

6 California Procedure (5th), Proceedings Without Trial

I. MOTIONS

A. In General.

- 1. [§1] Application for Order.**
- 2. [§2] Types of Motions.**
- 3. [§3] Main Action of Proceeding.**
- 4. [§4] Party to Proceeding.**
- 5. [§5] Time of Motion.**
- 6. [§6] Required Papers and Elements.**

B. Notice of Motion.

- 1. Necessity and Waiver.**
 - (a) [§7] General Requirement of Notice.**
 - (b) [§8] Waiver of Notice.**
- 2. Form and Content.**
 - (a) [§9] Formal Requisites.**
 - (b) [§10] Statement of Grounds.**
 - (c) [§11] Supporting Memorandum.**
- 3. Service and Filing.**
 - (a) Nature of Requirement.**
 - (1) [§12] In General.**
 - (2) Service on Attorney.**
 - (aa) [§13] General Rule.**
 - (bb) [§14] Exceptions.**
 - (b) Time of Service.**
 - (1) [§15] Required Period Before Hearing.**
 - (2) [§16] Shortening Time.**
 - (3) Extending Time.**
 - (aa) [§17] Statutory Extension Based on Manner of Service.**
 - (bb) [§18] Extension by Stipulation or Court Order.**
 - (c) Manner of Service.**
 - (1) Personal and Constructive Service.**
 - (aa) [§19] On Attorney or Party.**
 - (bb) [§20] Proof of Service.**
 - (2) Service by Mail.**
 - (aa) [§21] When Permitted.**
 - (bb) [§22] Mechanics of Service.**
 - (cc) [§23] Proof of Service.**
 - (3) Service by Fax.**
 - (aa) [§24] When Permitted.**
 - (bb) [§25] Mechanics of Service.**
 - (cc) [§26] Proof of Service.**
 - (4) Electronic Service.**
 - (aa) [§27] When Permitted.**
 - (bb) [§28] Mechanics of Service.**

- (cc) [§29] Proof of Service.
- (5) Time Extended for Certain Acts.
 - (aa) [§30] Statutory Extension.
 - (bb) [§31] Express Limitations.
 - (cc) [§32] Implied Limitations.

(d) Filing.

- (1) [§33] General Requirements.
- (2) [§34] Filing by Fax.
- (3) [§35] Electronic Filing.

C. Hearing.

- 1. [§36] Nature of Hearing.
- 2. [§37] Tentative Ruling.
- 3. Appearance by Counsel.
 - (a) [§38] Making of Motion.
 - (b) [§39] Appearance by Telephone.
- 4. Evidence.
 - (a) [§40] Restrictions on Oral Testimony.
 - (b) [§41] Affidavits and Declarations.
 - (c) [§42] Other Documentary Evidence.
 - (d) [§43] Judicial Notice.

D. Order.

- 1. [§44] How Order Is Made.
- 2. [§45] Notification and Notice.

E. Reconsideration or Renewal of Motion.

- 1. [§46] In General.
- 2. Grounds for Relief.
 - (a) [§47] Requirements.
 - (b) [§48] What Are Not Grounds for Relief.
- 3. Statutory Requirements Are Jurisdictional.
 - (a) [§49] In General.
 - (b) [§50] Inherent Judicial Authority.
- 4. Time Limits on Seeking Relief.
 - (a) [§51] In General.
 - (b) [§52] Distinction: Court's Authority To Construe as Different Motion.
- 5. [§53] Reconsideration by Different Judge.
- 6. [§54] Sanctions.

F. Penalty for Meritless Motion.

- 1. [§55] Statutory Authorization.
- 2. [§56] Sanction Warranted.
- 3. [§57] Sanctions Not Warranted.

G. Ex Parte Application.

- 1. [§58] In General.
- 2. [§59] Formal Requisites.
- 3. Order To Show Cause.
 - (a) [§60] Nature and Purpose.

- (b) [§61] When Order Is Used.
- (c) [§62] Procedure.

II. REFERENCE

A. In General.

- 1. [§63] Nature and Purpose.
- 2. [§64] Voluntary Reference.
- 3. Compulsory Reference.
 - (a) [§65] In General.
 - (b) [§66] Proper Reference.
 - (c) [§67] Improper Reference.

B. Procedure.

- 1. [§68] Motion.
- 2. [§69] Appointment of Referee.
- 3. [§70] Objection to Referee.
- 4. [§71] Withdrawal of Stipulation for Reference.
- 5. [§72] Intervention.
- 6. [§73] Hearing.
- 7. [§74] Report.
- 8. [§75] Review of General Reference.
- 9. [§76] Review of Special Reference.
- 10. Fees and Costs.
 - (a) [§77] In General.
 - (b) [§78] Consideration of Economic Hardship.

