This outline was created for the February 2008 California bar exam. The law changes over time, so use with caution. If you would like an **updated** and editable version of this topic outline, go to http://www.barexammind.com/california-bar-exam-outlines/.

Civil Procedure Outline: Federal First, then California Distinctions

I. Personal Jurisidiction
   a. Basic Idea
      i. In which state(s) can P sue D?
      ii. Use two-step analysis:
         1. satisfy the statute? (ie, long-arm statute)
         2. satisfy the const (ie, due Process)
      iii. Same test in state and Fed Court
   b. Statutory Analysis
      i. California state courts have jurisdiction in the following four situations:
         1. D is present in forum state and is personally served with process
         2. D is domiciled in forum state
         3. D consents to jurisdiction
         4. Long-Arm statute applies
      ii. Look to words of long-arm statute
         1. California may exercise jurisdiction over any person or property over which the state can constitutionally exercise jurisdiction.
            a. Therefore, perform const analysis
         2. Also need NOTICE. See Service of Process
            a. This is a DP requirement that a reasonable method be used to notify D of the pending lawsuit so that he may have an opportunity to appear and be heard.
   c. Consitutional analysis (*International shoe*)[1]
      i. **WORDS:** "does D have such minimum contacts with the forum so that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice?"
      ii. Easy cases:
         1. D is domiciled in forum
         2. D is served personally in forum
      iii. Hard cases; look at two main factors: contact and fairness
         1. **contact**: must be some tie between D and forum

[1] Mnemoic: My Parents Frequently Forgot to Read Children's Stories.

Minimum Contacts	Fair Play and Substantial Justice
-purposeful availment	-relatedness of the contact
-foreseeability	-convenience
	-state's interest

a. must result from D's **purposeful availment** (ie, an affirmative act) of privilege of conducting activities in the forum state
b. must be **foreseeable** that D would be sued in the forum and "haled into court"

2. **fairness** (ie, fair play and substantial justice)
    a. **relatedness** between contact and the claim, esp. where *systematic and continuous*
        i. NB: if small contact, was it of such quality as to make up for the smallness?
        ii. NB: relatedness NOT needed if D has *substantial ties* with the forum
    b. **Convenience**
        i. D must show a *severe disadvantage* in litigation in the forum state
    c. Look to **state's interest**
        i. Ie, provide forum for citizens

II. Subject Matter Jurisdiction (SMJ)
    a. Basic Idea: we know what state we are in, but now we need to figure out what court (state or federal) we will be in
    b. DO **SMJ** ANALYSIS FOR EACH AND EVERY CLAIM IN AN ESSAY QUESTIONS!!!!
        i. Two types of SMJ:
            1. diversity
            2. federal question
    c. **Diversity of Citizenship**
        i. Requirements
            1. citizens of different states (or foreign citizen)
            2. amount in controversy *exceeds* $75,000
        ii. **citizenship**
            1. complete diversity required *at time action is filed*
            2. citizenship determined by:
                a. <u>humans</u>: state of domicile
                i. domicle is:
                1. presence in the state; and
                2. subjective intent to make permanent home
                b. <u>corporations</u>: located in two states:
                i. state of incorporation; and
                ii. state where principal place of business (PPB)
                1. PPB Test:
                a. Location of HQ ("nerve-center"); or
                b. More production or service activity than anywhere else
                c. <u>Unincoporated association</u> (partnerships, unions, LLC)
                i. Determine citizenship of ALL members
                d. <u>Decedents, minors, and incompetents</u>

i. Look to *their* citizenship, NOT citizenship of their *representative*
ii. EXCEPT in class action (below)

iii. **Amount in controversy**
1. must <u>exceed</u> $75,000[2]
2. whatever P pleads is fine, UNLESS it is *clear to a legal certainty* that P can't recover that much
3. <u>aggregation</u>
a. yes, if claims of 1 P vs. **1 D**
b. no, if claims of 2 Ps vs. 1 D
c. **joint tortfeasors** if sued by 1 P
4. *Equitable Relief* (rare)
a. Test whether injunction is either
i. Worth $75k+ to P or
ii. Will cost D $75k+

iv. Can't get diversity via *collusion*

d. **Federal Question Jurisdiction**
i. Claim "arises under" federal law, Constitution or treaties
1. look to *well-pleaded complaint* rule to determine
2. ASK: <u>is P enforcing a federal right?</u>
a. Yes = FQ
b. NO = No FQ

