

### **3 California Procedure (5th), Actions**

#### **I. INTRODUCTION**

##### **A. Judicial Remedies.**

- 1. [§1] Judicial and Legislative Acts Distinguished.**
- 2. [§2] Nature of Judicial Remedy.**
- 3. Judicial Remedy Where None Is Prescribed by Statute.**
  - (a) [§3] Statutory Declarations.**
  - (b) [§4] Obligation May Be Enforced.**
  - (c) [§5] Remedy for Every Wrong.**
  - (d) [§6] Illustrations.**
  - (e) [§7] Exceptions.**
- 4. Statutory Remedy Is Exclusive.**
  - (a) [§8] General Rule.**
  - (b) Exceptions: Where Other Remedies Are Allowed.**
    - (1) [§9] Preexisting Right.**
    - (2) [§10] Statutory Remedy Is Inadequate.**
    - (3) [§11] Quia Timet Relief.**

##### **B. Survival or Abatement of Actions.**

- 1. Survival After Death of Plaintiff or Defendant.**
  - (a) [§12] Nature of Topic.**
  - (b) [§13] Former Law: Survivable Claims.**
  - (c) [§14] Former Law: Nonsurvivable Claims.**
  - (d) [§15] Current Rule of Survivability.**
  - (e) Limitations on Recovery.**
    - (1) [§16] Statutory Rules and Exceptions.**
    - (2) [§17] Illustrations.**
- 2. [§18] Abatement of Family Law Actions.**
- 3. Abatement by Statutory Repeal.**
  - (a) [§19] Repeal of Jurisdictional Statute.**
  - (b) [§20] Repeal of Statute Creating Cause of Action.**

##### **C. Necessity of Justiciable Controversy.**

- 1. In General.**
  - (a) [§21] California Doctrine.**
  - (b) [§22] Federal Doctrine.**
  - (c) [§23] Illustrations: Standing and Ripeness.**
- 2. No Actual Controversy.**
  - (a) [§24] California Doctrine.**
  - (b) [§25] Federal Doctrine.**
  - (c) [§26] Challenge to Administrative Regulations.**
  - (d) Distinctions and Exceptions.**
    - (1) [§27] Friendly Suit.**
    - (2) [§28] Declaratory Relief and Agreed Case.**
    - (3) [§29] Public Interest in Question.**
    - (4) [§30] Hardship to Parties.**
    - (5) [§31] Concealment Does Not Bar Determination.**
- 3. Moot Case.**

- (a) [§32] What Constitutes Moot Case.
- (b) Distinctions and Exceptions.
  - (1) [§33] Substantial Issue Remaining.
  - (2) [§34] Public Interest in Question.
  - (3) [§35] Moot Case on Appeal.
  - (4) [§36] Mootness Is Not Jurisdictional.

**4. Political Controversies.**

- (a) [§37] General Rule.
- (b) [§38] Act of State Doctrine.

**5. Ecclesiastical Controversies.**

- (a) [§39] Church Policy: Jurisdiction Declined.
- (b) [§40] Common Law Torts in Performance of Church Functions.
- (c) [§41] Determination of Civil or Property Rights.

**D. Conflict of Laws.**

- 1. [§42] Nature of Conflict of Laws Doctrines.
- 2. [§43] Second Restatement.
- 3. [§44] Governmental Interest Approach.
- 4. [§45] Distinction Between Substance and Procedure.
- 5. [§46] Procedural Matters.
- 6. Substantive Matters in Procedural Form.
  - (a) [§47] Parol Evidence Rule.
  - (b) [§48] Statute of Frauds.
  - (c) Measure of Damages.
    - (1) [§49] In General.
    - (2) [§50] Limitation on Amount Recoverable.
  - (d) [§51] Direct-Action Statute.
- 7. [§52] Survival or Abatement.
- 8. Statute of Limitations.
  - (a) General Rule: Law of Forum Governs.
    - (1) [§53] Traditional Substance-Procedure Approach.
    - (2) [§54] Modern Approach.
    - (3) [§55] Constitutionality of Rule.
  - (b) Exceptions.
    - (1) [§56] The "Borrowing Statute."
    - (2) [§57] Limitation on Substantive Right.
    - (3) Limitation in Federal Statute.
      - (aa) [§58] Federal Statute Without Express Limitation.
      - (bb) [§59] Federal Statute With Express Limitation.
    - (4) [§60] Action on Revived Judgment.
    - (5) [§61] Limitation Shortened by Contract.

**II. TYPES OF ACTIONS AND SPECIAL PROCEEDINGS**

**A. Nature of Action.**

- 1. [§62] Definition and Distinctions.
- 2. [§63] Classification of Actions.

**B. Nature of Special Proceeding.**

- 1. [§64] Distinguished From Action.

2. [§65] Statutory Classes.
  3. [§66] General Policy of Uniformity in Procedure.
  4. [§67] Principal Procedural Differences.
- C. Civil, Criminal, and Quasi-Criminal Proceedings.**
1. [§68] Civil and Criminal Actions.
  2. [§69] Contempt.
  3. [§70] Forfeiture Proceedings.
  4. [§71] Escheat Proceedings.
  5. [§72] Juvenile Court Proceedings.
  6. Habeas Corpus.
    - (a) [§73] In General.
    - (b) [§74] Distinction: Collateral Attack on Judgment in Adoption Case.
  7. [§75] Coram Nobis.
  8. [§76] Mandamus.
  9. [§77] Peace Bond Proceedings.
  10. [§78] Administrative Disciplinary Proceedings.
- D. Civil Commitment and Related Proceedings.**
1. [§79] Trial of Present Competence of Defendant.
  2. Commitment Under Lanterman-Petris-Short Act.
    - (a) Mentally Disordered Person.
      - (1) [§80] Nature of Act.
      - (2) [§81] Detention for Observation and Evaluation.
      - (3) [§82] Certification for Intensive Treatment.
      - (4) [§83] Right to Counsel and Habeas Corpus.
      - (5) [§84] Postcertification Commitment.
      - (6) [§85] Antipsychotic Medication.
      - (7) [§86] Civil Rights of Patient.
      - (8) [§87] Constitutional Rights of Patient.
    - (b) [§88] Alcoholic.
    - (c) [§89] User of Controlled Substance.
  3. [§90] Commitment Under Children's Civil Commitment and Mental Health Treatment Act.
  4. Judicial Commitments.
    - (a) [§91] Narcotic Addict.
    - (b) Mentally Retarded Person.
      - (1) [§92] In General.
      - (2) [§93] Procedure.
      - (3) [§94] Civil Rights of Patient.
    - (c) [§95] Juvenile Court Ward.
    - (d) [§96] Sexually Violent Predator.
  5. Conservatorship of Gravely Disabled Person.
    - (a) [§97] In General.
    - (b) [§98] Factors That Preclude Finding of Gravely Disabled.
    - (c) [§99] Constitutionality of Gravely Disabled Classification.
    - (d) Procedure.
      - (1) [§100] In General.

- (2) [§101] Investigation and Report.
- (3) [§102] Hearing.
- (4) [§103] Representation by Counsel.
- (5) Right to Jury Trial.
  - (aa) [§104] Nature of Right and Procedure.
  - (bb) [§105] Waiver of Jury Trial.
- (6) [§106] Habeas Corpus.
- (7) [§107] Physical Restraint of Conservatee.
- (8) Standard of Proof.
  - (aa) [§108] General Rule: Beyond Reasonable Doubt.
  - (bb) [§109] Exceptions: Preponderance of Evidence.
- (9) [§110] Exclusionary Rule Is Not Applicable.
- (10) [§111] Appeal.
- (e) [§112] Powers and Duties of Conservator.
- 6. Protection of Developmentally Disabled or Mentally Ill Persons.
  - (a) [§113] In General.
  - (b) [§114] Protection and Advocacy Agency.
  - (c) [§115] Immunity of Agency and Employees.
- 7. Protection of Endangered Adults.
  - (a) [§116] In General.
  - (b) [§117] Procedure.

### **III. FORMS OF ACTION**

- A. [§118] Importance of Distinctions.
- B. Legal and Equitable Actions.
  - 1. [§119] Distinction.
  - 2. Tests.
    - (a) [§120] Historical Basis of Right.
    - (b) [§121] Nature of Relief Sought.
    - (c) [§122] Defendant's Pleading.
    - (d) Matters That Are Not Controlling.
      - (1) [§123] Label or Designation.
      - (2) [§124] Cause of Action or Governing Principles.
      - (3) [§125] Prayer.
  - 3. Equitable Actions.
    - (a) [§126] Actions Arising Out of Contract.
    - (b) [§127] Actions Arising Out of Tort.
    - (c) [§128] Actions Involving Trusts, Mortgages, or Equitable Liens.
    - (d) [§129] Miscellaneous Actions.
  - 4. [§130] Legal Action for Restitution.
  - 5. Actions Based on Fraud.
    - (a) [§131] Legal Relief Sought.
    - (b) [§132] Equitable Relief Sought.
  - 6. Actions To Quiet Title.
    - (a) [§133] Nature of Problem.
    - (b) [§134] Determining Whether Action Is Legal or Equitable.
  - 7. Actions Involving Both Legal and Equitable Issues.