III. SUBMISSION OF CONTROVERSY WITHOUT ACTION

A. [§79] Agreed Case.

B. [§80] Stipulation of Facts After Action Is Brought.

IV. OFFER TO COMPROMISE

A. [§81] Defendant's Offer Before Action Commenced.

B. Offer Before Trial.

- 1. [§82] In General.
- 2. [§83] Scope of Statute.
- 3. [§84] Distinction: Inverse Condemnation Actions.
- 4. Offer.
 - (a) [§85] Formal Requirements.
 - (b) [§86] Terms Must Be Certain.
 - (c) [§87] Offers by Multiple Plaintiffs.
 - (d) [§88] Offer by Multiple Defendants.
 - (e) [§89] Offers to Multiple Plaintiffs.
 - (f) [§90] Offers to Multiple Defendants.
 - (g) [§91] Good Faith Requirement.
 - (h) [§92] Offer Is Revocable During Statutory Period.
 - (i) [§93] Offer Is Terminated by Death of Offeree.
 - (j) [§94] Offer Is Not Revoked by Counteroffer.
 - (k) [§95] Rejection of Offer.
 - (l) [§96] Effect of Second Offer.
 - (m) [§96A] (New) Effect of Withdrawal of Offer on Earlier Offer.

- 5. Acceptance.**
 - (a) [§97] Time.
 - (b) [§98] Formal Requirements.
- 6. [§99] Judgment on Compromise.**
- 7. What Constitutes More Favorable Judgment.**
 - (a) [§100] In General.
 - (b) [§101] Costs Incurred After Offer by Defendant.
 - (c) [§102] Costs Provisions in Offer.
 - (d) [§103] Attorneys' Fees.
 - (e) [§104] Amount of Liens Against Judgment.
 - (f) [§105] Amount of Settlement Offset.
 - (g) [§106] Value of Periodic Payments.
 - (h) [§107] Prejudgment Interest.
 - (i) [§108] Postoffer Payment by Defendant.
 - (j) [§109] Value of Jury Verdict.
- 8. Penalties for Failure To Accept Offer.**
 - (a) [§110] Offer by Defendant.
 - (b) [§111] Offer by Plaintiff.
 - (c) [§112] Expert Witness Fees Allowable.

V. JUDGMENT BY CONSENT

A. [§113] Nature and Effect.

B. Enforcement of Settlement.

- 1. [§114] Former Motion Procedure.**
- 2. Statutory Motion for Entry of Judgment.**
 - (a) [§115] In General.
 - (b) [§116] Litigation Must Be Pending.
 - (c) [§117] Insurance-Funded Settlements.
 - (d) Requirements for Agreement.
 - (1) [§118] In General.
 - (2) [§119] Signatures.
 - (3) [§120] Authority of Attorney.
 - (4) [§121] Oral Stipulations.
 - (e) [§122] Agreement Made in Arbitration.
 - (f) [§123] Agreement Made in Mediation.
 - (g) [§124] Preservation of Right to Indemnity.
 - (h) [§125] Retention of Jurisdiction.
- 3. [§126] Other Means of Enforcement.**

C. [§127] Plaintiff's Duties After Settlement.

VI. CONFESSION OF JUDGMENT

A. In General.

- 1. [§128] Nature of Proceeding.**
- 2. [§129] Attorney's Advice Is Required.**
- 3. [§130] Procedure.**

B. Family Law Proceedings.

- 1. [§131] Paternity and Support Judgments.**

2. [§132] Termination of Parental Rights.

VII. JUDGMENT BY DEFAULT

A. In General.

- 1. [§133] Nature and Effect.**
- 2. [§134] Default and Default Judgment Distinguished.**
- 3. [§135] Default of Fewer Than All Defendants.**
- 4. [§136] Default Against Corporation Under Fictitious Business Name.**
- 5. [§137] Restrictions on Default Judgments.**

B. When Default Will Be Entered.

1. In General.

- (a) [§138] Responses Preventing Entry of Default.**
- (b) [§139] Extension of Time.**
- (c) [§140] Types of Actions.**

2. Where Motion To Strike, Quash, Transfer, Stay, or Dismiss Is Not Filed.

- (a) [§141] Failure To Answer or Demur to Complaint.**
- (b) [§142] Failure To Answer or Demur to Cross-Complaint.**
- (c) [§143] Failure To Answer or Demur to Amended Complaint.**
- (d) [§144] Failure To Answer After Demurrer Is Overruled.**
- (e) [§145] Failure To Amend After Demurrer Is Sustained.**

3. Where Motion To Strike, Quash, Transfer, Stay, or Dismiss Is Filed.

- (a) [§146] Filing of Motion Prevents Default.**
- (b) [§147] Default After Granting Motion To Strike or Transfer.**
- (c) [§148] Default After Denial of Motions.**

C. Notice of Damages Required Before Taking Default.

1. In General.

- (a) [§149] General Rule: Recovery Is Limited to Amount Alleged.**
- (b) [§150] Prayer for Damages According to Proof.**
- (c) [§151] Default Entered as Discovery Sanction.**
- (d) [§152] Prayer on Dissolution Petition Form.**
- (e) [§153] Action for Accounting.**

2. Service of Statement of Damages.

- (a) Personal Injury and Wrongful Death Cases.**
 - (1) [§154] Notice of Damages.**
 - (2) [§155] Effect of Other Claims.**
 - (3) [§156] Special and General Damages.**
 - (4) [§157] Time for Response.**

(b) Punitive Damages Claims.

