, or sampling that is at least five days after service of the demand, unless the court, for good cause shown, has granted leave to specify an earlier date.

(3) Specify a reasonable place for making the inspection, copying, testing, or sampling, and performing any related activity.

(4) Specify any inspection, copying, testing, sampling, or related activity that is being demanded, as well as the manner in which that activity will be performed, and whether that activity will permanently alter or destroy the item involved.

*(Amended by Stats. 2009, Ch. 5, Sec. 6. Effective June 29, 2009.)*

**2031.040.** The party making a demand for inspection, copying, testing, or sampling shall serve a copy of the demand on the party to whom it is directed and on all other parties who have appeared in the action.

*(Amended by Stats. 2009, Ch. 5, Sec. 7. Effective June 29, 2009.)*

**2031.050.** (a) In addition to the demands for inspection, copying, testing, or sampling permitted by this chapter, a party may propound a supplemental demand to inspect, copy, test, or sample any later acquired or discovered documents, tangible things, land or other property, or electronically stored information in the possession, custody, or control of the party on whom the demand is made.

(b) A party may propound a supplemental demand for inspection, copying, testing, or sampling twice before the initial setting of a trial date, and, subject to the time limits on discovery proceedings and motions provided in Chapter 8 (commencing with Section 2024.010), once after the initial setting of a trial date.

(c) Notwithstanding subdivisions (a) and (b), on motion, for good cause shown, the court may grant leave to a party to propound an additional number of supplemental demands for inspection, copying, testing, or sampling.

*(Amended by Stats. 2009, Ch. 5, Sec. 8. Effective June 29, 2009.)*

**2031.060.** (a) When an inspection, copying, testing, or sampling of documents, tangible things, places, or electronically stored information has been demanded, the party to whom the demand has been directed, and any other party or affected person, may promptly move for a protective order. This motion shall be accompanied by a meet and confer declaration under Section 2020.040.

(b) The court, for good cause shown, may make any order that justice requires to protect any party or other person from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That all or some of the items or categories of items in the demand need not be produced or made available at all.

(2) That the time specified in Section 2030.260 to respond to the set of demands, or to a particular item or category in the set, be extended.

(3) That the place of production be other than that specified in the demand.

(4) That the inspection, copying, testing, or sampling be made only on specified terms and conditions.

(5) That a trade secret or other confidential research, development, or commercial information not be disclosed, or be disclosed only to specified persons or only in a specified way.

(6) That the items produced be sealed and thereafter opened only on order of the court.

(c) The party or affected person who seeks a protective order regarding the production, inspection, copying, testing, or sampling of electronically stored information on the basis that the information is from a source that is not reasonably accessible because of undue burden or expense shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense.

(d) If the party or affected person from whom discovery of electronically stored information is sought establishes that the information is from a source that is not reasonably accessible because of undue burden or expense, the court may nonetheless order discovery if the demanding party shows good cause, subject to any limitations imposed under subdivision (f).

(e) If the court finds good cause for the production of electronically stored information from a source that is not reasonably accessible, the court may set conditions for the discovery of the electronically stored information, including allocation of the expense of discovery.

(f) The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that any of the following conditions exist:

(1) It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive.

(2) The discovery sought is unreasonably cumulative or duplicative.

(3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.

(4) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the

issues in the litigation, and the importance of the requested discovery in resolving the issues.

(g) If the motion for a protective order is denied in whole or in part, the court may order that the party to whom the demand was directed provide or permit the discovery against which protection was sought on terms and conditions that are just.

(h) Except as provided in subdivision (i), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(i) (1) Notwithstanding subdivision (h), absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored

information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

*(Amended by Stats. 2009, Ch. 5, Sec. 9. Effective June 29, 2009.)*

**2031.210.** (a) The party to whom a demand for inspection, copying, testing, or sampling has been directed shall respond separately to each item or category of item by any of the following:

(1) A statement that the party will comply with the particular demand for inspection, copying, testing, or sampling by the date set for the inspection, copying, testing, or sampling pursuant to

paragraph (2) of subdivision (c) of Section 2031.030 and any related activities.

(2) A representation that the party lacks the ability to comply with the demand for inspection, copying, testing, or sampling of a particular item or category of item.

(3) An objection to the particular demand for inspection, copying, testing, or sampling.

(b) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the demanding party.

(c) Each statement of compliance, each representation, and each objection in the response shall bear the same number and be in the same sequence as the corresponding item or category in the demand, but the text of that item or category need not be repeated.

(d) If a party objects to the discovery of electronically stored information on the grounds that it is from a source that is not reasonably accessible because of undue burden or expense and that the responding party will not search the source in the absence of an agreement with the demanding party or court order, the responding party shall identify in its response the types or categories of sources of electronically stored information that it asserts are not reasonably accessible. By objecting and identifying information of a type or category of source or sources that are not reasonably accessible, the responding party preserves any objections it may have relating to that electronically stored information.

*(Amended by Stats. 2009, Ch. 5, Sec. 10. Effective June 29, 2009.)*

**2031.220.** A statement that the party to whom a demand for inspection, copying, testing, or sampling has been directed will comply with the particular demand shall state that the production, inspection, copying, testing, or sampling, and related activity

demanded, will be allowed either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no

objection is being made will be included in the production.

*(Amended by Stats. 2009, Ch. 5, Sec. 11. Effective June 29, 2009.)*

**2031.230.** A representation of inability to comply with the particular demand for inspection, copying, testing, or sampling shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.

*(Amended by Stats. 2009, Ch. 5, Sec. 12. Effective June 29, 2009.)*

**2031.240.** (a) If only part of an item or category of item in a demand for inspection, copying, testing, or sampling is objectionable, the response shall contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category.

(b) If the responding party objects to the demand for inspection, copying, testing, or sampling of an item or category of item, the response shall do both of the following:

(1) Identify with particularity any document, tangible thing, land, or electronically stored information falling within any category of item in the demand to which an objection is being made.

(2) Set forth clearly the extent of, and the specific ground for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked shall be stated. If an objection is based on a claim that the information sought is protected work product under Chapter 4 (commencing with Section 2018.010), that claim shall be expressly asserted.

(c) (1) If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log.

(2) It is the intent of the Legislature to codify the concept of a privilege log as that term is used in California case law. Nothing in this subdivision shall be construed to constitute a substantive change in case law.

*(Amended by Stats. 2012, Ch. 232, Sec. 1. (AB 1354) Effective January 1, 2013.)*

**2031.250.** (a) The party to whom the demand for inspection, copying, testing, or sampling is directed shall sign the response under oath unless the response contains only objections.

