

9 California Procedure (5th), Appeal

I. INTRODUCTION

A. Nature of Appeal and Appellate Jurisdiction.

- 1. [§1] In General.**
- 2. Right to Appeal Is Statutory.**
 - (a) [§2] Power of Legislature.**
 - (b) [§3] No Right to Direct Appeal.**
- 3. [§4] Judicial Economy Is Not Ground for Appeal.**
- 4. [§5] Retroactive Legislation.**
- 5. [§6] Appellate Practice.**
- 6. [§7] Major Developments in Appellate Procedure.**

B. Appellate Rules.

- 1. [§8] Adoption and Subsequent Amendments.**
- 2. [§9] Current Structure.**
- 3. [§10] Scope: Practice and Procedure.**
- 4. Construction and Definitions.**
 - (a) [§11] In General.**
 - (b) [§12] Serve and File.**

C. [§13] Judicial Council Forms.

D. Decision on Request by Court of Another Jurisdiction.

- 1. [§14] Procedure.**
- 2. [§15] Illustrations.**

E. [§16] Extending Time Because of Public Emergency.

F. [§16A] (New) Waiver of Fees and Costs.

II. EFFECT OF TAKING APPEAL

A. Jurisdiction Vested in Appellate Court.

- 1. [§17] In General.**
- 2. [§18] Transfer of Dependency Case After Appeal Is Perfected.**
- 3. [§19] Distinction: Using Writ of Prohibition To "Vacate" Appealed Judgment.**

B. Jurisdiction Retained by Trial Court.

- 1. [§20] Jurisdiction Over Collateral Matters.**
- 2. Jurisdiction Over Merits.**
 - (a) [§21] In General.**
 - (b) [§22] Spousal Support.**
- 3. [§23] Vacation or Correction of Judgment.**

III. PARTIES AND RIGHT TO APPEAL

A. Appellant Must Be Party.

- 1. Party to Action.**
 - (a) [§24] In General.**
 - (b) [§25] Substitution of Parties.**
- 2. Party to Record After Judgment.**
 - (a) Procedure for Becoming Party.**
 - (1) [§26] Motion To Vacate.**
 - (2) [§27] Motion for New Trial.**

- (b) **Necessity of Motion.**
 - (1) **§28 General Rule: Motion Is Required.**
 - (2) **§29 Exception.**
 - (c) **§30 Intervention by Attorney General.**
- 3. Distinctions.**
 - (a) **§31 Probate Proceeding.**
 - (b) **§32 Res Judicata Effect on Nonparty.**
- B. Appellant Must Be Aggrieved.**
 - 1. Necessity of Interest Injuriouly Affected.**
 - (a) **Nature of Requirement.**
 - (1) **§33 In General.**
 - (2) **Illustrations of Aggrieved Parties.**
 - (aa) **§34 In General.**
 - (bb) **§35 Guardianship and Dependency Cases.**
 - (b) **No Interest in Subject Matter.**
 - (1) **§36 In General.**
 - (2) **§37 Debtor in Bankruptcy.**
 - (3) **§38 Former Attorney Requesting Fees.**
 - (4) **§39 Attorney Potentially Liable for Malpractice.**
 - (c) **§40 Judgment Affecting Other Parties.**
 - (d) **Judgment in Favor of Appellant.**
 - (1) **§41 General Rule: Not Appealable.**
 - (2) **§42 Exceptions.**
 - (e) **Judgment by Consent.**
 - (1) **§43 General Rule: Not Appealable.**
 - (2) **Exceptions.**
 - (aa) **§44 In General.**
 - (bb) **§45 Judgment Void on Constitutional Grounds.**
 - (cc) **§46 Consent Given To Facilitate Appeal.**
 - (f) **§47 Judgment by Default.**
 - 2. Persons in Representative Capacity.**
 - (a) **Executors, Administrators, Trustees, and Guardians.**
 - (1) **§48 In General.**
 - (2) **§49 Exercise of Decedent's Right To Appeal.**
 - (3) **§50 Rights of Beneficiaries.**
 - (4) **§51 No Contest Clause.**
 - (b) **§52 Shareholder in Derivative Suit.**
 - (c) **§53 Attorney or Representative After Client's Death.**
 - (d) **§54 Representative Who Is Both Appellant and Respondent.**
 - 3. §55 Court or Administrative Agency.**
- C. Partial Appeal.**
 - 1. §56 Appeal by Fewer Than All Parties.**
 - 2. Appeal From Part of Severable Judgment.**
 - (a) **§57 General Rule.**
 - (b) **§58 Illustrations.**
 - 3. §59 No Partial Appeal Where Judgment Is Not Severable.**

4. Judgment of Dissolution of Marriage.

(a) Where Dissolution and Property Issues Are Severable.

(1) [§60] Case Law Background.

(2) [§61] Codification of Partial Appeal Rule.

(b) [§62] Where Jurisdiction Over Property Issues Is Reserved.

D. Waiver or Forfeiture of Right.

1. [§63] Express Waiver.

2. Compliance With Judgment.

(a) [§64] In General: Voluntary Compliance or Satisfaction.

(b) [§65] Where Restitution After Reversal Is Not Practical.

(c) [§66] Distinction: Enforced Satisfaction.

3. Acceptance of Benefits.

(a) General Rule of Waiver.

(1) [§67] Acceptance of Benefits of Judgment.

(2) [§68] Acceptance of Arbitration Award.

(3) [§69] Acceptance of Benefits of Settlement.

(b) [§70] Illustrations.

(c) Exceptions.

(1) [§71] Appeal Seeking Greater Recovery.

(2) [§72] Severable Judgment.

(3) No Substantial Benefit Received.

(aa) [§73] In General.

(bb) [§74] Deposit in Trust Account.

(4) [§75] Statute or Agreement Preserving Right To Appeal.

(5) [§76] Conditional New Trial Order.

(6) [§77] Policy Exception for Homestead Exemption.

(d) [§78] Executing Satisfaction of Judgment.

4. Loss of Right as Penalty.

(a) [§79] Failure of Corporation To Pay Taxes.

(b) [§80] Party in Contempt.

(c) Misconduct Without Contempt Adjudication.

(1) [§81] In General.

(2) [§82] No Denial of Due Process.

(3) [§83] Trial Judge May Not Impose Penalty.

(d) [§84] Stay in Marital Proceeding.

IV. APPEALABLE JUDGMENTS AND ORDERS

A. In General.

1. [§85] Statutory Classes Are Exclusive.

2. [§86] Appeal Dismissed on Court's Own Motion.

3. [§87] Appellate Jurisdiction by Acquiescence.

4. [§88] Discretionary Appeal.

B. Review of Nonappealable Judgment or Order.

1. Appeal From Subsequent Appealable Judgment or Order.

(a) [§89] In General.

(b) [§90] Review of Nonappealable Order on Appeal of Dismissal Requested by Coparty.

2. [§91] Review by Extraordinary Writ.
3. [§92] Distinction: No Review on Appeal of Dismissal for Failure To Prosecute.

C. Void Judgment or Order.

1. [§93] General Rule: Appealable.
2. [§94] Void Orders After Final Judgment.

V. FINAL JUDGMENT: ONE FINAL JUDGMENT RULE

A. In General.

1. [§95] Appeal From Judgment.
2. Judgment Must Be Final.
 - (a) [§96] In General.
 - (b) [§97] Judgment Contingent on Interim Ruling.
3. [§98] Distinctions.

B. Judgment Final on Collateral Matter.

1. [§99] Nature of Exception.
2. Illustrations.
 - (a) [§100] Support Orders.
 - (b) [§101] Receivers.
 - (c) Monetary Sanctions.
 - (1) [§102] Former Law.
 - (2) [§103] Nature of Statutory Revision.
 - (3) [§104] Appealability of Discovery Sanctions.
 - (4) [§105] No Aggregation of Sanctions To Meet Statutory Threshold.
3. Where No Act Is Ordered.
 - (a) Limitation Disregarded.
 - (1) [§106] In General.
 - (2) [§107] Discovery Cases.
 - (b) [§108] Limitation Observed.

C. Judgment Final as to Party.

1. [§109] General Rule.
2. [§110] Order Denying Intervention or Substitution.
3. [§111] Order Striking Special Answer by Third-Party Defendant.
4. [§112] Order Denying Certification of Class Action.
5. Order Striking Out Cross-Complaint.
 - (a) [§113] Third Party or Codefendant: Appealable.
 - (b) [§114] Plaintiff or Third Party Not Served: Not Appealable.
 - (c) [§115] Distinction: Determination of Jurisdiction.
 - (d) [§116] Distinction: Cross-Complainant Not Named in Action.
6. Partial Determination of Issues.
 - (a) General Rule: Partial Judgment Is Not Appealable.
 - (1) [§117] Complaint and Cross-Complaint.
 - (2) [§118] Multiple Causes of Action.
 - (3) [§119] Order in Bifurcated Trial.
 - (4) [§120] Appeal in Severed Trial.

