

9 California Procedure (5th), Appeal

I. INTRODUCTION

A. Nature of Appeal and Appellate Jurisdiction.

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

B. Appellate Rules.

- 1. [§8] Adoption and Subsequent Amendments.**
- 2. [§9] Current Structure.**
- 3. [§10] Scope: Practice and Procedure.**
- 4. Construction and Definitions.**
 - (a) [§11] In General.**
 - (b) [§12] Serve and File**
 - (c) (New) Electronic Filing.**
 - (1) [§12A] (New) In General.**
 - (2) [§12B] (New) Signatures.**
 - (3) [§12C] (New) Filing.**
 - (4) [§12D] (New) Electronic Service.**

C. [§13] Judicial Council Forms.

D. Decision on Request by Court of Another Jurisdiction.

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

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

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

II. EFFECT OF TAKING APPEAL

A. Jurisdiction Vested in Appellate Court.

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

B. Jurisdiction Retained by Trial Court.

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

III. PARTIES AND RIGHT TO APPEAL

A. Appellant Must Be Party.

- 1. Party to Action.**
 - (a) [§24] In General.**

- (b) [§25] Substitution of Parties.
 - 2. Party to Record After Judgment.
 - (a) Procedure for Becoming Party.
 - (1) [§26] Motion To Vacate.
 - (2) [§27] Motion for New Trial.
 - (b) Necessity of Motion.
 - (1) [§28] General Rule: Motion Is Required.
 - (2) [§29] Exception.
 - (c) [§30] Intervention by Attorney General.
 - 3. Distinctions.
 - (a) [§31] Probate Proceeding.
 - (b) [§32] Res Judicata Effect on Nonparty.
- B. Appellant Must Be Aggrieved.**
- 1. Necessity of Interest Injuriouly Affected.
 - (a) Nature of Requirement.
 - (1) [§33] In General.
 - (2) Illustrations of Aggrieved Parties.
 - (aa) [§34] In General.
 - (bb) [§35] Guardianship and Dependency Cases.
 - (b) No Interest in Subject Matter.
 - (1) [§36] In General.
 - (2) [§37] Debtor in Bankruptcy.
 - (3) [§38] Former Attorney Requesting Fees.
 - (4) [§39] Attorney Potentially Liable for Malpractice.
 - (c) [§40] Judgment Affecting Other Parties.
 - (d) Judgment in Favor of Appellant.
 - (1) [§41] General Rule: Not Appealable.
 - (2) [§42] Exceptions.
 - (e) Judgment by Consent.
 - (1) [§43] General Rule: Not Appealable.
 - (2) Exceptions.
 - (aa) [§44] In General.
 - (bb) [§45] Judgment Void on Constitutional Grounds.
 - (cc) [§46] Consent Given To Facilitate Appeal.
 - (f) [§47] Judgment by Default.
 - 2. Persons in Representative Capacity.
 - (a) Executors, Administrators, Trustees, and Guardians.
 - (1) [§48] In General.
 - (2) [§49] Exercise of Decedent's Right To Appeal.
 - (3) [§50] Rights of Beneficiaries.
 - (4) [§51] No Contest Clause.
 - (b) [§52] Shareholder in Derivative Suit.
 - (c) [§53] Attorney or Representative After Client's Death.
 - (d) [§54] Representative Who Is Both Appellant and Respondent.
 - 3. [§55] Court or Administrative Agency.
- C. Partial Appeal.**

1. **[§56] Appeal by Fewer Than All Parties.**
2. **Appeal From Part of Severable Judgment.**
 - (a) **[§57] General Rule.**
 - (b) **[§58] Illustrations.**
3. **[§59] No Partial Appeal Where Judgment Is Not Severable.**
4. **Judgment of Dissolution of Marriage.**
 - (a) **Where Dissolution and Property Issues Are Severable.**
 - (1) **[§60] Case Law Background.**
 - (2) **[§61] Codification of Partial Appeal Rule.**
 - (b) **[§62] Where Jurisdiction Over Property Issues Is Reserved.**

