

CALIFORNIA CIVIL PROCEDURE DISTINCTIONS

PROFESSOR ROBERT PUSHAW

PEPPERDINE UNIVERSITY SCHOOL OF LAW

CHAPTER 1: SUBJECT MATTER JURISDICTION

A. In General

- Federal court jurisdiction—_____ to enumerated categories of cases, most importantly, those arising under _____ law
- By contrast, CA State Courts have _____ jurisdiction over ALL civil cases.

B. Classifying Cases

- One Superior Court in each CA county with SMJ over three classifications of cases:
 - _____ claims—Amount in controversy is \$ _____ or less for actions by individuals, and \$ _____ or less by other parties
 - Limited—Amount in controversy is \$ _____ or less
 - Unlimited—Amount in controversy is **more than** \$ _____

C. Reclassifying Cases

- Automatically reclassified if:
 - Plaintiff _____ the complaint and changes the amount above or below \$ _____; or
 - Cross-complaint (the defendant makes a claim against the plaintiff) increases the amount of the _____ to above \$25,000
 - Reclassified as unlimited
- If initially misclassified, Superior Court keeps _____, but has two options:
 - Reclassify the case from *unlimited* to *limited* if the verdict will _____ be \$25,000 or less
 - Reclassify the case from *limited* to *unlimited* if the verdict _____ above \$25,000
- For an unlimited case to satisfy the \$25,000.01 amount, you can _____ all the claims.

Example 1: Plaintiff brings a limited case against Defendant for \$20,000. Defendant cross-complains for \$10,000. What's the result?

Example 2: D1 and D2 assault a Plaintiff. Plaintiff sues D1 for \$13,000 and D2 for \$12,500. What's the classification?

Example 3: P sues D for breach of contract and seeks \$26,000 in damages. The court correctly classifies the case as unlimited. The defendant's answer denies liability and produces the disputed contract, which plainly shows that the maximum possible damages would be \$24,000. What should the court do?

CHAPTER 2: PERSONAL JURISDICTION

A. In Personam Jurisdiction

- Easy when the defendant is a CA _____
- Trickier when the defendant is from _____

Exam Tip 1: Be alert for a question where the plaintiff is trying to sue a non-CA defendant.

- Apply CA's _____ statute, which allows a CA court to bring an out of state defendant to CA court as long as that complies with due process

1. Due Process—Two part test:

- Does the defendant have _____ with the forum state?
 - Did the defendant _____ herself of CA in a substantial way such that she should have anticipated being sued here
- Would exercising jurisdiction offend _____ and _____?
 - Discretionary call
 - Court balances the _____ on the defendant against CA's _____ in deciding its citizens' claims, judicial efficiency, and all states' policy interests.

Example 4: In 2015, Becky of West Tahoe, CA, bought a Toro (made by Ford, a huge Michigan corporation) from "Tahoe Joe," who owns a big Ford dealership across the state line in East Tahoe, Nevada. Tahoe Joe advertises extensively in California. Thirty percent of his customers are Californians. In West Tahoe, CA, Becky is struck from behind by a speeding car and her gas tank explodes, causing her severe injuries. The tank has a design defect that causes it to

explode when it's hit at speeds over 85 mph. CA imposes strict liability for design defects. Can Becky sue Tahoe Joe in California Superior Court?

_____. California's long-arm statute extends to Tahoe Joe from Nevada. This comports with Due Process.

First, California courts have _____ jurisdiction over Joe because he has "minimum contacts" with CA by continuously advertising and selling vehicles in CA. He should foresee being sued there if his cars cause injury. Even if no general jurisdiction, CA would still have _____ jurisdiction because Becky's claims arose from Joe's contact with the state.

Second, asserting jurisdiction would be "fair and just" because the burden on Joe is small, CA has a strong interest in adjudicating this case, doing so would be efficient, and every state has an interest in addressing defective products.

Example 5: Assume the same facts, except that in 2015 Becky had lived in Rhode Island and bought her Toro used from Rhody, a small used-car dealer in Rhode Island. Would California courts have personal jurisdiction?

It is _____. First, Rhody lacked _____ with CA. He did not do any business there so he should not have reasonably foreseen that someone would buy a car in Rhode Island, drive it to CA and get in an accident, and then sue him there. Second, CA's exercise of jurisdiction over Rhody would be unfair and unjust—a huge burden on him forcing him to cross the country, with little benefit to CA.