(5) [§121] Stipulation To Dismiss Some Causes of Action Without Prejudice.

(b) Exceptions to Rule: Partial Judgment Is Appealable.

(1) [§122] Different Parties.

(2) [§123] Appeal in Case Consolidated for Trial.

(3) Appeal Saved by Amendment of Judgment.

(aa) [§124] In General.

(bb) [§125] Multiple Causes of Action.

(cc) [§126] Complaint and Cross-Complaint.

(dd) [§127] Theory Criticized and Rejected.

(4) Appeal Saved by Treating It as Writ Application.

(aa) [§128] Stipulation and Court's Discretion.

(bb) [§129] Distinction: Late Appeal.

(cc) [§130] Jurisdiction Declined: In General.

(dd) [§131] Jurisdiction Declined: Request in Juvenile Dependency Proceeding.

(ee) [§132] Jurisdiction Accepted.

(5) [§133] Appeal Considered in Court's Discretion.

(6) [§134] Order in Bifurcated Family Law Case.

(7) [§135] Stipulation To Dismiss With Prejudice.

D. Interlocutory and Final Judgments.

1. [§136] Nonappealable Interlocutory Judgment.

2. [§137] Final Judgment Mislabeled Interlocutory.

3. [§138] Appealable Interlocutory Judgments.

E. Judgments in Special Proceedings.

1. [§139] In General.

2. Orders in Arbitration Proceeding.

(a) [§140] Order Directing Arbitration: Not Appealable.

(b) [§141] Order Denying Arbitration: Appealable.

(c) [§142] Orders After Arbitration: Appealable.

3. [§143] Motion as Special Proceeding.

F. [§144] Dismissal and Nonsuit.

G. [§145] Summary Judgment.

H. [§146] Habeas Corpus.

I. [§147] Contempt.

J. Order Granting or Denying Writ.

1. [§148] General Rule: Order Appealable.

2. [§149] Judgment Directed at Superior Court.

K. [§150] Agricultural Labor Relations Board Enforcement Judgment.

L. [§151] Appeal in Sterilization Case.

VI. NONAPPEALABLE ORDERS

A. In General.

1. [§152] Theory of Nonappealability.

2. [§153] Where Appealable Judgment Is Entered.

B. Pleading and Parties.

1. [§154] Demurrer and Judgment on Pleadings.

- 2. **[§155] Motion To Strike.**
 - 3. **[§156] Amendment of Pleading and Substitution of Parties.**
 - 4. **[§157] Class Certification.**
 - C. **[§158] Evidence and Discovery.**
 - D. **[§159] Orders at Trial.**
 - E. **Steps Preliminary to Final Judgment.**
 - 1. **[§160] In General.**
 - 2. **[§161] Order for Judgment.**
 - 3. **[§162] Minute Order.**
 - 4. **[§163] Notice of Ruling.**
 - F. **[§164] Order Denying New Trial.**
 - G. **[§165] Order Denying Motion for Reconsideration.**
 - H. **[§166] Order Made Nonappealable by Waiver.**
 - I. **[§167] Order Dealing With Jurisdictional Reclassification.**
 - J. **[§168] Placement Order for Dependent Child After Parental Rights Have Been Terminated.**
 - K. **[§169] Miscellaneous Orders.**
- VII. ORDERS APPEALABLE UNLESS APPEAL IS PROHIBITED**
- A. **[§170] Orders Dealing With Venue.**
 - B. **[§171] Orders Dealing With Process.**
 - C. **[§172] Order on Special Motion To Strike SLAPP Suit.**
 - D. **Orders Dealing With Provisional Remedies.**
 - 1. **[§173] Attachment.**
 - 2. **Injunction.**
 - (a) **[§174] In General.**
 - (b) **[§175] Order Modifying Injunction.**
 - (c) **[§176] Interlocutory Order Denying Permanent Injunction.**
 - 3. **Receivers.**
 - (a) **[§177] Appointment and Vacating Appointment.**
 - (b) **[§178] Accounts and Discharge.**
 - E. **[§179] Orders in Tax Refund Cases.**
 - F. **Orders After Verdict or Judgment.**
 - 1. **Orders Affecting Final Judgment.**
 - (a) **[§180] General Rule: Appealable.**
 - (b) **Limitations.**
 - (1) **Order Must Affect Judgment or Relate to Enforcement.**
 - (aa) **[§181] In General.**
 - (bb) **[§182] When Order Affects Judgment or Relates to Enforcement.**
 - (2) **[§183] Order Must Raise Different Issues.**
 - (3) **[§184] Judgment Must Be Final.**
 - (c) **[§185] Orders Dealing With Enforcement.**
 - (d) **Orders Dealing With Costs.**
 - (1) **[§186] In General.**
 - (2) **[§187] No Separate Appeal Is Required.**

(3) [§188] Distinction: Separate Appeal Is Required for Discretionary Cost Award.

(e) [§189] Orders Dealing With Receiver.

(f) [§190] Order Awarding Attorneys' Fees on Appeal.

(g) [§191] Miscellaneous Orders.

2. [§192] Order Granting New Trial.

3. [§193] Order Denying Judgment Notwithstanding Verdict.

4. Order Granting Motion To Vacate.

(a) [§194] General Rule: Appealable.

(b) [§195] Exception: Order Vacating Nonappealable Order.

(c) [§196] Conditional Vacating Order.

5. Order Denying Motion To Vacate.

(a) [§197] General Rule: Nonappealable.

(b) Exceptions.

(1) [§198] No Effective Appeal From Judgment.

(2) [§199] Appellant Not an Original Party.

(3) [§200] Statutory Motions.

(4) [§201] Motion To Vacate Void Judgment.

G. Probate Orders and Decrees.

1. In General.

(a) [§202] Statutory Framework.

(b) [§203] Probate Code Provisions Are Exclusive.

(c) [§204] Denial of Appealable Order.

(d) [§205] Nonappealable Orders.

(e) [§206] Order on Motion for New Trial.

(f) [§207] Order on Motion To Vacate.

2. All Probate Code Proceedings.

(a) [§208] Property Transactions.

(b) [§209] Payment and Priority of Debts.

(c) [§210] Instructions.

(d) [§211] Settlement of Accounts.

3. Decedents' Estates.

(a) [§212] Admitting Will or Revoking Probate.

(b) [§213] Issuing or Revoking Letters.

(c) [§214] Existence of Will Contest.

(d) [§215] Administration of Estate.

(e) [§216] Small Estates and Exemptions.

(f) [§217] Heirship and Distribution.

4. [§218] Guardianships and Conservatorships.

5. [§219] Trusts and Trustees.

6. [§220] Powers of Attorney and Health Care Directives.

VIII. STAY OF ENFORCEMENT

A. In General.

1. [§221] Methods of Staying Enforcement.

2. [§222] Effect of Stay.

3. [§223] Stay by Trial Judge.

B. Child Custody and Dwelling Exclusion Orders.

- 1. [§224] Statutory Development.**
- 2. [§225] Discretionary Stay by Trial Judge.**
- 3. Stay by Supersedeas.**
 - (a) [§226] In General.**
 - (b) [§227] Relevant Factors.**
 - (c) [§228] Avoidance of Conflicting Rulings by Courts of Concurrent Jurisdiction.**
- 4. [§229] Modification of Custody Order.**

C. Stay by Undertaking.

1. When Undertaking Is Required.

(a) Judgment Directing Payment of Money.

(1) Judgments Covered.

(aa) [§230] Money or Payment of Money.

(bb) [§231] Costs Awarded Against Party Rejecting Compromise.

(cc) [§232] Costs Awarded Against Party Demanding Trial De Novo After Arbitration.

(dd) [§233] Attorneys' Fees Awarded as Sanction.

(2) Judgments Not Covered.

(aa) [§234] In General.

(bb) [§235] Judgment for Costs Alone.

(cc) [§236] Attorneys' Fees as Costs.

(3) [§237] Condition of Undertaking.

(4) Amount of Undertaking.

(aa) [§238] In General.

(bb) [§239] Costs.

(b) Judgment Directing Sale or Delivery of Documents or Personal Property.

(1) [§240] Application of Statute.

(2) [§241] Recovery for Decline in Value.

(3) [§242] Exception: Where Appellant Is Not in Possession.

(c) Judgment Directing Sale or Delivery of Real Property.

(1) [§243] Application of Statute.

(2) [§244] Exception: Where Appellant Is Not in Possession.

(3) Forcible Entry or Unlawful Detainer.

(aa) [§245] In General.

(bb) [§246] Attorneys' Fees.

(d) [§247] Appointment of Receiver.

(e) [§248] Right To Attach Order.

(f) [§249] Order for Family Allowance in Probate.

