**California Civil Procedure Outline**

1. **Subject Matter Jurisdiction**
   1. SMJ = the types of cases California can hear.
   2. California has broad subject matter jurisdiction to hear any case where IPJ exists so long as the issue isn’t exclusive to another tribunal.
   3. Limited v. Unlimited Cases
      1. If the amount in controversy is >25k the case is unlimited.
      2. If the amount in controversy is 25k or less the case is limited.
      3. All cases go to the superior court (California merge its municipal and superior courts into one) but what type of case contingent on the amount in controversy determines certain procedural rules (Example: the number of interrogatories allowed)
      4. *Amount in Controversy* – this is ONLY what is in the prayer for relief and does not include interest or attorney’s fees.
      5. *Stern v. Superior Court*
         1. Rule: WALKER RULE – For due process reasons each party needs an opportunity to respond and show they ‘necessarily’ meet the statutory 25k before a court can reclassify a case.
         2. Rule: if the court reclassifies a case the parties need notice and opportunity to oppose the reclassification.
   4. Policy
      1. The statutory limit of 25k puts the defendant on notice for how to defend themselves in court (some D’s might defend smaller amounts differently than a large amount).
2. **Personal Jurisdiction**
   1. Long Arm Statute
      1. California’s long arm statute limits California’s IPJ to the extent granted by the U.S. Constitution. (CCP § 410.10)
   2. As long as a person is served in California, California has IPJ over the person. (*Pennoyer v. Neff*)
   3. Out of Forum defendants
      1. “due process requires only that in order to subject a defendant to judgment in personam, if he be not present within the territory of the foru, he must have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” (*International Shoe*)
         1. **Minimum Contacts**
            1. General v. Specific Jurisdiction

General Jurisdiction means your activities in the forum are continuous and systematic therefore the courts in the forum have general jurisdiction over you for any matter.

Specific jurisdiction means your activities in the forum are more limited and in order to establish IPJ a sufficient nexus between the defendant’s activities in the forum and the cause of action must exist.

*Snowney v. Harrah’s Entertainment, Inc.*

Snowney files a class action against Harrah’s for an energy charge not stated.

Rule: A court may exercise specific jurisdiction over out of state defendants if 1) the defendant has **purposefully availed** themselves to the forum’s **benefits and protections** and 2) the **controversy is related** (NEXUS – substantial connection between C/A and in forum activities) to or arises out of the defendant’s contacts with the forum and 3) the assertion of IPJ would comport with fair play and substantial justice (**fairness factors** – burden on D/P and state interest).

* 1. **Disputing IPJ**
     1. Make a SPECIAL APPERANCE (as opposed to a general) in the forum state only to dispute IPJ – you can’t be “tagged” (*Pennoyer*) with service while you’re in court for this.
     2. **Rule**: The defendant must dispute IPJ in their motion to quash in the pre-trial motion or file the motion to quash simultaneously with their answer or else they lose the opportunity to dispute IPJ and they are subject to IPJ in the forum.
        1. *Roy v. Superior Court*
           1. D’s didn’t dispute IPJ right away.
           2. Issue: whether the defendants waived their right to assert jurisdictional defenses because they included their IPJ defense in their answer rather than their pre-asnwer motions defenses. (Note: 418.10(e)(3) omits ‘answer”)
           3. Holding: The defendants here waived their right to dispute IPJ when they made a general appearance in the action by filing an answer and excluding their IPJ dispute from their pre-answer motions to quash.
           4. NOTE: California’s rules are congruent with FRCP 12(b) except(!) in California you have to raise your IPJ defense in your pre-answer or absent a pre-answer simultaneous to your answer whereas in Fed you can raise a 12b6 objection through trial.

Policy: preserve judicial efficiency and keep the cost of litigation low. In California you have case management conferences between both attorneys. You should bring this up asap to avoid further congesting the courts… and so you don’t lose the defense.

* 1. **Personal Service**
     1. Personal Service is delivering a copy of the summons and the complaint to the party’s home (415.20(b)) or place of business (415.20(a)).
     2. To Dispute you need to file a Motion to Quash (418.10)
     3. *Espindola v. Nunez*
        1. Issue: Whether the process server used reasonable diligence resulting in valid service of process. (yes)
        2. Rule: If the process server goes to the home several times and the party cannot be found reasonable diligence is satisfied and SUBSTITUTED SERVICE is good if the party receives actual notice (what happened here – left it with the wife).
           1. Substituted service means the process server didn’t leave summons/ complaint with the party but with an Authorized Person or co-occupant.
     4. Notes:
        1. You can’t avoid the process server. If you’re in your car/ house/ or whatever you can’t just lock the doors and windows and drive off.
        2. substituted service is ok for a business so long as the process server leaves everything with a secretary or someone capable of effectuating actual notice.