- (a) [§135] Plaintiff's Demand.
- (b) [§136] Defendant's Demand.
- (c) [§137] Damages Award Where Equitable Relief Is Unwarranted or Unobtainable.
- (d) [§138] One Issue Incidental.

**C. Contract and Tort Actions.**

- 1. [§139] Distinction.
- 2. Contract Actions.
  - (a) [§140] Quasi-Contract or Other Implied Obligation.
  - (b) [§141] Action on Judgment.
  - (c) [§142] Unlawful Detainer Proceeding.
- 3. [§143] Actions To Enforce Statutory Liability.
- 4. Alternative Tort or Contract Actions.
  - (a) [§144] Nature of Problem.
  - (b) Election Allowed: Tort Actions.
    - (1) [§145] Breach of Legal Duty Arising Out of Contract.
    - (2) Breach of Contract as a Tort.
      - (aa) [§146] In General.
      - (bb) [§147] Insurer's Wrongful Failure To Settle.
      - (cc) [§148] Insurer's Wrongful Refusal To Pay.
      - (dd) [§149] Wrongful Discharge of Employee in Violation of Public Policy.
      - (ee) [§150] Breach of Warranty of Habitability.
    - (3) [§151] Strict Tort Liability of Manufacturer or Dealer.
    - (4) Fraud in Inducement of Contract.
      - (aa) [§152] Enforceable Contract.
      - (bb) [§153] Illegal Contract.
      - (cc) [§154] Contract in Violation of Statute of Frauds.
    - (5) [§155] Inducing Breach of Contract.
  - (c) Election Allowed: Contract and Quasi-Contract Actions.
    - (1) [§156] Fraud in Inducement of Contract.
    - (2) Intentional Tort Violating Contract.
      - (aa) [§157] Conversion or Misappropriation.
      - (bb) [§158] Wrongful Eviction by Landlord.
      - (cc) [§159] Wrongful Expulsion of Union Member.
      - (dd) [§160] Insurer's Refusal To Settle.
      - (ee) [§161] Fraudulent Breach of Contract.
    - (3) Negligent Violation of Contract.
      - (aa) [§162] Election Allowed To Permit Recovery.
      - (bb) [§163] Election Allowed To Defeat Recovery.
    - (4) [§164] Waiver of Tort and Suit in Quasi-Contract.
  - (d) Denial of Contract Action for Negligence.
    - (1) [§165] Theory and Illustrations.
    - (2) [§166] Analysis and Criticism.
  - (e) Denial of Tort Action.
    - (1) [§167] False Promise in Unenforceable Contract.

- (2) [§168] Wrongful Discharge of Employee.
- (3) Bad Faith Denial That Contract Exists.
  - (aa) [§169] Former Rule Allowing Election.
  - (bb) [§170] Current Rule Denying Tort Action.
- (4) [§171] Breach of Covenant of Good Faith and Fair Dealing.
- 5. Alternative Contract or Quasi-Contract Actions.
  - (a) [§172] Contract Actions Against Same Person.
  - (b) [§173] Contract Actions Against Different Persons.
  - (c) [§174] Quasi-Contract Actions.
- 6. Alternative Tort Actions.
  - (a) [§175] Torts to Property.
  - (b) [§176] Defamation, Disparagement, or Inducing Breach.
  - (c) [§177] Contributing Tortfeasors and Respondeat Superior.
  - (d) [§178] Action Under Federal Civil Rights Act.

#### **IV. ELECTION OF REMEDIES**

- A. [§179] Nature of Doctrine.
- B. Modern Theory of Election of Rights.
  - 1. [§180] Criticism of Election of Remedies Doctrine.
  - 2. [§181] Required Election of Rights.
  - 3. [§182] Distinction: Restitution and Damages.
- C. What Constitutes Election of Remedy.
  - 1. Older View: Manifestation of Choice.
    - (a) [§183] Manifestation Without Suit.
    - (b) [§184] Manifestation by Suit.
  - 2. [§185] Pursuing Claim to Judgment: Merger or Bar.
  - 3. Modern View: Estoppel.
    - (a) [§186] Basis of Doctrine.
    - (b) Acts Amounting to Estoppel.
      - (1) [§187] Attachment.
      - (2) [§188] Claim and Delivery.
      - (3) [§189] Creditor's Claim Against Estate.
      - (4) [§190] Injunction.
- D. Where Doctrine Is Not Applicable.
  - 1. Where No Real Choice Exists.
    - (a) [§191] Only One Remedy Is Available at Time of Action.
    - (b) [§192] Plaintiff's Mistake: Choice of Wrong Remedy.
  - 2. Where Alternative Remedies Are Not Actually Inconsistent.
    - (a) Remedies Consistent Under Law.
      - (1) [§193] In General.
      - (2) [§194] Dual Remedies of Sale and Foreclosure.
      - (3) [§195] Action for Money and Action for Property.
      - (4) [§196] Two Actions for Property.
      - (5) [§197] Two Actions for Money.
      - (6) [§198] Miscellaneous Examples.
    - (b) [§199] Remedies Against Different Persons.
  - 3. [§200] Where Defendant Is Not Actually Prejudiced: No Estoppel.

**4. [§201] Statutory or Contractual Provisions.**

**E. [§202] Waiver of Defense.**

**V. PRELIMINARY STEPS IN ACTIONS AND PROCEEDINGS**

**A. [§203] In General.**

**B. Substantive Conditions.**

**1. [§204] Demand.**

**2. [§205] Tender.**

**3. [§206] Notice of Rescission.**

**4. [§207] Notice of Dishonor.**

**5. [§208] Exhaustion of Security or Pursuit of Principal Debtor.**

**6. [§209] Certificate of Merit in Malpractice Action Against Architect, Engineer, or Land Surveyor.**

**7. [§210] Recordation of Change in Ownership Agreement or Statement.**

**8. Order Allowing Conspiracy Action Against Attorney.**

**(a) [§211] In General.**

**(b) [§212] Procedure.**

**C. [§213] Steps Relating to Capacity of Parties.**

**D. [§214] Steps by Defendant.**

**VI. NOTICE OF CLAIM OR REMEDY AGAINST ORDINARY DEFENDANT**

**A. [§215] Creditor's Action Against Estate.**

**B. [§216] Landlord's Proceeding Against Tenant.**

**C. Enforcement of Mechanic's Lien or Stop Notice.**

**1. Private Property: Mechanic's Lien.**

**(a) [§217] In General.**

**(b) [§218] Preliminary Notice.**

**2. [§219] Private Property: Stop Notice.**

**3. [§220] Public Property: Stop Notice.**

**4. [§221] Constitutionality of Statutes.**

**D. [§222] Action on Payment Bond for Work of Improvement.**

**E. [§223] Action for Breach of Warranty.**

**F. [§224] Malpractice Action Against Health Care Provider.**

**G. [§225] Action Under Fair Employment and Housing Act.**

**H. [§226] Actions on Construction Defects.**

**I. [§227] Miscellaneous Statutory Requirements.**

**J. Contractual Requirements.**

**1. [§228] Action Against Carrier or Warehouseperson.**

**2. [§229] Action Against Insurer.**

**3. [§230] Other Actions.**

**VII. NOTICE OF CLAIM AGAINST PUBLIC ENTITY**

**A. In General.**

**1. [§231] Nature and Purpose of Requirement.**

**2. [§232] Former Law.**

**3. [§233] Revised Law.**

**4. [§234] Requirement as Element of Cause of Action.**

**B. Scope of Requirement.**

**1. Local and State Entities.**

- (a) [§235] In General.
- (b) [§236] Failure To Furnish Information.

**2. Claims.**

(a) **Included Claims.**

- (1) [§237] Tort Claims.
- (2) [§238] Other Money Claims.
- (3) [§239] Claims in Class Actions.

(b) **Excluded Claims.**

- (1) [§240] In General.
- (2) [§241] Claims by Public Employees for Fees, Salaries, or Expenses.
- (3) [§242] Claims for Benefits Under Public Retirement or Pension System.
- (4) [§243] Mechanics' Liens.
- (5) [§244] Claims for Specific Recovery.
- (6) [§245] Civil Rights Actions.
- (7) [§246] Actions Under Fair Employment and Housing Act.
- (8) [§247] Cross-Complaints in Actions by State.
- (9) [§248] Actions on Judgment.
- (10) [§249] Claims Seeking Performance of Mandatory Duty.

(c) [§250] Insurer's Reliance on Insured's Claim.

**3. Public Employees.**

- (a) [§251] In General.
- (b) [§252] Requirement of Claim Against Entity.