- (1) [§158] Requirement of Notice of Amount Sought.**
- (2) [§159] Damages Statement Preserves Right To Recover.**

D. Procedure on Clerk's Entry of Default.

- 1. [§160] Nature of Clerk's Power.**
- 2. [§161] Application and Affidavit.**
- 3. [§162] Notice to Defendant.**
- 4. [§163] Entry and Memorandum.**

E. Judgment on the Default.

- 1. [§164] Application and Accompanying Documents.**

2. **Entry of Judgment by Clerk.**
 - (a) **[\$165] When Clerk May Act.**
 - (b) **[\$166] Contents of Judgment.**
 - (c) **[\$167] Clerk's Delay or Failure To Act.**
3. **Entry of Judgment by Court.**
 - (a) **[\$168] Contract Actions: No Definite Sum Demanded.**
 - (b) **Other Actions.**
 - (1) **[\$169] Procedure.**
 - (2) **[\$170] Nature of Hearing.**
 - (c) **[\$171] Defendant Served by Publication.**
 - (d) **[\$172] Judgment on Cross-Complaint.**

F. Waiver of Right to Default.

1. **[\$173] Waiver of Right To Take Default.**
2. **[\$174] Waiver of Default Entered.**

G. Effect of Default and Default Judgment.

1. **When Properly Taken.**
 - (a) **[\$175] Defendant's Procedural Rights Are Cut Off.**
 - (b) **[\$176] Conclusive Admission of Material Facts.**
2. **When Improperly Taken.**
 - (a) **[\$177] Wrongly or Fictitiously Named Defendant.**
 - (b) **[\$178] Case Not Within Clerk's Power.**
 - (c) **[\$179] Premature Entry.**
 - (d) **[\$180] Entry Without Affidavit of Notice.**
 - (e) **[\$181] Entry Without Proof of Service.**
 - (f) **[\$182] Defendant's Answer Sufficient.**
 - (g) **[\$183] Plaintiff's Complaint Insufficient.**
 - (h) **[\$184] No Subject Matter Jurisdiction.**

VIII. JUDGMENT ON THE PLEADINGS

A. In General.

1. **[\$185] Former Common Law Motion.**
2. **[\$186] Statutory Motion.**
3. **[\$187] General Demurrer Compared.**
4. **[\$188] Use of Answer To Support Complaint.**

B. Grounds for Motion.

1. **[\$189] Statutory Requirements.**
2. **[\$190] Motion by Defendant.**
3. **[\$191] Motion by Plaintiff.**

C. Procedure.

1. **[\$192] Notice.**
2. **[\$193] Time of Motion.**
3. **[\$194] Effect of Failure To File General Demurrer.**
4. **[\$195] Effect of Prior Overruling of General Demurrer.**
5. **[\$196] Renewal of Motion.**
6. **[\$197] Order and Judgment.**
7. **[\$198] Further Proceedings Where Leave To Amend Is Granted.**

D. Objection to All Evidence.

1. [§199] Nature and Purpose of Objection.
2. [§200] Judgment Where Objection Is Sustained.

IX. SUMMARY JUDGMENT

A. In General.

1. [§201] Nature of Remedy.
2. [§202] Purpose of Summary Judgment.
3. When Summary Judgment Is Available.
 - (a) [§203] In General.
 - (b) [§204] Actions for Unlawful Detainer and Forcible Entry.
 - (c) [§205] Actions for Declaratory Relief.
4. [§206] When Summary Judgment Is Not Available.
5. Other Procedures Compared.
 - (a) [§207] Motion To Dismiss or Strike.
 - (b) Motion for Judgment on the Pleadings.
 - (1) [§208] Distinction Between Remedies.
 - (2) [§209] Effect Of Seeking Summary Judgment.
 - (c) [§210] Trial of Special Defenses.
 - (d) [§211] Motion To Enforce Settlement.
6. [§212] Role of Pleadings.

B. Motion.

1. [§213] In General.
2. [§214] Time After Which Motion May Be Made.
3. [§215] Notice of Motion.
4. [§216] Statement of Material Facts.
5. [§216A] Stipulation To Circumvent Motion Requirements.

C. Opposition.

1. [§217] In General.
2. [§218] Statement of Material Facts.
3. [§219] Consideration of Other Papers.
4. [§220] Reply.