1. **Venue**
   1. Three types of actions
      1. Local actions – real property = go to the county where the property is located
      2. Transitory actions – go to where the D’s place of residence is or where the injury occurred.
      3. Mixed Actions – More than one venue rule applies.
         1. Rule 395(a) – go to where the injury occurred.
         2. In mixed actions the D can have the action transferred to his county. It trumps almost all the Venue rules including where the property is located for a local action.Conversely – if the P files where the D lives the D can’t transfer the action to where the property is located.
         3. Main Relief Rule – if there are several causes of action you go to the county where the underlying claim is (unless the D wants it in his county)
         4. Money damages for rent are transitory
         5. If the property is HARMED you go to where the property is.
      4. Grounds for transfer of venue
         1. Factors to change venue
            1. Convenience to witnesses – court doesn’t care about convenience of the parties unless someone is debilitated. The court cares about witnesses and why its inconvenient and what they will testify to.
            2. The MOVING party has the BURDEN of proof.
         2. *Morris v. Agfa Corp.*
            1. P’s estate is suing in California for injuries incurred mostly in Texas w/ almost all the witnesses and defendants in Texas.
            2. Issue: is the alternate forum suitable and whether private balancing factor favor another forum? (texas is suitable)
            3. Rule: motions must be filed in a reasonable time to dispute venue and to grant inconvenient forum there must be a suitable alternative forum and second the court evaluates private interests of the litigants and the interests of the public in retaining the action for trial in California.
2. **Complaint**
   1. California requires a cover sheet (check off what type of case)
   2. Other requirements certain types of suits
      1. Employment discrimination – must go to fair employment and housing and if they don’t take your case they give you a ‘right to sue’.
      2. Some types of suits require ADR
      3. Medical Malpractice Rule: California statutes require anyone pursuing a medical malpractice claim to file an intent to sue 90 days before filing suit with a specific statement of the nature of the injuries suffered by the P. If the provider is government administered a MICRA tort claim with a general description of the injuries is required and after the claim is rejected the P has 6 months to file.
         1. *Wurts v. County of Fresno*
            1. Issue: Does a MICRA claim constitute an intent to sue notice? No.
            2. Holding: The MICRA claim provides a notice to the health care provider a cause of action exists and gives the provider a chance to settle without a lawsuit whereas the intent to sue notifies the provider a lawsuit will exist and to prepare to defend itself.
            3. Note: The P in this case thought each of these mechanisms would toll the other but lost on a demurrer because they filed past the 6 months they were required to file after the MICRA claim.
   3. Types of Complaints
      1. California courts categorize all complaints as cross complaints rather than the federal system’s counterclaims and third party complaints…
      2. Some claims are filed as petitions rather than complaints but mislabeling is inconsequential.
      3. **Form Complaints** 
         1. used for complaints, cross complaints, answers in cases involving personal injury, property damage, wrongful death, unlawful detainer, breach of K and fraud.
         2. RULE: in form pleadings, although a simplified form of pleading, must include facts supporting the cause of action.
            1. *People ex rel. Department of Transportation v. Superior Court*

Holding: The P failed to include facts in the form complaint sufficient for Caltrans to determine the injury to the P and their culpability, if any, for an accident which happened north of Santa Barbara.

* + 1. Subscription and Verification
       1. Subscription – The attorney must sign the pleading.
          1. If the pleading is signed incorrectly or by the wrong person the court allows you to fix it.
       2. Verification – under penalty of perjury you the subscription verifies the complaint
    2. Notice Pleading v. Fact Pleading
       1. A **notice pleading** is something akin to FRCP 8 – a short, plain statement of the claim showing that the pleader is entitled to relief.
       2. A **Fact Pleading** in state court a plaintiff must allege a fact for each element of each theory of liability to present a valid prima facie case. CCP § 425.10(a)(1) requires a statement of the facts constituting the cause of action, in ordinary and concise language..
          1. Two common case categories: 1) personal injury and 2) cases requiring more particularity (fraud, statute, or cases pled upon information and belief)

Personal Injury: *Blockrath v. Aldrich Chemical Co.*

Holding: The plaintiff in this wrongful death/ PI suit needs to allege by showing some facts the plaintiff was exposed to chemicals manufactured by the numerous defendants and the exposure is a **substantial factor** (50% +1) in the cause of death.

Information and Belief: *Doe v. City of Los Angeles*

Holding: The plaintiffs failed to **allege** the LAPD knew or should have known Kalish’s past or current acts of molesting children.

Note: Defendant bears the general pleading burden for affirmative defenses like the statute of limitations. When the P ‘discovers’ a claim after the statute of limits should have run the P has to plea facts to establish when the claim was discovered. In a molestation case a P would have until 26 to file a claim, but here the P wanted to file against a third party, the LAPD, after the P discovered the claim.