2. Procedure on Undertaking.

(a) In General.

(1) [§250] Deposit in Lieu of Bond.

(2) [§251] Form and Filing.

(3) [§252] Provisional Stay.

- (4) [§253] Waiver or Reduction of Undertaking.
 - (b) Fixing Amount.
 - (1) [§254] In General.
 - (2) [§255] Additional Security Is Not Allowable.
 - (3) [§256] Distinction: Changed Circumstances.
 - (c) Defective or Insufficient Undertaking.
 - (1) [§257] Objections.
 - (2) [§258] Execution Is Not Stayed.
 - (3) [§259] Appeal Is Not Affected.
 - (4) [§260] Insufficient Bond or Sureties.
 - (5) [§261] Substitution of Sufficient Undertaking.
 - (6) [§262] Distinction: Valid Partial Undertaking.
 - (d) Liability of Surety.
 - (1) [§263] Construction of Bond.
 - (2) [§264] Failure To Give Sufficient Undertaking.
 - (3) [§265] Enforcement of Liability.
 - (e) Surety's Right of Subrogation.
 - (1) [§266] In General.
 - (2) [§267] Where Surety Is Liable on Judgment Itself.
 - (3) [§268] Rights as Between Successive Sureties.
- D. Stay by Appeal Without Undertaking.**
- 1. Automatic Stay.
 - (a) [§269] Theory.
 - (b) [§270] Illustrations.
 - (c) [§271] Order or Judgment Under Probate Code.
 - 2. Exception: Undertaking in Court's Discretion.
 - (a) [§272] Background and Former Law.
 - (b) [§273] Current Statute.
 - 3. Exemption From Undertaking Requirement.
 - (a) [§274] Representatives.
 - (b) [§275] Governmental Officers.
- E. Judgments Not Stayed by Appeal or Undertaking.**
- 1. [§276] Self-Executing Judgments.
 - 2. [§277] Other Types Not Stayed.
 - 3. [§278] Appeal From Order After Judgment.
- F. Stay by Writ of Supersedeas.**
- 1. In General.
 - (a) [§279] Nature and Purpose of Writ.
 - (b) [§280] Effect of Constitutional Revision.
 - (c) [§281] Discretion of Reviewing Court.
 - (d) Retroactive and Corrective Effect.
 - (1) [§282] Stay in Effect.
 - (2) [§283] Stay Not in Effect.
 - 2. Reasons for Granting Writ.
 - (a) Statutory Stay Is Violated.
 - (1) [§284] Appeal Stayed by Undertaking.

- (2) **Automatic Stay.**
 - (aa) **§285 In General.**
 - (bb) **§286 Necessity of Writ.**
 - (b) **§287 Bond Is Valid but Sureties Are Insufficient.**
 - (c) **§288 Where Judgment Is Not Stayed by Appeal or Undertaking.**
 - (d) **§289 Cost of Bond Is Prohibitive.**
- 3. Reasons for Refusing Writ.**
 - (a) **In General.**
 - (1) **§290 No Valid Appeal.**
 - (2) **§291 Appeal Is Without Merit.**
 - (3) **§292 Writ Would Defeat Statutory Purpose.**
 - (4) **§293 Failure To Exhaust Other Remedies.**
 - (b) **Self-Executing Judgment: In General.**
 - (1) **§294 Theory of Refusal.**
 - (2) **§295 Illustrations.**
 - (c) **Self-Executing Judgment: Prohibitory Injunction.**
 - (1) **Prohibitory Injunction Granted.**
 - (aa) **§296 Former Law: Writ Refused.**
 - (bb) **§297 Current Law: Writ Authorized.**
 - (2) **Prohibitory Injunction Denied.**
 - (aa) **§298 Former Law: Writ Refused.**
 - (bb) **§299 Current Law: Writ Authorized.**
- 4. Procedure.**
 - (a) **§300 Petition.**
 - (b) **§301 Temporary Stay.**
 - (c) **§302 Opposition.**
 - (d) **§303 Determination.**
 - (e) **§304 Form and Content of Writ.**
 - (f) **Conditions.**
 - (1) **§305 Bond.**
 - (2) **§306 Other Protective Conditions.**
 - (3) **§307 Prompt Prosecution of Appeal.**
 - (g) **§308 Modification and Recall.**

IX. FACT-FINDING POWER OF REVIEWING COURT

A. Nature and Scope of Power.

- 1. §309 Constitutional and Legislative Development.**
- 2. §310 Implementing Statute.**
- 3. Where Power Will Not Be Exercised.**
 - (a) **§311 Judgment Roll Appeal.**
 - (b) **General Reversal.**
 - (1) **§312 No Fact-Finding.**
 - (2) **§313 No Evidence Taken.**

B. Factual Determinations on Appeal.

- 1. Where Factual Determinations May Be Made.**
 - (a) **§314 To Affirm or Modify.**
 - (b) **§315 To Reverse With Directions.**

2. [§316] Where Factual Determinations Are Improper.
 3. [§317] Procedure.
- C. New Evidence on Appeal.
1. [§318] In General.
 2. [§319] Procedure.
 3. Reasons for Denial of Motion.
 - (a) [§320] Evidence Is Inadmissible or Cumulative.
 - (b) [§321] Lack of Diligence.

X. SCOPE OF REVIEW

A. In General.

1. Function of Appellate Court.

- (a) Review of Question of Law.
 - (1) [§322] General Principle.
 - (2) [§323] Illustrations.
 - (3) [§324] Distinction: Independent Review of "Constitutional Fact."
- (b) [§325] Review of Mixed Question of Fact and Law.
- (c) [§326] Moot or Abstract Question.
- (d) Error That Appellant Cannot Assert.
 - (1) [§327] Error Favorable to Appellant.
 - (2) [§328] Error Favorable to Coparty.
 - (3) Error Against Nonappealing Party.
 - (aa) [§329] In General.
 - (bb) [§330] Nonappealing Class Member.
- (e) Review of Error Against Nonappealing Party.
 - (1) [§331] Point Raised by Appellate Court.
 - (2) Point Raised by Respondent.
 - (aa) [§332] Nature of Problem and Former Law.
 - (bb) [§333] To Negate Prejudice From Error Against Appellant.
- (f) Matters Outside Record.
 - (1) [§334] General Rule: Nonreviewable.
 - (2) [§335] Exceptions.
- (g) [§336] Matters Occurring After Trial but Before Judgment.
- (h) Matters Occurring After Entry of Judgment.
 - (1) [§337] General Rule: Nonreviewable.
 - (2) [§338] Exception: Judgment Inoperative.
 - (3) Exception: Change in Circumstances or Law.
 - (aa) [§339] Change Following Entry of Equitable Decree.
 - (bb) [§340] Change in Other Types of Cases.
 - (4) [§341] Postjudgment Order Fixing Costs and Fees.
- (i) Matters Unnecessary to Decision.
 - (1) [§342] General Rule: Nonreviewable.
 - (2) [§343] Exception: Guidance of Trial Court or Administrative Body.
 - (3) Other Departures From Rule.

- (aa) [§344] In General.
 - (bb) [§345] Decision on Merits in Dismissed Appeal.
 - (j) Reasons for Trial Court's Decision.
 - (1) [§346] General Rule: Nonreviewable.
 - (2) Illustrations.
 - (aa) [§347] Exclusion of Evidence.
 - (bb) [§348] Other Situations.
 - (3) [§349] Exceptions.
 - (4) Trial Judge's Opinion.
 - (aa) [§350] In General.
 - (bb) [§351] Aid to Interpretation or Discovery of Grounds.
 - (cc) [§352] Other Uses.
 - (k) Policy of Legislation.
 - (1) [§353] Improper Consideration.
 - (2) [§354] Proper Consideration.
 - 2. Presumptions in Favor of Judgment.
 - (a) [§355] In General.
 - (b) Appeal on Judgment Roll.
 - (1) [§356] Former Law.
 - (2) [§357] Nature of Rule and Limitation.
 - (3) [§358] No Requirement That Short Record Bring Up Some Evidence.
 - (4) [§359] Error on Face of Record.
 - (5) [§360] No Review of Sufficiency of Evidence.
 - (c) [§361] Appeal From Default Judgment.
 - 3. Review of Lower Court's Discretion.
 - (a) [§362] Rule and Theory.
 - (b) [§363] Illustrations.
 - (c) [§364] Limits of Legal Discretion.
- B. Sufficiency of Evidence.**
- 1. Rule of Conflicting Evidence.
 - (a) In General.
 - (1) [§365] Nature of Rule.
 - (2) [§366] Policy Limitations on Power.
 - (3) [§367] Function of Appellate Court.
 - (4) [§368] Examination of Entire Record.
 - (b) What Constitutes Substantial Evidence.
 - (1) [§369] Slight Evidence of Respondent.
 - (2) [§370] Overwhelming Evidence of Appellant Is Disregarded.
 - (3) [§371] Where Clear and Convincing Evidence Is Required.
 - (4) [§372] Evidence Attacked as Inherently Improbable.
 - (c) What Does Not Constitute Substantial Evidence.
 - (1) [§373] No Clear Test.
 - (2) [§374] Illustrations.
 - (d) [§375] Review of Punitive Damages Award.
 - 2. Rule of Conflicting Inferences.