(b) If that party is a public or private corporation or a partnership or association or governmental agency, one of its officers or agents shall sign the response under oath on behalf of that party. If the officer or agent signing the response on behalf of that party is an attorney acting in that capacity for a party, that party waives any lawyer-client privilege and any protection for work product under Chapter 4 (commencing with Section 2018.010) during any subsequent discovery from that attorney concerning the identity of the sources of the information contained in the response.

(c) The attorney for the responding party shall sign any responses that contain an objection.

*(Amended by Stats. 2009, Ch. 5, Sec. 14. Effective June 29, 2009.)*

**2031.260.** (a) Within 30 days after service of a demand for inspection, copying, testing, or sampling, the party to whom the demand is directed shall serve the original of the response to it on the party making the demand, and a copy of the response on all other parties who have appeared in the action, unless on motion of the party making the demand, the court has shortened the time for response, or unless on motion of the party to whom the demand has been directed, the court has extended the time for response.

(b) Notwithstanding subdivision (a), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the party to whom a demand for

inspection, copying, testing, or sampling is directed shall have at least five days from the date of service of the demand to respond, unless on motion of the party making the demand, the court has shortened the time for the response, or unless on motion of the party to whom the demand has been directed, the court has extended the time for response.

*(Amended by Stats. 2009, Ch. 5, Sec. 15. Effective June 29, 2009.)*

**2031.270.** (a) The party demanding inspection, copying, testing, or sampling and the responding party may agree to extend the date for the inspection, copying, testing, or sampling or the time for service of a response to a set of demands, or to particular items or categories of items in a set, to a date or dates beyond those provided in Sections 2031.030, 2031.210, 2031.260, and 2031.280.

(b) This agreement may be informal, but it shall be confirmed in a writing that specifies the extended date for inspection, copying, testing, or sampling, or for the service of a response.

(c) Unless this agreement expressly states otherwise, it is effective to preserve to the responding party the right to respond to any item or category of item in the demand to which the agreement applies in any manner specified in Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280.

*(Amended by Stats. 2009, Ch. 5, Sec. 16. Effective June 29, 2009.)*

**2031.280.** (a) Any documents or category of documents produced in response to a demand for inspection, copying, testing, or sampling shall be identified with the specific request number to which the documents respond.

(b) The documents shall be produced on the date specified in the demand pursuant to paragraph (2) of subdivision (c) of Section 2031.030, unless an objection has been made to that date. If the date for inspection has been extended pursuant to Section 2031.270, the documents shall be produced on the date agreed to pursuant to that section.

(c) If a party responding to a demand for production of electronically stored information objects to a specified form for producing the information, or if no form is specified in the demand, the responding party shall state in its response the form in which it intends to produce each type of information.

(d) Unless the parties otherwise agree or the court otherwise orders, the following shall apply:

(1) If a demand for production does not specify a form or forms for producing a type of electronically stored information, the responding party shall produce the information in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable.

(2) A party need not produce the same electronically stored information in more than one form.

(e) If necessary, the responding party at the reasonable expense of the demanding party shall, through detection devices, translate any data compilations included in the demand into reasonably usable form.

*(Amended by Stats. 2019, Ch. 208, Sec. 1. (SB 370) Effective January 1, 2020.)*

**2031.285.** (a) If electronically stored information produced in discovery is subject to a claim of privilege or of protection as attorney work product, the party making the claim may notify any party that received the information of the claim and the basis for the claim.

(b) After being notified of a claim of privilege or of protection under subdivision (a), a party that received the information shall immediately sequester the information and either return the specified information and any copies that may exist or present the information to the court conditionally under seal for a determination of the claim.

(c) (1) Prior to the resolution of the motion brought under subdivision (d), a party shall be precluded from using or disclosing the specified information until the claim of privilege is resolved.

(2) A party who received and disclosed the information before being notified of a claim of privilege or of protection under subdivision (a) shall, after that notification, immediately take

reasonable steps to retrieve the information.

(d) (1) If the receiving party contests the legitimacy of a claim of privilege or protection, he or she may seek a determination of the claim from the court by making a motion within 30 days of receiving the claim and presenting the information to the court conditionally under seal.

(2) Until the legitimacy of the claim of privilege or protection is resolved, the receiving party shall preserve the information and keep it confidential and shall be precluded from using the information in any manner.

*(Added by Stats. 2009, Ch. 5, Sec. 18. Effective June 29, 2009.)*

**2031.290.** (a) The demand for inspection, copying, testing, or sampling, and the response to it, shall not be filed with the court.

(b) The party demanding an inspection, copying, testing, or sampling shall retain both the original of the demand, with the original proof of service affixed to it, and the original of the sworn response until six months after final disposition of the action. At that time, both originals may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the originals be preserved for a longer period.

*(Amended by Stats. 2009, Ch. 5, Sec. 19. Effective June 29, 2009.)*

**2031.300.** If a party to whom a demand for inspection, copying, testing, or sampling is directed fails to serve a timely response to it, the following rules shall apply:

(a) The party to whom the demand for inspection, copying, testing, or sampling is directed waives any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

(1) The party has subsequently served a response that is in substantial compliance with Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

(b) The party making the demand may move for an order compelling response to the demand.

(c) Except as provided in subdivision (d), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to a demand for inspection, copying, testing, or sampling, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If a party then fails to obey the order compelling a response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to this sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(d) (1) Notwithstanding subdivision (c), absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored

information that has been lost, damaged, altered, or overwritten as a result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

*(Amended by Stats. 2009, Ch. 5, Sec. 20. Effective June 29, 2009.)*

**2031.310.** (a) On receipt of a response to a demand for inspection, copying, testing, or sampling, the demanding party may move for an order compelling further response to the demand if the demanding party deems that any of the following apply:

(1) A statement of compliance with the demand is incomplete.

(2) A representation of inability to comply is inadequate, incomplete, or evasive.

(3) An objection in the response is without merit or too general.

(b) A motion under subdivision (a) shall comply with each of the following:

(1) The motion shall set forth specific facts showing good cause justifying the discovery sought by the demand.

(2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040.

(3) In lieu of a separate statement required under the California Rules of Court, the court may allow the moving party to submit a concise outline of the discovery request and each response in dispute.

(c) Unless notice of this motion is given within 45 days of the service of the verified response, or any supplemental verified response, or on or before any specific later date to which the demanding party and the responding party have agreed in writing, the demanding party waives any right to compel a further response to the demand.

(d) In a motion under subdivision (a) relating to the production of electronically stored information, the party or affected person objecting to or opposing the production, inspection, copying, testing, or sampling of electronically stored information on the basis that the information is from a source that is not reasonably accessible because of the undue burden or expense shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense.