B. Other Notes on PJ

- The same due process standards apply if a CA court wants to exercise _____, quasi in rem, or attachment jurisdiction over _____ belonging to an out-of-state defendant.
- Unlike SMJ, you can _____ PJ
- CA _____ the majority rule that nonresident defendants are immune from personal jurisdiction if they come here _____ to participate in a judicial proceeding.

CHAPTER 3: VENUE

A. In General

Which court can hear the case? One that provides a _____ and convenient _____

B. Venue in State Court

- In California, venue lies in the _____ of the appropriate county.

1. Where is venue for local real estate actions?

- In the county where the real property is _____

2. Where is venue for “transitory” actions?

- In the county where _____ resides when the action commences.
- If no defendant resides in California, then in _____ county.

a. Two transitory actions with unique venue rules:

- Contract: sue in the county where the contract was _____ or _____.
- Personal injury or wrongful death: sue where the injury _____.

3. Some actions are _____ (i.e., instituted in more than one venue)

Basic rule: sue defendants in the county where _____ of them resides, unless there is a _____ reason to hold the trial elsewhere

4. Venue against corporations, associations, and partnerships

- Lies in the county:
 - Where the business executed or promised to perform a _____;
 - Where a _____ of contract happened; or
 - Where _____ arose
- Venue against a corporation is permissible where it has its _____ of business.

***Example 6:** Best Buy is a corporation with its principal place of business in San Diego County. P goes to Best Buy in Newport Beach in Orange County and signed a contract to buy a big screen TV for \$2,000 to be delivered in one week. Best Buy later breaches the contract. What court has venue?*

C. Transfer of Venue

- Allowed if the plaintiff sues in the _____ county court
- Even if venue is in the right court, the court might transfer the case if it concludes:
 - A _____ cannot be held in its court;

***Example 7:** Because the community is biased against the defendant*

- It is more _____ for witnesses and fairer to move the trial to another county; or
- No judge on the superior court is qualified to act
 - Happens in small counties where judges have to recuse themselves because they all know a party

Example 8: *Pedro sues Dan in Los Angeles County Superior Court for the tort of battery, claiming that Dan punched him at a Dodgers game in LA. Dan moves to transfer venue to Kern County where he resides. Should the court grant Dan's motion?*

_____. *It is a personal injury suit, so venue is proper where the _____, which is LA county. That specific rule trumps the more general rule that venue should be where the defendant resides.*

D. Forum Non Conveniens

Allows a court to dismiss an action in the interest of _____ if a court in another state (or nation) is more convenient

CHAPTER 4: CHOICE OF LAW—CA RULES

A. Tort

Where more than _____ state has an interest in applying its laws, the court must determine the comparative impairment of each _____ if the other state's laws are applied.

B. Contract

- Choice of law clause – provision saying which state's law applies if there is a _____
 - CA courts determine whether the law substantially relates to the _____ or the _____.
 - If not, it is unenforceable
 - If enforceable, it then decides whether the chosen law conflicts with CA public policy
 - If conflicts, determines whether CA or the chosen state has a _____ in the issue
- No choice-of-law clause (or it is unenforceable)—court applies a _____ governmental interest test, just like in _____ law

Example 9: *Best Buy is incorporated and headquartered in Minnesota, although it has stores throughout the United States, including in California. Plaintiff signs a contract with Best Buy in Orange County to buy a big-screen TV for \$2,000. The contract contains a clause that provides "Minnesota law will*

govern any disputes.” Plaintiff then sues Best Buy in Orange County Superior Court over the TV’s warranty. Assume that CA contract law provides consumers with much better warranty protections than MN law does. Which contract law should the CA Superior Court apply, CA or MN?

MN law _____ relates to one of the parties (Best Buy), which is a MN corporation interested in having its state’s contract law applied to all its contracts. CA would have to decide whether the MN law conflicts with CA’s _____ of giving consumers far stronger warranty protection. If so, then the court would have to use its discretion to determine whether CA or MN has more of an interest in determining this issue. Because the contract was signed in CA by a CA customer, and the store is located in CA, the court would most likely apply _____.

CHAPTER 5: PLEADINGS (PART 1)

A. Commencement of Pleadings

1. Service of Process

As in federal court, P files a complaint and serves it and a _____ on the defendant

2. Key CA Differences

- If despite _____ the plaintiff cannot serve the defendant in person, then substituted service is permitted by:

- Serving a responsible _____ at defendant’s home or place of business

Editorial Note 1: To clarify, the plaintiff serves the defendant at the defendant’s home or business.

- Plaintiff must send a follow-up first-class mailing with return receipt.

- If the plaintiff cannot serve the defendant in person or by substituted service, then service by _____ is allowed.

