

## **4 California Procedure (5th), Pleading**

### **I. INTRODUCTION**

#### **A. The Code Pleading System.**

- 1. [§1] Origin, Nature, and Extent.**
- 2. [§2] Federal Rules.**
- 3. [§3] California Reform Legislation of 1972.**

#### **B. Pleadings Allowed in Civil Action.**

- 1. [§4] In General.**
- 2. [§5] Small Claims Courts and Limited Civil Cases.**

#### **C. [§6] Motions and Applications Relating to Pleadings.**

#### **D. Time To Plead and Extension.**

- 1. [§7] Time Prescribed by Statute.**
- 2. [§8] Time Prescribed by Court.**
- 3. [§9] Computation of Time.**
- 4. Extension of Time.**
  - (a) [§10] Extension to Ordinary Party.**
  - (b) [§11] Extension to Legislator.**
  - (c) [§12] Procedure.**

#### **E. Form, Filing, and Service of Pleadings.**

##### **1. Form.**

- (a) [§13] In General.**
- (b) [§14] Paper.**
- (c) [§15] Printing.**
- (d) [§16] Numbering.**
- (e) [§17] Format of First Page.**
- (f) [§18] Other Requirements.**

##### **2. Filing.**

- (a) [§19] In General.**
- (b) [§20] Fax Filing.**
- (c) Electronic Filing.**
  - (1) [§21] Nature of Filing Process.**
  - (2) [§22] Duties of Courts and Filers.**
  - (3) [§23] Court Action on Receipt of Filing.**
  - (4) [§24] Electronic Service.**

##### **3. Fees.**

- (a) [§25] Basic Fees.**
- (b) [§26] Additional Fees.**
- (c) [§27] Exemptions.**
- (d) [§28] Distribution of Fees.**

##### **4. [§29] Service.**

### **II. THE CAUSE OF ACTION**

#### **A. One Form of Action.**

##### **1. Abolition of Forms of Action.**

- (a) [§30] Nature of Reform.**
- (b) [§31] Law and Equity.**
- (c) [§32] Contract, Tort, and Other Forms.**

2. [§33] Effect of Forms on Pleading.
- B. What Constitutes Cause of Action.**
1. In General.
    - (a) [§34] Primary Right Theory.
    - (b) [§35] Uncertainty of Theory.
  2. Cause of Action Distinguished From Legal Theory of Wrong.
    - (a) [§36] In General.
    - (b) Tort Actions.
      - (1) [§37] Successive Actions.
      - (2) [§38] Single Action.
    - (c) [§39] Other Actions.
  3. Cause of Action Distinguished From Remedy or Relief.
    - (a) [§40] In General.
    - (b) [§41] Legal and Equitable Remedies.
    - (c) [§42] Tort and Contract Remedies.
    - (d) [§43] Collection of Secured Debt.
    - (e) [§44] Recovery of Property and Damages.
- C. Rule Against Splitting Cause of Action.**
1. [§45] Nature of Rule.
  2. [§46] Distinctions and Exceptions.
  3. [§47] Waiver of Objection.
  4. [§48] First Action in Federal Court.
- D. Illustrations of Single and Multiple Causes.**
1. Injuries to Person.
    - (a) [§49] Single Cause.
    - (b) [§50] Multiple Causes: Single Act or Transaction.
    - (c) [§51] Multiple Causes: Independent Successive Acts.
  2. Defamation or Invasion of Privacy.
    - (a) [§52] Nature of Problem.
    - (b) [§53] Uniform Single Publication Act.
  3. [§54] Injuries to Person and Property From One Act.
  4. Immediate and Permanent Injuries to Property.
    - (a) [§55] Single Cause.
    - (b) [§56] Multiple Causes.
  5. Continuing Injury to Property.
    - (a) [§57] Single Cause: Permanent Nuisance.
    - (b) [§58] Multiple Causes: Continuing Trespass or Nuisance.
    - (c) [§59] Plaintiff's Election in Nuisance Case.
    - (d) [§60] Removal of Lateral Support.
    - (e) [§61] Latent Deficiencies in Construction.
  6. Breach of Contract or Trust.
    - (a) [§62] Single Cause.
    - (b) [§63] Multiple Causes.
    - (c) [§64] Contract Action Followed by Tort Action.
  7. [§65] Several Defendants Causing Single Injury.
  8. [§66] Miscellaneous Cases Involving Connected Acts.

### **III. PARTIES**

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

- 1. [§67] Designation of Parties.**
- 2. [§68] Party Appearing as Both Plaintiff and Defendant.**
- 3. [§69] Party Must Be an Entity.**

#### **B. Capacity To Sue and Be Sued.**

##### **1. Minors and Incompetents.**

###### **(a) Necessity of Guardian, Conservator, or Guardian Ad Litem.**

- (1) [§70] In General.**
- (2) [§71] Incompetent Spouse.**
- (3) [§72] Minor or Incompetent Is Party.**
- (4) [§73] Exception: Injunction or Protective Order.**

###### **(b) Appointment of Guardian Ad Litem.**

- (1) [§74] Who May Apply.**
- (2) [§75] Time of Application.**
- (3) [§76] Ex Parte Petition.**
- (4) [§77] Order.**

###### **(c) Powers of Guardian Ad Litem.**

- (1) [§78] General Limitations on Power.**
- (2) [§79] Employment of Attorney Is Required.**
- (3) Power To Compromise Action.**
  - (aa) [§80] Nature and Scope of Power.**
  - (bb) [§81] Petition.**
  - (cc) [§82] Hearing and Order.**

###### **(d) Effect of Failure To Appear by Guardian.**

- (1) [§83] Judgment Is Ordinarily Subject to Disaffirmance.**
- (2) [§84] Nature of Defect.**
- (3) [§85] Waiver of Right To Disaffirm.**

##### **2. [§86] Married Persons.**

##### **3. Corporations.**

###### **(a) [§87] In General.**

###### **(b) [§88] Foreign Corporation.**

###### **(c) Suspended Corporation.**

- (1) [§89] Suspension and Revivor.**
- (2) [§90] Effect of Suspension.**

###### **(d) [§91] Dissolved Corporation.**

###### **(e) [§92] Merged Corporation.**

##### **4. Partnerships and Other Unincorporated Associations.**

###### **(a) As Plaintiffs.**

- (1) [§93] Former Law.**
- (2) Any Association May Sue.**
  - (aa) [§94] Reformation of Rule.**
  - (bb) [§95] Limitation When Using Fictitious Business Name.**
  - (cc) [§96] Limitation for Tenants and Homeowners Associations.**



- (3) [§129] Assignment of Collateral Security.
  - (4) [§130] Partial Assignment.
  - (b) [§131] Right of Assignor To Sue.
- 3. Subrogee.
  - (a) [§132] Right of Subrogee To Sue.
  - (b) [§133] Rights of Partial Subrogee and Subrogor.
- 4. Personal Representative.
  - (a) [§134] Personal Representative as Real Party in Interest.
  - (b) Exceptions: When Heir or Devisee May Sue.
    - (1) [§135] Personal Representative Acting Wrongfully.
    - (2) [§136] Possession or Quiet Title to Estate Property.
- 5. Trustee.
  - (a) [§137] In General.
  - (b) Exceptions.
    - (1) [§138] Suit by Beneficiary.
    - (2) [§139] Enforcement of Charitable Trust.
- 6. Principal and Agent: Agent's Contract.
  - (a) [§140] Action by Principal.
  - (b) [§141] Action by Agent.
- 7. Promisee and Third-Party Beneficiary.
  - (a) [§142] Action by Promisee.
  - (b) [§143] Action by Third-Party Beneficiary.
- 8. Persons Authorized by Statute.
  - (a) [§144] Nature of Provision.
  - (b) Actions Involving Private Rights.
    - (1) [§145] Wrongful Death.
    - (2) Bankruptcy.
      - (aa) [§146] Trustee.
      - (bb) [§147] Bankrupt.
    - (3) [§148] Receiver.
    - (4) [§149] Injury to Employee.
    - (5) [§150] Nullity of Marriage of Minor or Incompetent.
    - (6) [§151] Negotiable Instruments.
    - (7) [§152] Common Interest Development Association.
    - (8) [§153] Husband and Wife.
    - (9) [§154] Injury to Child.
  - (c) Illustrations: Actions Affecting Public Interest.
    - (1) Action by Public Officer.
      - (aa) [§155] In General.
      - (bb) [§156] Supervision of Charitable Trust.
    - (2) [§157] Action by Relator.
    - (3) [§158] Validating Action.
    - (4) Environmental Actions.
      - (aa) [§159] In General.
      - (bb) [§160] Intervention by Attorney General.
      - (cc) [§161] Action by Attorney General.