(e) If the party or affected person from whom discovery of electronically stored information is sought establishes that the information is from a source that is not reasonably accessible because of the undue burden or expense, the court may nonetheless order discovery if the demanding party shows good cause, subject to any limitations imposed under subdivision (g).

(f) If the court finds good cause for the production of electronically stored information from a source that is not reasonably accessible, the court may set conditions for the discovery of the electronically stored information, including allocation of the expense of discovery.

(g) The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that any of the following conditions exists:

(1) It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive.

(2) The discovery sought is unreasonably cumulative or duplicative.

(3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.

(4) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

(h) Except as provided in subdivision (j), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(i) Except as provided in subdivision (j), if a party fails to obey an order compelling further response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of, or in addition to, that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(j) (1) Notwithstanding subdivisions (h) and (i), absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

*(Amended by Stats. 2018, Ch. 317, Sec. 4. (AB 2230) Effective January 1, 2019. Section operative January 1, 2020, pursuant to Sec. 6, Stats. 2018, Ch. 317.)*

**2031.320.** (a) If a party filing a response to a demand for inspection, copying, testing, or sampling under Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280 thereafter fails to permit the inspection, copying, testing, or sampling in accordance with that party's statement of compliance, the demanding party may move for an order compelling compliance.

(b) Except as provided in subdivision (d), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel compliance with a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(c) Except as provided in subdivision (d), if a party then fails to obey an order compelling inspection, copying, testing, or sampling, the court may make those orders that are just, including

the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(d) (1) Notwithstanding subdivisions (b) and (c), absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

*(Amended by Stats. 2009, Ch. 5, Sec. 22. Effective June 29, 2009.)*

**Physical and Mental Examinations**

**2032.010.** (a) This chapter does not affect genetic testing under Chapter 2 (commencing with Section 7550) of Part 2 of Division 12 of the Family Code.

(b) This chapter does not require the disclosure of the identity of an expert consulted by an attorney in order to make the certification required in an action for professional negligence under Section 411.35.

*(Amended by Stats. 2018, Ch. 876, Sec. 2. (AB 2684) Effective January 1, 2019.)*

**2032.020.** (a) Any party may obtain discovery, subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by means of a physical or mental examination of (1) a party to the action, (2) an agent of any party, or (3) a natural person in the custody or under the legal control of a party, in any action in which the mental or physical condition (including the blood group) of that party or other person is in controversy in the action.

(b) A physical examination conducted under this chapter shall be performed only by a licensed physician or other appropriate licensed health care practitioner.

(c) (1) A mental examination conducted under this chapter shall be performed only by a licensed physician, or by a licensed clinical psychologist who holds a doctoral degree in psychology and has had at least five years of postgraduate experience in the diagnosis of emotional and mental disorders.

(2) If an action involves allegations of sexual abuse of a minor, including any act listed in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 1002, and the examinee is less than 15 years of age, the licensed physician or clinical psychologist shall have expertise in child abuse and trauma.

*(Amended by Stats. 2017, Ch. 133, Sec. 1. (SB 755) Effective January 1, 2018.)*

Requests for Admissions

**2033.010.** Any party may obtain discovery within the scope delimited by Chapter 2 (commencing with Section 2017.010), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by a written request that any other party to the action admit the genuineness of specified documents, or the truth of specified matters of fact, opinion relating to fact, or application of law to fact. A request for admission may relate to a matter that is in controversy between the parties.

*(Amended by Stats. 2016, Ch. 86, Sec. 43. (SB 1171) Effective January 1, 2017.)*

2033.020. (a) A defendant may make requests for admission by a party without leave of court at any time.

(b) A plaintiff may make requests for admission by a party without leave of court at any time that is 10 days after the service of the summons on, or appearance by, that party, whichever occurs first.

(c) Notwithstanding subdivision (b), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, a plaintiff may make requests for

admission by a party without leave of court at any time that is five days after service of the summons on, or appearance by, that party, whichever occurs first.

(d) Notwithstanding subdivisions (b) and (c), on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to make requests for admission at an earlier time.

*(Amended by Stats. 2007, Ch. 113, Sec. 12. Effective January 1, 2008.)*

**2033.030.** (a) No party shall request, as a matter of right, that any other party admit more than 35 matters that do not relate to the genuineness of documents. If the initial set of admission requests

does not exhaust this limit, the balance may be requested in subsequent sets.

(b) Unless a declaration as described in Section 2033.050 has been made, a party need only respond to the first 35 admission requests served that do not relate to the genuineness of documents, if that party states an objection to the balance under Section 2033.230 on the ground that the limit has been exceeded.

(c) The number of requests for admission of the genuineness of documents is not limited except as justice requires to protect the responding party from unwarranted annoyance, embarrassment,

oppression, or undue burden and expense.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2033.040.** (a) Subject to the right of the responding party to seek a protective order under Section 2033.080, any party who attaches a supporting declaration as described in Section 2033.050 may request a greater number of admissions by another party if the greater number

is warranted by the complexity or the quantity of the existing and potential issues in the particular case.

(b) If the responding party seeks a protective order on the ground that the number of requests for admission is unwarranted, the propounding party shall have the burden of justifying the number of requests for admission.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2033.050.** Any party who is requesting or who has already requested more than 35 admissions not relating to the genuineness of documents by any other party shall attach to each set of requests for admissions a declaration containing substantially the following words:

DECLARATION FOR ADDITIONAL DISCOVERY

I, \_\_\_\_\_\_\_\_\_\_, declare:

1. I am (a party to this action or proceeding appearing in propria persona) (presently the attorney for \_\_\_\_\_\_\_\_\_\_, a party to this action or proceeding).

2. I am propounding to \_\_\_\_\_\_\_\_\_\_ the attached set of requests for admission.

3. This set of requests for admission will cause the total number of requests propounded to the party to whom they are directed to exceed the number of requests permitted by Section 2033.030 of the Code of Civil Procedure.

4. I have previously propounded a total of \_\_\_\_\_\_\_\_\_\_ requests for admission to this party.

5. This set of requests for admission contains a total of \_\_\_\_\_\_\_\_\_\_ requests.

6. I am familiar with the issues and the previous discovery conducted by all of the parties in this case.

7. I have personally examined each of the requests in this set of requests for admission.

8. This number of requests for admission is warranted under Section 2033.040 of the Code of Civil Procedure because \_\_\_\_\_\_\_\_\_\_. (Here state the reasons why the complexity or the quantity of issues in the instant lawsuit warrant this number of requests for admission.)