D. Waiver or Forfeiture of Right.

1. **[§63] Express Waiver.**
2. **Compliance With Judgment.**
 - (a) **[§64] In General: Voluntary Compliance or Satisfaction.**
 - (b) **[§65] Where Restitution After Reversal Is Not Practical.**
 - (c) **[§66] Distinction: Enforced Satisfaction.**
3. **Acceptance of Benefits.**
 - (a) **General Rule of Waiver.**
 - (1) **[§67] Acceptance of Benefits of Judgment.**
 - (2) **[§68] Acceptance of Arbitration Award.**
 - (3) **[§69] Acceptance of Benefits of Settlement.**
 - (b) **[§70] Illustrations.**
 - (c) **Exceptions.**
 - (1) **[§71] Appeal Seeking Greater Recovery.**
 - (2) **[§72] Severable Judgment.**
 - (3) **No Substantial Benefit Received.**
 - (aa) **[§73] In General.**
 - (bb) **[§74] Deposit in Trust Account.**
 - (4) **[§75] Statute or Agreement Preserving Right To Appeal.**
 - (5) **[§76] Conditional New Trial Order.**
 - (6) **[§77] Policy Exception for Homestead Exemption.**
 - (d) **[§78] Executing Satisfaction of Judgment.**
4. **Loss of Right as Penalty.**
 - (a) **[§79] Failure of Corporation To Pay Taxes.**
 - (b) **[§80] Party in Contempt.**
 - (c) **Misconduct Without Contempt Adjudication.**
 - (1) **[§81] In General.**
 - (2) **[§82] No Denial of Due Process.**
 - (3) **[§83] Trial Judge May Not Impose Penalty.**
 - (d) **[§84] Stay in Marital Proceeding.**
5. **[§84A] (New) Expedited Jury Trial.**

IV. APPEALABLE JUDGMENTS AND ORDERS

A. In General.

1. **[§85] Statutory Classes Are Exclusive.**
2. **[§86] Appeal Dismissed on Court's Own Motion.**
3. **[§87] Appellate Jurisdiction by Acquiescence.**

4. **[§88] Discretionary Appeal.**
 - B. Review of Nonappealable Judgment or Order.**
 1. **Appeal From Subsequent Appealable Judgment or Order.**
 - (a) **[§89] In General.**
 - (b) **[§90] Review of Nonappealable Order on Appeal of Dismissal Requested by Coparty.**
 2. **[§91] Review by Extraordinary Writ.**
 3. **[§92] Distinction: No Review on Appeal of Dismissal for Failure To Prosecute.**
 - C. Void Judgment or Order.**
 1. **[§93] General Rule: Appealable.**
 2. **[§94] Void Orders After Final Judgment.**
- V. FINAL JUDGMENT: ONE FINAL JUDGMENT RULE**
- A. In General.**
 1. **[§95] Appeal From Judgment.**
 2. **Judgment Must Be Final.**
 - (a) **[§96] In General.**
 - (b) **[§97] Judgment Contingent on Interim Ruling.**
 3. **[§98] Distinctions.**
 - B. Judgment Final on Collateral Matter.**
 1. **[§99] Nature of Exception.**
 2. **Illustrations.**
 - (a) **[§100] Support Orders.**
 - (b) **[§101] Receivers.**
 - (c) **Monetary Sanctions.**
 - (1) **[§102] Former Law.**
 - (2) **[§103] Nature of Statutory Revision.**
 - (3) **[§104] Appealability of Discovery Sanctions.**
 - (4) **[§105] No Aggregation of Sanctions To Meet Statutory Threshold.**
 3. **Where No Act Is Ordered.**
 - (a) **Limitation Disregarded.**
 - (1) **[§106] In General.**
 - (2) **[§107] Discovery Cases.**
 - (b) **[§108] Limitation Observed.**
 - C. Judgment Final as to Party.**
 1. **[§109] General Rule.**
 2. **[§110] Order Denying Intervention or Substitution.**
 3. **[§111] Order Striking Special Answer by Third-Party Defendant.**
 4. **[§112] Order Denying Certification of Class Action.**
 5. **Order Striking Out Cross-Complaint.**
 - (a) **[§113] Third Party or Codefendant: Appealable.**
 - (b) **[§114] Plaintiff or Third Party Not Served: Not Appealable.**
 - (c) **[§115] Distinction: Determination of Jurisdiction.**
 - (d) **[§116] Distinction: Cross-Complainant Not Named in Action.**
 6. **Partial Determination of Issues.**