Note 1: If defendant is _____, the plaintiff can do ordinary service or service by first-class mail with return receipt.

- The defendant can _____ service

- In contrast to the federal rules, waiver of service _____ extend the defendant’s deadline to _____.

Example 10: Bob, a resident of Los Angeles, is driving in San Francisco. Tammy, a San Francisco resident, crashes into Bob and allegedly causes \$10,000 in damages to his car and \$15,000 in personal injuries. Bob files a timely complaint in the San Francisco County Superior Court. Bob then delivers the

complaint and a summons to Tammy at her home address by U.S. Express Overnight Mail with return receipt, which Tammy gets the next morning. Has Tammy been properly served?

_____. If that does not work, he can attempt substituted service on an adult in Tammy's home or work and then mail the complaint and summons to Tammy as a _____ (not as the first method of service). It is irrelevant that Tammy received the court papers.

Example 11: Assume the same facts as in the previous example, except that Bob (1) properly served Tammy, and (2) filed an unlimited civil action in Los Angeles County Superior Court. How should Tammy respond?

Tammy should move to _____ the case from unlimited to limited because the amount in controversy does not exceed \$25,000 (\$10,000 in damages to his car plus \$15,000 in personal injuries). Next, Tammy should move to _____ to San Francisco County where she, the defendant, resides and where the personal injury occurred.

B. Complaint

- Federal rules allow simple _____ pleading—bare bones claims and defenses
- California demands _____ pleading.
 - Parties must allege all _____ that give rise to each cause of action and demand for judgment.
 - The exact dollar amount of _____ must be included.
 - **Exception:** _____ or wrongful-death actions

Example 12: Pam sues Dharma “for a broken leg caused by Dharma’s negligence resulting in physical and mental injuries to Pam.” Is this complaint acceptable?

_____, because it is a personal injury action, so Pam does not have to identify the dollar amount of damages.

Example 13: Pam sues Dharma for “breach of contract executed on June 10, 2019 that results in substantial monetary loss to Pam.” Is this complaint valid?

_____. Pam must set forth the _____ dollar amount of damages.

C. Motions Against the Complaint

After the plaintiff files and serves the complaint, the defendant can respond in various ways.

1. Demurrer

The defendant can file a demurrer to any causes of action (like a Federal Rule 12(b) motion).

Editorial Note 2: To clarify, the **defendant** is the party that files a demurrer.

a. General

- Based on a challenge to court's SMJ; or
- An argument that plaintiff has not set forth _____ sufficient to establish a cause of action

b. Special

- The defendant lacks _____
- Similar action pending in another court
- Problem with joinder of parties
- Pleading is _____
- Plaintiff in a _____ action failed to state whether it was oral or written

Note 2: A party seeking to file a demurrer must first confer with opponent to try to resolve the problem.

2. Motion to Quash Service of Summons

- To challenge _____ jurisdiction
- Must be made _____ filing any other responsive pleading
- What happens if the defendant objects to PJ in the answer rather than by motion to quash?
 - The defendant has made a _____ appearance and _____ this objection.
 - Under federal rules, a defendant can object to PJ in either a _____ or an _____.

3. Motion to Strike

- Can strike:
 - Irrelevant, false, or improper matter; or
 - Any pleading that _____ with CA law or a court order.
- The motion must be filed within _____ of the pleading being challenged.
- **Specific motion to strike:** anti-SLAPP motion—defendant demonstrates that the plaintiff's claim arose from the defendant's exercise of protected _____ rights
 - Defendant wins **unless** plaintiff can show he will probably win on the _____ (an extremely tough burden).

CHAPTER 6: PLEADINGS (PART 2)

A. Answer

- If the defendant's demurrers or motions fail, the defendant must file an answer within _____ days of being served.

Editorial Note 3: The professor misspoke; if the **defendant's** demurrers or motions fail (or they are not made), the defendant must file an answer.

- Answer is similar to Federal Rule 8, except in CA a defendant can file either:
 - A _____ denial (of every allegation); or
 - _____ denials of particular allegations
- Anything not denied is deemed _____.

B. Cross-Complaint

- If the defendant wants to assert a cause of action against the plaintiff, the defendant cannot put it in the answer (as with a federal counterclaim).
- Defendant must file a separate _____
- Catch-all term in CA that covers three distinct claims under the federal rules:
 - Counterclaims;
 - _____ against co-defendants; and
 - Impleader against _____
- If Defendant's cross-complaint _____ to Plaintiff's cause of action, it is _____
 - The defendant must file it or it is _____.
- If the defendant's cross-complaint does not _____ to the plaintiff's cause of action, it is _____.
- In response to a cross-complaint, the plaintiff must file a separate _____ (NOT a "reply").