9. None of the requests in this set of requests is being propounded for any improper purpose, such as to harass the party, or the attorney for the party, to whom it is directed, or to cause unnecessary delay or needless increase in the cost of litigation.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this declaration was executed on \_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature)

Attorney for\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2033.060.** (a) A party requesting admissions shall number each set of requests consecutively.

(b) In the first paragraph immediately below the title of the case, there shall appear the identity of the party requesting the admissions, the set number, and the identity of the responding party.

(c) Each request for admission in a set shall be separately set forth and identified by letter or number.

(d) Each request for admission shall be full and complete in and of itself. No preface or instruction shall be included with a set of admission requests unless it has been approved under Chapter 17 (commencing with Section 2033.710).

(e) Any term specially defined in a request for admission shall be typed with all letters capitalized whenever the term appears.

(f) No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request unless it has been approved under Chapter 17 (commencing with Section 2033.710).

(g) A party requesting an admission of the genuineness of any documents shall attach copies of those documents to the requests, and shall make the original of those documents available for inspection on demand by the party to whom the requests for admission are

directed.

(h) No party shall combine in a single document requests for admission with any other method of discovery.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2033.070.** The party requesting admissions shall serve a copy of them on the party to whom they are directed and on all other parties who have appeared in the action.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2033.080.** (a) When requests for admission have been made, the responding party may promptly move for a protective order. This motion shall be accompanied by a meet and confer declaration under Section 2020.040.

(b) The court, for good cause shown, may make any order that justice requires to protect any party from unwarranted annoyance, embarrassment, oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the set of admission requests, or particular requests in the set, need not be answered at all.

(2) That, contrary to the representations made in a declaration submitted under Section 2033.050, the number of admission requests is unwarranted.

(3) That the time specified in Section 2033.250 to respond to the set of admission requests, or to particular requests in the set, be extended.

(4) That a trade secret or other confidential research, development, or commercial information not be admitted or be admitted only in a certain way.

(5) That some or all of the answers to requests for admission be sealed and thereafter opened only on order of the court.

(c) If the motion for a protective order is denied in whole or in part, the court may order that the responding party provide or permit the discovery against which protection was sought on terms and conditions that are just.

(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order under this section, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2033.210.** (a) The party to whom requests for admission have been directed shall respond in writing under oath separately to each request.

(b) Each response shall answer the substance of the requested admission, or set forth an objection to the particular request.

(c) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the requesting party.

(d) Each answer or objection in the response shall bear the same identifying number or letter and be in the same sequence as the corresponding request. The text of that request need not be repeated, except as provided in paragraph (6) of subdivision (e).

(e) In order to facilitate the discovery process:

(1) Except as provided in paragraph (5), upon request by the responding party, the propounding party shall provide the requests for admission in an electronic format to the responding party within three court days of the request.

(2) Except as provided in paragraph (5), upon request by the propounding party after receipt of the responses to the requests for admission, the responding party shall provide the responses in an electronic format to the propounding party within three court days of the request.

(3) A party may provide the requests for admission or responses to the requests for admission requested pursuant to paragraphs (1) and (2) in any format agreed upon by the parties. If the parties are unable to agree on a format, the requests for admission or responses to the requests for admission shall be provided in plain text format.

(4) A party may transmit the requests for admission or responses to the requests for admission requested pursuant to paragraphs (1) and (2) by any method agreed upon by the parties. If the parties are unable to agree on a method of transmission, the requests for admission or responses to the requests for admission shall be transmitted by electronic mail to an email address provided by the requesting party.

(5) If the requests for admission or responses to the requests for admission were not created in an electronic format, a party is not required to create the requests for admission or responses in an electronic format for the purpose of transmission to the requesting party.

(6) A responding party who has requested and received requests for admission in an electronic format pursuant to paragraph (1) shall include the text of the request immediately preceding the response.

*(Amended by Stats. 2019, Ch. 190, Sec. 2. (AB 1349) Effective January 1, 2020.)*

**2033.220.** (a) Each answer in a response to requests for admission shall be as complete and straightforward as the information reasonably available to the responding party permits.

(b) Each answer shall:

(1) Admit so much of the matter involved in the request as is true, either as expressed in the request itself or as reasonably and clearly qualified by the responding party.

(2) Deny so much of the matter involved in the request as is untrue.

(3) Specify so much of the matter involved in the request as to the truth of which the responding party lacks sufficient information or knowledge.

(c) If a responding party gives lack of information or knowledge as a reason for a failure to admit all or part of a request for admission, that party shall state in the answer that a reasonable

inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter.

*(Amended by Stats. 2005, Ch. 22, Sec. 24. Effective January 1, 2006.)*

**2033.230.** (a) If only a part of a request for admission is objectionable, the remainder of the request shall be answered.

(b) If an objection is made to a request or to a part of a request, the specific ground for the objection shall be set forth clearly in the response. If an objection is based on a claim of privilege, the particular privilege invoked shall be clearly stated. If an objection is based on a claim that the matter as to which an admission is requested is protected work product under Chapter 4 (commencing with Section 2018.010), that claim shall be expressly asserted.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2033.240.** (a) The party to whom the requests for admission are directed shall sign the response under oath, unless the response contains only objections.

(b) If that party is a public or private corporation, or a partnership or association or governmental agency, one of its officers or agents shall sign the response under oath on behalf of

that party. If the officer or agent signing the response on behalf of that party is an attorney acting in that capacity for the party, that party waives any lawyer-client privilege and any protection for

work product under Chapter 4 (commencing with Section 2018.010) during any subsequent discovery from that attorney concerning the identity of the sources of the information contained in the response.

(c) The attorney for the responding party shall sign any response that contains an objection.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2033.250.** (a) Within 30 days after service of requests for admission, the party to whom the requests are directed shall serve the original of the response to them on the requesting party, and a copy of the response on all other parties who have appeared, unless on motion of the requesting party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response.

(b) Notwithstanding subdivision (a), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the party to whom the request is directed shall have at least five days from the date of service to respond, unless on motion of the requesting party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response.

*(Amended by Stats. 2007, Ch. 113, Sec. 13. Effective January 1, 2008.)*

**2033.260.** (a) The party requesting admissions and the responding party may agree to extend the time for service of a response to a set of admission requests, or to particular requests in a set, to a date beyond that provided in Section 2033.250.

(b) This agreement may be informal, but it shall be confirmed in a writing that specifies the extended date for service of a response.

(c) Unless this agreement expressly states otherwise, it is effective to preserve to the responding party the right to respond to any request for admission to which the agreement applies in any manner specified in Sections 2033.210, 2033.220, and 2033.230.