**C. Content and Form of Claim.**

- 1. [§253] Statutory Requirements.
- 2. [§254] Illustrations.

**D. Time of Filing.**

- 1. [§255] Statutory Requirements.
- 2. **Time Runs From Accrual of Cause of Action.**
  - (a) [§256] Statute of Limitations Rule Governs.
  - (b) **Postponed Accrual and Tolling.**
    - (1) [§257] In General.
    - (2) [§258] Tolling by Payment of Damages.
    - (3) [§259] Postponed Accrual for Subrogation Claim.
  - (c) **Tort Defendant's Indemnity Claim.**
    - (1) [§260] Former Rule of Postponed Accrual.
    - (2) [§261] Legislative Repudiation of Rule.

**E. [§262] Manner of Presentation.**

**F. Action by Agency.**

- 1. **Local Agency.**
  - (a) [§263] Allowance, Rejection, Partial Rejection, or Compromise.
  - (b) [§264] Time To Act.
  - (c) [§265] Notice of Action Taken.
- 2. [§266] State.
- 3. [§267] Judicial Branch Entity.

**4. [§268] Notice of Rejection of Late Claim.**

**G. Special Claims Procedures.**

**1. Local Agency.**

**(a) [§269] In General.**

**(b) [§270] Excluded Claims Governed by Local Procedures.**

**2. State.**

**(a) [§271] Procedure Established by Agreement.**

**(b) [§272] Payment by Controller or Authorized State Agency.**

**3. [§273] Judicial Branch Entity.**

**H. Defective Compliance.**

**1. [§274] Early Rule of Strict Compliance.**

**2. Later Rule of Substantial Compliance.**

**(a) [§275] Nature and Scope of Rule.**

**(b) Illustrations.**

**(1) Agency, Department, or Officer.**

**(aa) [§276] Compliance Sufficient.**

**(bb) [§277] Compliance Insufficient.**

**(2) [§278] Place of Accident.**

**(3) [§279] Address of Claimant.**

**(4) [§280] Series of Writings as Claim.**

**(5) [§281] Other Defects.**

**I. Defects of Form.**

**1. [§282] Correction by Amendment.**

**2. Waiver of Defects.**

**(a) [§283] Statutory Procedure.**

**(b) [§284] Illustrations: Defects Waived.**

**(c) [§285] Illustrations: Defects Not Waived.**

**J. Relief From Late Filing.**

**1. [§286] In General.**

**2. [§287] Minority.**

**3. Incapacity.**

**(a) [§288] Former Law.**

**(b) [§289] Current Law: Mandatory Relief on Application.**

**4. Mistake or Excusable Neglect.**

**(a) [§290] Theory of Relief.**

**(b) Illustrations of Relief Granted.**

**(1) [§291] Mistake of Law.**

**(2) [§292] Calendaring Mistake.**

**(3) [§293] Mistake About Proper Defendant.**

**(4) [§294] Delay Due to Trauma.**

**(5) [§295] Failure To File Second Claim.**

**(c) Illustrations of Relief Denied.**

**(1) [§296] Ignorance of Filing Requirement or Time Limitation.**

**(2) [§297] Unreasonable Mistake About Proper Defendant.**

**(3) [§298] Other Excuses.**

**5. Application to Agency.**

- (a) [§299] In General.
- (b) [§300] Claim by Mentally Incapacitated Person.
- (c) [§301] Claim by Minor.
- (d) [§302] Action by Agency.

**6. Petition to Superior Court.**

- (a) [§303] In General.
- (b) [§304] Filing and Service of Petition.
- (c) [§305] Hearing and Determination.
- (d) Suit After Relief Is Granted.
  - (1) [§306] Time and Statute of Limitations.
  - (2) [§307] Where Original Complaint Is on File.
  - (3) [§308] Effect of New Facts Not in Original Claim.

**K. Estoppel.**

- 1. [§309] Development of Doctrine.
- 2. [§310] Continuing Validity.
- 3. Complete Failure To File May Be Excused.
  - (a) [§311] Former Law Rejecting Doctrine.
  - (b) [§312] Current Law Applying Doctrine.

**VIII. EXHAUSTION OF OTHER REMEDIES**

**A. [§313] In General.**

**B. Private or Contract Remedy.**

**1. Arbitration as Condition Precedent.**

- (a) [§314] General Rule.
- (b) Waiver of Right.
  - (1) [§315] In General.
  - (2) [§316] Delay in Demanding Arbitration.
  - (3) [§317] No Waiver by Repudiation for Breach.
  - (4) [§318] No Waiver by Filing Action.
  - (5) [§319] Distinction: Action Filed Solely for Discovery.

**2. Internal Remedy of Unincorporated Association.**

- (a) Exhaustion Requirement.
  - (1) [§320] In General.
  - (2) [§321] Tort Action for Damages.
- (b) Exceptions.
  - (1) [§322] Violation of Internal Rules.
  - (2) [§323] No Effective Remedy.
  - (3) [§324] Refusal To Allow Inspection of Records.

**C. Administrative Remedy.**

**1. Exhaustion Requirement.**

- (a) [§325] In General.
- (b) [§326] Nature and Scope of Requirement.
- (c) [§327] Duplicative Remedy Need Not Be Exhausted.
- (d) [§328] Administrative Enforcement of Appellate Ruling.
- (e) [§329] Application for Rehearing by Administrative Body.
- (f) [§330] Primary Jurisdiction Doctrine Compared.

**2. Illustrations of Doctrine.**

- (a) [§331] In General.
- (b) [§332] Common Law Disputes Involving Motor Vehicle Dealerships and Franchises.
- (c) [§333] Tax Proceedings.
- (d) [§334] Actions Raising Constitutional Issues.
- (e) [§335] Claim of Exemption From Coastal Zone Regulations.

**3. Exceptions.**

- (a) No Effective Remedy.
  - (1) [§336] In General.
  - (2) [§337] Distinctions.
- (b) Agency Is Without Jurisdiction.
  - (1) [§338] In General.
  - (2) [§339] Distinctions.
- (c) Agency Decision Is Known.
  - (1) [§340] In General.
  - (2) [§341] Distinctions.
- (d) [§342] Irreparable Injury.
- (e) [§343] Alternative Remedy.
- (f) [§344] Constitutional Challenge to Agency.
- (g) [§345] Public Rights Involved.
- (h) [§346] Civil Rights Actions.

**D. Judicial Remedy.**

- 1. [§347] In General.
- 2. [§348] Judicial Mandamus Proceeding as Prerequisite to Tort Action.
- 3. [§349] Administrative Mandamus Proceeding as Prerequisite to Tort Action.

**IX. SECURITY FOR COSTS**

**A. Former Law and Revision.**

- 1. [§350] In General.
- 2. [§351] Former Statutes Unconstitutional.
- 3. [§352] Statutory Revision.

**B. Nonresident or Foreign Corporation Plaintiff.**

- 1. [§353] In General.
- 2. [§354] Actual Residence.
- 3. [§355] Cross-Complainant Need Not Post Security.
- 4. [§356] Motion and Stay.
- 5. [§357] Hearing, Determination, and Undertaking.

**C. [§358] Action Against Architect, Engineer, or Related Professional.**

**D. [§359] Action Against Physician or Related Professional.**

**E. [§360] Action Challenging Construction Project.**

**F. Shareholder's Derivative Suit.**

- 1. [§361] Nature and Scope of Requirement.
- 2. [§362] Requirement Is Not Applicable to Personal Action.
- 3. [§363] Motion and Order.
- 4. [§364] Security.

**G. Vexatious Litigant.**

- 1. [§365] In General.