- (5) Taxpayers' Actions.**
  - (aa) [§162] In General.**
  - (bb) [§163] Liberal Construction.**
  - (cc) [§164] Action Against State Agency or Officer.**
  - (dd) [§165] Where Other Persons Directly Are Affected.**
  - (ee) [§166] Where Issue Becomes Moot.**
- (6) Improper Taxpayers' Actions.**
  - (aa) [§167] Action by Collector of Sales Tax.**
  - (bb) [§168] Action Involving Agency's Discretion.**
  - (cc) [§169] Action Involving Judicial Function.**
- (7) [§170] Other Examples.**

**9. The State as Representative of Citizens.**

- (a) [§171] Right To Sue and Conditions.**
- (b) [§172] Limitations on Right.**

**IV. JOINDER AND CHANGE OF PARTIES**

**A. In General.**

- 1. [§173] Origin and Nature of Joinder Rules.**
- 2. [§174] Federal Rules.**
- 3. Former California Law.**
  - (a) [§175] Indispensable, Necessary, and Proper Parties.**
  - (b) [§176] Compulsory Joinder.**
  - (c) [§177] Joinder by Order of Court.**
  - (d) [§178] Permissive Joinder.**
- 4. [§179] Legislative Revision of 1971.**

**B. Compulsory Joinder.**

- 1. [§180] In General.**
- 2. [§181] Test Under Revised Statute.**
- 3. Indispensable Parties.**
  - (a) [§182] In General.**
  - (b) [§183] Illustrations.**
  - (c) [§184] Waiver.**
- 4. [§185] Where Joinder Is Possible.**
- 5. Where Joinder Is Not Possible.**
  - (a) [§186] In General.**
  - (b) [§187] Effect of Running of Statute of Limitations.**
  - (c) [§188] Effect of Sovereign Immunity.**
  - (d) [§189] Standard of Review.**
- 6. Joinder by Order of Court.**
  - (a) [§190] In General.**
  - (b) [§191] Application.**
  - (c) [§192] Court's Own Motion.**
- 7. [§193] Joinder Required by Special Statutes.**

**C. Permissive Joinder.**

- 1. Joinder of Plaintiffs.**
  - (a) [§194] In General.**
  - (b) Right Arising Out of Same Transaction.**

- (1) [§195] Nature and Scope of Transaction Clause.
  - (2) [§196] Tort Transaction.
  - (c) [§197] Interest in Subject of Action.
- 2. Joinder of Defendants.
  - (a) [§198] In General.
  - (b) Relief Sought Jointly or Severally.
    - (1) [§199] In General.
    - (2) [§200] Joint, Concurrent, and Successive Tortfeasors.
    - (3) [§201] Wrongful Death.
    - (4) [§202] Employee and Employer.
    - (5) [§203] Distinction: Liability Insurer.
  - (c) Relief Sought in the Alternative.
    - (1) [§204] Nature of Statute.
    - (2) [§205] Method of Pleading.
    - (3) Illustrations of Permissive Joinder.
      - (aa) [§206] Contractual Liabilities.
      - (bb) [§207] Torts to Person.
      - (cc) [§208] Torts to Property.
- 3. [§209] Joinder of Unwilling Party.
- 4. [§210] No Joinder Where No Relief Is Sought.
- 5. [§211] Separate Trials.

#### **D. Intervention.**

- 1. In General.
  - (a) [§212] Nature of Right.
  - (b) [§213] Federal Rule.
  - (c) [§214] California Rule.
  - (d) [§215] Special Statutes.
  - (e) [§216] Other Procedures Compared.
  - (f) [§217] Mandamus With Effect of Intervention.
  - (g) [§218] Test: Interest in Subject Matter or Success of Party.
- 2. Procedure.
  - (a) Complaint, Application, and Order.
    - (1) [§219] Complaint in Intervention.
    - (2) [§220] Application and Ex Parte Order.
    - (3) [§221] Hearing on Notice.
    - (4) [§222] Review of Order.
  - (b) Time of Application.
    - (1) [§223] Before or During Trial.
    - (2) [§224] After Judgment.
    - (3) [§225] Diligence.
  - (c) Intervenor as Party to Action.
    - (1) [§226] In General.
    - (2) [§227] Prior Proceedings and Control Over Action.
    - (3) [§228] No Time Limit on Service.
- 3. Permissible Intervention.
  - (a) [§229] Interest in Success of One Party.

- (b) Independent Interest.**
  - (1) [§230] In General.**
  - (2) [§231] Insurance.**
  - (3) [§232] Interest in Property.**
  - (4) [§233] Other Illustrations.**

**4. Improper Intervention.**

- (a) No Direct Interest.**
  - (1) [§234] Theory and Uncertainty of Test.**
  - (2) [§235] Illustrations.**
- (b) [§236] Test Case and Interest in Legal Precedent.**

**E. Interpleader.**

**1. In General.**

- (a) [§237] Nature and Early Restrictions.**
- (b) [§238] Adoption of Federal Rule.**
- (c) [§239] Illustrations.**
- (d) Limitations on Interpleader.**
  - (1) [§240] In General.**
  - (2) [§241] Adverse Interest.**
- (e) Independent Liability.**
  - (1) [§242] Former Law.**
  - (2) [§243] Modern View.**

**2. Procedure.**

- (a) Defendant's Application for Substitution.**
  - (1) [§244] In General.**
  - (2) [§245] Application and Affidavit.**
  - (3) [§246] Substitution and Discharge.**
- (b) Plaintiff's Action of Interpleader.**
  - (1) [§247] In General.**
  - (2) [§248] Complaint.**
  - (3) [§249] Defendants' Pleadings.**
  - (4) [§250] Restraining Order.**
  - (5) [§251] Hearing and Interlocutory Order.**
  - (6) [§252] Discharge of Plaintiff.**
- (c) [§253] Interpleader by Cross-Complaint.**
- (d) [§254] Partial Interpleader.**
- (e) Trial Between Conflicting Claimants.**
  - (1) [§255] In General.**
  - (2) [§256] Nature of Trial.**
- (f) [§257] Costs and Attorneys' Fees.**
- (g) [§258] No Tort Liability to Named Potential Claimant.**

**F. Death, Disability, or Transfer.**

**1. Death or Disability of Party.**

- (a) [§259] Necessity of Substitution.**
- (b) [§260] Procedure.**
- (c) [§261] Where Substitution Is Unnecessary.**

**2. Transfer of Interest.**

- (a) Continuation in Name of Original Party.**
  - (1) [§262] Transferee's Election.**
  - (2) [§263] Transferee's Control Over Action.**
- (b) Substitution of Transferee.**
  - (1) [§264] Right to Substitution.**
  - (2) [§265] Procedure.**
- (c) [§266] Succession of Officer.**

## **V. CLASS ACTIONS**

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

- 1. [§267] Origin and Development.**
- 2. [§268] California Law and Uniform Act.**
- 3. [§269] Scope of Action.**
- 4. [§270] Effect of Judgment.**
- 5. Defendants' Class Actions.**

- (a) [§271] In General.**

- (b) [§272] Unborn Remainderpersons.**

### **B. Federal Rules of Civil Procedure, Rule 23.**

- 1. [§273] In General.**
- 2. [§274] Commentary.**
- 3. [§275] Eisen Cases.**
- 4. [§276] California Cases.**
- 5. [§277] Superiority of Pending Federal Action.**

### **C. California Rules of Court.**

- 1. [§278] In General.**
- 2. [§279] Case Conference.**
- 3. [§280] Discovery From Unnamed Members.**

### **D. Question of Common Interest.**

- 1. [§281] In General.**
- 2. [§282] Sufficient Showing.**
- 3. Insufficient Showing.**
  - (a) [§283] Numerous, Complex, Individual Issues.**
  - (b) [§284] Nationwide Classes.**
  - (c) [§285] Benefits of Class Action Not Substantial.**
- 4. [§286] Where Interests Are in Conflict.**
- 5. Where Separate Relief Is Sought.**
  - (a) [§287] In General.**
  - (b) [§288] Class Action Allowed.**
  - (c) Class Action Not Allowed.**
    - (1) [§289] In General.**
    - (2) [§290] Nuisance and Inverse Condemnation.**
    - (3) [§291] Mass Personal Injury Actions.**

### **E. The Class.**

- 1. [§292] In General.**
- 2. [§293] Absent Persons.**
- 3. [§294] Effect of Choice-of-Law Issues and Agreements.**
- 4. Numerous Parties Without Substantial Interests.**

- (a) [§295] In General.
- (b) [§296] Fluid Class Recovery.
- (c) [§297] Illustrations.

**F. Adequacy of Representation.**

- 1. [§298] In General.
- 2. [§299] Unrepresentative Plaintiffs.
- 3. [§300] Representative Plaintiffs.

**G. Illustrations of Proper Class Actions.**

- 1. [§301] Action Involving Common Fund or Property.
- 2. Consumers' Actions.
  - (a) [§302] Statutory Authorization.
  - (b) [§303] Fraud in Sales.
  - (c) [§304] Exclusive Criteria of Consumers Act.
- 3. [§305] Fraud in Hiring Farm Workers.
- 4. [§306] Other Situations.

**H. Procedure.**

- 1. Certification as Class Action.
  - (a) Motion To Certify.
    - (1) [§307] Authority for Motion.
    - (2) [§308] Determination at Pleadings Stage.
    - (3) [§309] Necessity of Notice.
    - (4) [§310] Plaintiff's Burden.
    - (5) [§311] Factors Considered by Court.
    - (6) [§312] Nationwide Class Action.
  - (b) [§313] Motion To Decertify.
  - (c) [§314] Order and Review of Order.
- 2. Notice of Action.
  - (a) [§315] In General.
  - (b) [§316] Precertification Notice.
  - (c) [§317] Manner of Notice.
  - (d) [§318] Unreasonable Notice.
  - (e) [§319] Allocation of Costs.
- 3. [§320] Election To Be Excluded.
- 4. [§321] Election To Be Included.
- 5. [§322] Interrogatories to Unnamed Members.
- 6. Prior Trial of Liability Issue.
  - (a) [§323] On Court Order: Improper.
  - (b) [§324] Defendant's Stipulation or Failure To Object.
  - (c) [§325] Unusual Circumstances Justifying Order.
- 7. [§326] Default.
- 8. [§327] Dismissal for Delay in Certification.
- 9. [§328] Plaintiff's Duty To Continue Action.
- 10. Settlement of Class Action.
  - (a) [§329] In General.
  - (b) [§330] California Rules of Court.
- 11. [§331] Distribution of Unpaid Residuals.