- (a) [§376] Nature of Rule.
- (b) [§377] Exception: Only One Reasonable Inference.
- (c) [§378] Distinction: Questions of Law.
- (d) [§379] Stipulation of Facts.
- 3. Review of Interpretation of Writings.
 - (a) [§380] Nature of Problem.
 - (b) [§381] Extrinsic Evidence Conflicting.
 - (c) [§382] No Extrinsic Evidence Introduced.
 - (d) [§383] Extrinsic Evidence Not Conflicting.
- 4. Review of Administrative Review.
 - (a) [§384] Nature of Problem.
 - (b) Findings of Trial Court Upheld.
 - (1) [§385] Conflicting Evidence Rule.
 - (2) [§386] Decisions Following Rule.
 - (c) [§387] Distinction: Legislative Determination.
- 5. [§388] Reconciliation of Conflicting Decisions.
- C. Estoppel and Waiver.
 - 1. Error Invited: Estoppel.
 - (a) [§389] Theory of Invited Error.
 - (b) [§390] Appellant's Act Inducing Error.
 - (c) [§391] Appellant's Objection Inducing Error.
 - (d) [§392] Respondent's Objection Inducing Error.
 - (e) [§393] Exception: Defensive Acts.
 - 2. Error Consented to: Waiver.
 - (a) [§394] Theory of Error Waived.
 - (b) [§395] Express Waiver.
 - (c) Implied Waiver.
 - (1) [§396] Failure To Object.
 - (2) [§397] Acts Indicating Acquiescence.
 - (3) [§398] Concession of Liability.
 - (d) [§399] Exception: Defensive Acts.
 - 3. Point Not Properly Raised Below.
 - (a) Nature and Scope of Rule.
 - (1) [§400] In General.
 - (2) [§401] No Requirement That Objection Be Supported by Extensive Evidence.
 - (3) [§402] Distinction: Recently Announced Rule of Law.
 - (b) Methods of Raising Point.
 - (1) [§403] Formal Exceptions Abolished.
 - (2) [§404] Steps Before and During Trial.
 - (3) [§405] Motion for New Trial.
 - (c) [§406] Exceptions to Requirement.
 - 4. Theory of Trial.
 - (a) Nature of Doctrine.
 - (1) [§407] In General.
 - (2) [§408] Justification.

- (b) Application of Doctrine.**
 - (1) [§409] Sufficiency of Pleadings.**
 - (2) [§410] Matters in Issue.**
 - (3) [§411] Measure of Damages.**
 - (4) [§412] Controlling Statute or Ordinance.**
 - (5) [§413] Legal Relationship or Ground of Liability.**
- (c) Exceptions to Doctrine.**
 - (1) [§414] In General.**
 - (2) [§415] Issue of Law Alone.**

XI. REVERSIBLE ERROR

A. In General.

- 1. [§416] Development of California Doctrine.**
- 2. Theory of Constitutional Provision.**
 - (a) [§417] No Presumption of Injury From Error.**
 - (b) [§418] Review of Entire Record.**
 - (c) [§419] Reversible Error Is Relative Term.**
- 3. Review of Order on New Trial Motion.**
 - (a) [§420] Appeal From Order Granting.**
 - (b) [§421] Review of Order Denying.**
- 4. [§422] Improper Evidence in Trial by Court.**
- 5. [§423] Appeal on Short Record.**
- 6. [§424] Analysis of Reversible Error Problem.**

B. Unsubstantial Error.

- 1. Trivial Error or Irregularity.**
 - (a) [§425] Clerical or Grammatical Error.**
 - (b) [§426] Inadvertent Misuse of Terms.**
 - (c) [§427] Slight Irregularity in Procedure.**
- 2. Minor Error Usually Harmless.**
 - (a) [§428] Defect of Parties or Pleadings.**
 - (b) [§429] Immaterial Variance.**
 - (c) [§430] Evidence Erroneously Admitted.**
 - (d) [§431] Evidence Erroneously Excluded.**
 - (e) [§432] Misconduct of Counsel, Court, or Jury.**
 - (f) [§433] Erroneous Instruction or Failure To Instruct.**
 - (g) [§434] Erroneous Statement of Decision or Failure To Resolve Issue.**
- 3. [§435] Failure To Award Nominal Damages.**

C. Substantial Error Not Reversible.

- 1. Error Cured by Party.**
 - (a) [§436] Rulings on Pleadings.**
 - (b) [§437] Denial of Nonsuit.**
 - (c) [§438] Denial of Summary Judgment.**
- 2. Error Cured by Judge or Jury.**
 - (a) [§439] Evidence.**
 - (b) [§440] Misconduct.**
 - (c) [§441] Instructions.**
- 3. [§442] Judgment Clearly Right.**

D. Substantial Error Reversible Under Circumstances.

1. Close Case.

(a) [§443] Nature of Problem.

(b) Test of Reversible Error.

(1) [§444] Repudiated Test of Possible Prejudice.

(2) [§445] Current Test of Probable Prejudice.

(c) Illustrations.

(1) [§446] Rulings on Evidence.

(2) [§447] Instructions and Failure To Instruct.

(3) [§448] Defective Verdict or Statement of Decision.

(d) [§449] Review of Conflicting Evidence.

2. [§450] Numerous Errors Having Cumulative Effect.

3. [§451] Error Intentional or in Bad Faith.

4. [§452] Federal Constitutional Error.

E. Reversible Error Per Se.

1. [§453] Theory of Error Necessarily Reversible.

2. Denial or Impairment of Jury Trial.

(a) [§454] In General.

(b) [§455] Distinction: Refusal To Give Instruction.

3. [§456] Denial of Fair Hearing.

4. [§457] Failure To Issue Sufficient Statement of Decision.

F. [§458] Confession of Error.

XII. LAW OF THE CASE

A. Nature of Doctrine.

1. [§459] In General.

2. Appellate Court Decisions.

(a) [§460] In General.

(b) [§461] Writ Proceedings.

3. [§462] Earlier Inflexible Rule.

4. Modern Rule of Policy.

(a) [§463] Departure by Appellate Court.

(b) [§464] Departure by Trial Court.

B. Requisites for Invoking Doctrine.

1. Points of Law.

(a) [§465] In General.

(b) [§466] Validity or Construction of Document or Judgment.

(c) [§467] Sufficiency or Nature of Pleadings.

(d) [§468] Admissibility of Evidence.

(e) [§469] Appellate Jurisdiction.

2. Sufficiency of Evidence.

(a) Where Evidence Is Substantially the Same.

(1) [§470] General Rule.

(2) [§471] Distinction: Where Credibility Is Involved.

(b) [§472] Where Evidence Is Substantially Different.

3. What Constitutes Decision on Point.

(a) [§473] Nature of First Appellate Decision.

- (b) Matter Necessarily Involved.**
 - (1) [§474] Dictum Is Not Binding.**
 - (2) [§475] Where Decision Is on Additional Grounds.**
- (c) Matter Expressly Decided.**
 - (1) [§476] Point Not Raised Is Not Binding.**
 - (2) [§477] Exception: Point Essential to Decision Is Binding.**

C. Circumstances Justifying Departure From Doctrine.

- 1. [§478] In General.**
- 2. [§479] Recognition of Rule.**
- 3. [§480] Illustrations.**

XIII. STARE DECISIS

A. Nature of Doctrine.

- 1. [§481] In General.**
- 2. Departure From Precedent.**
 - (a) [§482] Unlimited Power of Highest Court.**
 - (b) [§483] Doctrine Is Jurisdictional in Lower Court.**
- 3. [§484] Distinction: Common Law as Rule of Decision.**
- 4. [§485] Distinction: Statute as Precedent.**