2. **Who Is Vexatious Litigant.**
  - (a) **[\$366] Statutory Definition.**
  - (b) **[\$367] Litigant Acting in Pro. Per.**
3. **Procedure.**
  - (a) **[\$368] Motion and Grounds.**
  - (b) **[\$369] Hearing, Determination, and Security.**
  - (c) **[\$370] Order Prohibiting Filing of New Litigation.**

## **X. LIS PENDENS**

### **A. In General.**

1. **[\$371] Nature and Purpose.**
2. **[\$372] Former Law.**
3. **[\$373] 1992 Revision.**
4. **[\$374] Definitions.**

### **B. Availability of Lis Pendens Procedure.**

1. **[\$375] In General.**
2. **[\$376] Real Property Claim.**
3. **[\$377] Federal District Court Action.**
4. **[\$378] Condemnation Action.**
5. **[\$379] Family Law Proceeding.**
6. **[\$380] Specific Permissive Statutes.**
7. **[\$381] Specific Mandatory Statutes.**

### **C. Procedure.**

1. **[\$382] Form of Notice.**
2. **[\$383] Signature of Attorney or Approval of Court.**
3. **[\$384] Service and Filing.**
4. **[\$385] Recordation.**
5. **[\$386] No Duty To Notify Prospective Transferees.**

### **D. Effect of Recordation.**

1. **[\$387] Constructive Notice.**
2. **[\$388] Where Notice Is Ineffective.**

### **E. Expungement and Other Relief.**

1. **Nature and Purpose of Legislation.**
  - (a) **[\$389] Former Law.**
  - (b) **[\$390] 1992 Revision.**
2. **Expungement: Procedure.**
  - (a) **[\$391] In General.**
  - (b) **[\$392] Time For Bringing Motion.**
  - (c) **[\$393] Evidence and Discovery.**
  - (d) **[\$394] Burden and Degree of Proof.**
3. **Expungement: Showing Required.**
  - (a) **[\$395] Invalid and Void Lis Pendens.**
  - (b) **Lack of Real Property Claim.**
    - (1) **[\$396] In General.**
    - (2) **[\$397] Action Challenging Government Housing Program.**
    - (3) **[\$398] Action To Impose Constructive Trust.**
    - (4) **[\$399] Action To Impose Equitable Lien.**

- (5) [§400] Action To Set Aside Fraudulent Conveyance.
- (6) [§401] Claim of Easement.
- (c) Failure To Establish Probable Validity of Real Property Claim.
  - (1) [§402] Former Law.
  - (2) [§403] Current Law.
- (d) Expungement Conditioned on Undertaking.
  - (1) [§404] In General.
  - (2) [§405] Amount and Nature of Undertaking.
  - (3) [§406] Deed of Trust as Alternative to Undertaking.
  - (4) [§407] Procedure.
- 4. Maintaining Lis Pendens on Condition of Undertaking.
  - (a) [§408] Nature and Purpose of Remedy.
  - (b) [§409] Procedure.
- 5. [§410] Attorneys' Fees and Costs.
- 6. [§411] Review by Mandamus.
- 7. [§412] Withdrawal of Notice.
- 8. Effect of Expungement or Withdrawal.
  - (a) [§413] When Expungement Becomes Effective.
  - (b) [§414] Recording Expungement Order or Notice of Withdrawal.
  - (c) [§415] Second Notice Requires Court Approval.

## **XI. IN FORMA PAUPERIS**

### **A. Nature of Right.**

- 1. [§416] In General.
- 2. [§417] Constitutional Right in Marital Case.

### **B. Scope of Right.**

- 1. Costs Excused.
  - (a) [§418] Trial Court Costs.
  - (b) [§419] Costs of Appeal.
- 2. Relief From Bond or Undertaking.
  - (a) [§420] Security for Costs.
  - (b) [§421] Injunction Bond.
- 3. [§422] No Right to Interpreter.
- 4. [§423] No Right to Reporter's Transcript.

### **C. Procedure.**

- 1. [§424] Former Judicially Established Practice.
- 2. [§425] Legislative Directive to Judicial Council.
- 3. [§426] Application and Forms.
- 4. [§427] Determination of Application.

### **D. What Constitutes Indigence.**

- 1. [§428] In General.
- 2. [§429] Contingent Fee Is Not Bar.

### **E. (New) Revised In Forma Pauperis Statutes and Rules of Court.**

- 1. [§429A] (New) In General.
- 2. (New) Scope of Right.
  - (a) [§429B] (New) In General.
  - (b) [§429C] (New) Costs Excused.

3. **[429D] (New) Eligibility Criteria.**
4. **(New) Procedure.**
  - (a) **[\$429E] (New) Judicial Council Rules and Forms.**
  - (b) **(New) Applications**
    - (1) **[\$429F] (New) General Requirements.**
    - (2) **[\$429G] (New) Requirements for Specific Proceedings.**
  - (c) **[\$429H] (New) Determination of Trial Court Applications.**
  - (d) **[\$429-I] (New) Determination of Appellate Court Applications.**
  - (e) **[\$429J] (New) Fee Waiver Requests by Prisoners.**
  - (f) **[\$429K] (New) Changed Circumstances.**
5. **(New) Recovery of Fee Waivers.**
  - (a) **[\$429L] (New) In General.**
  - (b) **[\$429M] (New) Family Law Cases.**
  - (c) **[\$429N] (New) Enforcement.**

## **XII. STATUTE OF LIMITATIONS: IN GENERAL**

### **A. Nature of Statute.**

1. **[\$430] Types of Limitation Statutes.**
2. **[\$431] Statutory Classification.**
3. **[\$432] Statute Affects Remedy Only.**
4. **Meritorious or Favored Defense.**
  - (a) **[\$433] General Rule.**
  - (b) **[\$434] Illustrations.**
  - (c) **Effect of Change in Case Law.**
    - (1) **[\$435] General Rule: No Tolling of Statute.**
    - (2) **[\$436] Illustration: Product Liability Action.**
    - (3) **[\$437] Illustration: Action Alleging Violation of Proposition 62.**
5. **[\$438] Technical or Disfavored Defense.**
6. **[\$439] A "Shield" and Not a "Sword."**
7. **[\$440] Personal Privilege: Waiver by Defendant.**

### **B. Distinctions.**

1. **Statute Affecting Substantive Right.**
  - (a) **[\$441] Significance of Distinction.**
  - (b) **[\$442] Limitation Affecting Property Right.**
  - (c) **[\$443] Limitation in Statute Creating Right.**
  - (d) **[\$444] Tolling Substantive Time Limit.**
2. **[\$445] Other Statutory Time Limits.**
3. **[\$446] Laches in Equitable Actions.**

### **C. Scope of Limitation Statutes.**

1. **[\$447] Actions and Special Proceedings.**
2. **Cross-Complaint and Defensive Relief.**
  - (a) **[\$448] Statute Runs if Affirmative Relief Is Sought.**
  - (b) **When Statute Does Not Run.**
    - (1) **[\$449] Cross-Demands Deemed Compensated.**
    - (2) **[\$450] Answer Pleading Defensive Matter.**
    - (3) **[\$451] Cross-Complaint by Uninsured Motorist.**

- (4) [§452] Cross-Complaint Against Suspended Corporation.
- (5) [§453] Amended Cross-Complaint.
- (6) [§454] Failure To File Cross-Complaint.

**3. Sovereign Plaintiff.**

- (a) [§455] United States.
- (b) [§456] State or Political Subdivision.
- (c) [§457] Foreign Country.

**D. Changes in Period.**

**1. Legislative Changes.**

**(a) Before Statute Has Run.**

- (1) [§458] Period Extended.
- (2) [§459] Period Shortened.

**(b) Period Extended After Statute Has Run.**

- (1) [§460] In General.
- (2) [§461] Construction To Avoid Retroactivity.
- (3) Valid Retroactive Change.
  - (aa) [§462] In General.
  - (bb) [§463] Sexual Abuse of Minor: 1986 Extension of Period.
  - (cc) [§464] Sexual Abuse of Minor: 1990 Extension of Period.
  - (dd) [§465] Sexual Abuse of Minor: 2002 Extension of Period.
  - (ee) [§466] Action on Northridge Earthquake Insurance Claim.
- (4) [§467] Invalid Retroactive Change.

**2. Contractual Modifications.**

- (a) [§468] Extending Period by Waiver.
- (b) Shortening Period by Agreement.
  - (1) [§469] General Rule: Shorter Period Is Valid If Reasonable.
  - (2) [§470] Distinctions.
  - (3) [§471] Insured's Action Against Successive Insurers for Progressive Property Loss.
  - (4) [§472] Successor Insurer's Action for Contribution or Indemnity.
  - (5) [§473] Agreements Under Uniform Commercial Code.

**E. Classification According to Periods of Limitation.**

- 1. [§474] In General.
- 2. [§475] Thirty Days.
- 3. [§476] Sixty Days or Two Months.
- 4. [§477] Ninety Days or Three Months.
- 5. [§478] One Hundred Days.
- 6. [§479] One Hundred Twenty Days or Four Months.
- 7. [§480] One Hundred Eighty Days or Six Months.
- 8. [§481] One Year.
- 9. [§482] Two Years.

10. [§483] Three Years.
11. [§484] Four Years.
12. [§485] Five Years.
13. [§486] Six Years.
14. [§487] Eight Years.
15. [§488] Ten Years.
16. No Limitation.
  - (a) [§489] Express Statutory Provisions.
  - (b) [§490] Quiet Title by Owner in Possession.
  - (c) [§491] Cancellation of Void Instrument.
  - (d) [§492] Other Proceedings.