- (a) **General Rule: Partial Judgment Is Not Appealable.**
 - (1) [§117] **Complaint and Cross-Complaint.**
 - (2) [§118] **Multiple Causes of Action.**
 - (3) [§119] **Order in Bifurcated Trial.**
 - (4) [§120] **Appeal in Severed Trial.**
 - (5) [§121] **Stipulation To Dismiss Some Causes of Action Without Prejudice.**
- (b) **Exceptions to Rule: Partial Judgment Is Appealable.**
 - (1) [§122] **Different Parties.**
 - (2) [§123] **Appeal in Case Consolidated for Trial.**
 - (3) **Appeal Saved by Amendment of Judgment.**
 - (aa) [§124] **In General.**
 - (bb) [§125] **Multiple Causes of Action.**
 - (cc) [§126] **Complaint and Cross-Complaint.**
 - (dd) [§127] **Theory Criticized and Rejected.**
 - (4) **Appeal Saved by Treating It as Writ Application.**
 - (aa) [§128] **Stipulation and Court's Discretion.**
 - (bb) [§129] **Distinction: Late Appeal.**
 - (cc) [§130] **Jurisdiction Declined: In General.**
 - (dd) [§131] **Jurisdiction Declined: Request in Juvenile Dependency Proceeding.**
 - (ee) [§132] **Jurisdiction Accepted.**
 - (5) [§133] **Appeal Considered in Court's Discretion.**
 - (6) [§134] **Order in Bifurcated Family Law Case.**
 - (7) [§135] **Stipulation To Dismiss With Prejudice.**

D. Interlocutory and Final Judgments.

- 1. [§136] **Nonappealable Interlocutory Judgment.**
- 2. [§137] **Final Judgment Mislabeled Interlocutory.**
- 3. [§138] **Appealable Interlocutory Judgments.**

E. Judgments in Special Proceedings.

- 1. [§139] **In General.**
- 2. **Orders in Arbitration Proceeding.**
 - (a) [§140] **Order Directing Arbitration: Not Appealable.**
 - (b) [§141] **Order Denying Arbitration: Appealable.**
 - (c) [§142] **Orders After Arbitration: Appealable.**
- 3. [§143] **Motion as Special Proceeding.**

F. [§144] Dismissal and Nonsuit.

G. [§145] Summary Judgment.

H. [§146] Habeas Corpus.

I. [§147] Contempt.

J. Order Granting or Denying Writ.

- 1. [§148] **General Rule: Order Appealable.**
- 2. [§149] **Judgment Directed at Superior Court.**

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

L. [§151] Appeal in Sterilization Case.

VI. NONAPPEALABLE ORDERS

A. In General.

1. [§152] Theory of Nonappealability.
2. [§153] Where Appealable Judgment Is Entered.

B. Pleading and Parties.

1. [§154] Demurrer and Judgment on Pleadings.
2. [§155] Motion To Strike.
3. [§156] Amendment of Pleading and Substitution of Parties.
4. [§157] Class Certification.

C. [§158] Evidence and Discovery.

D. [§159] Orders at Trial.

E. Steps Preliminary to Final Judgment.

1. [§160] In General.
2. [§161] Order for Judgment.
3. [§162] Minute Order.
4. [§163] Notice of Ruling.

F. [§164] Order Denying New Trial.

G. [§165] Order Denying Motion for Reconsideration.

H. [§166] Order Made Nonappealable by Waiver.

I. [§167] Order Dealing With Jurisdictional Reclassification.

J. [§168] Placement Order for Dependent Child After Parental Rights Have Been Terminated.

K. [§169] Miscellaneous Orders.

VII. ORDERS APPEALABLE UNLESS APPEAL IS PROHIBITED

A. [§170] Orders Dealing With Venue.

B. [§171] Orders Dealing With Process.

C. [§172] Order on Special Motion To Strike SLAPP Suit.

D. Orders Dealing With Provisional Remedies.

1. [§173] Attachment.
2. Injunction.
 - (a) [§174] In General.
 - (b) [§175] Order Modifying Injunction.
 - (c) [§176] Interlocutory Order Denying Permanent Injunction.