(d) Notice of this agreement shall be given by the responding party to all other parties who were served with a copy of the request.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2033.270.** (a) The requests for admission and the response to them shall not be filed with the court.

(b) The party requesting admissions shall retain both the original of the requests for admission, with the original proof of service affixed to them, and the original of the sworn response until six

months after final disposition of the action. At that time, both originals may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the originals be preserved for a longer period.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**2033.280.** If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply:

(a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4

(commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

(1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

(b) The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction under Chapter 7 (commencing with Section 2023.010).

(c) The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. It is mandatory that the court impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion.

*(Amended by Stats. 2005, Ch. 294, Sec. 12. Effective January 1, 2006.)*

**2033.290.** (a) On receipt of a response to requests for admissions, the party requesting admissions may move for an order compelling a further response if that party deems that either or both of the following apply:

(1) An answer to a particular request is evasive or incomplete.

(2) An objection to a particular request is without merit or too general.

(b) (1) A motion under subdivision (a) shall be accompanied by a meet and confer declaration under Section 2016.040.

(2) In lieu of a separate statement required under the California Rules of Court, the court may allow the moving party to submit a concise outline of the discovery request and each response in dispute.

(c) Unless notice of this motion is given within 45 days of the service of the verified response, or any supplemental verified response, or any specific later date to which the requesting party and the responding party have agreed in writing, the requesting party waives any right to compel further response to the requests for admission.

(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(e) If a party then fails to obey an order compelling further response to requests for admission, the court may order that the matters involved in the requests be deemed admitted. In lieu of, or in addition to, this order, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

*(Amended by Stats. 2018, Ch. 317, Sec. 5. (AB 2230) Effective January 1, 2019. Section operative January 1, 2020, pursuant to Sec. 6, Stats. 2018, Ch. 317.)*

**2033.300.** (a) A party may withdraw or amend an admission made in response to a request for admission only on leave of court granted after notice to all parties.

(b) The court may permit withdrawal or amendment of an admission only if it determines that the admission was the result of mistake, inadvertence, or excusable neglect, and that the party who obtained the admission will not be substantially prejudiced in maintaining that party's action or defense on the merits.

(c) The court may impose conditions on the granting of the motion that are just, including, but not limited to, the following:

(1) An order that the party who obtained the admission be permitted to pursue additional discovery related to the matter involved in the withdrawn or amended admission.

(2) An order that the costs of any additional discovery be borne in whole or in part by the party withdrawing or amending the admission.

*(Added by Stats. 2004, Ch. 182, Sec. 23. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)*

**CALIFORNIA EVIDENCE CODE**

**WITNESSES**

**700.** Except as otherwise provided by statute, every person, irrespective of age, is qualified to be a witness and no person is disqualified to testify to any matter.

*(Amended by Stats. 1985, Ch. 884, Sec. 1.)*

**701.** (a) A person is disqualified to be a witness if he or she is:

(1) Incapable of expressing himself or herself concerning the matter so as to be understood, either directly or through interpretation by one who can understand him; or

(2) Incapable of understanding the duty of a witness to tell the truth.

(b) In any proceeding held outside the presence of a jury, the court may reserve challenges to the competency of a witness until the conclusion of the direct examination of that witness.

*(Amended by Stats. 1985, Ch. 884, Sec. 2.)*

**702.** (a) Subject to Section 801, the testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter. Against the objection of a party, such personal knowledge must be shown before the witness may testify concerning the matter.

(b) A witness' personal knowledge of a matter may be shown by any otherwise admissible evidence, including his own testimony.

*(Enacted by Stats. 1965, Ch. 299.)*

703. (a) Before the judge presiding at the trial of an action may be called to testify in that trial as a witness, he shall, in proceedings held out of the presence and hearing of the jury, inform

the parties of the information he has concerning any fact or matter about which he will be called to testify.

(b) Against the objection of a party, the judge presiding at the trial of an action may not testify in that trial as a witness. Upon such objection, the judge shall declare a mistrial and order the

action assigned for trial before another judge.

(c) The calling of the judge presiding at a trial to testify in that trial as a witness shall be deemed a consent to the granting of a motion for mistrial, and an objection to such calling of a judge shall be deemed a motion for mistrial.

(d) In the absence of objection by a party, the judge presiding at the trial of an action may testify in that trial as a witness.

*(Enacted by Stats. 1965, Ch. 299.)*

**703.5.** No person presiding at any judicial or quasi-judicial proceeding, and no arbitrator or mediator, shall be competent to testify, in any subsequent civil proceeding, as to any statement,

conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to a statement or conduct that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under paragraph (1) or (6) of subdivision (a) of Section 170.1 of the Code of Civil Procedure. However, this section does not apply to a mediator with regard to any mediation under Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code.

*(Amended by Stats. 1994, Ch. 1269, Sec. 7. Effective January 1, 1995.)*

**704.** (a) Before a juror sworn and impaneled in the trial of an action may be called to testify before the jury in that trial as a witness, he shall, in proceedings conducted by the court out of the

presence and hearing of the remaining jurors, inform the parties of the information he has concerning any fact or matter about which he will be called to testify.

(b) Against the objection of a party, a juror sworn and impaneled in the trial of an action may not testify before the jury in that trial as a witness. Upon such objection, the court shall declare a

mistrial and order the action assigned for trial before another jury.

(c) The calling of a juror to testify before the jury as a witness shall be deemed a consent to the granting of a motion for mistrial, and an objection to such calling of a juror shall be deemed a motion for mistrial.

(d) In the absence of objection by a party, a juror sworn and impaneled in the trial of an action may be compelled to testify in that trial as a witness.

*(Enacted by Stats. 1965, Ch. 299.)*

**Privileges**

**Lawyer-Client**

**950.** As used in this article, "lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

*(Enacted by Stats. 1965, Ch. 299.)*

**951.** As used in this article, "client" means a person who, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity, and includes an incompetent (a) who himself so consults the lawyer or (b) whose guardian or conservator so consults the lawyer in behalf of the incompetent.

(Enacted by Stats. 1965, Ch. 299.)

**952**. As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship.

*(Amended by Stats. 2002, Ch. 72, Sec. 3. Effective January 1, 2003.)*

**953.** As used in this article, “holder of the privilege” means:

(a) The client, if the client has no guardian or conservator.

(b) (1) A guardian or conservator of the client, if the client has a guardian or conservator, except as provided in paragraph (2).

(2) If the guardian or conservator has an actual or apparent conflict of interest with the client, then the guardian or conservator does not hold the privilege.