**F. Periods and Accrual.**

1. **General Rule: Accrual When Wrongful Act Is Done.**
  - (a) [§493] What Constitutes Accrual.
  - (b) [§494] Ignorance of Cause of Action.
  - (c) [§495] Cause Accruing Before Substantial Damage.
2. **Exceptions: Postponed Accrual.**
  - (a) [§496] In General.
  - (b) **Accrual on Discovery of Facts.**
    - (1) [§497] In General.
    - (2) **Discovery of Defendant's Negligence.**
      - (aa) [§498] Awareness of Injury and Its Cause.
      - (bb) [§499] Prior Rule: Actual Knowledge of Wrongdoing.
      - (cc) [§500] Current Rule: Suspicion of Wrongdoing.
  - (c) **Accrual When Damage Results.**
    - (1) [§501] General Rule: Insurance Cases.
    - (2) [§502] General Rule: Professional Negligence Cases.
    - (3) [§503] Distinction: Remedy Uncertain or Ineffective.
  - (d) [§504] Postponement by Condition Precedent.
  - (e) [§505] Postponement as to Particular Plaintiff.
3. [§506] Alternative Remedy With Longer Period.
4. [§507] Computing Time.

**XIII. STATUTE OF LIMITATIONS: CONTRACT ACTIONS**

**A. Limitation Statutes.**

1. **Written Instruments: Four Years.**
  - (a) [§508] Action on Written Contract.
  - (b) **Action on Promise Implied From Writing.**
    - (1) [§509] Implied Promise To Pay Money.
    - (2) [§510] Other Implied Promises.
    - (3) [§511] Distinctions.
2. **Obligations Not Founded on Written Instrument: Two Years.**
  - (a) [§512] In General.
  - (b) [§513] Oral Express Contracts.
  - (c) [§514] Quasi-Contract Obligations.
3. **Accounts: Four Years.**
  - (a) [§515] In General.



- (2) [§545] Legislative Repudiation of Rule.
- 6. Quasi-Contractual Recovery.
  - (a) [§546] Restitution Where Contract Is Void.
  - (b) Recovery for Services Performed.
    - (1) [§547] In General.
    - (2) [§548] Services Rendered to Decedent.

#### **XIV. STATUTE OF LIMITATIONS: TORT ACTIONS**

##### **A. False Imprisonment and Defamation: One Year.**

- 1. [§549] False Imprisonment.
- 2. Defamation.
  - (a) [§550] In General.
  - (b) [§551] Single Publication Rule.

##### **B. Injuries to Persons and Wrongful Death: Two Years.**

- 1. [§552] In General.
- 2. [§553] Scope of Statute.
- 3. [§554] Assault and Battery.
- 4. [§555] Malicious Prosecution and Abuse of Process.
- 5. [§556] Invasion of Privacy.
- 6. [§557] Conspiracy: Postponed Accrual.
- 7. [§558] Civil Rights Violations.
- 8. [§559] Personal Injuries.
- 9. [§560] Wrongful Death.
- 10. [§561] Action Based on Imputed Liability.
- 11. Action by Employee or Employer.
  - (a) [§562] Personal Injury Action Against Third-Party Tortfeasor.
  - (b) [§563] Action for Termination of Employment in Violation of Public Policy.
  - (c) [§564] Employment Discrimination Action Under Fair Employment and Housing Act.
- 12. [§565] Action on Theory of Breach of Contract.
- 13. [§566] Uninsured Motorist Proceeding.
- 14. Postponed Accrual.
  - (a) [§567] Progressive Disease.
  - (b) Asbestosis.
    - (1) [§568] Statutory Rule of Postponed Accrual.
    - (2) [§569] Definition of Disability.
    - (3) [§570] Cause of Disability.
    - (4) [§571] Knowledge of Disability.
    - (5) [§572] Distinction: Loss of Consortium.
  - (c) [§573] Exposure to Hazardous Material or Toxic Substance.
  - (d) [§574] Infliction of Emotional Distress.
  - (e) Products Liability.
    - (1) [§575] In General.
    - (2) [§576] Suspicion of Wrongdoing.
  - (f) Medical Malpractice.
    - (1) [§577] Former Judicially Developed Exception.

- (2) [§578] Statutory Rule: In General.
- (3) One Year After Discovery.
  - (aa) [§579] In General.
  - (bb) [§580] Illustrations.
- (4) [§581] Three Years After Injury.
- (5) Tolling of Three-Year Period.
  - (aa) [§582] In General.
  - (bb) [§583] Fraud and Intentional Concealment.
  - (cc) [§584] Presence of Foreign Body.
- (6) [§585] Tolling of One-Year Period.
- (7) Action by Minor.
  - (aa) [§586] Limitations periods.
  - (bb) [§587] Delayed Accrual and Tolling of Period.
  - (cc) [§588] Effect of Reaching Majority.
- (8) [§589] Prenatal Injuries.
- (9) [§590] Wrongful Death.
- (g) Distinct Injuries From Same Cause.
  - (1) [§591] Postponed Accrual Allowed.
  - (2) [§592] Postponed Accrual Denied.
- C. Sexual Abuse of Minor: Three or Eight Years.**
  - 1. [§593] Statutory Rule.
  - 2. [§594] Scope of Statute.
  - 3. [§595] Delayed Accrual and Tolling During Minority.
- D. Trespass or Injury to Real Property: Three Years.**
  - 1. [§596] Scope of Statute.
  - 2. Act Causing Immediate and Permanent Injury.
    - (a) [§597] General Rule: Accrual on Date of Wrongful Act.
    - (b) [§598] Buildings Damaged by Hazardous Substances.
    - (c) [§599] Subsequent Owners.
    - (d) [§600] Injury Not Abatable at Reasonable Cost.
  - 3. Continuing Trespass or Nuisance.
    - (a) [§601] In General.
    - (b) [§602] Airplane Overflight.
    - (c) [§603] Environmental Contamination.
  - 4. [§604] Act Causing Consequential Injuries.
  - 5. [§605] Distinction: Inverse Condemnation.
- E. Patent Defects in Real Property: Four Years.**
  - 1. [§606] Scope of Statute.
  - 2. [§607] Distinctions.
- F. Latent Defects in Real Property: Ten Years.**
  - 1. [§608] Scope of Statute.
  - 2. [§609] Retroactive Application of Statute.
  - 3. [§610] Commencement of Ten-Year Period.
  - 4. [§611] Delayed Accrual Rules.
  - 5. Exceptions and Distinctions.
    - (a) [§612] In General.

- (b) **Cross-Complaint for Indemnity.**
    - (1) **[\$613] Exception Held Applicable.**
    - (2) **[\$614] Exception Held Inapplicable.**
  - (c) **[\$615] Personal Injury or Death.**
  - (d) **[\$616] Action by Homeowner for Defects in Original Construction of Residence.**
- G. [\$617] Defects in Construction of Residential Real Property: Ten Years.**
- H. [\$618] Slander of Title to Real Property: Three Years.**
- I. Injuries to or Conversion of Personal Property: Three Years.**
- 1. **[\$619] Scope of Statute.**
  - 2. **Exceptions and Distinctions.**
    - (a) **[\$620] In General.**
    - (b) **[\$621] Action for Recovery or Conversion of Personal Property Left in Hotel and Similar Establishments.**
    - (c) **[\$622] Action for Conversion Based on Underground Trespass on Oil or Gas Well.**
  - 3. **Accrual.**
    - (a) **[\$623] Conversion by Original Wrongful Act.**
    - (b) **[\$624] Conversion After Lawful Possession.**
    - (c) **[\$625] Conversion by Fiduciary or Bailee.**
- J. Attorney Malpractice: One or Four Years.**
- 1. **[\$626] Former Law.**
  - 2. **Judicial Rules of Delayed Accrual.**
    - (a) **[\$627] Accrual Delayed Until Discovery.**
    - (b) **[\$628] Accrual Delayed Until Damage.**
  - 3. **Codification.**
    - (a) **[\$629] Nature and Scope of Statute.**
    - (b) **[\$630] Alternative Periods.**
    - (c) **[\$631] Statutory Tolling Provisions.**
  - 4. **Tolling Until Actual Injury.**
    - (a) **Litigational Malpractice.**
      - (1) **[\$632] Conflicting Decisions in Courts of Appeal.**
      - (2) **[\$633] Laird Rule: Adverse Judgment or Dismissal.**
      - (3) **[\$634] Distinction: Negligent Advice About Settlement.**
    - (b) **Transactional Malpractice.**
      - (1) **[\$635] Conflicting Decisions in Courts of Appeal.**
      - (2) **[\$636] ITT Rule: Adverse Judgment, Settlement, or Dismissal.**
      - (3) **[\$637] Problems With ITT Rule.**
      - (4) **[\$638] ITT Rule Overruled: Malpractice Is Question of Fact.**
    - (c) **Missed Filing Malpractice.**
      - (1) **[\$639] Conflicting Decisions in Courts of Appeal.**
      - (2) **[\$640] Adams Rule: Question of Fact.**
      - (3) **[\$641] Illustrations.**
    - (d) **[\$642] Criminal Case Malpractice.**
  - 5. **Tolling While Attorney Continues To Represent Plaintiff.**
    - (a) **[\$643] Statute Tolloed.**

(b) [§644] Statute Not Tolled.

(c) [§645] Tolling After Attorney Leaves Law Firm.

6. [§646] Tolling While Plaintiff Is Under Legal or Physical Disability.