1. **Demand for Judgment** 
   1. Statement of Damages (required) - California complaints and cross complaints must contain a demand for judgment for the relief to which the pleader claims to be entitled. (the amount demanded).
      1. *Schwab v. Rondel Homes*
         1. Holding: In superior court the actual and punitive damages for personal injury/ wrongful death the P does not need to state damages but must give notice to the D to get a default judgment.
      2. Economic Litigation Statute – limited cases – no special demurrers, no motions to strike, 1 depo/ side, no witnesses only affidavits.
      3. Pleading Punitive Damages
         1. difficult to obtain in California due to constitutional limitations and pleading restrictions.
         2. burden of proof is clear and convincing evidence
         3. Have to motion to open punitive damages in med. malpractice
         4. The plaintiff has to present confident reasonable evidence of fraud, oppression or malice.
2. **Responses**
   1. General Demurrer
      1. Failure to state facts sufficient to support a cause of action. There aren’t facts sufficient to support elements of a claim.
      2. Demurrer is the first thing filed. The court assumes all the facts are true. In *Blockrath* the defendants demurred and the courts gave the plaintiffs time to amend the complaint.
   2. Special Demurrer
      1. Not enough facts or too confusing to respond to.
      2. NOT allowed in limited civil cases!
   3. Motion to Strike
      1. Anti-slapp motions are attached to motions to strike.
      2. Keeps material out of trial.
   4. Answer
      1. Raise any affirmative defenses
      2. Admit/ deny the factual allegations in the complaint
         1. General Denial – Denies all the allegations in the complaints in one swoop.
            1. RULE: A general denial brings everything in the complaint in issue.

*Advantec Group v. Edwin’s Plumbing Co.*

Holding: The general denial puts the licensing of Edwin’s Plumbing in issue and Edwin’s cross complaint against advantec is dropped by the court b/c they failed to produce a copy of their contracting license.

Note: the attorney should have known the rule for providing the license so edwin’s recourse is filing a mal practice suit.

* + - 1. Specific Denial goes through each allegation and admits or denies with an explanation.
         1. If the complaint is **verified** (penalty of perjury) specific denials are required.

1. Amendments
   1. 1) cure pleading/defect 2) add party 3) add theory
   2. As a Right
      1. before D answers
      2. before trial = amend @ will. During trial must move to amend.
      3. Relation Back (Avoids the Statute of Limitations (SoL) by relating back to the original filing date. Note: Discovery Rule = SoL clock starts ticking from the time of discovery of the injury)
         1. same facts
            1. *Devaloo v. State Farm(no facts, nothing to compare:tossed out)*
         2. same injury
         3. same instrumentality
      4. Doe Defendants:
         1. Add Doe D in case you find them. 3 years to ID and serve them.
            1. *Fuller v. Tucker(discovery rule standard=what reasonable person would know, No Duty to Investigate bladder lift case)*
            2. *Nogart v. Upjohn(amend to include Doe on discovery rule to stop SoL)*
2. Frivolous Pleading(truth in pleading)
   1. Vexatious Litigants
      1. 5 cases against in 7 years
      2. repeatedly filing non-meritorious motions
      3. need a notice hearing to determine if D is vexatious
      4. Ct determines if its reasonable they could prevail on the suit:
   2. Vexatious Attorney
      1. same as FRCP 11 except Ca has safeharbor.
         1. Harassment or delay
         2. non frivolous argument to change law
         3. notice and a motion for sanctions: 21 day **safe harbor** to fix/ withdraw
            1. *Eichenbaum v. Alon(can’t wait till last day of safe harbor if you say you’re going through just to suck up Ct and opp. Resources)*
3. AntiSLAPP (strategic lawsuit against public participation)
   1. 425.16:
      1. D is engaged in protected const. activity
         1. leg, exec, judicial proceeding see privilege
         2. statements under review by those above
         3. public interest
            1. goal = public good not gathering ammo for another private controversy
         4. const. right of petition or speech in connection w/ issue of public interest
      2. burden shifts to P to establish prob. Of prevailing on merits (prima facie) w/o discovery and no interlocutory appeal ability must be filed in 60 days
         1. *Flatley v. Mauro(extortion not protected by antiSLAPP const. activity or litigation privilege)*
      3. 425.17: Policy: protect David from Goliath
         1. no relief different or greater than the public interest
         2. private enforcement necessary to protect important public right
            1. *Blanchard v. Directv (antiSLAPP protection must exceed just the class and no private enforce. Necessary to protect pub. Right)*
            2. 425.17(c)(1-2) antiSLAPP exception for commercial speech

statement is about business &

intended audience is potential buyer

*Brenton v. Metabolife(statute dumps non-speech claims & cannot antiSLAPP false ad claim b/c statute does not limit their commercial speech just what they can do during litigation)*

* + 1. 425.18(a):
       1. if you win antiSLAPP you can SLAPPback and go for malicious prosecution/ other c/a that might have arose from batted down SLAPP suit and if new D antiSLAPPs the SLAPPback no atty fees/ discovery stay/ or lose immediate appeal.