(c) The personal representative of the client if the client is dead, including a personal representative appointed pursuant to Section 12252 of the Probate Code.

(d) A successor, assign, trustee in dissolution, or any similar representative of a firm, association, organization, partnership, business trust, corporation, or public entity that is no longer in existence.

*(Amended by Stats. 2018, Ch. 475, Sec. 1. (AB 1290) Effective January 1, 2019.)*

**954.** Subject to Section 912 and except as otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a

confidential communication between client and lawyer if the privilegeclaimed by:

(a) The holder of the privilege;

(b) A person who is authorized to claim the privilege by the holder of the privilege; or

(c) The person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

The relationship of attorney and client shall exist between a law corporation as defined in Article 10 (commencing with Section 6160) of Chapter 4 of Division 3 of the Business and Professions Code and the persons to whom it renders professional services, as well as between such persons and members of the State Bar employed by such corporation to render services to such persons. The word "persons" as used in this subdivision includes partnerships, corporations,

limited liability companies, associations and other groups and entities.

*(Amended by Stats. 1994, Ch. 1010, Sec. 104. Effective January 1, 1995.)*

**955.** The lawyer who received or made a communication subject to the privilege under this article shall claim the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 954.

*(Enacted by Stats. 1965, Ch. 299.)*

**956.** (a) There is no privilege under this article if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(b) This exception to the privilege granted by this article shall not apply to legal services rendered in compliance with state and local laws on medicinal cannabis or adult-use cannabis, and confidential communications provided for the purpose of rendering those services are confidential communications between client and lawyer, as defined in Section 952, provided the lawyer also advises the client on conflicts with respect to federal law.

*(Amended by Stats. 2017, Ch. 530, Sec. 2. (AB 1159) Effective January 1, 2018.)*

**Privilege Not to Testify Against Spouse**

**970.** Except as otherwise provided by statute, a married person has a privilege not to testify against his spouse in any proceeding.

*(Enacted by Stats. 1965, Ch. 299.)*

**971.** Except as otherwise provided by statute, a married person whose spouse is a party to a proceeding has a privilege not to be called as a witness by an adverse party to that proceeding without the prior express consent of the spouse having the privilege under this section unless the party calling the spouse does so in good faith without knowledge of the marital relationship.

*(Enacted by Stats. 1965, Ch. 299.)*

**972.** A married person does not have a privilege under this article in:

(a) A proceeding brought by or on behalf of one spouse against the other spouse.

(b) A proceeding to commit or otherwise place his or her spouse or his or her spouse's property, or both, under the control of another because of the spouse's alleged mental or physical condition.

(c) A proceeding brought by or on behalf of a spouse to establish his or her competence.

(d) A proceeding under the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(e) A criminal proceeding in which one spouse is charged with:

(1) A crime against the person or property of the other spouse or of a child, parent, relative, or cohabitant of either, whether committed before or during marriage.

(2) A crime against the person or property of a third person committed in the course of committing a crime against the person or property of the other spouse, whether committed before or during marriage.

(3) Bigamy.

(4) A crime defined by Section 270 or 270a of the Penal Code.

(f) A proceeding resulting from a criminal act which occurred prior to legal marriage of the spouses to each other regarding knowledge acquired prior to that marriage if prior to the legal

marriage the witness spouse was aware that his or her spouse had been arrested for or had been formally charged with the crime or crimes about which the spouse is called to testify.

(g) A proceeding brought against the spouse by a former spouse so long as the property and debts of the marriage have not been adjudicated, or in order to establish, modify, or enforce a child, family or spousal support obligation arising from the marriage to the former spouse; in a proceeding brought against a spouse by the other parent in order to establish, modify, or enforce a child support obligation for a child of a nonmarital relationship of the spouse; or in a proceeding brought against a spouse by the guardian of a child of that spouse in order to establish, modify, or enforce a child support obligation of the spouse. The married person does not have a privilege under this subdivision to refuse to provide information relating to the issues of income, expenses, assets, debts, and employment of either spouse, but may assert the privilege as otherwise provided in this article if other information is requested by the former spouse, guardian, or other parent of the child.

Any person demanding the otherwise privileged information made available by this subdivision, who also has an obligation to support the child for whom an order to estabish, modify, or enforce child support is sought, waives his or her marital privilege to the same extent as the spouse as provided in this subdivision.

*(Amended by Stats. 1989, Ch. 1359, Sec. 9.7.)*

**973.** (a) Unless erroneously compelled to do so, a married person who testifies in a proceeding to which his spouse is a party, or who testifies against his spouse in any proceeding, does not have a privilege under this article in the proceeding in which such testimony is given.

(b) There is no privilege under this article in a civil proceeding brought or defended by a married person for the immediate benefit of his spouse or of himself and his spouse.

*(Enacted by Stats. 1965, Ch. 299.)*

**Privilege for Confidential Marital Communications**

**980.** Subject to Section 912 and except as otherwise provided in this article, a spouse (or his or her guardian or conservator when he or she has a guardian or conservator), whether or not a party, has a privilege during the marital or domestic partnership relationship and afterwards to refuse to disclose, and to prevent another from disclosing, a communication if he or she claims the privilege and the communication was made in confidence between him or her and the other spouse while they were spouses.

*(Amended by Stats. 2016, Ch. 50, Sec. 34. (SB 1005) Effective January 1, 2017.)*

**981.** There is no privilege under this article if the communication was made, in whole or in part, to enable or aid anyone to commit or plan to commit a crime or a fraud.

*(Enacted by Stats. 1965, Ch. 299.)*

**982.** There is no privilege under this article in a proceeding to commit either spouse or otherwise place him or his property, or both, under the control of another because of his alleged mental or physical condition.

*(Enacted by Stats. 1965, Ch. 299.)*

**983.** There is no privilege under this article in a proceeding brought by or on behalf of either spouse to establish his competence.

*(Enacted by Stats. 1965, Ch. 299.)*

**984.** There is no privilege under this article in:

(a) A proceeding brought by or on behalf of one spouse against the other spouse.

(b) A proceeding between a surviving spouse and a person who claims through the deceased spouse, regardless of whether such claim is by testate or intestate succession or by inter vivos transaction.

*(Enacted by Stats. 1965, Ch. 299.)*

**985.** There is no privilege under this article in a criminal proceeding in which one spouse is charged with:

(a) A crime committed at any time against the person or property of the other spouse or of a child of either.

(b) A crime committed at any time against the person or property of a third person committed in the course of committing a crime against the person or property of the other spouse.

(c) Bigamy.

(d) A crime defined by Section 270 or 270a of the Penal Code.