**12. [§332] Judgment.**

**VI. JOINDER OF CAUSES OF ACTION**

**A. Former Law.**

- 1. [§333] Nature of Restricted Joinder Rules.**
- 2. [§334] Classes of Causes.**

**B. [§335] Federal Rules.**

**C. Revised California Statute.**

- 1. [§336] Law Revision Commission Recommendation.**
- 2. [§337] Unrestricted Joinder of Causes.**
- 3. [§338] Causes Need Not Be Separately Stated.**
- 4. [§339] Cause Need Not Affect All Parties.**
- 5. [§340] Joinder Is Permissive.**

**VII. CONSOLIDATION, COORDINATION, AND SEVERANCE**

**A. Consolidation of Actions.**

**1. In General.**

- (a) [§341] Nature of Consolidation.**
- (b) [§342] Statutory Basis.**
- (c) [§343] Other Similar Procedures.**

**2. [§344] Procedure.**

**3. Circumstances Warranting Consolidation.**

- (a) [§345] Discretion of Trial Court.**
- (b) [§346] Complete Consolidation Resulting in Single Action.**
- (c) [§347] Consolidation of Separate Actions for Trial.**

**4. Equitable Bill of Peace.**

- (a) [§348] Nature of Remedy.**
- (b) [§349] Illustrations.**
- (c) [§350] Distinction: No Common Interest.**
- (d) [§351] Relation to Consolidation Procedure.**

**B. Coordination of Actions.**

**1. [§352] In General.**

**2. [§353] Test: Common Question in Different Courts.**

**3. [§354] Applicable Procedure.**

**4. [§355] Peremptory Challenge of Assigned Judge.**

**5. [§356] Service, Filing, and Submission of Papers.**

**6. Petition to Chair of Judicial Council.**

- (a) [§357] In General.**
- (b) [§358] Notice and Opposition.**

**7. [§359] Motion In Court.**

**8. [§360] Potential Add-On Cases.**

**9. Hearing and Determination of Issue.**

- (a) [§361] Assignment of Coordination Motion Judge.**
- (b) [§362] Stay Pending Determination.**
- (c) [§363] Hearing.**
- (d) [§364] What Constitutes Complex Case.**
- (e) [§365] Determination and Order.**

**10. [§366] Transfer of Noncomplex Actions.**

**11. Trial of Coordinated Actions.**

- (a) [§367] In General.
- (b) [§368] Case Management Conference.
- (c) [§369] Liaison Counsel.
- (d) [§370] Remand of Action or Claim.
- (e) [§371] Transfer of Action or Claim.
- (f) [§372] Add-on Cases.
- (g) [§373] Termination of Action.

**12. [§374] Review.**

**13. [§375] Coordination of Related Cases.**

**C. Severance of Actions.**

**1. [§376] Federal Rules.**

**2. [§377] California Statute.**

**VIII. GENERAL RULES OF PLEADING**

**A. Pleading Ultimate Facts.**

**1. In General.**

- (a) [§378] Requirement of Pleading Facts.
- (b) [§379] Notice Pleading and Federal Rules.
- (c) Use of Forms.
  - (1) [§380] In General.
  - (2) [§381] Practice Works.
  - (3) [§382] Judicial Council Forms.
- (d) [§383] Effect of Improper Pleading.

**2. Ultimate Facts and Legal Conclusions.**

- (a) Improper Pleading of Conclusions of Law.
  - (1) [§384] Illegality, Invalidity, or Fraud.
  - (2) [§385] Allegations Relating to Debt or Instrument.
  - (3) [§386] Fiduciary or Official Capacity.
- (b) [§387] Allegations of Ultimate Facts.
- (c) Permissible Pleading of Conclusions of Law.
  - (1) [§388] Conditions Precedent.
  - (2) [§389] Ordinance or Private Statute.
  - (3) [§390] Judgment or Administrative Determination.
  - (4) [§391] Other Matters.

**3. Evidentiary, Argumentative, and Inferential Pleading.**

- (a) [§392] Evidentiary Matter.
- (b) Other Inferential Pleading.
  - (1) [§393] Reliance on Recitals in Document.
  - (2) Indirect Allegations.
    - (aa) [§394] Defect of Substance.
    - (bb) [§395] Defect of Form.
  - (3) [§396] No Inference Against Pleader.

**4. [§397] Pleading Truthfully.**

**B. Allegations on Information and Belief.**

**1. [§398] Right To Plead.**

**2. [§399] Where Pleading Is Improper.**

**C. Pleading in the Alternative.**

1. [§400] Rule Against Alternative Allegations.
2. [§401] Criticism of Rule.

**D. Pleading Inconsistent or Alternative Counts.**

1. Right To Plead on Alternative Theories of Case.
  - (a) [§402] General Rule.
  - (b) Reasons for Pleading Alternative Counts.
    - (1) [§403] Doubt as to Facts.
    - (2) [§404] Doubt as to Rights.
    - (3) [§405] Defendants Joined in Alternative.
  - (c) [§406] Court Cannot Compel Election.
2. Illustrations.
  - (a) [§407] Contract Actions.
  - (b) [§408] Tort Actions.
3. Limitations on Right To Plead Inconsistently.
  - (a) [§409] Election of Remedies.
  - (b) [§410] Admissions and Inconsistent Judgment.
  - (c) [§411] Contradictions of Fact in Verified Pleading.

**E. Theory of the Pleading.**

1. [§412] Nature of Problem.
2. [§413] Doctrine Repudiated.
3. Illustrations.
  - (a) Recovery Contrary to Theory of Complaint.
    - (1) [§414] Equity and Law Theories.
    - (2) [§415] Contract, Quasi-Contract, and Tort Theories.
    - (3) [§416] Other Examples.
  - (b) [§417] Recovery Where Complaint Lacks Definite Theory.
  - (c) [§418] Recovery Where Complaint Embodies Alternative Theories.
4. [§419] Theory Determining Form of Action.

**F. Anticipating Defenses.**

1. [§420] Rule Against Negating Defenses.
2. Effect of Pleading in Violation of Rule.
  - (a) [§421] In General.
  - (b) [§422] No Admission From Failure To Deny.
  - (c) [§423] Motion To Strike.
  - (d) [§424] No Waiver of Objection.
3. Exceptions: Defenses That Must Be Anticipated.
  - (a) [§425] Pleading To Escape Statutory Bar.
  - (b) [§426] Negative Averments Part of Cause of Action.

**G. Incorporation by Reference.**

1. Exhibit Attached to Pleading.
  - (a) [§427] Right To Plead by Reference.
  - (b) [§428] Form of Pleading.
  - (c) Effect of Pleading.
    - (1) [§429] In General.
    - (2) Where Instrument Is Foundation of Action or Defense.

- (aa) [§430] Recitals as Substitute for Allegations.
    - (bb) [§431] Recitals Inconsistent With Allegations.
    - (cc) [§432] Allegations Are Required Where Instrument Is Ambiguous.
  - (3) Where Instrument Is Not Foundation of Action.
    - (aa) [§433] Recitals Cannot Be Substitute for Allegations.
    - (bb) [§434] Exception: Expressly Incorporated Recitals.
  - 2. [§435] Another Count of Same Pleading.
  - 3. [§436] Other Pleading in Same Case.
  - 4. [§437] Superseded Pleading.
- H. [§438] Pleading Where Presumption Applies.
- I. Pleading Where Facts Are Judicially Noticed.
  - 1. [§439] No Judicial Notice in Favor of Pleader.
  - 2. Judicial Notice Against Pleader.
    - (a) [§440] General Principle.
    - (b) [§441] Illustrations.
- J. Construction of Pleadings.
  - 1. Liberal Construction in Favor of Pleader.
    - (a) [§442] General Rule.
    - (b) [§443] Distinctions.
    - (c) Illustrations.
      - (1) [§444] Ordinary Situations.
      - (2) [§445] Adverse Party's Failure To Demur.
      - (3) [§446] No Prejudice After Trial on Merits.
      - (4) [§447] Compelling Nature of Pleader's Case.
  - 2. Construction Against Pleader.
    - (a) [§448] In General.
    - (b) [§449] Failure To Remove Defect by Amendment.
  - 3. [§450] Specific Allegations Control General.
  - 4. [§451] Allegations Control Title or Prayer.
- K. Admissions in Pleadings.
  - 1. [§452] Nature of Judicial Admission.
  - 2. [§453] Distinctions.
  - 3. Effects of Judicial Admission.
    - (a) [§454] In General.
    - (b) [§455] Admissions of Plaintiff.
    - (c) [§456] Admissions of Defendant.
  - 4. Superseded Pleading in Same Case.
    - (a) [§457] Justifiable Correction.
    - (b) [§458] Suppressed Allegation.
- L. Verification of Pleadings.
  - 1. [§459] Nature of Verification.
  - 2. [§460] Former Requirement of Denial of Instrument.
  - 3. [§461] Who May Verify.
  - 4. Form of Verification.
    - (a) [§462] Affidavit or Declaration.

- (b) [§463] Use of Statutory Form.
- (c) By Attorney or Other Person.
  - (1) [§464] Statement of Reasons.
  - (2) [§465] Verification by Attorney or Officer.

- 5. When Verification Is Required.
  - (a) [§466] Complaint or Petition.
  - (b) [§467] Answer.
- 6. [§468] Effect of Failure To Comply.