Example 14: Polly claims that Derek breached a contract to construct a house for \$500,000. The contract provides that one month before Derek begins work, Polly must pay Derek \$50,000 to cover initial costs, such as materials. Should Derek bring up this contract provision in his answer or in a cross-complaint?

In CA state court, Derek must file a _____ alleging that Polly breached the contract by failing to make the initial \$50,000 payment. Derek cannot make that claim in an _____.

C. Amendments

- As with the federal rules, can amend pleadings freely

- Plaintiff has the right to amend _____ before the defendant demurs, moves to strike, answers, or in certain instances where the demurrer or motion to strike has not yet been heard.
- If the court _____ a defendant's demurrer or _____ a motion to strike, it usually gives the plaintiff an opportunity to amend the complaint.
- Later, amendments are granted routinely.

1. Statute of Limitations

- When a party amends a pleading _____ the statute of limitations has run, CA uses a relation back doctrine (like the FRCP).
- Amendment relates back to the original pleading date if it arises from the _____; the amended pleading _____ time barred.
- CA has added _____ requirements to the relation back doctrine:
 - 1) In _____ cases, the amended pleading must concern the same accident and injuries as the original pleading
 - 2) The amended pleading must refer to the same _____ instrumentality.
- When plaintiff names the _____ ("misnomer"), the plaintiff can later name the correct defendant, even after the statute of limitations has _____.
- Unlike the FRCP, CA allows a plaintiff to name a fictitious "Doe" defendant.
 - The plaintiff can later amend and _____ with the defendant's true name if:
 - The original complaint was _____ and included sufficient factual allegations against all the defendants;
 - The plaintiff actually did not know: the defendant's _____, the facts giving rise to a _____, or that the law allowed a cause of action; and
 - The complaint stated the plaintiff's _____.
 - If all factors are met, the plaintiff has _____ years from the date of filing the original complaint to identify and serve any "Doe" defendants, and it _____ to the original complaint.

Example 15: *P is at a bar and gets into a fight with Bill Smith, his co-worker, and a stranger who jumps into the fight and then flees. P files a timely complaint against "Bill Smith and John Doe," which sets forth the material facts, asserting a tort claim against each D, demanding a judgment for \$125,000 from each D, and declaring that P does not know Doe's real name. Two years later,*

after the statute of limitations has expired, P learns that John Doe's name is Rob Lawless and amends his complaint to name Lawless. What is the result?

The plaintiff _____ his complaint and name Lawless because the plaintiff has satisfied all of the requirements concerning fictitious defendants. The complaint is _____, contains sufficient allegations, the plaintiff did not know the defendant's name, and his complaint said he did not know the defendant's name

D. Sanctions

- CA's approach is similar to Federal Rule _____ with a few distinctions.
 - The court must decide if the party requesting sanctions exercised _____.
 - The 21-day grace period for correcting offending conduct applies not only where a party served the motion (as in Federal Rule 11), but also where the _____ acted on its own.
 - The party can be sanctioned for bringing a motion for sanctions for an _____.

CHAPTER 7: MULTIPLE PARTIES AND CLAIMS

A. Joinder of Parties

- In CA, joinder of parties is similar to Federal Rule _____
- Joinder is allowed when:
 - The parties have _____ claims or defenses; or
 - Their claims or defenses arise from the _____ transaction or occurrence and present a common question of _____.

B. Intervention

- CA permits intervention by _____ but only if their interest is _____ and _____.
- Not as generous as Federal Rule _____, which has similar standards (like common question of law or fact)
- Federal judges do not delve into whether that party had a _____ and _____ interest.

Example 16: Diana, who owns a home on a beachfront, adopts some pot belly pigs that smell and squeal. Diana is sued for various property and tort law violations by her next door neighbor, Penelope. Another homeowner, Percy, who lives on the beach 12 houses away, moves to intervene as a co-plaintiff. Percy claims Diana's pigs will reduce his property's value, which is possible,

although he cannot see or smell the pigs and has no intention of selling his house. Can Percy intervene under the FRCP? Under the CA rules?

Under the FRCP: _____ intervene because his claim and Penelope's claim present common questions of law and fact and Penelope, and Diana will not suffer any prejudice or delay from the joinder.

Under the CA rules: The court would also have to determine that Percy's interest is _____, which is not clear because he has not suffered any present harm, and he is not intending to sell his house.