*(Amended by Stats. 1975, Ch. 71.)*

**986.** There is no privilege under this article in a proceeding under the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

*(Amended by Stats. 1982, Ch. 256, Sec. 2.)*

**987.** There is no privilege under this article in a criminal proceeding in which the communication is offered in evidence by a defendant who is one of the spouses between whom the communication was made.

*(Enacted by Stats. 1965, Ch. 299.)*

**Physician-Patient Privilege**

**990.** As used in this article, "physician" means a person authorized, or reasonably believed by the patient to be authorized, to practice medicine in any state or nation.

*(Enacted by Stats. 1965, Ch. 299.)*

**991.** As used in this article, "patient" means a person who consults a physician or submits to an examination by a physician for the purpose of securing a diagnosis or preventive, palliative, or curative treatment of his physical or mental or emotional condition.

*(Enacted by Stats. 1965, Ch. 299.)*

**992.** As used in this article, "confidential communication between patient and physician" means information, including information obtained by an examination of the patient, transmitted between a patient and his physician in the course of that relationship and in confidence by a means which, so far as the patient is aware, discloses the information to no third persons other than those who are present to further the interest of the patient in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the physician is consulted, and includes a diagnosis made and the advice given by the physician in the course of that relationship.

*(Amended by Stats. 1967, Ch. 650.)*

**993.** As used in this article, "holder of the privilege" means:

(a) The patient when he has no guardian or conservator.

(b) A guardian or conservator of the patient when the patient has a guardian or conservator.

(c) The personal representative of the patient if the patient is dead.

*(Enacted by Stats. 1965, Ch. 299.)*

**994.** Subject to Section 912 and except as otherwise provided in this article, the patient, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a

confidential communication between patient and physician if the privilege is claimed by:

(a) The holder of the privilege;

(b) A person who is authorized to claim the privilege by the holder of the privilege; or

(c) The person who was the physician at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

The relationship of a physician and patient shall exist between a medical or podiatry corporation as defined in the Medical Practice Act and the patient to whom it renders professional services, as well as between such patients and licensed physicians and surgeons employed by such corporation to render services to such patients. The word "persons" as used in this subdivision includes partnerships, corporations, limited liability companies, associations, and other groups and entities.

*(Amended by Stats. 1994, Ch. 1010, Sec. 105. Effective January 1, 1995.)*

**995.** The physician who received or made a communication subject to the privilege under this article shall claim the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 994.

*(Enacted by Stats. 1965, Ch. 299.)*

**996.** There is no privilege under this article as to a communication relevant to an issue concerning the condition of the patient if such issue has been tendered by:

(a) The patient;

(b) Any party claiming through or under the patient;

(c) Any party claiming as a beneficiary of the patient through a contract to which the patient is or was a party; or

(d) The plaintiff in an action brought under Section 376 or 377 of the Code of Civil Procedure for damages for the injury or death of the patient.

*(Enacted by Stats. 1965, Ch. 299.)*

**997.** There is no privilege under this article if the services of the physician were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a tort or to escape detection or apprehension after the commission of a crime or a tort.

*(Enacted by Stats. 1965, Ch. 299.)*

**998.** There is no privilege under this article in a criminal proceeding.

*(Enacted by Stats. 1965, Ch. 299.)*

**999.** There is no privilege under this article as to a communication relevant to an issue concerning the condition of the patient in a proceeding to recover damages on account of the conduct of the patient if good cause for disclosure of the communication is shown.

*(Amended by Stats. 1975, Ch. 318.)*

**1000.** There is no privilege under this article as to a communication relevant to an issue between parties all of whom claim through a deceased patient, regardless of whether the claims are by

testate or intestate succession or by inter vivos transaction.

*(Enacted by Stats. 1965, Ch. 299.)*

**1001.** There is no privilege under this article as to a communication relevant to an issue of breach, by the physician or by the patient, of a duty arising out of the physician-patient relationship.

*(Enacted by Stats. 1965, Ch. 299.)*

**1002.** There is no privilege under this article as to a communication relevant to an issue concerning the intention of a patient, now deceased, with respect to a deed of conveyance, will, or other writing, executed by the patient, purporting to affect an interest in property.

*(Enacted by Stats. 1965, Ch. 299.)*

**1003.** There is no privilege under this article as to a communication relevant to an issue concerning the validity of a deed of conveyance, will, or other writing, executed by a patient, now deceased, purporting to affect an interest in property.

*(Enacted by Stats. 1965, Ch. 299.)*

**1004.** There is no privilege under this article in a proceeding to commit the patient or otherwise place him or his property, or both, under the control of another because of his alleged mental or

physical condition.

*(Enacted by Stats. 1965, Ch. 299.)*

**1005.** There is no privilege under this article in a proceeding brought by or on behalf of the patient to establish his competence.

*(Enacted by Stats. 1965, Ch. 299.)*

**HEARSAY**

**1200.** (a) "Hearsay evidence" is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.

(b) Except as provided by law, hearsay evidence is inadmissible.

(c) This section shall be known and may be cited as the hearsay rule.

*(Enacted by Stats. 1965, Ch. 299.)*

**1201.** A statement within the scope of an exception to the hearsay rule is not inadmissible on the ground that the evidence of such statement is hearsay evidence if such hearsay evidence consists of one or more statements each of which meets the requirements of an exception to the hearsay rule.

*(Amended by Stats. 1967, Ch. 650.)*

**1202.** Evidence of a statement or other conduct by a declarant that is inconsistent with a statement by such declarant received in evidence as hearsay evidence is not inadmissible for the purpose of attacking the credibility of the declarant though he is not given and has not had an opportunity to explain or to deny such inconsistent statement or other conduct. Any other evidence offered to attack or support the credibility of the declarant is admissible if it would have been admissible had the declarant been a witness at the hearing. For the purposes of this section, the deponent of a deposition taken in the action in which it is offered shall be deemed to be a hearsay declarant.

*(Enacted by Stats. 1965, Ch. 299.)*

**1203.** (a) The declarant of a statement that is admitted as hearsay evidence may be called and examined by any adverse party as if under-examination concerning the statement.

(b) This section is not applicable if the declarant is (1) a party, (2) a person identified with a party within the meaning of subdivision (d) of Section 776, or (3) a witness who has testified in the action concerning the subject matter of the statement.

(c) This section is not applicable if the statement is one described in Article 1 (commencing with Section 1220), Article 3 (commencing with Section 1235), or Article 10 (commencing with

Section 1300) of Chapter 2 of this division.

(d) A statement that is otherwise admissible as hearsay evidence is not made inadmissible by this section because the declarant who made the statement is unavailable for examination pursuant to this section.