1. Cross Complaints
   1. Compulsory
      1. Same Transaction or Occurrence
         1. 428.10: if the issues to be raised in the cross complaint are sufficiently related to any subject raised in the complaint the cross complaint may be deemed compulsory.
         2. *Crocker National Bank v. Emerald* – compulsory cross complaints must be related to the cause of action that existed at the time of the service of the answer to the complaint. Can’t add causes of action happening after the answer.
      2. California uses the ‘logical relationship test’
         1. Wither there would be a substantial duplication of effort and time, by the courts and the parties, if the claims were litigated in separate trials.
      3. No need for cross complaint if P only seeks declaratory relief
      4. For cross complaints against third parties (usually indemnification)
         1. Must arise out of the same transaction or occurrence as the original action or involve the same property
   2. Permissive – anything not compulsory
2. **Discovery**
   1. Governed by the Civil Discovery Act. Allowed to discover “relevant” evidence for purposes of discovery. This is more liberal than the federal rules only allowing discovery for material leading to a claim or defense. California casts a wider discovery net because you can ask for anything within the subject matter of the controversy.
      1. Greyhound v. Superior Court – only strong public policy weigh against disclosure.
   2. Informal Discovery – investigative work parties do on their own
      1. Pullin v. Superior Court - in a case involving a slip and fall in a vons, the injured party’s investigator is allowed to go take pictures of the place where the injury occurred so long as they aren’t breaking any laws and the store allows them to stay.
   3. Relevance and Admissibility
      1. California only requires discovery lead to evidence relevant to the subject matter of the controversy
         1. Stewart v. Colonial Western Agency
            1. Rule: parties during a deposition do not need to object based on relevance to preserve the objection but irrelevant lines of questioning might be cumulative or harassing which justifies suspending the deposition.
   4. Protection from Discovery
      1. Parties can motion for a protective order to prevent discovery
         1. Privacy – California has a constitutional right to privacy not enumerated in the U.S. Const.
            1. *Pioneer Electronics v. Superior Court*

Pioneer Electronics sends out letters where silence = consent to be a part of a class action and the court balances the recipient’s reasonable expectation of privacy (whether there is a serious invasion of privacy) against a legitimate public interest and concludes it is OK to have an ‘opt out’ box to check.

* + - 1. Privilege (held by client) – Not discoverable but if a party fails to participate in discovery without good cause the court can compel a party (after a motion to compel) to hand over otherwise privileged documents
         1. Attorney-Client – prospective clients and clients who reasonably believe they are talking to an attorney get this.

*Hernadez v. Superior Court* – when a party chooses to invoke privilege during discovery they must keep a ‘privilege log’ and respond by saying why they are invoking the privilege and a description of the privileged information. The court doesn’t just take a party’s word for it without something to back up the assertion.

* + - 1. Work Product (held by attorney) – a writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories is not discoverable ccp § 2018.030(a)
         1. Absolute – limited to the attorney’s work product
         2. Qualified – if a party is substantially prejudiced by not having the work product of an attorney or an expert, the information can be discoverable to achieve substantial justice but the party has to be unable without undue hardship to otherwise get the information.
  1. Waiver
     1. Attorneys must be diligent in avoiding inadvertent disclosures of privileged materials
        1. *Jasmine Networks v. Marvell Semiconductor*
           1. Holding: The parties forgot to hang up the phone and one side of the conversation discussed committing fraud while the other party listened and the court decided parties cannot hide behind atty-client privilege when the disclosure was not coerced and the disclosure is a waiver.
  2. DISCOVERY DEVICES
     1. Interrogatories
        1. California allows 35 specially prepared interrogatories and 35 form interrogatories. In a limited civil case parties only get 35 of all interrogatories, demands to produce documents, and requests for admission. Only one depo/ limited case.
        2. *Sinaiko Healthcare v. Pacific Healthcare Consultants*
           1. Holding: Discovery is supposed to be self executing but one party only responds when their about to get punished by the court for not participating so the court decides once you’re late responding it doesn’t matter you quickly sent in responses, you’ve waived your right to invoke privilege.
     2. Depositions
        1. Court reporter, sworn testimony, question and answer
        2. Limited to natural persons
        3. For organizations – you can have 1 deposition but that might include a lot of people. The organization has to designate someone with knowledge of the subject matter to appear for the depo.
        4. Within 75 miles of the person’s residence or principle office.
        5. *Maldonado v Superior Court*
           1. Organizations only have to produce their employees but if the party requesting the depo finds former employees the organization is obligated to supply them with documents related to the subject matter of litigation where here the deponents showed up with nothing.
     3. Physical and Mental Examinations – Rule: attorney cannot be present for the mental exam but can be present for the physical examination. The party to be examined has to place their mental health in controversy. Neither can be physically invasive. Parties can’t ask to have a surgical evaluation of someone.
        1. Vinson v. Superior Court
           1. In this case for sexual harassment and IIED the IIED claim places the plaintiff’s mental state in controversy and the opposing party can ask for a mental evaluation to figure out if she is injured or not.