C. Joinder of Claims

- CA's approach _____ Federal Rule 18, except when many defendants have been joined, there must be at least _____ question of _____ common to every defendant.
 - CA courts may _____ claims to prevent undue delay or prejudice.
- Recall that CA uses one term _____ to describe what the Federal Rules call counterclaims, cross-claims, and impleader.
 - The same rules apply in CA as in federal counterclaims and cross-claims.
- Impleader—CA allows joinder more _____.

Example 17: Plaintiff sues Defendant and Defendant files a cross-complaint alleging a new cause of action against Plaintiff. Either the original defendant or the original plaintiff can defend against the claim by saying someone else is liable. They are called _____ and can implead (bring into the lawsuit) any other third-party defendant who might be liable and assert _____ claims and defenses.

- California—if a cross-complaint alleges a new cause of action and adds a _____, impleader is allowed only if that new cause of action:
 - Arises out of the _____ as the P's original complaint; or
 - Alleges a claim in the P's action against a third-party plaintiff (who may then join other new third-parties or causes of action against any third-party defendants).

Example 18: Dave, a CA resident, gets into an accident with Paula, also a CA resident. Paula claims Dave ran a light that had just turned red and sues Dave for negligence in the appropriate Superior Court and demands \$90,000 in damages. Dave promptly files a cross-complaint against Paula claiming that she negligently caused the accident by entering the intersection before the light turned green. Dave also believes that Rick may be partly at fault for the

accident because just before Dave went through the intersection, Rick darted in front of the car to grab his unleashed dog. What should Dave do?

_____ and allege that Rick's action amounted to negligence. The court would permit impleader because Dave's new cause of action against Rick arises out of the same occurrence (the accident that was the basis for Paula's complaint).

D. Class Actions

1. Basic Requirements

- CA guidelines are similar to those in Federal Rule _____, except the inquiry goes in a different order and uses different words.
- A plaintiff can bring a class action in CA if:
 - The parties are _____ and it's impracticable to bring them all before the court; OR
 - The question presented is of _____ to many persons.

2. Class Action Certification Requirements

- An _____ class; and
- A **community of interest** among the members—the factors are whether:
 - Common questions of law or fact _____;
 - A class action will _____ the parties and the court; and
 - The named representative will _____ represent the class

3. Subject Matter Jurisdiction

The amount in controversy can be obtained by _____ the claims of individual class members

Example 19: *Nelson's ship, sailing along the coast of Malibu, accidentally discharged a substance that cost Malibu's 500 oceanfront homeowners \$51 each to clean up. A class-action attorney McMahan seeks to represent Jane Jenkins and 499 other homeowners against Nelson in an "unlimited" class-action suit arising under tort law, in Los Angeles Superior Court. Will the court certify the class?*

_____. With numerous plaintiffs, it is impracticable to have them each file a separate suit; the tort questions are of common interest to all 500 plaintiffs; the class is readily ascertainable; they have a clear "community of interest"; there are common questions of law and fact; a class action is efficient for the parties and the court; and McMahan will adequately represent the class.

Example 20: Follow-up question to the previous example: Does the court have subject-matter jurisdiction?

_____. The class plaintiffs can reach the threshold amount in controversy (\$25,000.01) for _____ actions by adding up their claims.

4. Technical Notes about CA Class Actions

- Notice—court determines who bears the _____ of notice (the plaintiff or the defendant), whereas the _____ pays under Federal Rules
- Judgment binds any class member who does not _____
- A Superior Court order denying class certification is immediately _____

CHAPTER 8: PRETRIAL PROCEDURE & DISCOVERY

Note 3: Theme: Framing the issues for trial and discovering all relevant information to prevent one party from being blindsided at trial with previously unknown witnesses, documents, or other evidence

A. Mandatory Disclosures

- Unlike the Federal Rules, in CA there are _____ initial mandatory disclosures.

Editorial Note 4: While this is accurate, parties in California may agree to provide an automatic initial disclosure. Upon an order of the court following stipulation by all of the parties to the action, a party must, within 45 days of the court order, provide to the other parties an initial disclosure, without awaiting a discovery request.

B. Electronically Stored Information (ESI)

- CA treats ESI the same as physical _____ and _____.

C. Discovery Scope and Limits

1. Scope

- CA discovery standard—any material relevant to the _____ in litigation (broader)
- Federal standard—any matter relevant to a _____

Example 21: Bob files an unlimited civil action against Tammy, a young San Diego resident, in San Diego County Superior Court for negligently hitting his car in San Diego and causing \$50,000 in damages to his car and \$40,000 in personal injuries. Tammy insists that she was not at fault because she braked correctly and thus should have stopped before she hit Bob. During discovery, Bob suspects that Tammy's brakes might have been defective.