D. Evidence.

1. In General.
 - (a) [§221] Supporting Evidence.
 - (b) Opposing Evidence.
 - (1) [§222] Necessity For Evidence.
 - (2) [§223] Nature of Evidence.
2. Affidavits and Declarations.
 - (a) [§224] General Requirements.
 - (b) [§225] Affiant's Personal Knowledge.
 - (c) [§226] Admissibility of Evidence Recited.
 - (d) [§227] Statement of Evidentiary Facts.
 - (e) [§228] Penalty for Affidavits in Bad Faith.
3. [§229] Evidence Obtained by Discovery.
4. [§230] Reliance on Adversary's Pleadings.
5. [§231] Documentary Evidence.
6. [§232] Judicial Notice.

7. [§233] Objections to Evidence.

E. Determination.

1. [§234] Hearing.

2. Burden of Proof.

(a) [§235] Plaintiff or Cross-Complainant.

(b) Defendant or Cross-Defendant.

(1) [§236] In General.

(2) [§237] Burden When Asserting Compete Defense.

(3) [§238] Burden To Disprove Multiple Claims.

(4) Production of Evidence To Negate Claim.

(aa) [§239] Evidence Need Not Be Conclusive.

(bb) [§240] Cases Illustrating California Rule.

(cc) [§241] Affirmative Evidence Requirement.

(dd) [§242] Factually Devoid Discovery Responses.

3. Considerations Governing Determination.

(a) [§243] Existence of Triable Issue of Material Fact.

(b) [§244] Construing Moving and Opposing Papers.

(c) [§245] Drawing Inferences.

(d) [§246] Accepting Truth of Uncontroverted Evidence.

(e) [§247] Considering Grounds Not Raised by Moving Party.

(f) [§248] Free Speech Cases.

F. Order.

1. Denying Motion.

(a) [§249] In General.

(b) Specification of Reasons for Denial.

(1) [§250] In General.

(2) [§251] Denial Because of Existence of Triable Issue of Fact.

(c) Denial or Continuance To Procure Evidence.

(1) [§252] In General.

(2) [§253] Illustrations.

2. [§254] Granting Motion.

3. [§255] Challenging Order in Trial Court.

G. Judgment.

1. [§256] Entry.

2. [§257] Judgment Exonerating Codefendant.

3. [§258] Amendment.

4. [§259] Challenging Judgment in Trial Court.

H. Review.

1. [§260] Appeal.

2. [§261] Mandamus.

3. Scope of Review.

(a) [§262] Independent Review Standard.

(b) [§263] Issue Not Raised Below.

(c) [§264] Supplemental Briefing.

4. [§265] Granting Reversed.

5. [§266] Granting Upheld.

I. Summary Adjudication.

- 1. [§267] Nature of Remedy.**
- 2. [§268] Statutory Development.**
- 3. Matters Subject to Summary Adjudication.**
 - (a) [§269] In General.**
 - (b) [§270] Distinct Wrongful Acts in Same Pleaded Cause of Action.**
- 4. Complete Disposition of Matter Adjudicated.**
 - (a) [§271] In General.**
 - (b) [§272] Issue of Duty Not Dispositive of Cause of Action.**
 - (c) [§273] Compensatory Damage Claim Not Dispositive of Cause of Action.**
 - (d) [§274] Declaratory Relief Claim Asserting Issues Disputed in Other Causes of Action.**
- 5. Procedure.**
 - (a) [§275] Motion By Itself or In Alternative.**
 - (b) [§276] Practice Suggestions.**
- 6. [§277] Effect of Ruling on Motion.**
- 7. Review.**
 - (a) [§278] On Appeal.**
 - (b) [§279] By Mandamus.**

X. DISMISSAL OF ACTION GENERALLY

- A. [§280] In General.**
- B. [§281] Local Rules.**
- C. [§282] Inherent Power of Court.**

XI. VOLUNTARY DISMISSAL

A. Before Commencement of Trial.

- 1. Plaintiff's Right To Dismiss.**
 - (a) Complete Dismissal.**
 - (1) [§283] In General.**
 - (2) [§284] Effect of Fast Track Rules.**
 - (3) [§285] Federal Practice.**
 - (b) Partial Dismissal.**
 - (1) [§286] Fewer Than All Defendants.**
 - (2) [§287] Fewer Than All Causes.**
- 2. Limitations on Right.**
 - (a) Cross-Complaint Filed.**
 - (1) [§288] In General.**
 - (2) [§289] Form of Affirmative Relief Sought.**
 - (b) [§290] Complaint in Intervention Filed.**
 - (c) [§291] Motion To Change Venue Pending.**
 - (d) [§292] Plaintiff Not Sole Party in Interest.**
- 3. Time of Request.**
 - (a) Statutory Rule.**
 - (1) [§293] In General.**
 - (2) [§294] Right To Dismiss After Motion For Summary Judgment.**

(b) What Constitutes Commencement of Trial.