NOTE: In sexual harassment claims only the sexual history between the parties is discoverable. A party can’t discover a plaintiff’s entire sexual history. It is irrelevant, a violation of their privacy, embarrassing.

ATTACK (2 pages permitted front + back for final)

SMJ (long arm statute) = limited, unlimited, walker rule = necessarily meets amount

Personal jurisdiction - general jurisdiction (continuous and systematic) – specific jx (nonresident + Int’l Shoe (MC must be met – special appear) + snowney = 1) purp avail 2) nexus (c/a is related) 3) fairness (D, P, State interest). TIMELY before/ contemp w/ A

Personal Service – reasonable diligence before substituted service.

Venue = local (real property), transitory (go to D resides or inj. occurred), mixed. TIMELY – before or contemporaneous to the answer. Movant = burden of proof.

Forum – inconvenient forum (burden on D, P, and Witnesses).

Complaint = med mal pract – 90 day intent to sue + if gov. administerd: MICRA claim (gives 6 months to file after). They do not toll & not equivalent (*wurts v. county Fresno*)TYPES (limit pleading jx) – all cross complaints: Form Complaints (*Dept Trans v. Sup Ct: include enough facts*): Notice Pleading (FRCP 8 short plain): Fact Peading (fact/ each element of claim: 2 types: P.I. & particularity[fraud, pled on info/ belief] *blockrath v. Aldrich chem.*-tons of Ds no causal *Doe v. LA(must allege PD knew/ should’ve known past[note: P discovered claim against 3d party last so no SOL per revival statute])*

Demand for J’ment = state of damages. *Schwab v. Rondel Homes(must give notice of dam. For default jment)* Punitive = burden of proof:clear and convincing evidence

Responses = general demurrer(failure to state facts sufficient to form c/a[no facts/ elements] court assumes facts are true for evaluation: ct gives time to amend; Special Demurrer-not enough facts or confusing–not allowed in limited civil; Answer-affirmative defenses[SoL= when bad is complete/ Discovery Rule (p finds out)], admit/deny.[general denial]*advantec v. Edwins Plumbing(everything is in issue)*, [specific denial]if complaint if verified this is required.

Amendments = 1)cure pleading/defect 2)add party 3)add theory; As a Right-1)before D answers 2)before trial: amend @ will. Later: move to amend. Relation Back: 1)same facts 2)same injury 3)same instrumentality *Devaloo v. State Farm(no facts, nothing to compare:tossed out)*Doe Defendants:*Nogart v. Upjohn(amend to include Doe on discovery rule to stop SoL)* Add Doe D in case you find them. 3 years to ID and serve them. *Fuller v. Tucker(discovery rule standard=what reasonable person would know, No Duty to Investigate bladder lift case)*

Frivolous Pleading(truth in pleading) = Vexatious Litigants:1)5 cases aginst in 7 years 2)repeatedly filing non-meritorious motions 3)need a notice hearing to determine if D is vex 4)Ct determines if its reasonable they could prevail on the suit: Vexatious Attorney: same as FRCP 11 except Ca has safeharbor. Harassment or delay, non frivolous argument to change law, notice and a motion for sanctions: 21 day safe harbor to fix/ withdraw *Eichenbaum v. Alon(can’t wait till last day of safe harbor if you say you’re going through just to suck up Ct and opp. Resources)*

AntiSLAPP = strategic lawsuit against public participation: 425.16: 1) D is engaged in protected const. activity[1)leg, exec, judicial proceeding see privilege 2)statements under review by those 3)public interest; goal pub. Good not gathering ammo for another private controversy 4)const. right of petition or speech in connection w/ issue of public interest] 2) burden shifts to P to establish prob. Of prevailing on merits (prima facie) w/o discovery and no interlocutory appeal ability; filed in 60 days *Flatley v. Mauro(extortion not protected by antiSLAPP const. activity or litigation privilege)* 425.17 protect David from Goliath 1)no relief different or greater than the public interest 2) private enforcement necessary to protect important public right: *Blanchard v. Directv(antiSLAPP protection must exceed just the class and no private enforce. Necessary to protect pub. Right)* 425.17(c)(1-2)antiSLAPP exception for commercial speech 1)statement is about business & 2)intended audience is potential buyer *Brenton v. Metabolife(statute dumps non-speech claims & cannot antiSLAPP false ad claim b/c statute does not limit their commercial speech just what they can do during litigation)* 425.18(a) if you win antiSLAPP you can SLAPPback and go for malicious prosecution/ other c/a that might have arose from batted down SLAPP suit and if new D antiSLAPPs the SLAPPback no atty fees/ discovery stay/ or lose immediate appeal.