e. **Supplemental Jurisdiction**
i. Issue: fed court has SMJ over at least one claim; how can we get the non-SMJ claims in?
ii. TEST:
1. is there a **common nucleus of operative fact**?
a. ie, do the claims arise from the same transaction or occurrence (T/O)?
2. and P would ordinarily be expected to try them all in one judicial proceeding

iii. Limitation
1. P cannot use supplemental jurisdiction to overcome a lack of diversity in a *diversity of citizenship* case for a claim made by P
2. BUT, P can overcome lack of diversity in a FQ claim
3. AND, P can overcome failure to meet amount in controversy req in a diversity case against a second D
4. AND, will overcome lack of diversity OR amount in cont. by anyone other than initial P

f. **Removal**
i. Only Ds may remove from state to federal court if
1. the case *could have been brought* in federal court
2. if multiple Ds, ALL must agree to remove

ii. removed to federal district embracing the state court

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[2] can include: recoverable atty fees; interest that is part of claim itself (not payable due to delay); and punitive damage claimed allowed under substantive state law

iii. Remove 30 days after **service** of the *first removable document*
    1. and always removed within 1 year of initial filing
iv. EXCEPTION
    1. if D sued in D's home state under *diversity of citizenship case* ONLY, D can't remove
    2. if that D drops out, then remaining D could then remove

g. ***Erie* doctrine**
    i. In diversity cases, federal court must apply *substantive* law of state in which it sits, but applies its own *procedural* law
        1. Easy issues:
            a. elements of claim or defense
            b. sol
            c. rules for tolling of sol
            d. choice of law
        2. Difficult issue analysis:
            a. Is there a preempting federal law to be applied? If yes, apply it b/c of Supremacy Clause
            b. If no, judge balances interests, **outcome determinitive** effect vs need to prevent forum shopping to determine applicable law
    ii. California Conflict of Laws Analysis
        1. Tort Claims – govt interest approach
            a. Are the two states' laws identical?
            b. If NO, then determine whether each state has interest in application of its law.
            c. If each state has an interest, then true conflict exists and the court analyses the impairment to each state's interest if the law of the other state were applied.
        2. Contract Claims – choice-of-law clauses
            a. Court determines if clause is enforceable by determining if the chosen state's law has a substantial relationship to parties, their transaction, or another reasonable basis exists to apply it
            b. If enforceable, does chosen state's law conflict with fundamental California policy?
            c. If conflict, does CA have a materially greater interest than chosen state in the determination of the specific issue?

h. SMJ in California Courts
    i. Types of cases
        1. Limited Civil cases
            a. amount in controversy is $25,000 or less
            b. restrictions on jurisdiction over equitable claims, dec actions, and requests for ancillary relief
        2. Unlimited Civil cases
            a. amount is controversy exceeds $25,000
            b. greater range of equitable and dec actions available

3. small claims
    a. $7,500 or less for individuals
    b. $5,000 or less for other litigants

ii. Reclassification of an action
1. due to mistaken classification or subsequent pleadings change classification
2. a party or court on its own motion may request reclassification
3. from unlimited to limited
    a. court must determine that a recovery of greater than $25,000 is "virtually unobtainable"
4. from limited to unlimited
    a. court determines that there is a "possibility" that recovery with exceed $25,000
5. cross-complaint in limited civil action
    a. if exceeds $25,000 or asks for special equitable or dec relief, action is reclassified as unlimited civil case.

III. Venue

a. Basic Idea: SMJ says to go to fed court, but which fed court in the state?
b. Local actions (on land)
    i. Filed in place where land located
c. If not local action then, file in **any district where…**
    i. ***All* defendants reside***
        1. *special rule: if Ds reside in same state but different districts, then can sue in either of the districts
    ii. **A substantial part of the claim arose**
    iii. <u>If neither of these are satisfied</u>, then:
        1. diversity only cases: where any D is **subject to personal jurisdiction**; or
        2. not solely diversity cases: a district where any D may be found
d. Where do Ds *reside* for venue purposes?
    i. Humans: at place of domicile (residence plus intent to live permanently)
    ii. Corporation: in all districts where it is subject to personal jurisdictions (eg, Ford Motor resides everywhere)
e. **Transfer** of venue
    i. Can only transfer to district where *could have filed*
        1. ie, place of proper venue; and
        2. personal juris over D
            a. NB: these must be true *without waiver* by D
    ii. If original venue was proper, court has discretion to transfer if:
        1. convenience of parties/witnesses and interest of justice
    iii. What law applies?
        1. if original venue proper, law of transferor state
        2. if original venue improper, law of transferee state
f. Forum Non Conveniens
    i. Case should be in a foreign country; dismissed
g. Venue rule for California Courts