- (1) [§295] Statutory Definition.**
- (2) [§296] Demurrer Sustained Without Leave To Amend.**
- (3) [§297] Demurrer Sustained With Leave To Amend.**
- (4) [§298] Default on Request for Admissions.**
- (5) [§299] Summary Adjudication.**
- (6) Tentative Rulings on Dispositive Matters.**
 - (aa) [§300] Tentative Ruling To Sustain Demurrer.**
 - (bb) [§301] Tentative Ruling for Mandatory Dismissal.**
 - (cc) [§302] Tentative Ruling for Summary Judgment.**
- (7) [§303] Pending Motion for Discovery Sanction.**
- (8) [§304] Retrial After Reversal.**

4. Procedure.

- (a) [§305] Request and Clerk's Entry.**
- (b) [§306] Clerk's Refusal To Enter Dismissal.**

5. Effect.

- (a) [§307] Trial Court's Jurisdiction After Dismissal.**
- (b) [§308] Res Judicata and Collateral Estoppel.**
- (c) [§309] Legal Malpractice Action and Underlying Case.**
- (d) [§310] Relief and Review.**

B. After Commencement of Trial.

- 1. [§311] Dismissal on Request of Plaintiff.**
- 2. [§312] Dismissal on Abandonment.**
- 3. [§313] Effect of Dismissal.**

C. [§314] By Consent of Adverse Party.

XII. INVOLUNTARY DISMISSAL FOR DELAY

A. In General.

- 1. [§315] Governing Law.**
- 2. [§316] Application to Special Proceedings.**
- 3. [§317] Proceedings for Dissolution or Legal Separation.**
- 4. [§318] Nondissolution Proceedings Involving Child Support Order.**

B. Mandatory Dismissal for Delay in Service.

1. In General.

- (a) [§319] Authority.**
- (b) [§320] Purpose of Statute.**
- (c) [§321] Scope of Statute.**

2. Time for Service and Return.

- (a) [§322] Service Within 3 Years.**
- (b) [§323] Return Within 3 Years and 60 Days.**
- (c) [§324] Agreement for Shorter Time.**
- (d) Effect of Filing Amended or Supplemental Complaint.**
 - (1) [§325] General Rule.**
 - (2) [§326] Claim Based on Different Operative Facts.**
 - (3) [§327] New Defendant Added.**
 - (4) [§328] Joinder of Defendant by Order of Court.**

3. Extensions, Excuses, and Exceptions.

- (a) [§329] Statutory Basis.**
- (b) General Appearance.**
 - (1) [§330] Nature and Scope of Exception.**
 - (2) Acts Not Constituting General Appearance.**
 - (aa) [§331] Motion To Dismiss for Delay in Prosecution.**
 - (bb) [§332] Extension of Time To Plead.**
 - (cc) [§333] Responding to Cross-Complaint or Complaint in Intervention.**
 - (dd) [§334] Appearance After Period Has Run.**
 - (ee) [§335] Appearance in Action Consolidated With Present Action.**
 - (ff) [§336] Submitting Affidavit in Support of Codefendant's Motion.**
 - (gg) [§337] Other Acts.**
- (c) [§338] Stipulation Extending Time for Service.**
- (d) Conditions Preventing Running of Period.**
 - (1) Defendant Not Amenable to Process.**
 - (aa) [§339] Statutory Development.**
 - (bb) [§340] Defendant Outside California.**
 - (cc) [§341] Corporate Defendant.**
 - (dd) [§342] Marriage or Death of Defendant.**
 - (ee) [§343] Amenability to Service Only By Publication.**
 - (2) [§344] Stay Affecting Service.**
 - (3) [§345] Validity of Service Disputed.**
 - (4) Service Impossible, Impracticable, or Futile.**
 - (aa) [§346] Judicial Rule and Codification.**
 - (bb) [§347] Strict Construction.**
 - (cc) [§348] Improper Entry of Default.**
 - (dd) [§349] Improper Dismissal of Action.**
 - (ee) [§350] Other Illustrations of Strict Construction.**
- (e) Estoppel and Waiver.**
 - (1) [§351] Development of Estoppel Exception.**
 - (2) [§352] Nature of Estoppel Defense.**
 - (3) [§353] Extension of Time As Estoppel.**
 - (4) [§354] Waiver of Right To Dismiss.**

4. Procedure.

- (a) [§355] Motion To Dismiss.**
- (b) [§356] Ruling on Motion.**
- (c) [§357] Effect of Dismissal.**

C. Mandatory Dismissal for Delay in Trial.

1. In General.

- (a) [§358] Statutory Framework.**
- (b) [§359] Policy Considerations.**
- (c) Scope of Statute.**
 - (1) [§360] Parties.**
 - (2) [§361] Cross-Complaint.**

- (3) [§362] Coordinated Actions.**
- (4) [§363] Dissolution or Separation.**

2. Procedure.

- (a) [§364] Motion To Dismiss.**
- (b) [§365] Ruling on Motion.**
- (c) Review of Order.**
 - (1) [§366] Order Granting Dismissal.**
 - (2) [§367] Order Denying Dismissal.**
- (d) [§368] Effect of Dismissal.**