1(a) Can Bob, in a deposition, question Tammy about her driver training on braking, when she hit the brakes before the accident, and how hard she hit the brakes?

_____. This information is _____ to the subject matter of the litigation.

1(b) Could Bob discover this information if he had brought his action in U.S. District Court? (Assume that the federal court had jurisdiction).

_____. These questions are permitted because the matter sought is relevant to Bob's claim of negligence and Tammy's defense.

(2) In discovery, could Bob question Tammy about the brakes themselves—e.g., how they responded when she pressed them before the accident or whether they made any funny noises?

(a) If the case were in federal court?

_____. This information is not relevant to Bob's claim that Tammy was negligent or her defense that she was not. Rather, it concerns whether a party not before the court (the carmaker) made a defective product.

(b) How about the actual case filed in CA state court?

_____. The possible defects of the brakes are relevant to the _____ of the litigation.

Bonus question: In the CA case, if Tammy believed that the carmaker had sold her a car with defective brakes, what should she do to bring the carmaker into the case?

Tammy (as a third-party plaintiff) could bring a _____ against the carmaker as a third-party defendant because her cause of action against the carmaker arose from the same occurrence as Bob's original action (the accident).

2. Privileges

- Both federal and state law protect privileged material
- California—privilege is broader than Federal Rules because the CA Constitution contains an express right to _____ (which applies to discovery).
 - Court must _____ this privacy right against the opposing party's asserted need for the information.
- All parties must _____ (not merely assert) the claim of privilege.

- If a plaintiff attempts discovery and the defendant objects that the information is privileged, the defendant would have to provide **sufficient facts** for the plaintiff to evaluate the _____ of the claimed privilege.

3. Limitations on Discovery

- Trial preparation materials—materials prepared in anticipation of trial

Editorial Note 5: Although there is often overlap between trial preparation materials and the attorney-client privilege, this section deals with trial preparation materials only, not communications protected by attorney-client privilege.

- Federal Rule 26(b)(3) protects all such materials, regardless of whether they were prepared by a party, its representative, or its attorney, except where the party seeking the materials demonstrates substantial _____ and _____.
- By contrast, the CA rule applies ONLY to _____ work product.
 - Attorney work product—documents containing the attorney’s research, legal opinions and conclusions, evaluations of the case, impressions, tactics, etc.
 - Also applies when an attorney hires an _____ to record witness statements if the recordings reveal the attorney’s impressions, evaluations, tactics, etc.
 - If they do not, the party seeking discovery can obtain those witness statements only upon a showing of unfair _____ or _____.

Example 22: *Pete sues Don for suddenly attacking him from behind in a bar. In preparation for the trial, Pete hires Magnum, a private investigator, who obtains a statement from a witness stating that it was Pete who had thrown a glass of beer at Don and shoved him before Don retaliated by hitting Pete in the face, not from behind. Don’s attorney demands a copy of the witness’s statement, but Pete’s attorney asserts that it is privileged. Is it privileged?*

_____. Only the work product of an _____ prepared in anticipation of trial is privileged. The witness statement was obtained by a party, Pete.

4. Experts

- A party can request lists identifying trial _____, their proposed trial testimony, and their _____.
- Experts must be available for _____.

D. Discovery Conference

- Unlike the federal rule, CA _____ require parties to confer about discovery or provide a discovery plan.

- But, within _____ days of the complaint’s filing, the court must hold a case management conference to discuss _____ aspects of the case, including discovery.
- CA has a **“fast track” system** with goals for _____ disposition in unlimited cases:
 - _____ of cases in 12 months;
 - _____ in 18 months; and
 - _____ in 24 months.

CHAPTER 9: DISCOVERY DEVICES

A. Depositions

- CA has a _____ limit on notice of deposition.
- CA does NOT limit the _____ (unlike Federal Rule 30, which restricts each party to _____ depositions).
- CA limits the _____ of depositions to _____ hours, with many exceptions:
 - The parties so stipulate;
 - Witness is an expert;
 - Court designates the case as _____;
 - The defendant is an employer;
 - Deponent is most qualified person to be deposed;
 - The party appeared in the case after conclusion of regular depositions; or
 - The court determines more time is needed

B. Interrogatories

- Party may serve as many Judicial Council form interrogatories as they please, but only _____ individually drafted interrogatories (more if good cause is shown)
- Contrast: Federal Rule 33(a) limits all interrogatories to _____.