7. [§647] Equitable Tolling and Estoppel Doctrines.

**K. Miscellaneous Torts: Two Years.**

**1. Scope of Statute.**

(a) [§648] In General.

(b) [§649] Intentional Wrongs.

(c) [§650] Negligent Wrongs.

**2. Accrual: Accountant Malpractice.**

(a) [§651] Accrual Delayed Until Discovery.

(b) [§652] Accrual Delayed Until Damage.

**XV. STATUTE OF LIMITATIONS: ACTIONS FOR FRAUD OR MISTAKE**

**A. Three-Year Limitation: Scope of Statute.**

1. [§653] Form of Action or Relief Is Not Controlling.

2. [§654] Tort Action.

3. [§655] Equitable Action.

4. Quasi-Contract Action.

(a) [§656] Money Obtained by Fraud or Mistake.

(b) [§657] Money Paid Under Duress.

5. [§658] Recovery of Real Property.

**B. Accrual: Showing To Excuse Late Discovery of Facts.**

1. Burden on Plaintiff To Show Diligence.

(a) [§659] General Rule.

(b) [§660] Illustrations: Accrual Postponed.

(c) [§661] Illustrations: Accrual Not Postponed.

2. [§662] Where Circumstances Do Not Impose Duty To Inquire.

3. [§663] Duty Relaxed Where Confidential Relationship Exists.

**XVI. STATUTE OF LIMITATIONS: ACTIONS ON STATUTORY LIABILITIES**

**A. Three-Year Limitation: Scope of Statute.**

1. [§664] In General.

2. [§665] Federal Civil Rights Action.

3. Governmental Claim for Taxes.

(a) [§666] Action To Collect Taxes.

(b) [§667] Duration of Tax Lien.

4. [§668] Exceptions.

**B. Accrual.**

1. [§669] Obligation Payable in Installments.

2. [§670] Action Against Surety of Public Officer.

3. [§671] Action Against Shareholders and Directors.

4. [§672] Action for Reimbursement for Costs of State-Mandated Programs.

5. [§673] Action for Violation of Community Redevelopment Law.

6. [§674] Action Alleging Multiple Claims.

**XVII. STATUTE OF LIMITATIONS: OTHER ACTIONS**

**A. [§675] Action on Judgment: Ten Years.**

**B. [§676] Action by Beneficiary Against Trustee: Three Years.**

**C. Actions Not Otherwise Provided for: Four Years.**

**1. Scope of Provision: Actions in Equity.**

(a) [§677] In General.

(b) [§678] Illustrations.

**2. [§679] Delayed Accrual in Action Against Fiduciary.**

**D. Proceedings Subject to Various Limitations Statutes.**

**1. Constructive Trust.**

(a) [§680] Analysis of Problem.

(b) [§681] What Statutes Apply.

(c) [§682] Accrual on Knowledge of Facts.

**2. [§683] Accounting.**

**3. [§684] Mandamus.**

**4. [§685] Declaratory Relief.**

**5. [§686] Restitution After Rescission.**

**6. [§687] Petition To Vacate or Correct Arbitration Award.**

**7. Actions Against Public Entity or Employee.**

(a) **Public Entity: Where Claim Is Required.**

(1) [§688] In General.

(2) Six-Month Period.

(aa) [§689] Scope and Accrual.

(bb) [§690] Personal Injury Claim Not Involving Medical Malpractice.

(3) [§691] Two-Year Period.

(b) [§692] Public Entity: Where Claim Is Not Required.

(c) [§693] Public Employee.

**XVIII. SUSPENSION OR EQUITABLE TOLLING OF STATUTE OF LIMITATIONS**

**A. [§694] In General.**

**B. Disability of Plaintiff.**

**1. [§695] In General.**

**2. Minority.**

(a) [§696] Scope of Suspension.

(b) [§697] Exceptions and Distinctions.

**3. Insanity.**

(a) [§698] Scope of Suspension.

(b) [§699] Where Guardian Ad Litem Is Appointed.

(c) [§700] Unconsciousness as Insanity.

(d) [§701] Effect of Judicial Determination.

**4. Imprisonment.**

(a) [§702] Scope of Suspension.

(b) [§703] Exceptions and Distinctions.

**5. War.**

(a) [§704] General Suspension Statute.

(b) [§705] Special Suspension Statutes.

**6. When Disability Does Not Suspend.**

(a) [§706] Statute Already Running.

(b) [§707] Representative With Right To Sue.

- (c) [§708] Action To Recover Property Sold by Personal Representative.
- C. [§709] Disability of Attorney.
- D. Absence or Nonresidence of Defendant.
  - 1. General Rule of Suspension.
    - (a) [§710] Absence.
    - (b) [§711] Nonresidence.
    - (c) [§712] Constitutionality.
  - 2. Where Substituted Service Is Possible.
    - (a) [§713] Action In Rem.
    - (b) [§714] Action In Personam.
    - (c) [§715] Distinction: No Express Statute.
  - 3. [§716] Effect of Defendant's Return.
- E. Death of Party.
  - 1. [§717] Death of Prospective Plaintiff.
  - 2. Death of Prospective Defendant.
    - (a) [§718] Survival of Action.
    - (b) [§719] Limitations Periods.
- F. Stay or Other Prevention of Action.
  - 1. [§720] Injunction.
  - 2. Statutory Prohibition.
    - (a) [§721] In General.
    - (b) Notice of Intent To File Medical Malpractice Action.
      - (1) [§722] In General.
      - (2) Scope of Tolling Provision.
        - (aa) [§723] Medical Malpractice.
        - (bb) [§724] Equitable Indemnity.
        - (cc) [§725] Distinction: Intentional Torts.
      - (3) [§726] Form of Notice.
      - (4) [§727] Service of Notice.
      - (5) [§728] Duration of Tolling.
  - 3. Other Proceedings Preventing Effective Suit.
    - (a) [§729] In General.
    - (b) Pending Administrative Proceeding.
      - (1) [§730] In General.
      - (2) [§731] Effect of Pending Federal Administrative Proceeding on State Limitations Period.
      - (3) [§732] Distinction: Availability of Alternative Remedies.
    - (c) [§733] Pending Contract or Arbitration Proceeding.
    - (d) [§734] Pending Review Proceedings in Related Action.
- G. Commencement of Action.
  - 1. [§735] In General.
  - 2. [§736] Distinction: Mass Tort Class Action.
  - 3. [§737] Motion for Leave To Amend.
- H. First Action Tolling Statute on Second Action.
  - 1. [§738] In General.
  - 2. [§739] Equitable Tolling Doctrine.

3. **[§740] First Action Outside California.**
4. **Federal Proceeding Tolling State Action.**
  - (a) **[§741] General Rule.**
  - (b) **[§742] Distinction: Where Federal Court Is Without Jurisdiction.**
  - (c) **[§743] Effect of Federal Tolling Statute.**
5. **Compensation Proceeding Tolling Tort Action.**
  - (a) **[§744] General Rule.**
  - (b) **[§745] Distinction: Where Different Wrong Is Involved.**
6. **[§746] Compensation Proceeding Tolling Other Proceeding.**
7. **First Action Not Diligently Pursued.**
  - (a) **[§747] Statute in Second Action Tolled.**
  - (b) **[§748] Statute in Second Action Not Tolled.**

**I. [§749] Trial of Insured's Murderer.**

**J. Revival by Acknowledgment of Debt.**

1. **[§750] In General.**
2. **[§751] Formal Requisites.**
3. **Effect of Sufficient Acknowledgment.**
  - (a) **[§752] Acknowledgment Before and After Bar.**
  - (b) **[§753] No Effect on Third Parties.**
4. **[§754] Insufficient Acknowledgment.**
5. **[§755] Part Payment of Promissory Note.**

**K. [§756] Probation With Order of Restitution.**

**L. Insurance Cases.**

1. **Tolling While Insurer Investigates Claim.**
  - (a) **[§757] Liability Insurance.**
  - (b) **[§758] Title Insurance.**
2. **[§759] Tolling Until Final Judgment in Underlying Action Against Insured.**

**M. Repairing Defects.**

1. **[§760] General Rule of Tolling.**
2. **[§761] Distinction: Latent Defects in Real Property.**

**XIX. ESTOPPEL TO PLEAD STATUTE OF LIMITATIONS**

**A. [§762] In General.**

**B. Inducement Not To Sue.**

1. **[§763] Promise of Performance.**
2. **[§764] Promise of Settlement.**
3. **[§765] Promise Concerning Other Pending Litigation.**
4. **[§766] False Representation of No Insurance.**
5. **[§767] Other Representations.**

**C. Fraudulent Concealment of Identity of Defendant.**

1. **[§768] Prior Rule: Statute Not Tolled in Absence of Confidential Relationship.**
2. **[§769] Current Rule: Statute Tolled.**

**D. Fraudulent Concealment of Cause of Action.**

1. **[§770] Nature of Doctrine.**
2. **[§771] Scope of Doctrine.**
3. **[§772] What Constitutes Concealment.**

4. [§773] Fraud Cases Compared.
5. [§774] Nondisclosure in Breach of Duty.
6. [§775] Active Misrepresentation or Concealment.
7. [§776] Distinction: Nondisclosure Without Fraud.