B. Courts and Decisions to Which Stare Decisis Is, or Is Not, Applicable.

- 1. In General.**
 - (a) [§486] Trial Courts and Administrative Tribunals.**
 - (b) [§487] Superseded Cases: Former Procedure.**
 - (c) [§488] Nonsuperseded Cases: Present Procedure.**
- 2. Unreported or Unpublished Decisions.**
 - (a) [§489] Early Unreported Cases.**
 - (b) [§490] Unpublished Appellate Division Decisions.**
 - (c) [§491] Unpublished Court of Appeal Decisions.**
- 3. California Supreme Court Decisions.**
 - (a) [§492] Effect on California Courts.**
 - (b) [§493] Effect on Federal Courts.**
 - (c) [§494] Subsequent Declaration of Legislative Intent.**
 - (d) Criticisms by Lower Court.**
 - (1) [§495] General Rule.**
 - (2) [§496] Illustrations.**
- 4. Court of Appeal Decisions.**
 - (a) [§497] Binding on Lower Courts and Federal Courts.**
 - (b) Weight in Other Courts of Appeal.**
 - (1) [§498] Not Binding.**
 - (2) [§499] Persuasive Effect.**
 - (c) [§500] Weight in Supreme Court.**
 - (d) Effect of Denial of Review.**
 - (1) [§501] View That Denial of Review Causes Stronger Precedent.**
 - (2) [§502] Contrary View.**
- 5. [§503] Appellate Division Decisions.**
- 6. [§504] Decisions of Sister State Courts.**

- 7. Decisions of Federal Courts.**
 - (a) On Federal Questions.**
 - (1) [§505] Binding Authority of Supreme Court.**
 - (2) [§506] Lower Federal Court Decisions.**
 - (b) [§507] On Nonfederal Questions.**
 - 8. [§508] Decisions of Courts of Foreign Countries.**
- C. What Constitutes Rule of Decision.**
- 1. [§509] Ratio Decidendi and Dicta.**
 - 2. [§510] Determining Ratio Decidendi.**
 - 3. [§511] Persuasive Effect of Dicta.**
 - 4. [§512] Alternative Reasons for Decision.**
- D. Reasons for Following Precedent.**
- 1. Rule of Property.**
 - (a) [§513] Stare Decisis Is Applicable.**
 - (b) [§514] What Constitutes Rule of Property.**
 - 2. [§515] Rule Long Accepted.**
 - 3. Failure of Legislature To Act.**
 - (a) [§516] Theory of Legislative Approval.**
 - (b) [§517] Criticism and Departures From Theory.**
 - 4. [§518] Case Well Presented and Considered.**
- E. Reasons for Departing From Precedent.**
- 1. Decision Contrary to Statute.**
 - (a) [§519] Decision Overlooking Existing Statute.**
 - (b) [§520] Subsequent Change in Statute.**
 - 2. Decision Wrong on Principle or Policy.**
 - (a) In General.**
 - (1) [§521] Governing Rules.**
 - (2) [§522] Illustrations.**
 - (b) Cases on Practice and Procedure.**
 - (1) [§523] Evidence.**
 - (2) [§524] Other Rules of Practice and Procedure.**
 - (c) Cases on Substantive Law.**
 - (1) [§525] Torts.**
 - (2) [§526] Workers' Compensation.**
 - (3) [§527] Family Law.**
 - (4) [§528] Crimes.**
 - (5) [§529] Property.**
 - 3. Decision Contrary to Authority.**
 - (a) Authorities Elsewhere.**
 - (1) [§530] Relation to Other Grounds.**
 - (2) [§531] Illustrations.**
 - (b) Resolving Conflicts in Authority.**
 - (1) [§532] Higher Court Prevails.**
 - (2) [§533] Latest Case Governs.**
 - (3) [§534] Adopt the Better Rule.**
 - 4. Weakness of Prior Decision.**

- (a) [§535] In General.
- (b) [§536] Case Poorly Presented.
- (c) [§537] Case Poorly Considered.
- (d) [§538] Decision of Divided Court.
- (e) [§539] No Hearing Sought.

F. Overruling Prior Decisions.

1. Forms and Methods of Overruling.

- (a) [§540] Overruling Expressly.
- (b) [§541] Overruling Indirectly.

2. Retroactive Effect of Overruling Decision.

- (a) [§542] General Rule: Retroactivity.
- (b) Illustrations.

(1) [§543] Punitive Damages: Intoxicated Driver Acting in Conscious Disregard of Safety of Others.

(2) [§544] Punitive Damages: Evidence of Defendant's Financial Condition.

(3) [§545] Plaintiff's Burden of Proving That Interference With Expectancy Was Wrongful.

(4) [§546] No Tort Action for Violation of Covenant of Good Faith and Fair Dealing.

(5) [§547] No Tort Action for Bad Faith Denial of Existence of Contract.

(6) [§548] Tax Not Approved by Local Electorate.

(7) [§549] Settlement Must Be Signed by Parties.

(8) [§550] Residential Landlord Is Not Strictly Liable for Latent Defects.

3. Prospective Effect of Overruling Decision.

- (a) [§551] Power Recognized.
- (b) [§552] Policy Considerations.
- (c) [§553] Tax Cases.
- (d) [§554] Limited Retroactivity.

XIV. NOTICE OF APPEAL

A. In General.

1. [§555] Jurisdictional Requirement: Filing in Trial Court.
2. [§556] Payment of Fees.
3. [§557] Effect of Nonpayment.
4. [§558] Waiver of Fees in Indigent Appeal.
5. [§559] Notification by Clerk.

B. Content, Form, and Construction of Notice.

1. [§560] Statement That Party Appeals.
2. Specification of Judgment.
 - (a) [§561] In General.
 - (b) [§562] Erroneous Designation of Parties.
 - (c) Erroneous Specification of Nonappealable Decision.
 - (1) [§563] Former Strict Rule of Dismissal.
 - (2) Appeal Saved by Construction.

- (aa) [§564] In General.
- (bb) [§565] Notice Specifying Verdict or Decision.
- (cc) [§566] Notice Specifying Wrong Entry.
- (dd) [§567] Notice Specifying Wrong Judgment.
- (ee) [§568] Notice Specifying Writ.
- (ff) [§569] Notice Specifying Order Sustaining Demurrer.
- (gg) [§570] Notice Specifying Order Denying New Trial.
- (hh) [§571] Notice Specifying Order Denying Motion To Vacate.

(3) [§572] Where No Judgment Was Entered.

3. [§573] Signature of Party or Attorney.

C. Normal Time for Filing Notice.

1. [§574] Alternative Time Limits.

2. Sixty Days After Notice of Entry of Judgment.

(a) [§575] In General.

(b) [§576] Who May Give Notice of Entry.

(c) What Constitutes Sufficient Notice.

(1) [§577] In General.

(2) File-Stamped Copy of Judgment.

(aa) [§578] Used in Place of Notice of Entry.

(bb) [§579] As Equivalent to Notice of Entry.

(3) [§580] Erroneous or Inadequate Notice.

3. [§581] One Hundred Eighty Days After Entry of Judgment.

4. [§582] Special Statutes.

5. [§583] Where Judgment Is Modified.

6. [§584] Where Motion Is Renewed.

7. [§585] Where Judgment Is Reinstated After Appeal.

D. Extension of Time and Cross-Appeal.

1. [§586] In General.

2. Motion for New Trial.

(a) Extension Where Motion Is Denied.

(1) [§587] Purpose of Rule.

(2) [§588] Valid Notice of Motion.

(3) [§589] Period of Extension.

(4) [§590] Forms of Extension.

(5) [§591] Entry of Order in Minutes.

(b) Cross-Appeal Where Motion Is Granted.

(1) [§592] Nature of Rule.

(2) [§593] Procedure in Appellate Court.

(3) [§594] Valid New Trial Order.

3. Motion To Vacate.

(a) Extension Where Motion Is Denied.

(1) [§595] Nature of Motion.

(2) [§596] Motion on Any Ground.

(b) [§597] Cross-Appeal Where Motion Is Granted.

4. Motion for Judgment Notwithstanding Verdict.

- (a) [§598] Extension Where Motion Is Denied.
- (b) [§599] Cross-Appeal Where Motion Is Granted.

5. Motion To Reconsider.

- (a) [§600] In General.
- (b) [§601] Postjudgment Motion Does Not Extend Time.
- (c) [§602] Motion Denied by Entry of Judgment.
- (d) [§603] Reconsideration of Appealable Order.

6. Other Party's Appeal.

- (a) [§604] In General.
- (b) [§605] First Appeal Need Not Be Valid.

7. [§606] Judgment Against Public Entity.

E. What Constitutes Entry.

- 1. [§607] Nature of Rules.
- 2. [§608] Judgment and Decree of Distribution.
- 3. Appealable Order.
 - (a) [§609] Order Entered in Minutes.
 - (b) Signed Order.
 - (1) [§610] By Direction in Minute Order.
 - (2) [§611] Without Minute Entry.
- 4. Distinction: Nonappealable Minute Order.
 - (a) [§612] Where Formal Order Is Required.
 - (b) [§613] Where Written Order Is Directed.