M. [§469] Certification of Pleadings.

**IX. THE COMPLAINT**

**A. In General.**

- 1. Form and Content.
  - (a) [§470] Nature of Pleading.
  - (b) [§471] Superior Court.
  - (c) [§472] Limited Civil Cases.
- 2. Names of Parties.
  - (a) [§473] Natural Persons.
  - (b) [§474] Corporations and Associations.
  - (c) [§475] Public Entity or Officer.
  - (d) [§476] Persons in Representative Capacity.
  - (e) [§477] Effect of Misnaming Defendant.
- 3. Suing Defendant By Fictitious Name.
  - (a) [§478] In General.
  - (b) [§479] True Name Known.
  - (c) [§480] Amendment To Allege Initial Ignorance.
  - (d) True Name Not Known.
    - (1) [§481] Actual Ignorance.
    - (2) [§482] Theory That Ignorance Must Be Excusable.
  - (e) [§483] Speculative Listing of Fictitious Defendants.
  - (f) Ignorance of Cause of Action.
    - (1) [§484] Problem and Rule.
    - (2) [§485] Illustrations.
    - (3) [§486] Exception: Public Entity Defendant.
  - (g) Procedure.
    - (1) [§487] Forms of Allegation.
    - (2) [§488] Service and Appearance.
    - (3) Amendment To Substitute True Name.
      - (aa) [§489] Application and Order.
      - (bb) [§490] Delay in Seeking Amendment.
      - (cc) [§491] When Venue Change Is Pending.
      - (dd) [§492] When Action Is No Longer Pending.
      - (ee) [§493] Effect of Amendment.
      - (ff) [§494] Effect of Failure To Amend.
- 4. Prayer or Demand.
  - (a) [§495] Nature of Prayer.
  - (b) [§496] Form.

- (c) **Effect of Insufficient Prayer.**
      - (1) [§497] **Contested Case.**
      - (2) [§498] **Default Case.**
  - 5. Bill of Particulars in Action on Account.**
    - (a) [§499] **Limited to Action on Account.**
    - (b) [§500] **Other Procedures Distinguished.**
    - (c) **What Constitutes Action on Account.**
      - (1) [§501] **Ordinary Contract and Quasi-Contract Actions.**
      - (2) [§502] **Account Stated or Other Superseding Contract.**
    - (d) **Procedure in Obtaining Bill.**
      - (1) [§503] **Defendant's Demand.**
      - (2) [§504] **Delivery of Account.**
      - (3) [§505] **Amendment or Further Account.**
    - (e) [§506] **Effect of Bill.**
    - (f) **Effect of Failure To Comply With Demand.**
      - (1) [§507] **In General.**
      - (2) [§508] **Defective Bill and Motion for Further Account.**
      - (3) [§509] **Late Bill: Discretion To Withhold Penalty.**
      - (4) [§510] **Relief From Default.**
  - 6. Damages Sought for Personal Injury or Death.**
    - (a) **Statement of Nature and Amount of Damages.**
      - (1) [§511] **In General.**
      - (2) [§512] **Service and Filing of Statement.**
      - (3) [§513] **Effect of Statement on Amount of Actual Award.**
    - (b) [§514] **Statement Preserving Right To Seek Punitive Damages.**
- B. Legal Actions Arising Out of Contract.**
- 1. Damages for Breach of Contract.**
    - (a) **In General.**
      - (1) [§515] **Elements of Cause of Action.**
      - (2) [§516] **Common Types of Contract Actions.**
      - (3) [§517] **Judicial Council Forms.**
    - (b) **The Contract.**
      - (1) **Written Contract.**
        - (aa) [§518] **Setting Out Copy.**
        - (bb) [§519] **Pleading Legal Effect.**
        - (cc) [§520] **Essential Terms Must Be Pleaded.**
        - (dd) [§521] **Consideration Need Not Be Pleaded.**
      - (2) **Oral Contract.**
        - (aa) [§522] **Pleading Legal Effect.**
        - (bb) [§523] **Negating Statute of Frauds: Memorandum.**
        - (cc) [§524] **Negating Statute of Frauds: Estoppel.**
        - (dd) [§525] **Consideration or Promissory Estoppel.**
      - (3) [§526] **Implied Contract.**
      - (4) [§527] **Contract Made by Agent.**
      - (5) [§528] **Interpretation.**
      - (6) [§529] **Modification.**

**(c) Plaintiff's Performance or Excuse for Nonperformance.**

- (1) [§530] Conditions Precedent.**
- (2) [§531] Conditions Subsequent.**
- (3) [§532] Prevention by Defendant as Excuse.**
- (4) [§533] Waiver by Defendant as Excuse.**

**(d) Defendant's Breach.**

- (1) [§534] Specific Acts or Conduct.**
- (2) [§535] Negligent Performance.**
- (3) [§536] Bad Faith Breach.**
- (4) [§537] General Allegations.**
- (5) Obligation Conditional on Event.**
  - (aa) [§538] Requirement of Specific Pleading.**
  - (bb) [§539] Illustrations.**

**(e) [§540] Causation: Damage Resulting From Breach.**

**2. Restitution After Rescission.**

**(a) In General.**

- (1) [§541] Nature of Action.**
- (2) [§542] Elements of Cause of Action.**
- (3) [§543] Other Actions Distinguished.**

**(b) Grounds for Rescission.**

- (1) Fraud.**
  - (aa) [§544] Must Plead Injury.**
  - (bb) [§545] Need Not Plead Pecuniary Loss.**
- (2) [§546] Mistake or Innocent Misrepresentation.**
- (3) Undue Influence.**
  - (aa) [§547] Nature of Ground and Distinctions.**
  - (bb) [§548] Cases Involving Confidential Relationship.**
  - (cc) [§549] Cases Not Involving Confidential Relationship.**
- (4) [§550] Duress.**
- (5) [§551] Mental Incapacity.**
- (6) [§552] Breach or Failure of Consideration.**

**3. Common Counts.**

**(a) Right To Plead.**

- (1) [§553] In General.**
- (2) Action Involving Express Contract.**
  - (aa) [§554] Common Count Proper.**
  - (bb) [§555] Common Count Improper.**
- (3) [§556] Action Involving Waiver of Tort.**

**(b) [§557] Essential Allegations of Any Common Count.**

**(c) Nonessential Allegations.**

- (1) [§558] Defendant's Request.**
- (2) [§559] Defendant's Promise.**
- (3) [§560] Date of Indebtedness.**

**(d) Particular Counts in General Use.**

- (1) Counts for Fixed Amounts.**
  - (aa) [§561] Money Had and Received.**

- (bb) [§562] Work and Labor (Services).
- (cc) [§563] Goods Sold and Delivered.
- (dd) [§564] Money Lent or Money Paid.
- (ee) [§565] Account Stated.

**(2) Counts for Reasonable Value.**

- (aa) [§566] Quantum Meruit (Services).

- (bb) [§567] Quantum Valebant (Goods Sold).

**(e) Pleading Same Cause Specifically and as Common Count.**

- (1) [§568] Separate Counts in One Pleading.

- (2) [§569] Specific Count in Superseded Pleading.

- (3) [§570] Distinction: Alternative Remedies or Legal Theories of Recovery.

**4. Bills and Notes.**

**(a) Action on Promissory Note.**

- (1) [§571] Execution and Terms.

- (2) [§572] Acquisition by Transferee.

- (3) [§573] Breach.

- (4) [§574] Other Allegations.

**(b) [§575] Action on Bill of Exchange or Check.**

**C. Actions for Damages for Negligence.**

**1. In General.**

- (a) [§576] Elements of Cause of Action.

- (b) [§577] Matters That Need Not Be Pleaded.

- (c) [§578] Common Types of Negligence Actions.

- (d) [§579] Judicial Council Forms.

**2. Legal Duty of Care.**

**(a) In General.**

- (1) [§580] Traditional Approach.

- (2) [§581] Foreseeability of Risk.

**(b) Duty To Exercise Due Care.**

- (1) [§582] Common Law Duty.

- (2) Statutory Duty.

- (aa) [§583] Pleading Statute.

- (bb) [§584] General Pleading.

- (3) Contractual Duty.

- (aa) [§585] In General.

- (bb) [§586] Duty to Third Party.

- (cc) [§587] Election To Sue in Contract.

**(c) Affirmative Duty Arising From Special Relationship.**

- (1) [§588] In General.

- (2) [§589] Duty to Invitee or Licensee.

- (3) [§590] Duty to Trespassing Child: Attractive Nuisance.

- (4) [§591] Duty of Landlord to Residential Tenant.

- (5) [§592] Duty of Manufacturer or Supplier of Goods.

- (6) [§593] Duty of Professional to Patient or Client.

- (7) [§594] Duty on Voluntary or Gratuitous Undertaking.

**3. Breach of Duty by Negligent Act or Omission.**

**(a) [§595] In General.**

**(b) Pleading Negligence in General Terms.**

**(1) [§596] The Rule and Its Effect.**

**(2) [§597] Theory of The Rule.**

**(3) Form of General Allegations.**

**(aa) [§598] Failure To Refer to Act or Omission.**

**(bb) [§599] Reference to Broadest Act or Omission.**

**(cc) [§600] Malpractice and Negligent Medical Care Cases.**

**(dd) [§601] Deviations From Typical Form.**

**(4) [§602] Sufficiency of Pleading Against Special Demurrer.**

**(5) Pleading Breach of Affirmative Duty.**

**(aa) [§603] In General.**

**(bb) [§604] Where Complaint Discloses Obvious Danger.**

**(c) Pleading Negligence in Specific Terms.**

**(1) [§605] Nature and Form of Specific Pleading.**

**(2) Effect of Pleading in Res Ipsa Loquitur Case.**

**(aa) [§606] Rule Requiring General Pleading.**

**(bb) [§607] Where Pleading Is General and Specific.**

**(d) [§608] Pleading Negligence in Both General and Specific Terms.**

**(e) Pleading More Culpable Conduct.**

**(1) [§609] In General.**

**(2) [§610] Wilful Misconduct.**

**4. Proximate Cause.**

**(a) [§611] Causal Connection.**

**(b) [§612] Direct and Concurrent Causation.**

**(c) Foreseeable Intervening Cause.**

**(1) [§613] When General Pleading Is Sufficient.**

**(2) [§614] When Specific Pleading Is Required.**

**(d) [§615] Medical Malpractice.**

**(e) [§616] Legal Malpractice.**

**D. Tort Actions Against Public Entities.**

**1. [§617] Government Claims Act.**

**2. [§618] Motor Vehicle Torts.**

**3. Requirement of Filing Claim.**

**(a) [§619] In General.**

**(a) [§620] Conformance of Complaint to Claim.**

**4. Dangerous Condition of Public Property.**

**(a) [§621] Elements of Cause of Action.**

**(b) [§622] Illustrations.**

**5. [§623] Other Bases of Liability.**

**E. [§624] Tort Actions Against Public Employees.**

**F. Tort Actions Based on Absolute and Strict Liability.**

**1. [§625] Injuries From Animals.**

**2. [§626] Ultrahazardous Activity.**

**3. Strict Products Liability.**

- (a) [§627] Nature of Liability.
- (b) [§628] Elements of Cause of Action.
- (c) [§629] Damage From Defective Real Property.
- (d) [§630] Exposure to Toxic Materials.