E. [§777] Estoppel by Duress.

F. [§778] Expiration of Period of Estoppel.

## **XX. VENUE: IN GENERAL**

A. Venue Distinguished From Jurisdiction.

1. Nonjurisdictional Venue.

(a) [§779] In General.

(b) [§780] Illustrations.

2. [§781] Jurisdictional Venue.

B. Proper Court for Trial in Superior Court.

1. [§782] Former Justice and Municipal Courts.

2. [§783] Consolidation of Trial Courts.

C. [§784] Legislative Control Over Venue.

D. Effect of Contract or Consent.

1. [§785] General Rule: Agreement Fixing Venue Is Void.

2. [§786] Distinctions and Exceptions.

E. Determining Form of Action for Venue Purposes.

1. [§787] In General: Bases of Classification.

2. [§788] The Main Relief Rule.

3. Plaintiff's Complaint.

(a) [§789] Complaint Is Ordinarily Determinative.

(b) [§790] Construction Against Plaintiff.

(c) [§791] Failure To State Cause of Action.

## **XXI. VENUE: LOCAL ACTIONS**

A. Actions Involving Real Property.

1. General Principles.

(a) [§792] Former Constitutional Provision.

(b) [§793] Nature and Classes.

(c) [§794] Land in More Than One County.

2. Recovery or Determination of Interest.

(a) [§795] Ejectment and Unlawful Detainer.

(b) [§796] Quiet Title.

(c) [§797] Actions Involving Deeds, Contracts, or Trusts.

3. [§798] Partition.

4. [§799] Enforcement of Lien.

5. [§800] Condemnation.

6. Damages for Injuries to Real Property.

(a) [§801] Physical Injuries.

(b) [§802] Indirect or Consequential Injuries.

(c) [§803] Inverse Condemnation.

B. [§804] Recovery of Penalty or Forfeiture.

C. Probate Code Proceedings.

1. [§805] Proceeding Against Executor or Other Representative.

2. [§806] Proceeding Under Trust Law.
3. [§807] Guardianship or Conservatorship Proceeding.
4. [§808] Proceeding Under Power of Attorney Law or Health Care Decisions Law.
5. [§809] Proceeding Under Transfers to Minors Act.

**D. Family Law Proceedings.**

1. Dissolution of Marriage.
  - (a) [§810] Former Law: Petitioner's Residence.
  - (b) [§811] Current Law: Either Party's Residence.
2. Legal Separation and Nullity of Marriage.
  - (a) [§812] Former Law: Respondent's Residence.
  - (b) [§813] Current Law: Either Party's Residence.
3. [§814] Adoption.
4. [§815] Other Proceedings.

**E. [§816] Miscellaneous Local Proceedings.**

**XXII. VENUE: TRANSITORY ACTIONS**

**A. Actions Triable at Defendant's Residence.**

1. [§817] Nature of Right.
2. Meaning and Proof of Residence.
  - (a) [§818] Residence and Domicile.
  - (b) [§819] Subjective Factors.
  - (c) [§820] Objective Factors.
3. [§821] Personal Torts Other Than Physical Injury or Death.
4. [§822] Torts to Personal Property Other Than Physical Injury.
5. Actions in Equity Other Than Contract Actions.
  - (a) [§823] In General.
  - (b) [§824] Accounting.
  - (c) [§825] Injunction.
  - (d) [§826] Creditor's Action.
  - (e) [§827] Declaratory Relief.
  - (f) [§828] Cancellation of Instrument.
  - (g) [§829] Equitable Relief Against Judgment.
6. [§830] Action for Damages for Fraud.

**B. Actions Triable at Residence and Elsewhere.**

1. [§831] Actions To Recover Money: In General.
2. [§832] Actions for Personal Injury or Death.
3. [§833] Actions for Injury to Personal Property.
4. Actions on Contract.
  - (a) In General.
    - (1) [§834] Nature of Statute.
    - (2) [§835] What Are Contract Actions.
    - (3) [§836] Where Main Relief Is Contractual.
  - (b) County Where Contract Is Entered Into.
    - (1) [§837] In General.
    - (2) [§838] Recital Is Not Conclusive.
    - (3) [§839] Effect of Modification or Option.

- (4) [§840] Effect of External Condition Precedent.
- (c) County Where Obligation Is To Be Performed.
  - (1) [§841] Effect of Limiting Proviso: "Obligation Incurred."
  - (2) Meaning of "Special Contract."
    - (aa) [§842] Promise Must Be Express.
    - (bb) [§843] Illustrations.
    - (cc) [§844] Promise To Pay Seller's Assignee.
  - (d) [§845] Actions on Installment Contracts.
  - (e) [§846] Actions on Consumer Obligations.
- 5. Nonresidence or Imminent Departure.
  - (a) [§847] Defendant Nonresident or Residence Unknown.
  - (b) [§848] Defendant About To Depart.

### **XXIII. VENUE: ACTIONS AGAINST CORPORATIONS AND ASSOCIATIONS**

- A. Nature and Scope of Statute.
  - 1. [§849] In General.
  - 2. [§850] Unincorporated Associations.
- B. Principal Place of Business or Office.
  - 1. [§851] Corporate or Association Residence.
  - 2. Right to Trial at Residence.
    - (a) [§852] Domestic Corporation or Association.
    - (b) [§853] Foreign Corporation.
- C. [§854] Where Contract Is Made.
- D. Where Contract Is To Be Performed.
  - 1. [§855] In General.
  - 2. Payment of Money.
    - (a) [§856] No Place Specified.
    - (b) [§857] Place Specified.
- E. Where Liability Arises or Breach Occurs.
  - 1. [§858] Contract Actions.
  - 2. [§859] Tort Actions.
  - 3. [§860] Restitution and Quasi-Contract.
  - 4. [§861] Action Based on Statutory Liability.

### **XXIV. VENUE: ACTIONS BY OR AGAINST STATE AND LOCAL GOVERNMENTS**

- A. Actions By or Against State, State Agency, or Public Officer.
  - 1. In General.
    - (a) [§862] Nature of Problem.
    - (b) [§863] Where Attorney General Has Office.
    - (c) [§864] Effect of Venue Statutes.
  - 2. Actions Against State.
    - (a) [§865] Local Actions.
    - (b) [§866] Transitory Actions.
    - (c) [§867] Actions by Cities, Counties, and Local Agencies.
  - 3. [§868] Actions Against State Agency.
  - 4. Actions Against Public Officer for Official Act.
    - (a) [§869] Statutory Rule.
    - (b) [§870] Illustrations.

**B. Actions by or Against City or County.**

1. [§871] In General.
2. [§872] Parties Covered.
3. [§873] Parties Excluded.
4. Actions Excluded.
  - (a) [§874] Negligence Action Against City or County.
  - (b) [§875] County Child Support or Paternity Proceeding.
5. City or County Plaintiff.
  - (a) [§876] Individual Defendant.
  - (b) [§877] Corporation Defendant.
  - (c) [§878] City Defendant.
  - (d) [§879] Condemnation.

**C. Actions by or Against Local Agency.**

1. [§880] In General.
2. [§881] Distinctions and Clarifications.

**XXV. VENUE: JOINDER RULES**

**A. Joinder of Causes of Action.**

1. [§882] One Cause of Action.
2. [§883] Mixed Action.
3. [§884] Joinder of Local and Transitory Causes.
4. Joinder of Two Transitory Causes.
  - (a) [§885] General Rule: Residence Venue Controls.
  - (b) Exceptions: Special Venue Statutes.
    - (1) [§886] Action Under Fair Employment and Housing Act.
    - (2) [§887] Action To Dissolve Corporation.
    - (3) [§888] Distinction: Action Under Consumers Legal Remedies Act.

**B. Joinder of Defendants.**

1. In General.
  - (a) [§889] Effect of Proper Joinder.
  - (b) [§890] Effect of Improper Joinder.
  - (c) [§891] Amendment or Dismissal After Motion.
2. Joinder Proper for Venue Purposes.
  - (a) [§892] Defendant as Proper Party.
  - (b) [§893] Reasonable Belief in Cause of Action.
3. Joinder Improper for Venue Purposes.
  - (a) In General.
    - (1) [§894] Two Tests.
    - (2) [§895] Affidavits and Evidence.
  - (b) No Cause of Action Against Joined Defendant.
    - (1) [§896] Insufficiency Appearing From Facts Shown.
    - (2) [§897] Insufficiency Appearing From Pleading.
  - (c) Defendant Not Interested Party.
    - (1) [§898] Nominal Defendant.
    - (2) [§899] Stakeholder or Other Disinterested Person.
    - (3) [§900] Fictitious Defendant.