3. Time for Bringing Action to Trial.

- (a) [§369] 5-Year Period.**
- (b) When Action Is Commenced.**
 - (1) [§370] In General.**
 - (2) [§371] Addition of New Parties.**
 - (3) [§372] Later Action on Same Claim.**
 - (4) [§373] Complaint in Intervention.**
- (c) When Action Is Brought to Trial.**
 - (1) [§374] In General.**
 - (2) [§375] Trial by Court.**
 - (3) Trial by Jury.**
 - (aa) [§376] Impanelment.**
 - (bb) [§377] Selection and Discharge.**
 - (4) Pretrial Disposition on Merits.**
 - (aa) [§378] In General.**
 - (bb) [§379] Judgment on Demurrer.**
 - (cc) [§380] Summary Judgment or Adjudication.**
 - (5) [§381] Stipulation to Binding Arbitration.**

4. Extensions, Exceptions, and Excuses.

- (a) Stipulation Extending Time.**
 - (1) [§382] In General.**
 - (2) Extension of Time To Bring Action.**
 - (aa) [§383] In General.**
 - (bb) [§384] Open-Ended Extension.**
 - (3) [§385] Waiver of Right To Dismiss.**
 - (4) [§386] Parities to Stipulation.**
 - (5) [§387] Stipulation After Expiration of 5-Year Period.**
 - (6) [§388] Effect of Extension.**
- (b) Conditions Preventing Running of 5-Year Period.**
 - (1) Jurisdiction of Court Is Suspended.**
 - (aa) [§389] In General.**
 - (bb) [§390] When Statute Is Tolloed.**
 - (cc) [§391] When Statute Is Not Tolloed.**
 - (dd) [§392] Tolling on Transfer for Lack of Jurisdiction.**
 - (2) Prosecution of Action Is Stayed or Enjoined.**
 - (aa) [§393] In General.**
 - (bb) [§394] Bankruptcy Filing.**

(3) Trial Is Impossible, Impracticable, or Futile.

(aa) [§395] Implied Exceptions Under Former Law.

(bb) [§396] Codification of Exceptions.

(cc) [§397] Plaintiff's Burden.

(dd) [§398] Causation.

(ee) [§399] Diligence.

(ff) [§400] Duration of Tolling.

(4) Particular Circumstances of Impossible, Impracticable, or Futile Exception.

(aa) [§401] In General.

(bb) [§402] No Courtroom or Judge.

(cc) [§403] Death or Illness.

(dd) [§404] Defendant's Default.

(ee) [§405] Interlocutory Review.

(ff) [§406] Absence of Party in Interest.

(gg) [§407] Defendant Not Amendable to Process.

(hh) [§408] Invalid Order Preventing Matter Going to Trial.

(ii) [§409] Consolidated Actions.

(jj) [§410] Severable Causes of Action.

(kk) [§411] Related Proceeding Is Pending.

(c) Arbitration.

(1) [§412] Submission to Contractual Arbitration.

(2) Submission to Judicial Arbitration.

(aa) [§413] In General.

(bb) [§414] Stipulation for Binding Arbitration.

(cc) [§415] Tolling Until New Trial Date.

(dd) [§416] Plaintiff's Duty to Monitor Resetting.

(ee) [§417] Impracticability and Diligence.

(d) Estoppel and Waiver.

(1) [§418] Estoppel Against Defendant.

(2) [§419] Estoppel Against Trial Court.

(3) [§420] Waiver by Going to Trial.

(e) Disposition of Litigable Issues.

(1) [§421] Conclusive Admissions.

(2) [§422] Compromise Agreement.

(f) [§423] Extension Where Less Than 6 Months Remain.

5. Belated Attempt To Get Trial Date.

(a) [§424] In General.

(b) Discretion To Grant Preferential Setting.

(1) [§425] In General.

(2) [§426] Preferential Setting Denied.

(3) [§427] Preferential Setting Required.

D. Mandatory Dismissal for Delay in New Trial.

1. [§428] In General.

2. [§429] After Mistrial or Jury Disagreement.

3. [§430] After New Trial Is Granted.

4. After Decision on Appeal.

- (a) [§431] Order Granting New Trial.
- (b) [§432] Judgment Reversed With Remand for New Trial.
- (c) [§433] Distinction: Judgment Reversed Without Remand for New Trial.

5. Extensions, Exceptions, and Excuses.

- (a) [§434] In General.
- (b) Trial Impossible, Impracticable, or Futile.
 - (1) [§435] In General.
 - (2) [§436] Requirement of Reasonable Diligence.
- (c) [§437] Estoppel.