*(Enacted by Stats. 1965, Ch. 299.)*

**1203.1.** Section 1203 is not applicable if the hearsay statement is offered at a preliminary examination, as provided in Section 872 of the Penal Code.

*(Added June 5, 1990, by initiative Proposition 115, Sec. 8. Note: Prop. 115 is titled the Crime Victims Justice Reform Act.)*

**1204.** A statement that is otherwise admissible as hearsay evidence is inadmissible against the defendant in a criminal action if the statement was made, either by the defendant or by another, under such circumstances that it is inadmissible against the defendant under the Constitution of the United States or the State of California.

*(Enacted by Stats. 1965, Ch. 299.)*

**1205.** Nothing in this division shall be construed to repeal by implication any other statute relating to hearsay evidence.

*(Enacted by Stats. 1965, Ch. 299.)*

**Confessions and Admissions**

**1220.** Evidence of a statement is not made inadmissible by the hearsay rule when offered against the declarant in an action to which he is a party in either his individual or representative capacity,

regardless of whether the statement was made in his individual or representative capacity.

*(Enacted by Stats. 1965, Ch. 299.)*

**1221.** Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if the statement is one of which the party, with knowledge of the content thereof, has by words or other conduct manifested his adoption or his belief in its truth.

*(Enacted by Stats. 1965, Ch. 299.)*

**1222.** Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if:

(a) The statement was made by a person authorized by the party to make a statement or statements for him concerning the subject matter of the statement; and

(b) The evidence is offered either after admission of evidence sufficient to sustain a finding of such authority or, in the court's discretion as to the order of proof, subject to the admission of such evidence.

*(Enacted by Stats. 1965, Ch. 299.)*

**1223.** Evidence of a statement offered against a party is not made

inadmissible by the hearsay rule if:

(a) The statement was made by the declarant while participating in a conspiracy to commit a crime or civil wrong and in furtherance of the objective of that conspiracy;

(b) The statement was made prior to or during the time that the party was participating in that conspiracy; and

(c) The evidence is offered either after admission of evidence sufficient to sustain a finding of the facts specified in subdivisions (a) and (b) or, in the court's discretion as to the order of proof, subject to the admission of such evidence.

*(Enacted by Stats. 1965, Ch. 299.)*

**1224.** When the liability obligation, or duty of a party to a civil action is based in whole or in part upon the liability, obligation, or duty of the declarant, or when the claim or right asserted by a

party to a civil action is barred or diminished by a breach of duty by the declarant, evidence of a statement made by the declarant is as admissible against the party as it would be if offered against the declarant in an action involving that liability, obligation, duty, or breach of duty.

*(Enacted by Stats. 1965, Ch. 299.)*

**1225.** When a right, title, or interest in any property or claim asserted by a party to a civil action requires a determination that a right, title, or interest exists or existed in the declarant, evidence of a statement made by the declarant during the time the party now claims the declarant was the holder of the right, title, or interest is as admissible against the party as it would be if offered against the declarant in an action involving that right, title, or interest.

*(Enacted by Stats. 1965, Ch. 299.)*

**1226.** Evidence of a statement by a minor child is not made inadmissible by the hearsay rule if offered against the plaintiff in an action brought under Section 376 of the Code of Civil Procedure for injury to such minor child.

*(Enacted by Stats. 1965, Ch. 299.)*

**1227.** Evidence of a statement by the deceased is not made inadmissible by the hearsay rule if offered against the plaintiff in an action for wrongful death brought under Section 377 of the Code of Civil Procedure.

*(Enacted by Stats. 1965, Ch. 299.)*

**1228.** Notwithstanding any other provision of law, for the purpose of establishing the elements of the crime in order to admit as evidence the confession of a person accused of violating Section 261, 264.1, 285, 286, 287, 288, 289, or 647a of, or former Section 288a of, the Penal Code, a court, in its discretion, may determine that a statement of the complaining witness is not made inadmissible by the hearsay rule if it finds all of the following:

(a) The statement was made by a minor child under the age of 12, and the contents of the statement were included in a written report of a law enforcement official or an employee of a county welfare department.

(b) The statement describes the minor child as a victim of sexual abuse.

(c) The statement was made prior to the defendant’s confession. The court shall view with caution the testimony of a person recounting hearsay where there is evidence of personal bias or prejudice.

(d) There are no circumstances, such as significant inconsistencies between the confession and the statement concerning material facts establishing any element of the crime or the identification of the defendant, that would render the statement unreliable.

(e) The minor child is found to be unavailable pursuant to paragraph (2) or (3) of subdivision (a) of Section 240 or refuses to testify.

(f) The confession was memorialized in a trustworthy fashion by a law enforcement official.

If the prosecution intends to offer a statement of the complaining witness pursuant to this section, the prosecution shall serve a written notice upon the defendant at least 10 days prior to the hearing or trial at which the prosecution intends to offer the statement.

If the statement is offered during trial, the court’s determination shall be made out of the presence of the jury. If the statement is found to be admissible pursuant to this section, it shall be admitted out of the presence of the jury and solely for the purpose of determining the admissibility of the confession of the defendant.

*(Amended by Stats. 2018, Ch. 423, Sec. 23. (SB 1494) Effective January 1, 2019.)*

**Declarations Against Interest**

**1230.** Evidence of a statement by a declarant having sufficient knowledge of the subject is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made, was so far contrary to the declarant's pecuniary or proprietary interest, or so far subjected him to the risk of civil or criminal liability, or so far tended to render invalid a claim by him against another, or created such a risk of making him an object of hatred, ridicule, or social disgrace in the community, that a reasonable man in his position would not have made the statement unless he believed it to be true.

*(Enacted by Stats. 1965, Ch. 299.)*

**Spontaneous, Contemporaneous and Dying Declarations**

**1240.** Evidence of a statement is not made inadmissible by the hearsay rule if the statement:

(a) Purports to narrate, describe, or explain an act, condition, or event perceived by the declarant; and

(b) Was made spontaneously while the declarant was under the stress of excitement caused by such perception.

*(Enacted by Stats. 1965, Ch. 299.)*

**1241.** Evidence of a statement is not made inadmissible by the hearsay rule if the statement:

(a) Is offered to explain, qualify, or make understandable conduct of the declarant; and

(b) Was made while the declarant was engaged in such conduct.

*(Enacted by Stats. 1965, Ch. 299.)*

**1242.** Evidence of a statement made by a dying person respecting the cause and circumstances of his death is not made inadmissible by the hearsay rule if the statement was made upon his personal knowledge and under a sense of immediately impending death.

*(Enacted by Stats. 1965, Ch. 299.)*