**5 California Procedure (5th), Pleading**

**G. Actions Involving Rights in Real Property.**

**1. Damages for Trespass or Injury.**

- (a) [§631] Elements of Cause of Action.
- (b) [§632] Possession or Right to Possession.
- (c) [§633] Other Allegations.

**2. Recovery of Possession: Ejectment.**

- (a) [§634] In General.
- (b) [§635] Elements of Cause of Action.
- (c) [§636] Plaintiff's Ownership or Interest.
- (d) [§637] Defendant's Possession and Withholding.

**3. Recovery of Possession: Unlawful Detainer.**

- (a) In General.
  - (1) [§638] Nature of Remedy.
  - (2) [§639] Successive Actions.
  - (3) [§640] Procedure.
- (b) Action by Landlord Against Tenant.
  - (1) [§641] Relationship and Possession.
  - (2) Grounds for Recovery of Possession.
    - (aa) [§642] In General.
    - (bb) [§643] Lessee Holding Over.
    - (cc) [§644] Lessee's Default or Breach.
  - (3) [§645] Damages.
  - (4) [§646] Facts Justifying Immediate Possession.
- (c) [§647] Action by Owner Against Employee or Licensee.
- (d) [§648] Action by Purchaser at Judicial Sale.

**4. Recovery of Possession: Forcible Entry.**

- (a) [§649] In General.
- (b) [§650] Plaintiff's Possession.
- (c) [§651] Defendant's Forcible Entry.
- (d) [§652] Defendant's Withholding and Damage.

**5. [§653] Recovery of Possession: Forcible Detainer.**

**6. Quiet Title.**

- (a) In General.
  - (1) [§654] Nature and Scope of Action.
  - (2) [§655] Other Actions Distinguished.
  - (3) [§656] Statutory Development.
- (b) Statutory Action.
  - (1) [§657] In General.
  - (2) [§658] Jurisdiction, Venue, and Process.
  - (3) [§659] Necessary Known Defendants.

- (4) [§660] Defendant or Interest Unknown.
- (5) [§661] Appearance and Rights of Defendant.
- (6) [§662] Trial and Judgment.
- (c) Elements of Cause of Action.
  - (1) [§663] Statutory Requirements for Complaint.
  - (2) Plaintiff's Title or Interest.
    - (aa) [§664] In General.
    - (bb) [§665] Title in Fee.
    - (cc) [§666] Legal Interest Less Than Fee.
    - (dd) [§667] Equitable Interest.
  - (3) Defendant's Adverse Claim.
    - (aa) [§668] General Pleading.
    - (bb) [§669] Specific Pleading of Fraud.
  - (4) [§670] Plaintiff's Offer To Do Equity.
- 7. Action To Remove Cloud.
  - (a) [§671] In General.
  - (b) [§672] Plaintiff's Title or Interest.
  - (c) [§673] Defendant's Instrument.
  - (d) [§674] Invalidity of Instrument.
- 8. Foreclosure of Mortgage.
  - (a) [§675] In General.
  - (b) [§676] Security.
  - (c) [§677] Defendant's Default.
  - (d) [§678] Interests of Defendants Other Than Mortgagor.
- 9. Partition.
  - (a) [§679] In General.
  - (b) [§680] Ownership of Described Property.
  - (c) [§681] Interests of Plaintiff and Defendant.
  - (d) [§682] Interests of Other Persons.
  - (e) [§683] Property and Interests Subject to Action.
  - (f) [§684] Additional Allegations.
- 10. Condemnation.
  - (a) [§685] In General.
  - (b) [§686] Parties.
  - (c) [§687] Right To Condemn.
  - (d) [§688] Map and Description of Land.
- 11. Inverse Condemnation (Damage to Property).
  - (a) [§689] In General.
  - (b) [§690] Impairment of Access.
  - (c) [§691] Injury From Improvement.
- H. Actions Involving Rights in Personal Property.
  - 1. Specific Recovery: Claim and Delivery.
    - (a) Nature of Action.
      - (1) [§692] In General.
      - (2) [§693] Common Law Forms.
    - (b) [§694] Tangible Property.

- (c) **Plaintiff's Right to Possession.**
  - (1) **[\$695] Plaintiff Owner.**
  - (2) **[\$696] Plaintiff With Special Property.**
  - (3) **[\$697] Right at Time of Action.**
- (d) **Defendant's Wrongful Possession.**
  - (1) **[\$698] In General.**
  - (2) **[\$699] Original Possession Rightful.**
  - (3) **[\$700] Possession at Time of Action.**
- (e) **[\$701] Value of Property.**
- 2. Conversion.**
  - (a) **[\$702] Nature of Action.**
  - (b) **[\$703] Plaintiff's Right to Possession.**
  - (c) **[\$704] Defendant's Conversion.**
  - (d) **[\$705] Damages.**
- 3. [\$706] Action To Quiet Title.**
- 4. Literary or Artistic Infringement.**
  - (a) **[\$707] Contract and Tort Actions.**
  - (b) **[\$708] Copy or View of Production.**
- I. Fraud and Deceit.**
  - 1. In General.**
    - (a) **[\$709] Actions Involving Fraud.**
    - (b) **[\$710] Elements of Action for Deceit.**
    - (c) **Specific Pleading Requirement.**
      - (1) **In General.**
        - (aa) **[\$711] Particularity in Pleading.**
        - (bb) **[\$712] Actions Against Corporations.**
        - (cc) **[\$713] Actions Against Municipalities.**
      - (2) **Distinctions and Exceptions.**
        - (aa) **[\$714] In General.**
        - (bb) **[\$715] Election of Alternative Remedy.**
        - (cc) **[\$716] Fraud in Advertising.**
    - (d) **[\$717] Pleading Constructive Fraud.**
  - 2. Representation.**
    - (a) **[\$718] In General.**
    - (b) **[\$719] Representation of Fact.**
    - (c) **[\$720] Actionable Representation of Opinion.**
    - (d) **[\$721] Representation of Intention: False Promise.**
    - (e) **[\$722] Active Concealment or Suppression.**
  - 3. Falsity.**
    - (a) **[\$723] Allegation Required.**
    - (b) **[\$724] Specific Pleading.**
    - (c) **[\$725] Sufficiency of General Allegation.**
  - 4. Knowledge of Falsity (Scienter).**
    - (a) **[\$726] Allegation Required.**
    - (b) **[\$727] Distinction: Negligent Misrepresentation.**
  - 5. Intent To Deceive.**