**Discovery** - Allowed to discover “relevant” evidence for purposes of discovery. California casts a wider discovery net because you can ask for anything within the subject matter of the controversy. **Informal Discovery** – investigative work parties do on their own *Pullin v. Superior Court* - in a case involving a slip and fall in a vons **Relevance and Admissibility** California only requires discovery lead to evidence relevant to the subject matter of the controversy *Stewart v. Colonial Western Agency* Rule: parties during a deposition do not need to object based on relevance to preserve the objection but irrelevant lines of questioning might be cumulative or harassing which justifies suspending the deposition.**Protection from Discovery** motion for a *protective order* *Privacy* – California has a constitutional right to privacy not enumerated in the U.S. Const.*Pioneer Electronics v. Superior Court -*OK to have an ‘opt out’ box to check. *Privilege (held by client)* – Not discoverable but if a party fails to participate in discovery without good cause the court can compel a party (after a motion to compel) to hand over otherwise privileged documents *Attorney-Client* – prospective clients and clients who reasonably believe they are talking to an attorney get this. - *Hernadez v. Superior Court* – when a party chooses to invoke privilege during discovery they must keep a ‘privilege log’ and respond by saying why they are invoking the privilege. *Work Product (held by attorney)* – Absolute – limited to the attorney’s work product - Qualified – if a party is substantially prejudiced by not having the work product of an attorney or an expert, the information can be discoverable to achieve substantial justice but the party has to be unable without undue hardship to otherwise get the information. –Waiver- Attorneys must be diligent in avoiding inadvertent disclosures of privileged materials: *Jasmine Networks v. Marvell Semiconductor*Holding: The parties forgot to hang up the phone (not coerced) - **DISCOVERY DEVICES –** *Interrogatories*: *Sinaiko Healthcare v. Pacific Healthcare Consultants* Holding: Discovery is supposed to be self executing but one party only responds when their about to get punished by the court for not participating so the court decides once you’re late responding it doesn’t matter you quickly sent in responses, you’ve waived your right to invoke privilege. *Depositions:* For organizations – you can have 1 deposition but that might include a lot of people. The organization has to designate someone with knowledge of the subject matter to appear for the depo: *Maldonado v Superior Court -* Organizations only have to produce their employees but if the party requesting the depo finds former employees the organization is obligated to supply them with documents related to the subject matter of litigation where here the deponents showed up with nothing.*Physical and Mental Examinations* – Rule: attorney cannot be present for the mental exam but can be present for the physical examination. The party to be examined has to place their mental health in controversy. Neither can be physically invasive. Parties can’t ask to have a surgical evaluation of someone.*Vinson v. Superior Court* In this case for sexual harassment and IIED the IIED claim places the plaintiff’s mental state in controversy and the opposing party can ask for a mental evaluation to figure out if she is injured or not.**Production of Documents and Things** California does not have the automatic disclosure of relevant documents used to support claims or defenses the FRCP has.*Stadish v. Superior Court*The gas company wanted to invoke a trade secret protection but because they didn’t respond within 30 days adequately and could not show excusable neglect they waived this protection. **Requests for Admission** Used to narrow the scope of litigation. Limited to 35. Failure to admit without substantial justification may result in a judicial shifting of costs of proof and attorney’s fees to the party who should have made the admission prior to trial. Failure to respond to an interrogatory instigates a phone call from opposing counsel. Failure to Admit is a disaster:*Wilcox v. Birtwhistle*If you fail to admit or respond to an RAF the opposing party can make a motion to deem the RAFs admitted. This medical malpractice case allowed the doctor to withdraw or amend if they could show excusable neglect but they are still subject to monetary sanctions (so no automatic ‘jackpot’ if the other side doesn’t respond to an RAF unless you motion for it to be deemed admitted and they do not withdraw or amend and show excusable neglect)**Continuing Discovery** In California if you discover new evidence you do not have to disclose it to the other side unless they ask for it. (*Biles v. Exxon Mobile*)*Biles* – Biles found someone to support his claim before trial in the 11th hour so Exxon’s motion for summary judgment motion and their objection to the declaration from the new witness fails because there is no duty for the plaintiff to disclose new evidence Exxon never asked for. **Electronic Discovery** California says the responding party pays the expenses of extracting and providing electronic data even in cases involving significant cost or burden. FRCP uses the Zubulake case where the cost is shifted to the requesting party.*Toshiba v. Superior Court* The cost of producing electronic documents is in the millions of dollars but in order to protect from this expense Toshiba should have sought a protective order for undue burden and expense but because they relied on the federal rule incorrectly the state rule requires they bear the cost. **Experts** California allows parties to demand the simultaneous exchange of expert identities and reports no later than 10 days after the trial date is set or 70 days before trial, whichever is closest to trial.*Bonds v. Roy* – Roy severed a nerve on Bonds’ arm and the expert used could not expand the scope of their testimony to include the standard of care. The rule is you have to disclose what the expert is going to testify about.**Conflict of Interest***Western Digital v. Superior Court* – The rule is you have to show there is actually a conflict of interest and law firms are allowed to set up a screen to prevent such an occurrence for representation. Motion to disqualify counsel is used to kick out a lawyer from litigation who has a conflict of interest, usually knowledge of the other side’s confidential information. **Meet and Confer** *Obregon v. Superior Court* – The meet and confer requirement is an informal agreement and parties can ask for an extension to meet this requirement but the court can impose sanctions if a party does not participate which is what happened here.**Discovery Sanctions**You cannot hide the ball or you will face dismissal.*Stephen Slesinger v. Walt Disney Co*