3. Receivers.

- (a) [§177] Appointment and Vacating Appointment.
- (b) [§178] Accounts and Discharge.

E. [§179] Orders in Tax Refund Cases.

F. Orders After Verdict or Judgment.

1. Orders Affecting Final Judgment.

- (a) [§180] General Rule: Appealable.
- (b) Limitations.

(1) Order Must Affect Judgment or Relate to Enforcement.

(aa) [§181] In General.

(bb) [§182] When Order Affects Judgment or Relates to Enforcement.

(2) [§183] Order Must Raise Different Issues.

(3) [§184] Judgment Must Be Final.

- (c) [§185] Orders Dealing With Enforcement.
- (d) Orders Dealing With Costs.
 - (1) [§186] In General.
 - (2) [§187] No Separate Appeal Is Required.
 - (3) [§188] Distinction: Separate Appeal Is Required for Discretionary Cost Award.
- (e) [§189] Orders Dealing With Receiver.
- (f) [§190] Order Awarding Attorneys' Fees on Appeal.
- (g) [§191] Miscellaneous Orders.
- 2. [§192] Order Granting New Trial.
- 3. [§193] Order Denying Judgment Notwithstanding Verdict.
- 4. Order Granting Motion To Vacate.
 - (a) [§194] General Rule: Appealable.
 - (b) [§195] Exception: Order Vacating Nonappealable Order.
 - (c) [§196] Conditional Vacating Order.
- 5. Order Denying Motion To Vacate.
 - (a) [§197] General Rule: Nonappealable.
 - (b) Exceptions.
 - (1) [§198] No Effective Appeal From Judgment.
 - (2) [§199] Appellant Not an Original Party.
 - (3) [§200] Statutory Motions.
 - (4) [§201] Motion To Vacate Void Judgment.

G. Probate Orders and Decrees.

- 1. In General.
 - (a) [§202] Statutory Framework.
 - (b) [§203] Probate Code Provisions Are Exclusive.
 - (c) [§204] Denial of Appealable Order.
 - (d) [§205] Nonappealable Orders.
 - (e) [§206] Order on Motion for New Trial.
 - (f) [§207] Order on Motion To Vacate.
- 2. All Probate Code Proceedings.
 - (a) [§208] Property Transactions.
 - (b) [§209] Payment and Priority of Debts.
 - (c) [§210] Instructions.
 - (d) [§211] Settlement of Accounts.
- 3. Decedents' Estates.
 - (a) [§212] Admitting Will or Revoking Probate.
 - (b) [§213] Issuing or Revoking Letters.
 - (c) [§214] Existence of Will Contest.
 - (d) [§215] Administration of Estate.
 - (e) [§216] Small Estates and Exemptions.
 - (f) [§217] Heirship and Distribution.
- 4. [§218] Guardianships and Conservatorships.
- 5. [§219] Trusts and Trustees.
- 6. [§220] Powers of Attorney and Health Care Directives.

VIII. STAY OF ENFORCEMENT

A. In General.

1. [§221] Methods of Staying Enforcement.
2. [§222] Effect of Stay.
3. [§223] Stay by Trial Judge.

B. Child Custody and Dwelling Exclusion Orders.

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

C. Stay by Undertaking.

1. When Undertaking Is Required.

(a) Judgment Directing Payment of Money.

(1) Judgments Covered.

- (aa) [§230] Money or Payment of Money.
- (bb) [§231] Costs Awarded Against Party Rejecting Compromise.
- (cc) [§232] Costs Awarded Against Party Demanding Trial De Novo After Arbitration.
- (dd) [§233] Attorneys' Fees Awarded as Sanction.
- (ee) [§233A] (New) Attorneys' Fees or Costs Awarded in Family Law Proceeding.