(a) [§728] **General Intent To Deceive or Defraud.**

(b) [§729] **Intent To Induce Particular Action.**

**6. Causation: Reliance and Resulting Damage.**

(a) [§730] **Actual Reliance: Causal Connection Between Belief and Action.**

(b) [§731] **Injury or Damage: Causal Connection Between Action and Injury.**

(1) [§732] **Cases Denying Recovery.**

(2) [§733] **Cases Allowing Recovery.**

**J. Miscellaneous Tort Actions.**

**1. Defamation: Libel and Slander.**

(a) **In General.**

(1) [§734] **Nature of Action.**

(2) [§735] **Elements of Cause of Action.**

(3) [§736] **Effect of Privilege.**

(4) [§737] **Defamation in Newspaper or Broadcast.**

(5) [§738] **Pleading of Falsity Is Not Required.**

(b) **Publication of False and Defamatory Matter.**

(1) [§739] **Pleading of Exact Words or Other Matter.**

(2) [§740] **Publication to Third Persons.**

(c) [§741] **Inducement: Extrinsic Circumstances Affecting Meaning.**

(d) **Innuendo: Defamatory Meaning of Ambiguous Words.**

(1) [§742] **Nature and Purpose.**

(2) [§743] **Ascription of Unwarranted Meaning Is Not Allowed.**

(e) [§744] **Colloquium: Publication Concerning Plaintiff.**

(f) [§745] **Malice.**

**2. Invasion of Privacy.**

(a) [§746] **Elements of Cause of Action.**

(b) [§747] **Complaint Sufficient.**

(c) [§748] **Complaint Insufficient.**

**3. [§749] Slander of Title.**

**4. Malicious Prosecution.**

(a) **In General.**

(1) [§750] **Nature of Action.**

(2) [§751] **Elements of Cause of Action.**

(3) [§752] **Effect of Privilege.**

(4) [§753] **Civil Action.**

(5) [§754] **Administrative Proceeding.**

(b) **Lack of Probable Cause.**

(1) [§755] **General or Specific Pleading.**

(2) [§756] **Negating Inference From Conviction.**

(c) **Favorable Termination.**

(1) [§757] **Necessity and Form of Allegations.**

(2) [§758] **Allegation of Final Termination Is Not Required.**

**5. Abuse of Process.**

(a) [§759] **Nature of Action.**

- (b) [§760] Elements of Cause of Action.
    - (c) [§761] Excessive Attachment.
    - (d) [§762] Filing at Improper Venue.
  - 6. False Imprisonment.**
    - (a) [§763] Nature of Action.
    - (b) [§764] Arrest Without Warrant.
    - (c) [§765] Arrest With Warrant.
  - 7. Assault and Battery.**
    - (a) [§766] Nature of Action.
    - (b) [§767] Illustrations.
  - 8. Intentional Infliction of Emotional Distress.**
    - (a) [§768] Nature of Action.
    - (b) [§769] Complaint Sufficient.
    - (c) [§770] Complaint Insufficient.
  - 9. Interference With Contract and Business.**
    - (a) **Inducing Breach of Contract.**
      - (1) [§771] Nature of Action.
      - (2) [§772] Elements of Cause of Action.
      - (3) [§773] Illustrations.
    - (b) **Interference With Prospective Business Interests.**
      - (1) [§774] Nature of Action.
      - (2) [§775] Complaint Sufficient.
      - (3) [§776] Complaint Insufficient.
    - (c) [§777] Trademark or Tradename Infringement.
    - (d) [§778] Misappropriation of Trade Secrets.
    - (e) **Unfair Competition.**
      - (1) [§779] Nature of Action.
      - (2) [§780] Antitrust Violations.
      - (3) [§781] False Advertising.
  - 10. [§782] Wrongful Discharge of Employee.**
  - 11. [§783] Breach of Corporate Fiduciary Duty.**
- K. Suits in Equity.**
- 1. Specific Performance.**
    - (a) **In General.**
      - (1) [§784] Nature of Action.
      - (2) [§785] Elements of Cause of Action.
      - (3) [§786] Recovery of Interim Rentals.
    - (b) **Specifically Enforceable Contract.**
      - (1) [§787] Certainty.
      - (2) **Avoiding Statute of Frauds.**
        - (aa) [§788] Estoppel: In General.
        - (bb) [§789] Estoppel: Contract To Make Will.
        - (cc) [§790] Part Performance of Land Contract.
    - (c) **Consideration Adequate, Contract Just and Reasonable.**
      - (1) [§791] Rule and Theory.
      - (2) [§792] Exception Where Consideration Is Accepted.



- (2) [§827] **Threatened Multiplicity of Actions.**
  - (d) **Illustrations: Particular Actions.**
    - (1) [§828] **Injuries to Land.**
    - (2) [§829] **Trademarks, Tradenames, and Trade Secrets.**
    - (3) [§830] **Unfair Competition.**
    - (4) [§831] **Labor Disputes.**
    - (5) [§832] **Other Actions.**
- 5. Action by Beneficiary of Trust.**
- (a) **Express Trust.**
    - (1) [§833] **In General.**
    - (2) [§834] **Trust Intent.**
    - (3) [§835] **Trust Property.**
    - (4) [§836] **Breach of Trust.**
  - (b) **Resulting Trust.**
    - (1) [§837] **Payment of Purchase Price.**
    - (2) [§838] **Partial Payment.**
    - (3) [§839] **Negating Presumption of Gift.**
  - (c) **Constructive Trust.**
    - (1) [§840] **In General.**
    - (2) [§841] **Breach by Fiduciary.**
    - (3) [§842] **Fraud Without Fiduciary Relationship.**
    - (4) [§843] **Promise To Buy Property for Plaintiff.**
    - (5) [§844] **Gift on Unenforceable Trust.**
  - (d) **Effect of Pleading Wrong Kind of Trust.**
    - (1) [§845] **Nature of Problem.**
    - (2) [§846] **Resulting and Express Trust Confused.**
    - (3) [§847] **Express and Constructive Trusts Confused.**
    - (4) [§848] **Resulting and Constructive Trusts Confused.**
- 6. Declaratory Relief.**
- (a) **In General.**
    - (1) [§849] **Statutory Basis.**
    - (2) [§850] **Nature of Action.**
    - (3) [§851] **Remedy Against Government or Officer.**
    - (4) [§852] **Declaration on Criminal Liability.**
    - (5) [§853] **Requisites of Pleading.**
    - (6) [§854] **Effect of Mislabeling.**
  - (b) **Other Proceedings Compared.**
    - (1) [§855] **Remedies for Breach With Declaratory Relief.**
    - (2) [§856] **Special Kind of Declaratory Relief.**
    - (3) [§857] **Expansion of Traditional Remedies.**
  - (c) **Subjects of Declaratory Relief.**
    - (1) [§858] **Contract.**
    - (2) [§859] **Statute, Ordinance, or Regulation.**
    - (3) [§860] **Other Subjects.**
  - (d) **Actual Present Controversy.**
    - (1) [§861] **In General.**

- (2) [§862] Specific Pleading.
- (3) [§863] Showing Sufficient.
- (4) [§864] Showing Insufficient.
- (e) [§865] Probable Future Controversy.
- (f) Reasons for Denial of Relief.
  - (1) Discretion of Trial Court.
    - (aa) [§866] In General.
    - (bb) [§867] Abuse of Discretion.
  - (2) Other Remedy Available.
    - (aa) [§868] In General.
    - (bb) [§869] Accrued Cause of Action for Breach.
    - (cc) [§870] Special Statutory Procedure Available.
    - (dd) [§871] Decisions Granting Relief.
  - (3) [§872] Conflict of Jurisdiction.
  - (4) [§873] Express Prohibition by Statute.
  - (5) [§874] Circumvention of Statutory Right.
  - (6) [§875] Failure To Exhaust Administrative Remedy.
  - (7) [§876] Other Reasons.
- (g) Plaintiff Not Entitled to Favorable Declaration.
  - (1) [§877] Declaratory Judgment May Be Rendered.
  - (2) [§878] Determination Without Declaration.
  - (3) [§879] Improper Summary Determination.
- 7. Action To Set Aside Judgment.
  - (a) [§880] In General.
  - (b) [§881] Meritorious Case.
- 8. [§882] Action To Set Aside Fraudulent Conveyance.
- L. Proceedings Involving Domestic Relations.
  - 1. Dissolution, Nullity, and Legal Separation.
    - (a) [§883] Former Law.
    - (b) [§884] Family Law Act Changes.
    - (c) Rules of Court.
      - (1) [§885] Nature and Scope.
      - (2) [§886] Applicability of General Law.
    - (d) Parties.
      - (1) [§887] In General.
      - (2) [§888] Discretionary Joinder.
      - (3) [§889] Mandatory Joinder.
    - (e) [§890] Relief Available.
    - (f) Pleadings.
      - (1) [§891] In General.
      - (2) [§892] Petition.
      - (3) [§893] Other Papers.
    - (g) Other Proceedings.
      - (1) [§894] Process and Appearance.
      - (2) [§895] Motions.
      - (3) [§896] Default.

**(4) [§897] Judgment and Request for Judgment.**

**2. [§898] Proceedings Involving Children.**

**M. Miscellaneous Allegations.**

**1. Capacity To Sue or Be Sued.**

**(a) [§899] In General.**

**(b) Principal Situations.**

**(1) [§900] Private Corporation.**

**(2) [§901] Partnership or Other Unincorporated Association.**

**(3) [§902] Personal Representative.**

**(4) [§903] Guardian, Conservator, or Guardian Ad Litem.**

**(5) [§904] Public Officer.**

**(6) [§905] Public Entity.**

**(7) [§906] Licensee.**

**(c) [§907] Distinction: Showing of Capacity.**

**2. Right To Sue.**

**(a) [§908] In General.**

**(b) [§909] Assignee or Subrogee.**

**(c) [§910] Receiver or Trustee in Bankruptcy.**

**(d) [§911] Class Action.**

**(e) [§912] Shareholder's Action.**

**3. [§913] Nonpayment.**

**4. Malice.**

**(a) [§914] In General.**

**(b) [§915] Libel.**

**(c) [§916] Malicious Prosecution.**

**(d) Punitive or Exemplary Damages.**

**(1) [§917] General Allegation Is Sufficient.**

**(2) [§918] Inferential Pleading.**

**5. Tort Liability for Acts of Others.**

**(a) Agency or Employment: Respondeat Superior.**

**(1) [§919] Necessity of Pleading.**

**(2) [§920] Form of Pleading.**

**(b) Conspiracy: Liability of Joint Tortfeasors.**

**(1) [§921] In General.**

**(2) [§922] Sufficient Pleading.**

**(3) [§923] Insufficient Pleading.**

**(c) [§924] Liability of Parent.**

**6. Indemnity.**

**(a) [§925] Nature of Cause of Action.**

**(b) [§926] Illustrations.**

**7. [§927] Disregard of Corporate Entity.**

**8. [§928] Action Under Federal Civil Rights Act.**

**9. Anticipating Defense of Limitations.**

**(a) [§929] Delayed Accrual: Fraud or Mistake.**

**(b) [§930] Delayed Accrual: Other Actions.**

**(c) [§931] Suspension or Tolling.**

- (d) [§932] Estoppel.
- 10. General and Special Damages.
  - (a) In General.
    - (1) [§933] General Damages Need Not Be Pleaded.
    - (2) [§934] Special Damages Must Be Pleaded.
    - (3) [§935] Pleading Punitive or Exemplary Damages.
  - (b) Personal Injury.
    - (1) [§936] General Damages.
    - (2) [§937] Special Damages.
  - (c) [§938] Wrongful Death.
  - (d) [§939] Injury to Real Property.
  - (e) [§940] Injury to Personal Property.
  - (f) [§941] Fraud.
  - (g) [§942] Defamation.
  - (h) Breach of Contract.
    - (1) [§943] General Damages.
    - (2) [§944] Special Damages.
    - (3) [§945] Liquidated Damages.