C. Requests to Produce Documents or Inspect Property—Similar to Federal Rule 34

D. Physical Exams

- Same as federal rules, except in CA, an attorney must be permitted to _____

E. Requests for Admission

- Requests for admission of documents—_____ (same as Federal Rule 36)
- All other requests for admission—limited to _____ (unless good cause is shown)

F. Enforcement

1. Motion to Compel

- Party believes that a response to a discovery request is incomplete, evasive, or contains baseless _____.

- Note that the moving party must first have made a _____ effort to informally resolve the problem (only go to court as a _____).

2. Sanctions

- Similar to Federal Rule 37
- Exception: In CA, initial misuse of discovery must result in a _____ penalty (unless unjust), and further abuses will result in sanctions of increasing severity.

Example 23: *Tammy files a cross-complaint against the carmaker over allegedly defective brakes. Tammy sends the carmaker 23 carefully drafted interrogatories. The carmaker does not respond. Tammy makes a second request and the carmaker responds, but does not fully answer critical interrogatories regarding how the brakes were designed and tested. Tammy requests that the carmaker respond fully and the carmaker expressly refuses to do so. Tammy then brings a motion to compel discovery and seeks sanctions. What would the court be likely to do?*

The court would likely _____ the motion and _____ monetary sanctions against the carmaker because Tammy only submitted 23 carefully drafted interrogatories, Tammy reasonably believes that the carmaker's responses are incomplete on key questions, she has tried informally to resolve the issue, and the carmaker refuses to cooperate, which seems to be part of a pattern.

G. Adjudication without Trial

1. Dismissal

a. Voluntary

In contrast to Federal Rule 41(a), in CA, a voluntary dismissal after trial begins will be _____, unless the parties agree otherwise or good cause is shown.

b. Involuntary

- Usually if the plaintiff has failed to diligently _____ the complaint
- The court *may* dismiss _____ years after the complaint is filed, and *must* dismiss after _____ years (or after _____ years if the complaint was never served).

2. Summary Judgment

- Similar to Federal Rule _____ but with more obstacles
- California—a moving party can argue that her opponent has no _____ cause of action or defense.

- The movant can offer not merely pleadings, discovery materials, and affidavits (the materials considered in federal court), but also any other evidence _____ the opponent's claims, defenses, or factual assertions, or showing that the opponent does not have the necessary supporting _____.
- If the movant succeeds, the burden shifts to the _____ to demonstrate a triable _____ issue.
- CA requires the movant to file a _____ listing all material facts alleged to be undisputed, with supporting evidence for _____ or risk losing automatically.
 - Opposing party must present such a statement listing _____ facts with supporting evidence.
- The court limits its rulings to those objections to evidence that are _____ to the summary judgment motion.
- CA Timing:
 - SJ motion may be brought _____ days after the opponent makes a general appearance
 - The movant must serve all papers _____ days before the hearing.
 - The opposition papers must be filed _____ days before.
 - The reply papers _____ days before
- Summary judgment can be reviewed through a writ of _____.

CHAPTER 10: TRIAL PROCEDURE

A. Jury Trial

- CA grants the right to a jury in actions at _____ (contracts, property, and torts).
- Party must _____ a jury when the case is first set for trial
- Standard _____ jurors, unless the parties agree to fewer
 - If juror is excused after trial starts, trial proceeds with less than 12, unless a party objects.
- Cannot use a _____ challenge against a prospective juror based on the assumption that the juror is biased because of race, ethnicity, gender, or similar discriminatory factors.
- Unlike federal law, there's no requirement of _____—just a three-quarters majority

B. Motion for Nonsuit

- Similar to Federal Rule _____ for judgment as a matter of law (directed verdict)
- Defendant may bring a motion for nonsuit after the plaintiff's _____ statement or case in chief.

- Based on the same demanding standard as a directed verdict—no _____ could find for the opposing party.
- If the motion is denied, the defendant can present evidence or move for a directed verdict later.

C. Judgment Notwithstanding the Verdict (JNOV)

- Filed _____ the jury has rendered a verdict
- In contrast to Federal Rule 50(b), which requires that a movant attempted to obtain an earlier judgment as a matter of law, CA _____ require a *prior* motion for a directed verdict.

D. Motion for a New Trial

- Granted _____
- CA courts can also decide that a new trial will be held unless its proposal is accepted to either:
 - _____ what the court considers to be an excessive jury verdict—called _____; or
 - Add to an inadequate award—called _____, which is not available in federal court.
- A party must accept the reduction or addition that the court proposes within _____ days and submit a proposed amended judgment, or there is _____ a new trial regarding damages.