i. Transitory actions (ie, actions for damages)
    1. Venue proper in the county in which any D resides at commencement of the action
        a. If no D is CA, then venue proper in any county
    2. Contract actions also allow
        a. Venue proper in county in which
            i. Obligation to be performed; or
            ii. Contract was entered
    3. Wrongful death and Tort actions also allow
        a. Venue in county in which injury occurred
ii. Corporations, Associations, Partnerships
    1. Venue proper in county in which
        a. Contract is made or to be performed;
        b. Obligation or liability arises;
        c. The breach occurs; or
        d. The corporation has its principal place of business
iii. Local actions
    1. proper in county in which the land, or some part of it, is located
iv. TRANSFER of venue permitted where
    1. impartial trial difficult;
    2. convenience of witness or ends of justice would be served; or
    3. no judge of the court is qualified to act
v. Forum and Venue selection clauses
    1. forum selection clauses are enforceable
    2. venue selection clauses are not

IV. Service of Process

a. Action commences with filing of complaint with the court.

b. Basic idea: P needs to deliver within 120 days of filing to D a
    i. Summons (notice of suit and time to respond); and
    ii. Complaint

c. Who can serve?
    i. Person who is at least 18 years old and not a party to the action

d. Mechanics of Service
    i. Personal service: valid anywhere in forum state
    ii. Substituted service:
        1. left at D's usual abode
        2. with someone of suitable age & discretion *who resides there*
    iii. Service on D's agent
    iv. Method provided by state law
    v. Waiver by mail
        1. D must return within 30 days; otherwise must
        2. serve by personal or substituted service

e. Immunity
    i. If in forum state only to testify in *civil matter*, then D is immune
        1. CA does NOT recognize immunity from service

f. California Service

i. Types of service
    1. personal service: deliver S&C directly to D
    2. substituted service: deliver S&C to D's usual place of abode and leave with someone 18 or older, who is informed of the contents. Must also *mail* copy to D with statement on details of service
        a. complete on 10th day after mailing
    3. Office service: leave S&C at business office of D during normal hours with a *person in charge*, and who is informed of the contents, and mail copies to usual abode or place of business
        a. Complete on 10th day after mailing
    4. Mail service: by first class mail, with 2 copies of notice an acknowledgment and a post-paid return envelop
        a. Failure to acknowledge service within 20 days makes D liable for costs incurred to perfect service
    5. Service by Publication:

g. Parties served outside forum state
    i. Federal
        1. acquires PJ over parties served outside the state
            a. under the state's statues and rules for extraterritorial service;
            b. if 3d party Ds or required to be joined for just adjudication, if served within 100 miles from the place where the action is pending, and
            c. when out-of-state service is permitted by federal statute (eg, interpleader)
        2. FQ case
            a. Court has PJ over a D not subject to state's PJ so long as D has minimum contacts with the US
    ii. California
        1. service by prepaid first-class mail, requiring a return receipt
        2. so long as a proper statutory and consitutional basis for PJ exist

V. Pleadings
    a. Federal court requires **notice pleading**
    b. Rule 11
        i. All pleadings must be signed by atty or pro se
        ii. Signature *certifies that*, after reasonable inquiry,
            1. the paper is not for improper purpose,
            2. legal contentions are warranted by law, and
            3. factual contentions or denial of factual contentions have or are likely to have evidentiary support
                a. NB: certification is continuing throughout action
            4. denials of factual contentions are warranted on the evidence or where specified, based on lack of information or belief
        iii. Sanctions possible if violation
            1. sanction are for deterrence
            2. serve opposing party first; 21 day safe harbor

3. NB: court can raise sanctions sua sponte

iv. California's Sanction Statute

1. similar to Rule 11, but with notable distinctions:
    a. court assesses whether party seeking sanctions has exercised due diligence
    b. 21-day safe harbor applies to motion brought by opposing party AND by court
    c. motion for sanctions brought for an improper purpose is itself subject to a motion for sanctions

c. **Complaint**

i. Commences the action

ii. Requirements:

1. statement of SMJ
2. Notice pleading: short and plain statement of claim, showing entitled to relief
3. demand for judgment
4. *Special matters* requiring more specificity:
    a. Fraud
    b. Mistake
    c. Special damages

iii. California: **Fact pleading**

1. Statement of facts constituting the cause of action, stated in ordinary and concise language; and
2. Demand for judgment for relief to which pleader claims to be entitled
    a. including amount of damages if any sought, except in actions for actual or punitive damages

d. **D's Response:** Rule 12 motion OR Answer

i. **Rule 12 Motion**

1. issues of form:
    a. make more definite
    b. mtn to strike immaterial pleadings
2. 12(b) defenses
    a. lack of SMJ
    b. lack of PJ (waivable)
    c. improper venue (waivable)
    d. insufficiency of process (waivable)
    e. insufficient service of process (waivable)
    f. failure to state a claim
    g. failure to join indispensable party
3. If waivable, MUST be placed in first responsive pleading or they are lost

ii. California: General or Special Demurrer

1. General Demurrer -- grounds
    a. Pleading fails to state facts sufficient to constitute a cause of action; or

b. Court lacks SMJ

2. Special Demurrer – grounds
    a. Lack of legal capacity
    b. Existence of another pending action
    c. Defect or misjoinder of parties
    d. Uncertain pleading[3]
    e. Failure to plead whether a contract is oral or written
    f. Failure to file certain required certificates
3. Court's role
    a. Considers only material allegations pleaded and facts subject to judicial notice

iii. California: Motion to Quash Service

1. D must raise question of court's PJ at earliest opportunity
    a. Unlike FRCP where this can be pleaded as an affirmative defense in an answer

iv. **Answer**

1. serve within 20 days of receiving process (Cal: 30 days) OR
    a. 10 days after court ruling on motion (Cal: 10 days from service of notice of court's ruling)
    b. 60 days if D waves formal service
2. Contents:
    a. Admit
    b. Deny
        i. NB: failure to deny can constitute an admission
    c. State you lack sufficient information to admit or deny
    d. Raise all *affirmative defenses* or probably waived
3. Failure to Answer: **Default Judgment**
    a. Federal
        i. Default judgment may be entered if:
            1. claim is for a sum certain;
            2. D failed to appear; and
            3. D is not an incompetent or infant
        ii. Hearing
            1. if D has appeared, he is entitled to notice of hearing by mail at least three days before the hearing on the default application
        iii. After entry
            1. court clerk gives notice to defaulting D and all parties that have appeared
    b. California
        i. Default judgment may be entered if:
            1. action arises out of a contract or judgment;
            2. action is for a sum certain; and
            3. D was not served by publication

[3] similar to Federal motion to make a more definitve statement

ii. Must mail notice to party that a default may be entered
iii. Hearing
1. defaulted D not entitled to notice of default hearing and has no right to appear and present evidence

e. **Counterclaim (California: "cross-complaint")**
i. Compulsory
1. arises from same T/O as P's claim
2. MUST be filed in pending case or is waived
ii. Permissive
1. does NOT arise from same T/O as P's claim
2. may assert in separate action
iii. Analytical steps:
1. is counterclaim procedurally correct?
2. does fed court have SMJ over counterclaim?
3. if not, does supplemental jurisdiction save it?
iv. After filing
1. Reply to counterclaim must be filed within 20 days
2. CA: reply is known as "Answer" to the cross-complaint

f. **Cross-claim**
i. Never compulsory
ii. Against a co-party and arises out of same T/O
iii. Analytical steps:
1. procedurally correct?
2. SMJ or supplemental juris?

g. **Amending pleadings**
i. Plaintiff
1. right to amend ONCE before D serves answer
2. CA: right to amend ONCE before an answer or demurrer OR after demurrer and before trial on issue raised in demurrer
ii. Defendant
1. right to amend ONCE within 20 days of serving answer
iii. Leave of court
1. discretion to amend if not right available
2. FRCP: adverse party can give written consent to amend
iv. Variance
1. amend to bring pleadings in line with evidence offered at trial
v. Relation back; amend after sol has run
1. amendment will relate back if it concerns the same conduct, T/O as the original pleading
2. Amendment after SOL generally impermissible except:
a. FRCP: within 120 days of filing complaint and there is mistaken identity where

i. New party had notice of suit, with not be prejudiced by delay, and knew or should have known that action would be brought against her