## **X. THE DEMURRER**

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

- 1. Nature and Purpose.
  - (a) [§946] Raising Issue of Law.
  - (b) Raising Defects on Face of Pleading.
    - (1) [§947] General Rule and Applications.
    - (2) [§948] Exceptions and Distinctions.
  - (c) [§949] Filing With Answer or Motion To Strike.
- 2. [§950] Admissions for Demurrer.
- 3. General and Special Demurrers.
  - (a) [§951] In General.
  - (b) [§952] Nature of General Demurrer.
  - (c) [§953] Nature of Special Demurrer.
- 4. Demurrer to All or Part of Complaint.
  - (a) [§954] Demurrer to Entire Complaint.
  - (b) Demurrer to Individual Count.
    - (1) [§955] Single Cause of Action.
    - (2) [§956] Separate Causes of Action.
  - (c) [§957] No Demurrer to Part of Cause or to Prayer.
- 5. Waiver by Failure To Demur.
  - (a) [§958] Defects of Substance Are Not Waived.
  - (b) [§959] Defects of Form Raised by General Demurrer.
  - (c) [§960] Defects of Form Raised by Special Demurrer.

### **B. General Demurrer.**

- 1. [§961] Form.
- 2. Special Defenses.
  - (a) [§962] Statute of Limitations.
  - (b) [§963] Laches.

- (c) [§964] Not Real Party in Interest.
- (d) [§965] Res Judicata.
- (e) [§966] Defenses in Contract Actions.
- (f) [§967] Privilege in Tort Actions.

**C. Special Demurrer.**

- 1. [§968] Form.
- 2. Particular Grounds.
  - (a) [§969] No Jurisdiction of Subject Matter.
  - (b) [§970] Lack of Capacity To Sue.
  - (c) [§971] Other Action Pending.
  - (d) [§972] Nonjoinder of Parties.
  - (e) [§973] Misjoinder of Parties.
  - (f) Uncertainty.
    - (1) [§974] In General.
    - (2) [§975] When Demurrer Will Be Sustained.
    - (3) [§976] When Demurrer Will Be Overruled.
  - (g) [§977] Failure To Disclose Oral Contract.
  - (h) [§978] No Certificate Filed.

**D. Procedure.**

- 1. [§979] Service and Filing.
- 2. [§980] Supporting Memorandum.
- 3. [§981] Hearing.
- 4. Order: In General.
  - (a) [§982] Overruling or Sustaining.
  - (b) [§983] Notification and Service of Notice.
  - (c) [§984] Reconsideration.
- 5. [§985] Overruling and Right To Answer.
- 6. [§986] Striking and Right To Answer.
- 7. Sustaining.
  - (a) [§987] Specification of Grounds.
  - (b) Sustaining With Leave To Amend.
    - (1) [§988] Form and Scope of Amendment.
    - (2) [§989] Waiver of Error by Amendment.
    - (3) [§990] Dismissal on Failure To Amend.
  - (c) Sustaining Without Leave To Amend.
    - (1) When Denial of Leave Is Proper.
      - (aa) [§991] No Good Cause of Action.
      - (bb) [§992] Unsuccessful Attempts To State Cause.
      - (cc) [§993] Unsuccessful Attempts To Correct Defects of Form.
    - (2) When Denial of Leave Is Abuse of Discretion.
      - (aa) [§994] Defect of Form.
      - (bb) [§995] Curable Defect of Substance.
      - (cc) [§996] One Count Good.
    - (3) Judgment of Dismissal.
      - (aa) [§997] Necessity of Judgment.



- (6) [§1031] Miscellaneous Cases.
  - (d) [§1032] Parties.
  - (e) [§1033] Procedure.
  - (f) Burden of Proof.
    - (1) [§1034] In General.
    - (2) [§1035] Affidavit on Information and Belief.
    - (3) [§1036] Intent To Chill Is Not Required.
    - (4) [§1037] Plaintiff's Inability To Meet Burden as Matter of Law.
    - (5) [§1038] Illustrations.
  - (g) [§1039] Appeal.
  - (h) Fees and Costs.
    - (1) [§1040] Right of Prevailing Defendant.
    - (2) [§1041] Right of Prevailing Plaintiff.
    - (3) [§1042] After Dismissal.
- 4. Motion To Strike SLAPPback Cause of Action.
  - (a) [§1043] In General.
  - (b) [§1044] Exceptions.

## **XI. THE ANSWER**

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

- 1. [§1045] Nature and Purpose of Answer.
- 2. [§1046] Right To Answer and Limitations.
- 3. Content and Form.
  - (a) [§1047] In General.
  - (b) [§1048] Joint or Separate Answer.
  - (c) [§1049] Response in Marital Proceeding.
- 4. Admissions by Improper Denial or Failure to Deny.
  - (a) [§1050] General Rule.
  - (b) Exceptions.
    - (1) [§1051] Immaterial or Improper Allegations.
    - (2) [§1052] Other Exceptions and Distinctions.
  - (c) Illustrations.
    - (1) [§1053] Failure To Deny.
    - (2) [§1054] Defective Denial.
    - (3) [§1055] Affirmative Admission.
- 5. [§1056] Aider of Defects in Complaint.
- 6. Striking Out Sham or Irrelevant Matter.
  - (a) [§1057] Nature of Power.
  - (b) [§1058] Illustrations.

### **B. Denials.**

- 1. General Denial.
  - (a) [§1059] Where Complaint Is Not Verified.
  - (b) [§1060] Where Demand or Value Is Small.
- 2. Specific Denials.
  - (a) [§1061] Where Complaint Is Verified.
  - (b) [§1062] Denial by Affirmative Allegation.

- 3. **[§1063] Specific Denial by Parts and Qualified General Denial.**
  - 4. **Information and Belief or Lack of Either.**
    - (a) **Nature and Form of Allegations.**
      - (1) **[§1064] Information and Belief.**
      - (2) **[§1065] Lack of Information or Belief.**
    - (b) **When Denial on Information and Belief Is Improper.**
      - (1) **[§1066] Defendant's Actual or Presumed Knowledge.**
      - (2) **[§1067] Matters of Public Record.**
  - 5. **Negative Pregnant.**
    - (a) **[§1068] General Rule.**
    - (b) **[§1069] Illustrations.**
    - (c) **[§1070] Analysis and Criticism.**
  - 6. **[§1071] Conjunctive Denial.**
- C. Issues Raised by Denial.**
- 1. **Defenses in Contract Actions.**
    - (a) **[§1072] Statute of Frauds.**
    - (b) **[§1073] Purported Contract Is Void.**
    - (c) **[§1074] Payment.**
    - (d) **[§1075] Defenses to Common Counts.**
    - (e) **[§1076] Mitigation Where Other Income Is Earned.**
  - 2. **Defenses in Tort Actions.**
    - (a) **[§1077] Actions Based on Negligence.**
    - (b) **[§1078] Actions Based on Intentional Torts.**
  - 3. **Defenses in Property Actions.**
    - (a) **[§1079] Ejectment and Quiet Title.**
    - (b) **[§1080] Specific Recovery of Personal Property.**
- D. New Matter Constituting Defense.**
- 1. **Nature of New Matter.**
    - (a) **[§1081] Distinguished From Denial.**
    - (b) **[§1082] Method of Pleading.**
    - (c) **[§1083] New Matter Is Deemed Controverted.**
  - 2. **Pleading Several Defenses.**
    - (a) **[§1084] In General.**
    - (b) **Inconsistent Defenses.**
      - (1) **[§1085] Right To Plead.**
      - (2) **[§1086] Illustrations.**
      - (3) **[§1087] Limitations on Right.**
- E. Issues Raised by New Matter.**
- 1. **Defenses in Contract Actions.**
    - (a) **[§1088] In General.**
    - (b) **[§1089] Lack of Consideration.**
    - (c) **[§1090] Mistake, Fraud, Duress, or Undue Influence.**
    - (d) **[§1091] Minority or Incompetency.**
    - (e) **[§1092] Plaintiff's Default or Defendant's Excuse.**
    - (f) **Discharge of Liability.**
      - (1) **[§1093] Rescission or Release.**

- (2) [§1094] Novation or Account Stated.
    - (3) [§1095] Accord and Satisfaction.
    - (4) [§1096] Other Kinds of Discharge.
  - (g) **Illegality.**
    - (1) [§1097] Pleading Is Not Essential.
    - (2) [§1098] When Illegality Should Be Pleaded.
    - (3) [§1099] Method of Pleading.
  - (h) [§1100] Mitigation of Damages.
- 2. Defenses in Tort Actions.**
- (a) [§1101] Justification or Privilege.
  - (b) [§1102] Release.
  - (c) [§1103] Comparative Negligence.
  - (d) [§1104] Assumption of Risk.
  - (e) [§1105] Workers' Compensation Exclusive Remedy.
  - (f) [§1106] Mitigation of Damages.
  - (g) [§1107] Public Entity and Officer Defenses.
- 3. Defenses in Property Actions.**
- (a) **In General.**
    - (1) [§1108] Right To Plead.
    - (2) [§1109] Form.
  - (b) **Ejectment and Quiet Title.**
    - (1) [§1110] Purchaser's Right (Specific Performance).
    - (2) [§1111] Fraud (Rescission or Affirmance).
  - (c) **Unlawful Detainer.**
    - (1) [§1112] In General.
    - (2) [§1113] Particular Defenses.
    - (3) [§1114] Action by Purchaser.
- 4. [§1115] Answer in Condemnation Action.**
- 5. [§1116] Answer in Partition Action.**
- 6. Miscellaneous Defenses.**
- (a) **Statute of Limitations.**
    - (1) [§1117] Requirement of Special Pleading.
    - (2) [§1118] Exceptions.
    - (3) **Form.**
      - (aa) [§1119] Pleading Facts.
      - (bb) [§1120] Pleading Section Where No Subdivision.
      - (cc) [§1121] Pleading Subdivision.
  - (b) **Estoppel and Waiver.**
    - (1) **Requirement of Special Pleading.**
      - (aa) [§1122] Estoppel.
      - (bb) [§1123] Waiver.
    - (2) [§1124] Exception: Defense Not Known.
  - (c) [§1125] Laches.
  - (d) [§1126] Unclean Hands.
  - (e) **Res Judicata.**
    - (1) [§1127] Requirement of Special Pleading.