F. Time Is Jurisdictional.

- 1. Late Notice.
 - (a) [§614] In General.
 - (b) [§615] Exception for Criminal Appeal.
 - (c) No Exception for Civil Appeal.
 - (1) [§616] Cases Departing From Jurisdictional Rule.
 - (2) [§617] Jurisdictional Rule Reaffirmed.
 - (3) [§618] Late Appeal Is Not Treated as Writ Application.
 - (4) [§619] No Writ Review Where Petitioner Failed To Appeal.
- 2. Premature Notice.
 - (a) [§620] Notice After Rendition: Appeal Is Valid.
 - (b) Notice Before Rendition: Discretionary Relief.
 - (1) [§621] In General.
 - (2) [§622] Good Cause Requirement.
 - (3) [§623] Relief Granted.
 - (4) [§624] Relief Denied.

G. [§625] Case Information Statement.

XV. RECORD ON APPEAL

A. In General.

- 1. [§626] Nature of Record.
- 2. [§627] Notice Designating Record.
- 3. [§628] Duty of Appellant To Furnish Record.
- 4. Record Furnished Without Cost.
 - (a) [§629] In General.

- (b) [§630] Lanterman-Petris-Short Conservatorship Proceeding.
- 5. [§631] Form of Record.
- 6. [§632] Time Limitations and Extension.
- 7. [§633] Use of Copy of Record.
- 8. [§634] Administrative Proceedings.
- B. Reporter's Transcript.**
 - 1. [§635] Notice.
 - 2. [§636] Effect of Pretrial Order.
 - 3. Deposit.
 - (a) [§637] Deposit, or Substitute, for Cost.
 - (b) [§638] Failure To Make Deposit.
 - (c) [§639] Exception: Transcript Reimbursement Fund.
 - 4. [§640] Clerk's Notification to Reporter.
 - 5. [§641] Contents of Transcript.
 - 6. [§642] Preparation and Filing.
 - 7. [§643] Delinquent Clerk or Reporter.
 - 8. [§644] Remedies Against Judge.
 - 9. [§645] Electronic Recording of Proceeding.
- C. Clerk's Transcript and Original Papers.**
 - 1. [§646] Matters Automatically Included.
 - 2. [§647] Matters Designated.
 - 3. [§648] Original Papers.
 - 4. [§649] Cost and Preparation.
- D. Appendixes.**
 - 1. [§650] Nature and Purpose of Appendix.
 - 2. [§651] Notice of Election.
 - 3. [§652] Contents and Form.
 - 4. [§653] Exhibit Held by Other Party.
 - 5. [§654] Filing and Service.
 - 6. [§655] Sanctions for Improper Appendix.
- E. [§656] Superior Court File in Lieu of Clerk's Transcript.**
- F. Settled Statement.**
 - 1. [§657] Nature of Record.
 - 2. [§658] Motion.
 - 3. [§659] Appellant's Proposed Statement.
 - 4. [§660] Respondent's Proposed Amendments.
 - 5. [§661] Settlement and Certification.
 - 6. Refusal of Judge To Settle.
 - (a) [§662] Mandamus.
 - (b) [§663] No Settlement by Reviewing Court.
- G. Agreed Statement.**
 - 1. [§664] Nature of Record.
 - 2. [§665] Requirements.
 - 3. [§666] Statement or Stipulation.
- H. Judgment Roll or Clerk's Transcript.**
 - 1. [§667] Nature of Record.

2. [§668] No Review of Evidence.
3. [§669] Designation by Respondent.
4. [§670] Augmentation.

I. Record in Multiple Appeals.

1. [§671] Cross-Appeals.
2. [§672] Successive Appeals.

J. Transcript Wholly or Partially Unavailable.

1. [§673] Agreed or Settled Statement.
2. New Trial.
 - (a) [§674] In General.
 - (b) [§675] No Partial New Trial.
 - (c) [§676] No Reopening of Trial To Recover Lost Testimony.
 - (d) [§677] Circumstances Justifying Relief.
 - (e) [§678] Insufficient Showing.

K. Transmission of Record to Reviewing Court.

1. [§679] Record.
2. [§680] Original Exhibits.

L. Correction and Augmentation of Record.

1. Correction.
 - (a) [§681] Correction of Record on Appeal.
 - (b) [§682] Distinction: Trial Court Record.
2. Augmentation.
 - (a) [§683] Nature of Remedy.
 - (b) [§684] Proper Part of Record.
 - (c) [§685] Requirement of Diligence.
 - (d) [§686] Procedure.

M. [§687] Penalty for Excessive Record.

N. Default and Relief From Default.

1. [§688] Sanctions for Default.
2. Relief From Default.
 - (a) [§689] Procedure.
 - (b) [§690] Relief Granted.
 - (c) [§691] Relief Denied.

XVI. BRIEFS IN COURT OF APPEAL

A. In General.

1. Nature and Types of Briefs.
 - (a) [§692] In General.
 - (b) [§693] Supplementary Briefs.
2. Form.
 - (a) [§694] Separate Points and Headings.
 - (b) [§695] References to Record.
 - (c) [§696] Index and Tables.
 - (d) [§697] Format.
 - (e) [§698] Filing and Service of Original and Copies.
 - (f) Limitations on Length.
 - (1) [§699] In General.

- (2) [§700] Attachments.
 - 3. Legal Argument.
 - (a) Waiver of Point Not Urged.
 - (1) [§701] General Rule.
 - (2) [§702] Relaxation of Rule.
 - (b) [§703] Thoroughness of Research.
 - (c) [§704] Admissions in Briefs.
 - 4. Style and Method.
 - (a) [§705] In General.
 - (b) [§706] Decorum.
 - (c) [§707] Brevity.
 - (d) [§708] Honesty and Fairness.
 - 5. Penalties for Defective Brief.
 - (a) [§709] In General.
 - (b) [§710] Dismissal for Failure To Correct.
 - (c) [§711] Defective Brief as Abandonment of Appeal.
 - 6. Filing.
 - (a) [§712] When Filing Occurs.
 - (b) [§713] Extension of Time by Stipulation.
 - (c) Extension of Time for Good Cause.
 - (1) [§714] In General.
 - (2) [§715] Standards for Determining Good Cause.
 - B. Appellant's Opening Brief.
 - 1. [§716] In General.
 - 2. [§717] Service and Filing.
 - 3. [§718] Late Filing: Dismissal and Relief From Default.
 - C. Respondent's Brief.
 - 1. [§719] In General.
 - 2. Penalties for Failure To File.
 - (a) [§720] Appellant's Statement of Facts Accepted.
 - (b) [§721] Rule Relaxed.
 - D. Appellant's Reply Brief.
 - 1. [§722] Right To File.
 - 2. [§723] New Points Are Improper.
 - E. [§724] Briefs of Party Who Is Both Appellant and Respondent.
 - F. Briefs of Amici Curiae.
 - 1. [§725] In General.
 - 2. [§726] Amicus Briefs in Court of Appeal or Appellate Division.
- XVII. MOTIONS AND APPLICATIONS**
- A. Noticed Motions.
 - 1. [§727] Filing.
 - 2. [§728] Opposition.
 - 3. [§729] Hearing and Determination.
 - B. [§730] Routine Applications.
- XVIII. DISMISSAL OF APPEAL**
- A. Voluntary Abandonment or Dismissal.

1. **Abandonment Before Record Is Filed.**
 - (a) **[§731] In General.**
 - (b) **[§732] Partial Abandonment.**
 - (c) **[§733] Vacation of Abandonment.**
 2. **[§734] Dismissal After Record Is Filed.**
 3. **Discretion To Deny Dismissal.**
 - (a) **[§735] In General.**
 - (b) **[§736] Dismissal Sought To Avoid Precedent.**
 4. **[§737] Compromise of Claim of Minor or Incompetent.**
 5. **[§738] Notice of Settlement.**
- B. Involuntary Dismissal.**
1. **[§739] Nature of Power.**
 2. **Procedure on Motion To Dismiss.**
 - (a) **[§740] In General.**
 - (b) **[§741] Failure To Oppose Motion.**
 - (c) **Examination of Record.**
 - (1) **[§742] General Rule: Refusal To Dismiss.**
 - (2) **[§743] Exception: Defect Apparent.**
 - (d) **[§744] Vacating Order of Dismissal.**
 3. **Grounds for Dismissal.**
 - (a) **[§745] Lack of Jurisdiction or Other Basic Defect.**
 - (b) **[§746] Procedural Defaults.**
 - (c) **Frivolous Appeal.**
 - (1) **[§747] Power and Illustrations.**
 - (2) **[§748] Practical Considerations.**
 - (d) **Moot Case: In General.**
 - (1) **[§749] Basic Rule.**
 - (2) **[§750] Mootness in United States Supreme Court.**
 - (3) **Acts or Events Rendering Case Moot.**
 - (aa) **[§751] Compromise or Settlement.**
 - (bb) **[§752] Performance of Challenged Act.**
 - (cc) **[§753] Issues Determined by Other Judgment.**
 - (dd) **[§754] Legislative or Constitutional Change.**
 - (ee) **[§755] Death or Emancipation.**
 - (ff) **[§756] Miscellaneous Events.**
 - (e) **Moot Case: Reasons for Denying Dismissal.**
 - (1) **Material Question Remaining.**
 - (aa) **[§757] In General.**
 - (bb) **[§758] Illustrations.**
 - (2) **Public Interest in Decision.**
 - (aa) **[§759] In General.**
 - (bb) **[§760] Illustrations.**
 - (cc) **[§761] Where Action Is Moot.**
 4. **[§762] Effect of Dismissal.**