Example 24: *Employee sues Employer for breach of contract. The law is at will employment (i.e., Employer can fire Employee freely unless (1) there is a contrary written contract, or (2) Employee is protected by a statute that prohibits discrimination based on race, age, or gender). After discovery and after Employee presents his case, the undisputed evidence shows that he is a 25-year-old white male who is not protected by any antidiscrimination statutes and does not have a written contract with Employer. In addition, Employer caught Employee playing video games in his office for several hours each day after warning him that he would be fired if he did so. Employer does not move for a nonsuit. The jury finds for Employee. Employer moves for a judgment notwithstanding the verdict. Can the court hear the motion? If so, will the court grant or deny the motion?*

The court _____ the motion. The defendant's failure to file an earlier motion for a nonsuit _____ the state court from hearing the JNOV motion. In contrast, in federal court, it would be barred. Second, this case might be the rare situation where a JNOV would be granted because under the clear facts and applicable law, no _____ could have found for Employee.

CHAPTER 11: POST-TRIAL PROCEDURE

A. Alteration or Relief from Judgment

- A party can ask the trial court for relief, but only when the attorney's mistake or negligence resulted in a _____ judgment or _____.
- CA law _____ a court to grant that relief in those narrow circumstances
- Contrast FRCP 60(b)—the district court has _____ to grant relief to avoid injustice, including because of an attorney's mistake or negligence.

B. Appeals

- In CA, a party goes from Superior Court to a CA Court of Appeals and then to the CA Supreme Court.

1. Final Judgment Rule

- Generally, as in federal court, after the trial court renders its _____
- California—it is deemed a final judgment when the trial court enters judgment against _____ party (of many) and leaves no _____ for decision as to that party.

Example 25: *P1 and P2 sue D. Court grants D's motion for nonsuit against P1. Is that a final judgment that P1 can appeal?*

_____, because the judgment is final as to P1. In federal court, it would not be final because the case is still live as to _____.

2. Interlocutory (Nonfinal) Orders

- CA usually follows the federal rule that these orders are _____, with a few exceptions (e.g., injunction orders).
- CA adds _____ other exceptions:
 - 1) Order made after an _____ judgment;
 - 2) Order granting a motion based on forum non conveniens or to quash service of summons;
 - 3) Order granting a _____ or denying a motion for JNOV; and
 - 4) Order imposing sanctions greater than \$_____

3. Collateral-Order Rule

A party may immediately appeal a _____ interlocutory order on an issue collateral to the merits that directs the _____ or doing an act.

C. Claim Preclusion (Res Judicata)

- Similar to federal law—a final judgment precludes _____ claims

- Two distinctions compared to federal law:
 - CA treats a judgment as final not when it is _____ (as federal courts do), but rather when the _____ process concludes (or the time for appeal expires).
 - CA courts do not apply the federal _____ approach, but rather the _____ doctrine (i.e., one suit involves one _____ and one _____).

Example 26: *Bob brings a negligence cause of action against Tammy for \$50,000 in property damages for accidentally totaling his Mercedes. Bob obtains a final judgment for \$50,000. A few months later, Bob sues Tammy for \$40,000 for personal injuries suffered in that same accident. Tammy raises the affirmative defense of res judicata. What is the result?*

A CA court would _____ Tammy’s defense and allow the suit under the _____ doctrine because Bob’s first suit was for negligently causing property damages whereas his second suit is for personal injuries. By contrast, a federal court would apply the transactional approach, and bar the claim because Bob could have brought his personal injury claim against Tammy in the first suit.

D. Issue Preclusion (Collateral Estoppel)

- A specific issue of _____ has already been determined against a party to a previous action and that party wants to relitigate the issue
- Similar to federal, **except** CA accords _____ and _____ judgments preclusive effect as to material issues actually raised in the pleadings.

E. Summary

- CA civil procedure requires you to identify each _____ issue and apply the specific governing _____. Examples:
 - Reclassifying a “limited” case to an “unlimited” one
 - Determining personal jurisdiction over a defendant from Ohio
 - Deciding whether to honor a contractual provision to apply another state’s law
 - Making a special demurrer
 - Filing a cross-complaint
 - Determining what materials are privileged from discovery
 - Ascertaining whether a summary judgment motion had been properly made
 - Figuring out whether a trial court judgment is considered final
- Each of these issues triggers a particular rule that resolves the problem.

[END OF HANDOUT]