E. Discretionary Dismissal for Delay.

1. In General.

- (a) [§438] Power To Dismiss.
- (b) [§439] Criteria Governing Exercise of Discretion.
- (c) [§440] Premature Dismissal Is Improper.
- (d) [§441] Extensions, Exceptions, and Excuses.

2. Delay in Service.

- (a) [§442] In General.
- (b) Time for Service.
 - (1) [§443] Amended Complaint.
 - (2) [§444] Doe Defendant.
 - (3) [§445] Complaint in Intervention.
- (c) Excuse for Delay.
 - (1) [§446] Necessity for Showing.
 - (2) [§447] Sufficiency of Showing.
- (d) [§448] Prejudice to Defendant.
- (e) Review.
 - (1) [§449] Dismissal Upheld.
 - (2) [§450] Abuse of Discretion.

3. Delay in Trial.

- (a) [§451] In General.
- (b) Excuse for Delay.
 - (1) [§452] Former Rule: Dismissal Required Absent Adequate Showing.
 - (2) [§453] Current Rule: Discretion of Trial Court.
 - (3) [§454] Necessity for Some Showing.
 - (4) [§455] Attorney's Neglect Imputed to Client.
- (c) [§456] Prejudice to Defendant.
- (d) [§457] Effect of Judicial Arbitration.
- (e) [§458] Effect of Trial Preference.
- (f) [§459] Effect of Trial Setting.
- (g) Review.
 - (1) Dismissal Upheld.
 - (aa) [§460] Earlier Decisions.

- (bb) [§461] Later Decisions.
- (2) Abuse of Discretion.
 - (aa) [§462] Earlier Decisions.
 - (bb) [§463] Later Decisions.
- 4. [§464] Delay in New Trial.
- 5. Procedure.
 - (a) [§465] Notice of Motion.
 - (b) [§466] Opposition, Response, and Reply.
 - (c) Ruling on Motion.
 - (1) [§467] Ruling May Be Conditioned.
 - (2) [§468] Absent or Incorrect Statement of Grounds.
 - (d) Dismissal on Court's Own Motion.
 - (1) [§469] In General.
 - (2) [§470] After Motion To Specially Set.
 - (e) Relief From Order.
 - (1) [§471] Review of Order.
 - (2) [§472] Relief Under C.C.P. 473.
 - (f) [§473] Effect of Dismissal.

XIII. INVOLUNTARY DISMISSAL FOR REASONS OTHER THAN DELAY

- A. [§474] In General.
- B. Failure To Appear at Trial.
 - 1. [§475] When Dismissal Is Proper.
 - 2. [§476] Trial of Uncontested Matter as Alternative to Dismissal.
- C. [§477] Demurrer Sustained.
- D. [§478] Motion To Strike Granted.
- E. [§479] Failure To Bring Small Claims Court Appeal to Trial.
- F. [§480] Improper Grounds for Dismissal.

XIV. ALTERNATIVE DISPUTE RESOLUTION

- A. In General.
 - 1. [§481] Nature and Scope of ADR.
 - 2. [§482] Programs and Legislation.
 - 3. [§483] Judicial Standards and Rules.
 - 4. [§484] Immunity of Persons Performing Dispute Resolution Services.
- B. [§485] Negotiation.
- C. Mediation.
 - 1. [§486] In General.
 - 2. [§487] Confidentiality.
 - 3. [§488] Regulation of Mediation.
 - 4. Court-Ordered Mediation.
 - (a) [§489] Scope of Pilot Project.
 - (b) [§490] Time for Mediation.
 - (c) [§491] Procedure.
- D. [§492] Settlement Conference.
- E. [§493] Neutral Fact-Finding or Evaluation.
- F. [§494] Mini-Trial.
- G. Private Judging.

1. [§495] In General.
2. [§496] Voluntary Reference.
3. [§497] Temporary Judge.
4. [§498] Procedure.

H. Contractual Arbitration.

1. In General.
 - (a) [§499] Definition and Nature.
 - (b) [§500] Public Policy Considerations.
 - (c) [§501] Commentary and Practice Works.
2. California Legislation.
 - (a) [§502] General Statute.
 - (b) Special Statutes.
 - (1) [§503] In General.
 - (2) [§504] Medical Malpractice and Health Care Plans.
 - (3) [§505] Real Estate Contracts.
3. Federal Arbitration Act.
 - (a) In General.
 - (1) [§506] Nature and Scope.
 - (2) [§507] Commentary and Practice Works.
 - (b) Conflicting State Law Is Preempted.
 - (1) [§508] General Policy.
 - (2) [§509] Distinctions.
 - (3) [§510] Illustrations.
 - (c) [§511] Effect of Choice-of-Law Provision.
4. Agreement To Arbitrate.
 - (a) [§512] Agreement Is Enforceable.
 - (b) Form and Construction of Agreement.
 - (1) [§513] In General.
 - (2) [§514] Oral Agreement.
 - (3) [§515] Illustrations.
 - (c) [§516] Appraisal or Valuation Agreement.
 - (d) Employment or Labor Agreement.
 - (1) [§517] In General.
 - (2) Particular Claims.
 - (aa) [§518] Discrimination Claims.
 - (bb) [§519] Other Statutory Claims.
 - (cc) [§520] Harassment Claims.
 - (dd) [§521] Nonstatutory Public Policy Claims.
 - (3) [§522] Employer as Third-Party Beneficiary of Arbitration Agreement.
5. Enforcement Procedure.
 - (a) [§523] Self-Executing Agreement.
 - (b) Petition To Compel Arbitration.
 - (1) [§524] In General.
 - (2) [§525] Hearing.
 - (3) [§526] Appeal and Review.