XIX. DETERMINATION ON MERITS

A. In General.

- 1. Calendars.**
 - (a) [§763] In General.**
 - (b) [§764] Statutory Preferences and Advancement.**
 - 2. [§765] Consolidation of Cases on Appeal.**
 - 3. [§766] Transfer of Cases.**
 - 4. [§767] Reference.**
 - 5. [§768] Prehearing Conference in Court of Appeal.**
 - 6. [§769] Supervision of Progress in Court of Appeal.**
- B. Oral Argument.**
- 1. [§770] Right and Waiver.**
 - 2. [§771] Regulation.**
 - 3. [§772] Practice.**
- C. Decision and Opinion.**
- 1. Submission of Cause.**
 - (a) [§773] Supreme Court.**
 - (b) [§774] Court of Appeal.**
 - 2. Concurrence of Qualified Majority.**
 - (a) [§775] In General.**
 - (b) [§776] Absence, Disqualification, and Waiver of Argument.**
 - (c) [§777] Invalid Change in Panel After Argument.**
 - (d) [§778] Even Division on Differing Opinions.**
 - 3. Written Opinion.**
 - (a) [§779] Constitutional Requirement.**
 - (b) [§780] Exceptions: Decisions Not on Merits.**
 - (c) [§781] Written Opinion Is Optional in Appellate Division.**
 - 4. Form of Opinion.**
 - (a) [§782] In General.**
 - (b) [§783] By the Court Opinion.**
 - (c) Adoption of Another Opinion.**
 - (1) [§784] Adoption of Court of Appeal Opinion.**
 - (2) [§785] Other Adoptions.**
 - (d) Short Opinions.**
 - (1) [§786] In General.**
 - (2) [§787] Issues Not Requiring Discussion.**
 - (e) Memorandum Opinions.**
 - (1) [§788] Nature and Constitutional Validity.**
 - (2) [§789] Appellate Judges' Recommendation.**
 - (3) [§790] Judicial Council Standard.**
 - (4) [§791] Cases Appropriate for Memorandum Disposition.**
 - 5. Content of Opinion.**
 - (a) [§792] Guidelines and Models.**
 - (b) [§793] Elements of Full-Scale Opinion.**
 - (c) Authorities.**
 - (1) [§794] Cases and Statutes.**
 - (2) [§795] Treatises, Restatements, and Law Reviews.**
 - (3) [§796] Other Authoritative Sources.**

(d) Material Outside Main Text of Opinion.

(1) [§797] Footnotes.

(2) [§798] Appendixes.

(e) [§799] Elimination of Embarrassing Facts or Party's Name.

(f) [§800] Use of Traditional Gender-Specific Terms.

(g) [§801] Criticism of Judge.

(h) Suggestions to Others.

(1) [§802] Suggestions of Legislative Action.

(2) [§803] Suggestions to Supreme Court.

(3) [§804] Advice to Parties or Attorneys.

(4) [§805] Suggestions to Judge.

(5) [§806] Warning of Public Danger.

6. Concurring Opinion.

(a) [§807] In General.

(b) [§808] Concurring Opinion by Author of Main Opinion.

(c) [§809] Concurring Opinion as Majority Opinion.

7. Dissenting Opinion.

(a) [§810] Purpose.

(b) [§811] Format and Style.

(c) [§812] Majority's Answer to Dissent.

8. Selective Publication.

(a) Publication or Nonpublication.

(1) [§813] In General.

(2) [§814] Supreme Court Rule.

(3) [§815] Standards for Certification.

(b) Depublication by Supreme Court.

(1) [§816] In General.

(2) [§817] Request for Depublication.

(3) [§818] Effect of Order for Depublication.

(c) [§819] Request for Publication.

(d) Citation of Unpublished Opinions.

(1) General Rule: No Citation or Reliance.

(aa) [§820] Nature of Problem.

(bb) [§821] Rule Prohibiting Citation or Reliance.

(cc) [§822] Reliance Where Review Is Granted.

(2) [§823] Distinction: Citation but Not Reliance.

(3) [§824] Exceptions.

(e) [§825] Citation of Opinion Available Only in Computer-Based Source of Decisional Law.

(f) Partial Publication.

(1) [§826] Nature and Purpose.

(2) [§827] Guidelines.

(3) [§828] California Rule.

(4) [§829] Illustrations.

D. Judgment on Appeal.

1. [§830] Forms of Appellate Judgments.

2. **[§831] Rendition: Filing of Opinion.**
3. **When Judgment Becomes Final.**
 - (a) **In General.**
 - (1) **[§832] Period Begins on Filing.**
 - (2) **[§833] Effect of Modification.**
 - (b) **Judgment of Court of Appeal.**
 - (1) **[§834] General Rule: 30 Days After Filing.**
 - (2) **[§835] Exceptions: Immediately After Filing.**
 - (3) **[§836] Effect of Setting Writ Matter for Oral Argument.**
 - (4) **[§837] Effect of Certification for Publication.**
 - (5) **[§838] Finality for All Purposes.**
 - (c) **[§839] Judgment of Supreme Court.**
 - (d) **[§840] Finality for United States Supreme Court.**

E. Remittitur.

1. **[§841] Nature of Remittitur.**
2. **[§842] Procedure.**
3. **[§843] Proceedings in Which Remittitur Issues.**
4. **[§844] Effect of Issuance.**
5. **[§845] Issuance Forthwith.**
6. **[§846] Stay of Issuance.**
7. **Recall of Remittitur.**
 - (a) **[§847] Nature of Remedy.**
 - (b) **[§848] Procedure.**
 - (c) **Grounds.**
 - (1) **[§849] Correction of Remittitur.**
 - (2) **[§850] Correction of Judgment.**
 - (3) **[§851] Response to United States Supreme Court Remand.**
 - (d) **[§852] Reasons for Denying Motion.**

XX. AFFIRMANCE, MODIFICATION, OR REVERSAL OF JUDGMENT

A. General or Unqualified Affirmance.

1. **[§853] Nature and Effect.**
2. **[§854] Affirmance With Directions.**

B. Modification.

1. **[§855] Nature of Power.**
2. **Procedure.**
 - (a) **[§856] Modification by Direct Order.**
 - (b) **[§857] Modification as Condition of Affirmance.**
 - (c) **[§858] Remand With Directions To Modify.**
3. **Types of Errors Corrected.**
 - (a) **[§859] Clerical Error or Inadvertence.**
 - (b) **[§860] Error Shown by Record.**
 - (c) **[§861] Error Admitted by Respondent.**
 - (d) **[§862] Facts Found on Appeal.**
4. **Types of Erroneous Judgments Modified.**
 - (a) **[§863] Judgment Outside Issues or Demand.**
 - (b) **[§864] Judgment Contrary to Verdict or Statement of Decision.**

- (c) [§865] Judgment Contrary to Evidence.
- (d) [§866] Judgment Erroneous in Law.
- (e) [§867] Other Defective Judgments.

5. [§868] Where Modification Is Improper.

C. General or Unqualified Reversal.

- 1. [§869] Vacation of Judgment and Incidental Matters.
- 2. Right to New Trial.
 - (a) [§870] General Rule: Automatic Right After Reversal.
 - (b) [§871] Distinction: Reversal for Insufficiency of Evidence.
- 3. [§872] Right To Amend Pleadings.
- 4. [§873] Reversal of Judgment Notwithstanding Verdict.

D. Reversal With Directions.

1. Directions To Enter Judgment.

(a) When Directions Are Proper.

- (1) [§874] Nature of Power.
- (2) [§875] General Reversal Construed as Reversal With Directions.
- (3) [§876] Error of Law Alone.
- (4) [§877] Insufficient Evidence or Pleadings.
- (5) [§878] Where Action Should Be Dismissed.

(b) Duty of Trial Court To Follow Directions.

- (1) [§879] Nature of Duty.
- (2) [§880] Remedies for Noncompliance.
- (3) [§881] Directions Requiring Construction.

(c) [§882] Review of Judgment in Conformity With Directions.

2. Other Directions.

(a) [§883] In General.

(b) [§884] Direction To Permit Amended Pleadings.

(c) Proceedings in Conformity With Opinion.

- (1) [§885] Nature and Purpose of Direction.
- (2) [§886] Criticism and Proposal for Reform.
- (3) [§887] Illustrations.

E. Partial Reversal.

- 1. [§888] In General.
- 2. [§889] Where Appeal Is From Whole Judgment.
- 3. Directions To Retry Particular Issue.
 - (a) [§890] In General.
 - (b) [§891] Whether Complete Retrial Is Required.