This is the Winnie the pooh case. Because the stolen privileged documents told opposing counsel the strategy of Disney the court can’t ‘unring the bell’ to put everyone in a place as if there were no violation so the case is dismissed because the court can’t get litigation back on track again.**Protective Orders** – issued for annoyance, embarrassment, oppression, or undue burden or expense. California includes protective orders for oral depositions, written dips, interrogatories, production of documents, mental and physical exams, requests for admission, and exchange of expert witness information.*Planned Parenthood Golden Gate v. Superior Court*The court decides the disclosure of the names and addresses of the workers at a planned parenthood clinic is an unsafe invasion of privacy and weighs it against the need for disclosure concluding the right to privacy prevails here. (different from the *pioneer case* where the safety of the people isn’t an issue)**Discovery Completion (California has cut off dates for discovery)***Fairmont Ins. V. Superior Court* – In the event of a successful motion for a new trial or an order for a new trial the discovery clock is reset to allow discovery for new issues presented in the new trial. The dissent strongly disagrees saying it goes against the discovery policy to encourage efficient litigation and the court should just grant leave for additional discovery if it is necessary (but the majority says this is a waste of judicial resources, although having a whole new round of discovery and a new trial is also a ‘waste’)

**Punitive Damages** Must give a prima facie showing of success on the merits and the court weighs the evidence of both sides *Jabro v. Superior Court*Hill needed to show a substantial probability of success on the merits in order to discover Jabro’s finances for punitive damages and because the court didn’t weigh Jabro’s evidence the trial court erred.

**Dismissal** *Voluntary Dismissal* – State court plaintiffs can dismiss their own cases at any time before the actual commencement of trial upon payment of the costs, if any. RULE: The plaintiff can’t dismiss in the 11th hour knowing they are doomed only to refile and continue harassing their opponent.*Franklin Capital v. Wilson* Franklin never showed up to court and wanted to dismiss before getting dismissed. Court dismissed with prej.*Wells* – Ct gave leave to amend and they didn’t so the demure stands and dismiss with prej. *Christensen* - withdraws during time to amend, b/c its not the 11th hour they’re allowed to do this.*Involuntary Dismissal* – Failure to diligently procedure with a lawsuit results in dismissal. Parties have three years to file a complaint before the court can use discretion to dismiss and 5 years parties face MANDATORY dismissal.*Discretionary dismissal* – the court considers settlement negotiates, complexity and diligence.*Landry v. Berryessa* – Court concluded a 7.5 month dormant period where nothing happened is not diligent. Extending mandatory dismissal If bringing the action is ‘impracticable’ the 5 year limit is tolled *Tamburina v. combined ins. Co -*  plaintiff is looking for a new atty because his is dying. Look at impracticality – causality (but for the impracticality) – reasonable diligence

**Default Judgment** Defendant fails to respond or penalty is default where defendant refuses to follow litigation. The plaintiff has to apply ofr the default and most show proof of summons. There is a prove up hearing for damages. The effect of the default on the defendant: recovery limited to amount stated in the complaint – in PI you can’t state them in complaint so you have to give them a statement of damages.*Greenup v. Rodman -*  the defendant failed to answer an amended complaint – default. CALIFORNIA: prove up hearing is ex-parte and party only gets whats in the complaint.