(2) Judgments Not Covered.

- (aa) [§234] In General.
- (bb) [§235] Judgment for Costs Alone.
- (cc) [§236] Attorneys' Fees as Costs.

(3) [§237] Condition of Undertaking.

(4) Amount of Undertaking.

- (aa) [§238] In General.
- (bb) [§239] Costs.

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

- (1) [§240] Application of Statute.
- (2) [§241] Recovery for Decline in Value.
- (3) [§242] Exception: Where Appellant Is Not in Possession.

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

- (1) [§243] Application of Statute.
- (2) [§244] Exception: Where Appellant Is Not in Possession.
- (3) Forcible Entry or Unlawful Detainer.

(aa) [§245] In General.

(bb) [§246] Attorneys' Fees.

(d) [§247] Appointment of Receiver.

(e) [§248] Right To Attach Order.

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

2. Procedure on Undertaking.

(a) In General.

- (1) [§250] Deposit in Lieu of Bond.**
- (2) [§251] Form and Filing.**
- (3) [§252] Provisional Stay.**
- (4) [§253] Waiver or Reduction of Undertaking.**

(b) Fixing Amount.

- (1) [§254] In General.**
- (2) [§255] Additional Security Is Not Allowable.**
- (3) [§256] Distinction: Changed Circumstances.**

(c) Defective or Insufficient Undertaking.

- (1) [§257] Objections.**
- (2) [§258] Execution Is Not Stayed.**
- (3) [§259] Appeal Is Not Affected.**
- (4) [§260] Insufficient Bond or Sureties.**
- (5) [§261] Substitution of Sufficient Undertaking.**
- (6) [§262] Distinction: Valid Partial Undertaking.**

(d) Liability of Surety.

- (1) [§263] Construction of Bond.**
- (2) [§264] Failure To Give Sufficient Undertaking.**
- (3) [§265] Enforcement of Liability.**

(e) Surety's Right of Subrogation.

- (1) [§266] In General.**
- (2) [§267] Where Surety Is Liable on Judgment Itself.**
- (3) [§268] Rights as Between Successive Sureties.**

D. Stay by Appeal Without Undertaking.

1. Automatic Stay.

- (a) [§269] Theory.**
- (b) [§270] Illustrations.**
- (c) [§271] Order or Judgment Under Probate Code.**

2. Exception: Undertaking in Court's Discretion.

- (a) [§272] Background and Former Law.**
- (b) [§273] Current Statute.**

3. Exemption From Undertaking Requirement.

- (a) [§274] Representatives.**
- (b) [§275] Governmental Officers.**

E. Judgments Not Stayed by Appeal or Undertaking.

- 1. [§276] Self-Executing Judgments.**
- 2. [§277] Other Types Not Stayed.**
- 3. [§278] Appeal From Order After Judgment.**

F. Stay by Writ of Supersedeas.

1. In General.

- (a) [§279] Nature and Purpose of Writ.**
- (b) [§280] Effect of Constitutional Revision.**
- (c) [§281] Discretion of Reviewing Court.**