F. [§892] Summary Reversal.

G. Stipulation To Reverse.

- 1. [§893] Presumption in Favor of Stipulation.
- 2. [§894] Extraordinary Circumstances Justifying Rejection of Stipulation.
- 3. [§895] Refusal To Apply Presumption Favoring Stipulation.
- 4. [§896] Abrogation of Presumption Favoring Stipulation.
- 5. [§897] Procedure.
- 6. [§898] No Stipulated Reversal in Criminal Case.

7. [§899] Consent to Vacation of Judgment.
- H. Restitution After Reversal.

1. [§900] Nature and Scope of Power.
2. [§901] Summary Proceeding on Motion.
3. [§902] Independent Action.
4. [§903] Restitution Despite Impending New Trial.

XXI. REHEARING IN COURT RENDERING DECISION

- A. [§904] Nature of Power.
- B. [§905] Grounds.
- C. [§906] New Points Are Not Allowed.
- D. Procedure.
1. [§907] Petition.
 2. [§908] Answer.
 3. [§909] Time for Order.
 4. [§910] Grant of Petition.
 5. Denial of Petition.
 - (a) [§911] In General.
 - (b) [§912] Summary Denial Final Forthwith.

XXII. REVIEW IN SUPREME COURT

- A. In General.
1. [§913] Constitutional Authority.
 2. [§914] Judicial Council Advisory Committee Report.
- B. Grounds for Review.
1. [§915] Uniformity of Decision and Important Question.
 2. [§916] Appellate Court Without Jurisdiction.
 3. [§917] No Qualified Majority.
 4. [§918] Transfer to Court of Appeal for Further Proceedings.
 5. [§919] Other Grounds Formerly Recognized.
- C. Examination of Record.
1. [§920] General Rule: No Examination.
 2. [§921] When Record Will Be Reexamined.
- D. Transfer of Cause Before Decision.
1. Power of Supreme Court.
 - (a) [§922] Nature and Grounds.
 - (b) [§923] Procedure.
 2. [§924] Power of Court of Appeal.
- E. Procedure.
1. Review on Court's Own Motion.
 - (a) [§925] Time and Extension.
 - (b) [§926] Reasons for Granting Review.
 2. Review on Petition of Party.
 - (a) [§927] Petition.
 - (b) [§928] Answer and Reply.
 - (c) [§929] Form and Length Limitations.
 - (d) [§930] Statement of Issues.
 - (e) [§931] Transmission of Record.

- 3. Determination of Petition.**
 - (a) [§932] Court Conference and Orders.
 - (b) [§933] Time and Extension.
- 4. [§934] Issues on Review.**
- 5. [§935] Oral Argument.**
- 6. Brief on Merits.**
 - (a) [§936] In General.
 - (b) [§937] Form and Content.
 - (c) [§938] Amicus Briefs on Merits.
- 7. [§939] Letter in Lieu of Brief.**
- 8. Submission and Deposition of Causes.**
 - (a) [§940] Submission.
 - (b) [§941] Affirmance, Modification, or Reversal.
 - (c) [§942] Decision on Limited Issues.
 - (d) [§943] Dismissal.
 - (e) [§944] Transfer Where Justices of Supreme Court Are Recused.
 - (f) Retransfer With Directions.
 - (1) [§945] In General.
 - (2) [§946] Power To Exercise Discretion After Retransfer.
 - (3) [§947] Partial Decision and Retransfer.
- 9. Rehearing.**
 - (a) [§948] In General.
 - (b) [§949] Court Conference.
 - (c) [§950] What Constitutes Majority of Court.
- 10. Court of Appeal Opinion After Grant of Review.**
 - (a) [§951] Publication or Nonpublication.
 - (b) [§952] Distinction Between Practice of Granting Hearing and Review.

XXIII. COSTS AND ATTORNEYS' FEES

A. Costs on Appeal.

1. Right To Recover.

- (a) [§953] In General.
- (b) Right of Prevailing Party.
 - (1) [§954] General Rule.
 - (2) [§955] Who Is Prevailing Party.
 - (3) [§956] Unsuccessful Owner-Appellant in Condemnation.
 - (4) [§957] Award Against Government or Officer.
- (c) Discretion of Reviewing Court.
 - (1) [§958] In General.
 - (2) [§959] Request for Exercise of Discretion.
 - (3) [§960] No Costs Award.
 - (4) [§961] Costs Apportioned.
 - (5) [§962] Award to Respondent on Modification.
 - (6) [§963] Award to Respondent on Reversal.
 - (7) [§964] Award to Appellant on Affirmance.

(8) [§965] Award to Appellant on Reversal With Directions To Dismiss.

(9) [§966] Award to Appellant on Affirmance of Order Denying Mandamus.

(d) [§967] Discretion of Probate Judge.

2. Items Recoverable.

(a) [§968] In General.

(b) [§969] Record.

(c) [§970] Briefs.

(d) Expenses on Surety Bond.

(1) [§971] In General.

(2) [§972] Test of Necessity.

(e) [§973] Other Expenses.

3. Procedure.

(a) [§974] Award and Entry.

(b) Cost Bill in Trial Court.

(1) [§975] Requirements.

(2) [§976] Abandonment of Appeal.

(c) [§977] Motion To Tax.

(d) [§978] Enforcement of Award.

B. Attorneys' Fees on Appeal.

1. [§979] Right To Recover.

2. [§980] Jurisdiction of Reviewing Court.

3. [§981] Jurisdiction of Trial Court.

4. [§982] Procedure for Request.

XXIV. SANCTIONS FOR FRIVOLOUS OR DILATORY APPEAL

A. In General.

1. [§983] Nature of Power.

2. [§984] Partially Frivolous Appeal.

3. [§985] Frivolous Continuation of Appeal.

4. [§986] Bankruptcy Is No Bar to Sanctions.

B. Detriment and Benefit.

1. [§987] Persons Sanctioned.

2. [§988] Persons Compensated.

C. Standards for Determining Frivolousness.

1. [§989] Objective and Subjective Standards.

2. [§990] Standards Applicable to Pro. Per. Appellants.

D. Where Delay Is Sole Ground for Sanction.

1. [§991] In General.

2. [§992] Standard of Proof.

E. Procedure.

1. [§993] Due Process Requirements.

2. [§994] Noticed Motion Procedure.

3. [§995] Use of Referee.

F. Illustrations.

1. [§996] Sanction Under \$1,000.

2. [§997] Sanction of \$1,000 to \$5,000.
3. [§998] Sanction Over \$5,000, But Less Than \$100,000.
4. [§999] Sanction Over \$100,000.
5. [§1000] Sanction Denied.

G. [§1001] Distinction: No Tort Action for Malicious Appeal.

XXV. APPEAL IN LIMITED CIVIL CASE

A. [§1002] In General.

B. [§1003] Distinction: Appeal From Small Claims Court.

C. Appealability.

1. [§1004] Appealable Judgments and Orders.
2. [§1005] Nonappealable Judgments and Orders.

D. Procedure.

1. Notice of Appeal.

- (a) [§1006] Form and Filing.
- (b) [§1007] Notification by Clerk.
- (c) [§1008] Time.
- (d) [§1009] Extension After Denial of Motion.
- (e) [§1010] Cross-Appeal.

2. Record on Appeal.

- (a) [§1011] In General.
- (b) [§1012] Transcripts.
- (c) [§1013] Agreed or Settled Statement.
- (d) [§1014] Filing, Correction, and Augmentation.
- (e) [§1014A] (New) Record Where Trial Proceedings Are Electronically Recorded.
- (f) [§1014B] (New) Transmitting Exhibits.

3. [§1015] Briefs.

4. [§1016] Abandonment and Dismissal.

5. Hearing and Determination.

- (a) [§1017] Sessions and Calendar.
- (b) [§1018] Decision and Opinion.

6. [§1019] Rehearing.

E. Hearing in Court of Appeal.

1. [§1020] Nature and Scope of Power.

2. Certification and Transfer.

- (a) [§1021] In General.
- (b) Certification by Superior Court.
 - (1) [§1022] Application, Opposition, and Determination.
 - (2) [§1023] Certification and Transmission of Record.
 - (3) [§1024] Denial or Grant of Transfer.
- (c) [§1025] Transfer by Court of Appeal on Own Motion.
- (d) [§1026] Transfer by Court of Appeal on Party's Petition.
- (e) [§1027] Remedies When Certification or Transfer Is Refused.

3. Proceedings in Court of Appeal.

- (a) [§1028] Notice of Order Granting or Denying Transfer.
- (b) [§1029] Stay of Proceedings Below.

(c) [§1030] Record.

(d) [§1031] Briefs and Oral Argument.

(e) [§1032] Decision and Remittitur.