b. CA: Misnomer

i. Typically involves naming an incorrect but related corporation. Correction permitted under equitable estoppel theory

c. CA: Doe amendments: **3 years** from filing of original complaint to discover Doe's identities

i. Original complaint must be timely filed and contain allegations against all Ds, including Does;

ii. P must be genuinely ignorant or the identity of the fictitious D, or of facts giving rise to a cause of action against D, or of the fact that the law provides a cause of action; and

iii. P ignorance must be pleaded in the complaint

VI. Joinder of Parties

a. Permissive joinder of co-Ps or co-Ds

i. Claims arise from same T/O; and

ii. Raise at least one common question of fact or law

b. Necessary/Indispensable Parties

i. Three step analysis:

1. Who is necessary? An absentee who meets one of these:

a. Without A, court cannot accord complete relief;

b. A's interest may be harmed if not joined; or

c. A claims interest which subjects a party to multiple obligations

2. Can A be joined?

a. Only if *feasible*, ie

i. There is personal jurisdiction over A; and

ii. Joining won't destroy diversity

3. If A can't be joined, either

a. Proceed without him; or

b. Dismiss the case

c. **Impleader** (aka 3rd party practice)

i. Within 10 days of serving answer OR with court permission

ii. SMJ issue

1. a non-diverse 3rd party D can be implead by D, but P cannot assert a claim against TPD or else P destroys the diversity

iii. California

1. The "cross-complaint" must either

a. Arise out of the same T/O as P's action; or

b. Must assert a claim or interest in the subject of P's action against the 3d-party P

2. NB: a cross-complaint against a co-party is permissive, so long as some transactional relationship to original complaint

d. **Intervention**
    i. Rare on bar
e. **Interpleader**
    i. Rare on bar
    ii. Rule 22
        1. complete diversity of stakeholder and all adverse claimants and excess of $75,000 in controversy; or
        2. FQ jurisdiction
        3. Normal service and venue rules apply
    iii. Statutory Interpleader
        1. minimum diversity between claimants (only one must be diverse from one other) and $500 in issue
        2. service is nationwide and venue is where any claimant resides
f. **The Class Action**
    i. Initial requirements
        1. *Numerosity*: to many for practicable joinder
        2. *Commonality*: same questions of law or fact in common to the class
        3. *Typicality*: rep's claims/defenses typical of the class;
        4. *Adequate representation*: class rep fairly reps class; and
        5. One of the following:
            a. Separate actions would create risk of inconsistent results;
            b. Injunctive or dec relief is a appropriate for the class as a whole; or
            c. Common questions of law or fact predominate over individual issuing making class action superior to other methods of adjudication
    ii. Which of three class actions is it?
        1. <u>Prejudice</u>: deciding for one claimant could prejudice others (eg, fighting over a pot of money)
        2. <u>Injunction/Declaratory relief:</u> class members treated alike (eg, employment discrimination)
        3. <u>Damages</u>: (most common)
            a. Common questions predominate over individual questions; and
            b. Class action superior method to handle dispute
    iii. Court certification
        1. determined at "an early practicable time"
        2. cert defines the class, the claims, issues, or defenses
        3. counsel must *fairly and adequately* represent interests of class
    iv. Notice to class
        1. only in Type 3, "common question" class action
        2. class rep bears expense
        3. **contents** of notice:
            a. can opt out
            b. bound by case if don't opt out

c. can have separate counsel

v. Who is bound?
   1. all members of any class action, except those who opt out of Type 3 action

vi. Settlement/Dismissal of Claims
   1. court approval required in all Types
   2. if Type 3, class members must have 2nd chance to opt out

vii. SMJ
   1. FQ possible
   2. diversity based on representative's citizenship

viii. Class Actions in California Courts
   1. typically rely on FRCP 23 interpretations

ix. Review
   1. class action fairness act
   2. shareholder derivative suits on CMR, pp. 28-29