- (d) **Retroactive and Corrective Effect.**
 - (1) **[\$282] Stay in Effect.**
 - (2) **[\$283] Stay Not in Effect.**
- 2. Reasons for Granting Writ.**
 - (a) **Statutory Stay Is Violated.**
 - (1) **[\$284] Appeal Stayed by Undertaking.**
 - (2) **Automatic Stay.**
 - (aa) **[\$285] In General.**
 - (bb) **[\$286] Necessity of Writ.**
 - (b) **[\$287] Bond Is Valid but Sureties Are Insufficient.**
 - (c) **[\$288] Where Judgment Is Not Stayed by Appeal or Undertaking.**
 - (d) **[\$289] Cost of Bond Is Prohibitive.**
- 3. Reasons for Refusing Writ.**
 - (a) **In General.**
 - (1) **[\$290] No Valid Appeal.**
 - (2) **[\$291] Appeal Is Without Merit.**
 - (3) **[\$292] Writ Would Defeat Statutory Purpose.**
 - (4) **[\$293] Failure To Exhaust Other Remedies.**
 - (b) **Self-Executing Judgment: In General.**
 - (1) **[\$294] Theory of Refusal.**
 - (2) **[\$295] Illustrations.**
 - (c) **Self-Executing Judgment: Prohibitory Injunction.**
 - (1) **Prohibitory Injunction Granted.**
 - (aa) **[\$296] Former Law: Writ Refused.**
 - (bb) **[\$297] Current Law: Writ Authorized.**
 - (2) **Prohibitory Injunction Denied.**
 - (aa) **[\$298] Former Law: Writ Refused.**
 - (bb) **[\$299] Current Law: Writ Authorized.**
- 4. Procedure.**
 - (a) **[\$300] Petition.**
 - (b) **[\$301] Temporary Stay.**
 - (c) **[\$302] Opposition.**
 - (d) **[\$303] Determination.**
 - (e) **[\$304] Form and Content of Writ.**
 - (f) **Conditions.**
 - (1) **[\$305] Bond.**
 - (2) **[\$306] Other Protective Conditions.**
 - (3) **[\$307] Prompt Prosecution of Appeal.**
 - (g) **[\$308] Modification and Recall.**

IX. FACT-FINDING POWER OF REVIEWING COURT

A. Nature and Scope of Power.

- 1. [§309] Constitutional and Legislative Development.**
- 2. [§310] Implementing Statute.**
- 3. Where Power Will Not Be Exercised.**
 - (a) **[\$311] Judgment Roll Appeal.**
 - (b) **General Reversal.**

- (1) [§312] No Fact-Finding.
- (2) [§313] No Evidence Taken.

B. Factual Determinations on Appeal.

1. Where Factual Determinations May Be Made.

- (a) [§314] To Affirm or Modify.
- (b) [§315] To Reverse With Directions.

2. [§316] Where Factual Determinations Are Improper.

3. [§317] Procedure.

C. New Evidence on Appeal.

1. [§318] In General.

2. [§319] Procedure.

3. Reasons for Denial of Motion.

- (a) [§320] Evidence Is Inadmissible or Cumulative.
- (b) [§321] Lack of Diligence.

X. SCOPE OF REVIEW

A. In General.

1. Function of Appellate Court.

(a) Review of Question of Law.

- (1) [§322] General Principle.
- (2) [§323] Illustrations.
- (3) [§324] Distinction: Independent Review of "Constitutional Fact."

(b) [§325] Review of Mixed Question of Fact and Law.

(c) [§326] Moot or Abstract Question.

(d) Error That Appellant Cannot Assert.

- (1) [§327] Error Favorable to Appellant.
- (2) [§328] Error Favorable to Coparty.
- (3) Error Against Nonappealing Party.

(aa) [§329] In General.

(bb) [§330] Nonappealing Class Member.

(e) Review of Error Against Nonappealing Party.

(1) [§331] Point Raised by Appellate Court.

(2) Point Raised by Respondent.

(aa) [§332] Nature of Problem and Former Law.

(bb) [§333] To Negate Prejudice From Error Against Appellant.

(f) Matters Outside Record.

(1) [§334] General Rule: Nonreviewable.

(2) [§335] Exceptions.

(g) [§336] Matters Occurring After Trial but Before Judgment.

(h) Matters Occurring After Entry of Judgment.

(1) [§337] General Rule: Nonreviewable.

(2) [§338] Exception: Judgment Inoperative.

(3) Exception: Change in Circumstances or Law.

(aa) [§339] Change Following Entry of Equitable Decree.

(bb) [§340] Change in Other Types of Cases.