**Summary Judgment** Personal note: 12b6 – demure (they’re missing facts to back up an element) Sum J’ment – no triable issue of material fact (all the facts are in and there is nothing to dispute) No reason to go to trial and you show this by submitting an evidence packet with undisputed facts and why they matter. RULE: to succeed you just have to show the plaintiff can’t reasonably get evidence to prove something, not the absence of that something *Aguilar v. Atlantic Rechfield* – BURDEN: suing the oil companies claiming oligopoly and conspiracy – Oil company says they can’t prove there is a conspiracy, its not on them to show there isn’t one. They win.

## APPELLATE REVIEW

**Right to appeal**- To appeal order after judgment: 1. underlying judgment appealable; 2. order involves issues different from judgment; 3. affects judgment by enforcing it or staying it. **Collateral Orders**- serves as an alternate vehicle for obtaining a direct appeal of certain trial Ct order during the pendency of an action. Limitation on this rule: the proceeding must be collateral to the action (is not directly involved in the judgment), the collateral order must require the payment of money or performance of an act/ refrain from performing. CASE*Ponce*- denied a motion to appoint counsel for an EM/mnt claim. This collateral order does not give rise to an appeal b/c no order to pay $, nor to perform an act/refrain, so does not meet the requirements of rule above.

**Writ Only**- Sometimes an appellate Ct can review a matter only via writ (nonappealable orders)

. Writ is available to compel the performance of an act, which the law specially enjoins as a

duty. Writ relief is more likely when issue is a matter of public importance, novel constitutional

questions. **Writs** are not appealable but might never the less be reviewed by Ct of Appeals via an

**Extraordinary Writ** b/c of prejudice imposed upon petitioning litigant in the absence of appellate

relief. *SAIC*- P petition for writ of mandate requesting the Ct to vacate litigation award by writ. Special

reasons here to grant review: multiple & difficult issue, P stood in line in the appellate process.**Timeliness of an Appeal**- notice of appeal must be filed [1] w/in 60d after Ct clerk mails (not Email) “Notice of Entry,” of judgment to have standing to appeal. “Notice of Entry,” must bear precisely that title & must truly be filed stamped w/date; [2] 60d after party that won sends notice to the party that lost; or [3] 180d after entry of judgment. Time limits for filing a notice of appeal is jurisdictional—ct has no power to hear an appeal that is not timely filed. *Alan*- must commence an appeal w/in 60d period after denial of class action certification. But party was not adequately notified à entry was not filed stamped, did not bear “Notice of Entry” **Standard of Review- total of 3 in CA.** De Novo- Appellate Ct independently decides case involving only questions of law not deference given to the trial Cts ruling. Reserved for constitutional/statutory interpretations. Abuse of discretion- reviews trial judges discretion. Judgment reversed only if it constitutes an abuse exceeding the bounds of reason: difficult to overcome. Evidence standard- reviews the decision by the jury, there is some deference to the proceedings below but the ultimate test is: whether it is reasonable for the jury to make the ruling in question in light of the entire record. *Roddenberry-* no substantial evidence to support wife’s BOP re subsequent projects by the preponderance of the evidence (test above). Mere scintilla of evidence not enough.**Prejudicial v. Harmless Error- factors to consider are:** Conflict of evidence on critical issue Arguments contribute to misleading instructions to the jury Whether jury requested a rehearing of an erroneous instruction Closeness of the jury’s verdict Remedying effect on another instruction *Soule-* Jury intrusions were improper. Has to be sufficiently serious would have effected the outcome of the case for appellate Ct to reverse. No presumption that errors are prejudicial,except for absence of PJ.

## Claim Preclusion

## final judgment;same parties in privity;same cause of action;cause of action was or could have been litigated

**There has to be a primary right.** Have a plaintiff with a right, a defendant with a duty. The harm comes from depriving the primary right. By cause of action we mean legal theory. *Mycogen Corp. v. Monsanto Co.* CANNOT use claim preclusion when its about declaratory relief. The decision is just about the relationship of the parties. CAN use issue preclusion if you litigate the issue. Mycogen says these are different primary rights. First suit is about getting something. The second claim is about them delaying. The court disagrees. It’s a breach of K so all of the relief coming out of it is one primary right. **Page 925 – arising from the same transaction or occurrence.** Same car accident. Damage to property, damage to person. One primary right because its one transaction or occurrence giving rise to ONE thing. = claim preclusion. DEFAULT = claim preclusion.

## ISSUE Preclusion

Talking about a judgement. Its an issue litigated in the course of coming to a judgment from below.

identical issue;issue actually litigated in the former preceding;decided in the former preceding;judgment is final and on the merits;preclusion is sought against the party in privity The difference is actually litigated and necessarily decided. *Torry Pines Bank v. Superior Court* The bank wants to collect unpaid loans. Dismissed w/ prej != on the merits *Vandenberg v. Superior Court.* Arbitration doesn’t count