VII. Discovery

a. Initial Disclosures

i. FRCP: requires parties to disclose, without being asked, certain info about their case, within 14 days after pre-trial conference
   1. names and contact info for people likely to have discoverable information supporting claims or defenses
   2. copies or descriptions of documents and tangible items in possession or control used to support claims or defenses
   3. compilation of damages claimed by party and copies of materials upon which the computation is based; and
   4. copies of insurance agreements under which an insurer might be liable for some or all of the judgment

ii. CA: no automatic disclosure requirements

b. **Discovery Tools**

i. Depositions
   1. written or oral
   2. for *non-parties*, need subpoena or no need to attend
   3. max 10 deps and only depose each person once, UNLESS court approval

ii. Interrogatories
   1. only used against a party, NOT non-party
   2. must respond/object within 30 days

iii. Request for Production
   1. against a party
   2. *non-party* with subpoena
   3. respond/object within 30 days

iv. Physical or Mental Exam
   1. only against party
   2. only with court order

v. Request for admission
   1. only against party

c. **Scope of discovery**
    i. Anything *relevant* to a claim or defense (ie, in the pleadings)
    ii. Relevant: reasonably calculated to lead to the discovery of admissible evidence (ie, discovered info need not be admissible)
    iii. CA: has a broader std:
        1. information must be "relevant to the subject matter involved in the pending action"
        2. NB: Cal Const permits **right to privacy** to be exercised in the discovery context (balancing test)
    iv. Duty to supplement disclosures and discovery responses
        1. FRCP: yes
        2. CA: no
d. **Expert Testimony**
    i. Must disclose ID of experts, and a report stating the qualifications, opinions, and basis for those opinions
    ii. Made at least 90 days before trial or when directed by court or stipulated to by parties
    iii. CA: no requirement of expert disclosure
e. **Pretrial disclosures**
    i. 30 days before trial:
        1. witnesses to be called
        2. witnesses to be used if needed
        3. witnesses whose testimony to be presented by deposition
        4. list of documents or exhibits to be offered
    ii. within 14 days after this disclosure:
        1. party may serve objections to use of depositions and admissibility of evidence
    iii. Use of depositions at trial
        1. subject to rules of evidence
        2. may be used to
            a. impeach testimony of deponent as witness;
            b. for *any* purpose if deponent is dead or more than 100 miles (FRCP) or 150 miles (CA) from place of trial or unable to testify due to age, sickness, etc; or
            c. for *any* purpose if the deponent is adverse party
f. **Work Product**
    i. Material prepared *in anticipation of litigation*
    ii. Generally protected from discovery
    iii. Analysis:
        1. start with assumption that NOT discoverable, BUT
        2. can be discovered if:
            a. substantial need; and
            b. not otherwise available
    iv. CA
        1. work product is NOT discoverable except showing that a denial of discovery will

a. unfairly prejudice a party in preparing his claim or defense; or
b. will result in an injustice

g. **Enforcement of Discovery Rules**
i. Protective order
ii. Motions to Compel or for Sanctions
iii. Partial violation/light sanction
1. party objects improperly to some discovery requests
2. made good faith effort to resolve issue
3. seek motion to compel and atty fees
a. if violation of compel order, then heavy sanctions
iv. Total violation/heavy sanction
1. party improperly fails to fulfill any discovery requests
2. heavy sanctions:
a. matters treated as admitted
b. strike pleadings
c. disallow evidence
d. dismiss case (if bad faith shown)
e. enter default judgment (if bad faith shown)

VIII. Pretrial Adjudication

a. **Failure to State a Claim**: 12(b)(6)
i. Standard
1. court assumes truth of all well-pleaded facts
2. asks: if everything is true, would the person win?
a. If No, then case dismissed

b. **Summary judgment**
i. Moving party must show:
1. no genuine issue of material facts; AND
2. entitled to judgment as a matter of law
ii. Standard
1. court views facts in light most favorable to non-moving party
2. non-moving party cannot rest on pleadings and cannot use inadmissible evidence to counteract the MSJ
a. non-moving party must present new evidence (typically an affidavit)
3. CA:
a. Moving party must file separate statement of material facts and evidence supporting each
b. Nonmoving party must reply with statement of which facts are in dispute and evidence to support each
iii. Timing
1. FRCP: 20 days after commencement of action or anytime after adverse party moves for SJ
2. CA: 60 days after general appearance of party against whom motion is brought, or earlier if court directs upon showing of good cause

IX. Conferences and Meetings
    a. **Pretrial conference**
        i. Final one determines what will be said/presented at trial
        ii. Can be no surprises at trial
        iii. CA: parties not required to meet