- (4) [§341] Postjudgment Order Fixing Costs and Fees.
 - (i) Matters Unnecessary to Decision.
 - (1) [§342] General Rule: Nonreviewable.
 - (2) [§343] Exception: Guidance of Trial Court or Administrative Body.
 - (3) Other Departures From Rule.
 - (aa) [§344] In General.
 - (bb) [§345] Decision on Merits in Dismissed Appeal.
 - (j) Reasons for Trial Court's Decision.
 - (1) [§346] General Rule: Nonreviewable.
 - (2) Illustrations.
 - (aa) [§347] Exclusion of Evidence.
 - (bb) [§348] Other Situations.
 - (3) [§349] Exceptions.
 - (4) Trial Judge's Opinion.
 - (aa) [§350] In General.
 - (bb) [§351] Aid to Interpretation or Discovery of Grounds.
 - (cc) [§352] Other Uses.
 - (k) Policy of Legislation.
 - (1) [§353] Improper Consideration.
 - (2) [§354] Proper Consideration.
 - 2. Presumptions in Favor of Judgment.
 - (a) [§355] In General.
 - (b) Appeal on Judgment Roll.
 - (1) [§356] Former Law.
 - (2) [§357] Nature of Rule and Limitation.
 - (3) [§358] No Requirement That Short Record Bring Up Some Evidence.
 - (4) [§359] Error on Face of Record.
 - (5) [§360] No Review of Sufficiency of Evidence.
 - (c) [§361] Appeal From Default Judgment.
 - 3. Review of Lower Court's Discretion.
 - (a) [§362] Rule and Theory.
 - (b) [§363] Illustrations.
 - (c) [§364] Limits of Legal Discretion.
- B. Sufficiency of Evidence.**
- 1. Rule of Conflicting Evidence.
 - (a) In General.
 - (1) [§365] Nature of Rule.
 - (2) [§366] Policy Limitations on Power.
 - (3) [§367] Function of Appellate Court.
 - (4) [§368] Examination of Entire Record.
 - (b) What Constitutes Substantial Evidence.
 - (1) [§369] Slight Evidence of Respondent.
 - (2) [§370] Overwhelming Evidence of Appellant Is Disregarded.
 - (3) [§371] Where Clear and Convincing Evidence Is Required.

- (4) [§372] Evidence Attacked as Inherently Improbable.
 - (c) What Does Not Constitute Substantial Evidence.
 - (1) [§373] No Clear Test.
 - (2) [§374] Illustrations.
 - (d) [§375] Review of Punitive Damages Award.
 - 2. Rule of Conflicting Inferences.
 - (a) [§376] Nature of Rule.
 - (b) [§377] Exception: Only One Reasonable Inference.
 - (c) [§378] Distinction: Questions of Law.
 - (d) [§379] Stipulation of Facts.
 - 3. Review of Interpretation of Writings.
 - (a) [§380] Nature of Problem.
 - (b) [§381] Extrinsic Evidence Conflicting.
 - (c) [§382] No Extrinsic Evidence Introduced.
 - (d) [§383] Extrinsic Evidence Not Conflicting.
 - 4. Review of Administrative Review.
 - (a) [§384] Nature of Problem.
 - (b) Findings of Trial Court Upheld.
 - (1) [§385] Conflicting Evidence Rule.
 - (2) [§386] Decisions Following Rule.
 - (c) [§387] Distinction: Legislative Determination.
 - 5. [§388] Reconciliation of Conflicting Decisions.
- C. Estoppel and Waiver.
- 1. Error Invited: Estoppel.
 - (a) [§389] Theory of Invited Error.
 - (b) [§390] Appellant's Act Inducing Error.
 - (c) [§391] Appellant's Objection Inducing Error.
 - (d) [§392] Respondent's Objection Inducing Error.
 - (e) [§393] Exception: Defensive Acts.
 - 2. Error Consented to: Waiver.
 - (a) [§394] Theory of Error Waived.
 - (b) [§395] Express Waiver.
 - (c) Implied Waiver.
 - (1) [§396] Failure To Object.
 - (2) [§397] Acts Indicating Acquiescence.
 - (3) [§398] Concession of Liability.
 - (d) [§399] Exception: Defensive Acts.
 - 3. Point Not Properly Raised Below.
 - (a) Nature and Scope of Rule.
 - (1) [§400] In General.
 - (2) [§401] No Requirement That Objection Be Supported by Extensive Evidence.
 - (3) [§402] Distinction: Recently Announced Rule of Law.
 - (b) Methods of Raising Point.
 - (1) [§403] Formal Exceptions Abolished.
 - (2) [§404] Steps Before and During Trial.