(4) [§901] Separate Unrelated Causes Against Defendants.

**4. Joinder of Individual and Corporation.**

(a) [§902] Residence of Either Is Proper.

(b) [§903] County Where Neither Resides Is Improper.

**5. [§904] Joinder of Private and Governmental Defendants.**

**XXVI. CHANGE OF VENUE**

**A. In General.**

**1. Right To Change.**

(a) [§905] Statutory Grounds.

(b) [§906] Defendant's Right and Court's Discretion.

**2. Motion.**

(a) [§907] Necessity of Motion.

(b) [§908] No Waiver by Subsequent Procedural Steps.

**3. Who May Move for Change.**

(a) [§909] Where Ground Is Wrong Court.

(b) [§910] Where Ground Is Impartial Trial.

(c) [§911] Motion by Plaintiff.

**4. Burden of Proof on Moving Party.**

(a) [§912] In General.

(b) [§913] Stipulation To Grant Motion.

**5. Effect of Motion: Suspension of Trial Court's Powers.**

(a) [§914] General Rule.

(b) [§915] Exceptions.

**6. [§916] Effect of Order Granting Change.**

**7. Renewal of Motion After Denial.**

(a) [§917] Former Law.

(b) [§918] Current Law.

**8. Review of Order.**

(a) [§919] Mandamus and Appeal.

(b) [§920] Procedure on Mandamus.

(c) [§921] Determination Is Usually Upheld.

**B. Wrong Court.**

**1. Notice of Motion.**

(a) [§922] Form of Notice.

(b) [§923] Statement of Grounds.

(c) [§924] Time of Notice.

(d) [§925] Waiver by Failure To Comply.

**2. Affidavits and Counteraffidavits.**

(a) [§926] Former Affidavit of Merits.

(b) Affidavit of Residence.

(1) [§927] Nature of Affidavit.

(2) [§928] Defects of Content or Form.

(c) [§929] Affidavit Relating to Nature of Action.

(d) Plaintiff's Counteraffidavit.

(1) [§930] Right To File.

(2) [§931] Procedure.



2. [§967] Statutory Revision of 1969.
- E. Remedies for Defective Service.
  1. [§968] Motion To Quash.
  2. [§969] Review of Denial.
  3. [§970] Review of Default Judgment.
- F. Immunity From Process.
  1. Nonresident Witness.
    - (a) [§971] Common Law Rule.
    - (b) [§972] Abrogation of Common Law Rule.
  2. Nonresident Party.
    - (a) [§973] Common Law Rule.
    - (b) [§974] Limitations on Common Law Rule.
    - (c) [§975] Abrogation of Common Law Rule.
  3. [§976] Extradited Criminal Defendant.
  4. [§977] Nonresident Attorney.
  5. [§978] Nonresident Performing Public Duty.
  6. [§979] Legislator.
  7. [§980] Diplomatic Officer.

## **XXVIII. PROCESS: SUMMONS IN CIVIL ACTION**

- A. Formal Requisites: Ordinary Summons.
  1. [§981] In General.
  2. Form and Content.
    - (a) [§982] In General.
    - (b) [§983] Names of Parties.
    - (c) Direction To Plead.
      - (1) [§984] In General.
      - (2) [§985] Special Statutes.
    - (d) [§986] Other Requirements.
- B. Formal Requisites: Special Statutory Forms.
  1. [§987] Actions Involving Real Property.
  2. [§988] Validating Proceedings.
  3. [§989] Actions Against Corporation or Association.
  4. [§990] Proceedings Against Unserved Joint Debtors.
  5. [§991] Persons Sued by Fictitious Name.
  6. [§992] Family Law Proceedings.
  7. [§993] Probate Proceedings.
- C. [§994] Issuance.
- D. [§995] Amended or Supplemental Complaint.
- E. [§996] Loss or Failure To Serve.

## **XXIX. SERVICE OF PROCESS**

- A. Persons Who May Serve.
  1. [§997] Officer or Private Person.
  2. [§998] Registered Process Server.
- B. [§999] Recoverable Costs for Service.
- C. Manner of Service in General.
  1. [§1000] Former Law.

2. **[§1001] Statutory Revision of 1969.**
3. **[§1002] Service Within California.**
4. **[§1003] Service Outside California but Within United States.**
5. **Service Outside United States.**
  - (a) **[§1004] Statutory Requirements.**
  - (b) **[§1005] Hague Service Convention Requirements.**
  - (c) **[§1006] Foreign Sovereign Immunities Act.**
6. **[§1007] Method Devised by Court.**

**D. Personal Delivery.**

1. **[§1008] Delivery to Defendant.**
2. **[§1009] Sufficient Attempted Delivery.**

**E. Leaving Copy at Office or Home.**

1. **[§1010] Corporation, Association, or Public Entity Defendant.**
2. **Natural Person Defendant.**
  - (a) **[§1011] Attempted Physical Delivery Is Required.**
  - (b) **[§1012] Effectuating Substituted Service.**
3. **[§1013] Business Organization of Unknown Form.**
4. **[§1014] Service at Gated Communities.**

**F. Service by Mail.**

1. **Defendant in California: Mailing and Acknowledgment.**
  - (a) **[§1015] In General.**
  - (b) **[§1016] Notice.**
  - (c) **[§1017] Acknowledgment of Receipt.**
2. **Defendant Outside California: Mailing and Return Receipt.**
  - (a) **[§1018] In General.**
  - (b) **[§1019] Service on Corporation.**
3. **[§1020] No Extension of Time.**
4. **Special Statutes for Particular Actions.**
  - (a) **[§1021] In General.**
  - (b) **[§1022] Unlawful Detainer.**
  - (c) **[§1023] Nonresident Real Estate Licensee or Subdivider.**
  - (d) **[§1024] Nonresident Insurer.**
  - (e) **[§1025] Nonresident Personal Representative of Probate Estate.**
  - (f) **Nonresident Motorist.**
    - (1) **[§1026] In General.**
    - (2) **[§1027] Service and Effect.**
    - (3) **[§1028] What Constitutes Operation of Vehicle.**
    - (4) **[§1029] Who Are Nonresidents.**
    - (5) **[§1030] Action Against Executor or Administrator.**
  - (g) **[§1031] Nonresident Watercraft Owner.**

**G. Service by Publication.**

1. **When Publication Is Permissible.**
  - (a) **[§1032] Former Law.**
  - (b) **[§1033] Statutory Revision of 1969.**
  - (c) **[§1034] Special Statutes.**
2. **Affidavit.**

- (a) [§1035] Necessity.
- (b) [§1036] Who May Make.
- (c) [§1037] Form.
- (d) Diligent Attempt To Serve.
  - (1) [§1038] Inquiry of Persons.
  - (2) [§1039] Search of Directories and Records.
- (e) Nature of Action.
  - (1) [§1040] Statutory Conditions.
  - (2) [§1041] Sufficiency of Averments.

3. [§1042] Order.

4. Service.

- (a) [§1043] Publication.
- (b) [§1044] Where Defendant's Address Is Ascertained.

H. [§1045] Posting in Unlawful Detainer.

I. Persons on Whom Summons May Be Served.

1. Domestic Corporation.

- (a) [§1046] Officer or Designated Agent.
- (b) [§1047] Ostensible Agent.
- (c) [§1048] Secretary of State.

2. Foreign Corporation.

- (a) [§1049] Officer or Designated Agent.
- (b) [§1050] Secretary of State.

3. Defunct Corporation.

- (a) [§1051] Domestic Corporation.
- (b) [§1052] Foreign Corporation.

4. [§1053] Joint Stock Company.

5. Unincorporated Association.

- (a) [§1054] Domestic Association.
- (b) [§1055] Foreign Partnership.

6. Public Entity.

- (a) [§1056] In General.
- (b) [§1057] Officers.
- (c) Roster of Public Agencies.
  - (1) [§1058] Nature and Purpose.
  - (2) [§1059] Effect of Agency's Failure To Comply.

7. [§1060] Minor.

8. [§1061] Ward or Conservatee.

9. [§1062] Candidate for Public Office.

10. [§1063] Other Persons.

J. Proof of Service.

1. [§1064] In General.

2. [§1065] Nature of Return.

3. [§1066] Sufficiency of Return.

4. [§1067] Affidavit or Certificate.

5. Service Within State.

- (a) [§1068] Personal Delivery or Leaving Copy.

- (b) [§1069] Service By Mail.
  - (c) [§1070] Other Methods of Service.
- 6. Service Outside State.
  - (a) Under California Statute.
    - (1) [§1071] Statutory Requirements.
    - (2) [§1072] Illustrations.
  - (b) [§1073] Under Foreign Law.
  - (c) [§1074] Under Court Order.
- 7. [§1075] Amended Proof Where Return Is Defective.