X. Trial, Judgment, and Post-Trial Motions
    a. **Right to Jury Trial in FEDERAL court**
        i. 7th Amendment
        ii. only get jury in civil actions at law, not equity
            1. if both law and equity, **have legal trial with jury first**, then move to equitable issues in bench trial
        iii. Demand for jury trial must be within 10 days of service of last pleading raising a triable
        iv. Selection
            1. unlimited strikes for cause
            2. 3 peremtory challenges
                a. b/c jury selection is state action, can't discriminate on race or gender
    b. **Right to Jury Trial in California court**
        i. Exists for
            1. actions at law similar to those for which a jury was required in 1850 (when CA const adopted); and
            2. trials where "gist" of action is legal rather than equitable
                a. NB: where legal and equitable issues, CA **tries to equitable issues first**! ("*equity first*" rule)
                b. NB: no jury trial exists where legal issues are merely incidental to equitable issues ("*equitable cleanup doctrine*")
            3. Party must demand jury trial at time case is set for trial OR within 5 days of notice of such setting
    c. **Motion for Judgment as a Matter of Law (JMOL)**
        i. When brought?
            1. after other side is heard
                a. D can move twice
                b. P can only move once
        ii. Standard
            1. Reasonable people could not disagree on the result
            2. View evidence in light most favorable to non-moving party
        iii. California
            1. D may bring a "*nonsuit motion*", based on same evidentiary standard
                a. may be brought by after P's opening statement; or
                b. after P's presentation of evidence
            2. Either party may move for *directed verdict* after presentation of all evidence
    d. **Renewed JMOL**
        i. When brought?

1. within 10 days of entry of judgment

ii. Standard

1. Reasonable people could not disagree on the result

iii. MUST HAVE moved for JMOL at close of ALL EVIDENCE. If not, then *cannot bring RJMOL!!!*

iv. California

1. called JNOV
2. no requirement of moving for directed verdict prior to bring JNOV

e. **Motion for a new trial**

i. When brought?

1. within 10 days of entry of judgment
2. CA: within 15 days after notice of entry of judgment

ii. Standard

1. claim that errors at trial require a new trial
   a. prejudicial error
   b. new evidence arises that could not have been obtained with due diligence
   c. prejudicial misconduct of a party, atty, 3rd party, or juror
   d. judgment against weight of evidence
   e. unfair accident or surprise during trial
   f. excessive or inadequate damages
2. NB: less radical than RJMOL since merely grants new trial, not opposite verdict

f. Misc

i. Remittitur[4]: recognized by FRCP and CA

ii. Additur[5]: recognized by CA only

XI. Appeal

a. **Final judgment rule**

i. Must be final decision on <u>the merits</u> before appeal

1. eg, grant of full MSJ
2. after evidence at trial

ii. File notice within 30 days with trial court

1. CA: file within 60 days of service of notice of entry of judgment; or 180 days after entry if no notice served

b. **Interlocutory review**

i. Rare

1. failure to certify a class
2. permissive appeal (ie, controlling question of law for which there is substantial diff of opinion AND court of appeals grants permission)
3. CA: collateral order involving payment of $ or performance of an act

c. **Multiple Parties**

[4] P must accept amount less than the jury verdict or submit to new trial

[5] D must either agree to pay an amount greater than jury verdict or submit to new trial

i. Unlike FRCP, California permits a D who gets a final judgment against him even when claims against other Ds are proceeding to trial, to immediately appeal that judgment.

XII. Claim and Issue Preclusion

a. Issue: does a judgment entered in Case #1 preclude litigation of any matters in Case #2?

b. **Claim preclusion (aka res judicata**)

i. Same claimant vs. same defendant

ii. Case #1 ended with valid judgment on the merits

1. ie, any judgment EXCEPT based on

a. jurisdiction

b. venue

c. indispensable parties

iii. Both cases based on the same claim

1. two theories for defining same claim:

a. FRCP: same T/O; or

b. CA: primary rights (ie, property damage claim vs. a personal injury claim)

c. **Issue preclusion (aka collateral estoppel)**

i. Precludes relitigation of a particular *issue*

ii. Requirements:

1. judgment on the merits in first case

2. same issue was actually litigated (eg, default judgment cannot create issue preclusion)

3. issue was essential to case #1

4. asserted against party to case #1 (CA: adds, or in privity with a party to case #1)

5. asserted by:

a. traditional view: mutuality; party to case #1

b. modern view: permits nonmutual assertion

i. defensive: most courts allow

ii. offensive: most courts won't allow, but trend to allow if it would not be *unfair*

1. foreseeablitity of multiple suits

2. P couldn't easily be joined to case #1

3. no inconsistent judgments

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