(c) [§527] Consolidation With Pending Litigation.

(d) [§528] Stay of Pending Litigation.

(e) Provisional Remedies Pending Arbitration.

(1) [§529] In General.

(2) [§530] Injunctive Relief.

6. Defenses to Enforcement.

(a) [§531] In General.

(b) [§532] Controversy Is Not Within Scope of Arbitration Agreement.

(c) Petitioner or Respondent Is Not Party to Arbitration Agreement.

(1) [§533] In General.

(2) [§534] Joinder of Nonobjecting Third Party.

(3) [§535] Equitable Estoppel.

(d) [§536] Pending Litigation.

(e) Adhesion and Unconscionability.

(1) [§537] Contract of Adhesion.

(2) [§538] Unconscionable Contract or Term.

(3) [§539] Cases Deciding Issue of Unconscionability.

(f) [§540] Unjust or Unreasonable Provision.

(g) Fraud.

(1) [§541] When Issue Is Determined by Arbitrator.

(2) When Issue Is Determined by Court.

(aa) [§542] Fraud Directed to Arbitration Provision.

(bb) [§543] Fraud in Inception of Contract.

(h) [§544] Illegality.

(i) Waiver.

(1) [§545] Nature of Defense.

(2) [§546] Delay in Demanding Arbitration.

(3) Commencement of Litigation.

(aa) [§547] No Waiver by Mere Filing or Limited Participation.

(bb) [§548] Filing Action Solely for Discovery.

(cc) [§549] Defendant's Use of Discovery and Delay in Seeking Arbitration.

(dd) [§550] Deceptive Tactics in Settlement Process.

(4) Waiver or Forfeiture by Insurer.

(aa) [§551] Failure To Inform Insured of Remedy.

(bb) [§552] Requirement of Bad Faith Conduct.

7. Arbitration Proceeding.

(a) [§553] Commencement and Consolidation.

(b) Arbitrator.

(1) [§554] Selection and Appointment.

(2) [§555] Arbitral Immunity.

(3) Disclosures and Disqualification.

(aa) [§556] Judicial Requirements.

(bb) [§557] Statutory Requirements.

(cc) [§558] Ethics Standards for Neutral Arbitrators.

7. Arbitration Hearing.

- (a) [§595] In General.**
- (b) [§596] Subpenas.**
- (c) [§597] Time and Place of Hearing.**
- (d) [§598] Notice of Hearing.**
- (e) [§599] Persons Present.**
- (f) Evidence.**
 - (1) [§600] In General.**
 - (2) [§601] Reports and Records.**
 - (3) [§602] Written Statements.**
 - (4) [§603] Depositions.**
- (g) [§604] Sanctions for Failure To Participate.**

8. Arbitration Award.

- (a) Form and Content.**
 - (1) [§605] In General.**
 - (2) [§606] Amount of Damages.**
 - (3) [§607] Award of Costs.**
- (b) [§608] Filing.**
- (c) [§609] Service.**
- (d) [§610] Effect.**
- (e) [§611] Appealability.**
- (f) [§612] Vacation.**
- (g) [§613] Res Judicata and Collateral Estoppel.**

9. Trial De Novo After Arbitration.

- (a) Right to Trial.**
 - (1) [§614] In General.**
 - (2) [§615] Waiver by Plaintiff Electing Arbitration and Receiving Maximum Award.**
- (b) Request for Trial.**
 - (1) [§616] Time for Request.**
 - (2) [§617] Form of Request.**
 - (3) [§618] Filing and Service.**
 - (4) [§619] Request by One of Several Coparties.**
 - (5) [§620] Subsequent Voluntary Dismissal.**
 - (6) [§621] Subsequent Withdrawal of Request.**
- (c) Conduct of Trial.**
 - (1) [§622] Calendaring.**
 - (2) [§623] Discovery.**
 - (3) [§624] No Reference to Arbitration.**
 - (4) [§625] Adoption of Arbitrator's Findings Is Improper.**
- (d) Costs and Fees.**
 - (1) [§626] In General.**
 - (2) [§627] Improper Assignment of Case to Arbitration.**
 - (3) [§628] Effect of Rejection of Statutory Offer To Compromise.**
 - (4) [§629] Items Awarded.**