**(2) [§1128] Exceptions.**

**F. Pleas in Abatement.**

**1. In General.**

**(a) [§1129] Nature of Plea.**

**(b) Plea as a "Disfavored" Defense.**

**(1) [§1130] Strict Construction.**

**(2) [§1131] Waiver by Delay in Raising Objection.**

**(3) [§1132] Cure of Defect.**

**2. Lack of Capacity To Sue.**

**(a) [§1133] In General.**

**(b) [§1134] Corporation.**

**(c) [§1135] Business With Fictitious Name.**

**3. Defect of Parties.**

**(a) [§1136] Nonjoinder.**

**(b) [§1137] Misjoinder.**

**4. Other Action Pending.**

**(a) [§1138] General Rule and Theory.**

**(b) When Plea Is Available.**

**(1) Pendency of First Action.**

**(aa) [§1139] What Constitutes Pendency.**

**(bb) [§1140] When Action Must Be Pending.**

**(cc) [§1141] Distinction: Action Pending in Another State.**

**(2) What Actions Will Be Abated.**

**(aa) [§1142] Same Cause of Action and Parties.**

**(bb) [§1143] Special Rule in Condemnation.**

**(cc) [§1144] Special Rules Under Probate Code.**

**(3) What Actions Will Not Be Abated.**

**(aa) [§1145] Different Causes of Action.**

**(bb) [§1146] Parties in Different Relationship.**

**(cc) [§1147] Different Remedies Sought.**

**(c) [§1148] Manner of Pleading.**

**(d) Nature and Effect of Ruling.**

**(1) [§1149] Plea Sustained.**

**(2) [§1150] Plea Rejected.**

**5. Action Prematurely Brought.**

**(a) [§1151] Earlier Theory of Defense of Substance.**

**(b) [§1152] Present Theory of Plea in Abatement.**

**(c) [§1153] Illustrations.**

**XII. THE CROSS-COMPLAINT**

**A. In General.**

**1. [§1154] Origin and Nature.**

**2. Former California Law.**

**(a) [§1155] Nature of Former Counterclaim.**

**(b) [§1156] Nature of Former Restricted Cross-Complaint.**

**(c) [§1157] Effect of Improper Designation.**

**3. Statutory Reforms of 1971.**

- (a) [§1158] Abolition of Counterclaim.
- (b) [§1159] Revision of Cross-Complaint Statute.
- 4. No Cross-Complaint in Summary Proceeding.
  - (a) Unlawful Detainer.
    - (1) [§1160] Pleading Is Not Permitted.
    - (2) [§1161] Exceptions and Distinctions.
  - (b) [§1162] Summary Restitution.
- 5. [§1163] Defenses Distinguished.
- 6. Compensation of Cross-Demands Without Action.
  - (a) [§1164] Former Law.
  - (b) [§1165] Revised Law of Set-off.
  - (c) [§1166] When Set-off Is Improper.

**B. Revised Cross-Complaint Statute.**

- 1. [§1167] Nature and Scope.
- 2. [§1168] Time To File.
- 3. Unrestricted Cross-Complaint Against Plaintiff.
  - (a) [§1169] In General.
  - (b) [§1170] Exceptions.
- 3A. [§1170A] (New) Unrestricted Cross-Complaint Against Codefendant.
- 4. Restricted Cross-Complaint Against New Parties.
  - (a) [§1171] Related Causes of Action.
  - (b) [§1172] Joinder of Cross-Defendants.
- 5. [§1173] New Party Cross-Complainant.
- 6. [§1174] Joinder of Causes of Action.
- 7. [§1175] Cross-Complaint to Cross-Complaint.
- 8. [§1176] Special Answer by Third-Party Defendant.
- 9. Compulsory Cross-Complaint.
  - (a) [§1177] Failure To Plead as Bar.
  - (b) Exceptions.
    - (1) [§1178] Court Without Jurisdiction.
    - (2) [§1179] Other Exceptions.
  - (c) [§1180] Relief From Failure To Plead.

**XIII. OTHER PLEADINGS**

**A. Demurrer to Answer.**

- 1. [§1181] Nature of Pleading.
- 2. [§1182] Grounds.
- 3. [§1183] Procedure.

**B. [§1184] Answer to Cross-Complaint.**

**C. [§1185] Demurrer to Cross-Complaint.**

**XIV. AMENDMENT OF PLEADINGS**

**A. In General.**

- 1. [§1186] Right To Amend Pleadings.
- 2. Effect of Amended Complaint.
  - (a) [§1187] Original Is Superseded.
  - (b) Remaining Effect of Original.
    - (1) [§1188] Statute of Limitations and Dismissal.

- (2) [§1189] Sufficiency of Original Answer.
  - (3) Omitted Matter Destructive.
    - (aa) [§1190] General Rule.
    - (bb) [§1191] Illustrations.
- B. Amendment Without Leave of Court.**
  - 1. [§1192] In General.
  - 2. [§1193] Amendment of Answer.
- C. Amendment With Permission of Court.**
  - 1. Discretion To Allow Amendment.
    - (a) [§1194] Policy of Liberal Allowance.
    - (b) [§1195] Imposition of Conditions.
    - (c) Review of Order Denying Leave.
      - (1) [§1196] Appeal.
      - (2) [§1197] Mandamus.
  - 2. Reasons for Denial.
    - (a) Subject Matter of Amendment.
      - (1) [§1198] Insufficient Amendment.
      - (2) [§1199] Disfavored Plea in Answer.
    - (b) Conduct of Party.
      - (1) [§1200] Failure To Submit Amendment.
      - (2) Lack of Diligence or Prejudicial Delay.
        - (aa) [§1201] Inexcusable Delay.
        - (bb) [§1202] Excusable Delay.
      - (3) [§1203] Inequitable Conduct in Negotiations.
  - 3. Stage of Proceedings.
    - (a) During Trial.
      - (1) [§1204] Amendment Permitted.
      - (2) [§1205] Amendment Denied.
    - (b) [§1206] After Trial but Before Judgment.
    - (c) [§1207] After Judgment.
    - (d) [§1208] After Reversal on Appeal.
  - 4. Amendment To Conform to Proof.
    - (a) [§1209] Doctrine of Variance.
    - (b) [§1210] Immaterial Variance.
    - (c) Material Variance Cured by Amendment.
      - (1) [§1211] Liberal Allowance of Amendment.
      - (2) [§1212] Procedure.
      - (3) [§1213] Court's Duty To Order Amendment.
    - (d) [§1214] Substantial Variance Cured by Trial.
    - (e) [§1215] Noncurable Failure of Proof.
    - (f) [§1216] Prejudice to Adverse Party.
  - 5. Amendment Changing Nature of Action.
    - (a) [§1217] In General.
    - (b) [§1218] Improvement of Defective Statement.
    - (c) Change in Parties or Relationship.
      - (1) Correction of Name.

- (aa) [§1219] In General.
  - (bb) [§1220] Distinction: Wrong Person Named as Plaintiff.
- (2) Correction of Capacity.
  - (aa) [§1221] Plaintiff.
  - (bb) [§1222] Defendant.
- (3) [§1223] Substitution of Parties.
- (4) Addition of Parties Plaintiff.
  - (aa) [§1224] In General.
  - (bb) [§1225] After Denial of Class Certification.
- (5) Addition of Parties Defendant.
  - (aa) [§1226] In General.
  - (bb) [§1227] Corporation and Individuals.
  - (cc) [§1228] Substitution for Fictitious Defendants.
- (d) [§1229] Change in Remedy.
- (e) Change in Legal Theory.
  - (1) [§1230] In General.
  - (2) [§1231] Contract Actions.
  - (3) [§1232] Property Actions.
  - (4) [§1233] Tort Actions.
- (f) Change in Cause of Action.
  - (1) [§1234] In General.
  - (2) [§1235] Modern View.
  - (3) Tort Actions.
    - (aa) [§1236] Earlier Cases.
    - (bb) [§1237] Cases Applying Modern View.
    - (cc) [§1238] Distinction: Different Accident or Instrumentality.
    - (dd) [§1239] Distinction: Subsequently Arising Cause of Action.

#### **D. Procedure.**

- 1. [§1240] Application and Notice.
- 2. [§1241] Amendment or Amended Pleading.
- 3. Service.
  - (a) [§1242] In General.
  - (b) [§1243] Changes in Form.
  - (c) [§1244] Changes in Substance.
  - (d) [§1245] Where Defendant Does Not Appear.

### **XV. SUPPLEMENTAL PLEADINGS**

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

- 1. [§1246] Nature of Supplemental Pleadings.
- 2. [§1247] Procedure.

#### **B. Supplemental Complaint.**

- 1. [§1248] In General.
- 2. [§1249] Illustrations.
- 3. [§1250] Premature Action.

**4. Change in Cause of Action.**

(a) [§1251] General Rule.

(b) [§1252] Distinctions and Qualifications.

(c) [§1253] Relation Back.

**C. [§1254] Supplemental Answer.**