- (3) [§405] Motion for New Trial.
 - (c) [§406] Exceptions to Requirement.
- 4. Theory of Trial.
 - (a) Nature of Doctrine.
 - (1) [§407] In General.
 - (2) [§408] Justification.
 - (b) Application of Doctrine.
 - (1) [§409] Sufficiency of Pleadings.
 - (2) [§410] Matters in Issue.
 - (3) [§411] Measure of Damages.
 - (4) [§412] Controlling Statute or Ordinance.
 - (5) [§413] Legal Relationship or Ground of Liability.
 - (c) Exceptions to Doctrine.
 - (1) [§414] In General.
 - (2) [§415] Issue of Law Alone.

XI. REVERSIBLE ERROR

A. In General.

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

B. Unsubstantial Error.

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

C. Substantial Error Not Reversible.

- 1. Error Cured by Party.
 - (a) [§436] Rulings on Pleadings.
 - (b) [§437] Denial of Nonsuit.

- (c) [§438] Denial of Summary Judgment.
 - 2. Error Cured by Judge or Jury.
 - (a) [§439] Evidence.
 - (b) [§440] Misconduct.
 - (c) [§441] Instructions.
 - 3. [§442] Judgment Clearly Right.
- D. Substantial Error Reversible Under Circumstances.**
- 1. Close Case.
 - (a) [§443] Nature of Problem.
 - (b) Test of Reversible Error.
 - (1) [§444] Repudiated Test of Possible Prejudice.
 - (2) [§445] Current Test of Probable Prejudice.
 - (c) Illustrations.
 - (1) [§446] Rulings on Evidence.
 - (2) [§447] Instructions and Failure To Instruct.
 - (3) [§448] Defective Verdict or Statement of Decision.
 - (d) [§449] Review of Conflicting Evidence.
 - 2. [§450] Numerous Errors Having Cumulative Effect.
 - 3. [§451] Error Intentional or in Bad Faith.
 - 4. [§452] Federal Constitutional Error.
- E. Reversible Error Per Se.**
- 1. [§453] Theory of Error Necessarily Reversible.
 - 2. Denial or Impairment of Jury Trial.
 - (a) [§454] In General.
 - (b) [§455] Distinction: Refusal To Give Instruction.
 - 3. [§456] Denial of Fair Hearing.
 - 4. [§457] Failure To Issue Sufficient Statement of Decision.
- F. [§458] Confession of Error.**

XII. LAW OF THE CASE

- A. Nature of Doctrine.**
- 1. [§459] In General.
 - 2. Appellate Court Decisions.
 - (a) [§460] In General.
 - (b) [§461] Writ Proceedings.
 - 3. [§462] Earlier Inflexible Rule.
 - 4. Modern Rule of Policy.
 - (a) [§463] Departure by Appellate Court.
 - (b) [§464] Departure by Trial Court.
- B. Requisites for Invoking Doctrine.**
- 1. Points of Law.
 - (a) [§465] In General.
 - (b) [§466] Validity or Construction of Document or Judgment.
 - (c) [§467] Sufficiency or Nature of Pleadings.
 - (d) [§468] Admissibility of Evidence.
 - (e) [§469] Appellate Jurisdiction.
 - 2. Sufficiency of Evidence.

(a) Where Evidence Is Substantially the Same.

(1) [§470] General Rule.

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

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

3. What Constitutes Decision on Point.

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

(b) Matter Necessarily Involved.

(1) [§474] Dictum Is Not Binding.

(2) [§475] Where Decision Is on Additional Grounds.

(c) Matter Expressly Decided.

(1) [§476] Point Not Raised Is Not Binding.

(2) [§477] Exception: Point Essential to Decision Is Binding.

C. Circumstances Justifying Departure From Doctrine.

1. [§478] In General.

2. [§479] Recognition of Rule.

3. [§480] Illustrations.

XIII. STARE DECISIS

A. Nature of Doctrine.

1. [§481] In General.

2. Departure From Precedent.

(a) [§482] Unlimited Power of Highest Court.

(b) [§483] Doctrine Is Jurisdictional in Lower Court.

3. [§484] Distinction: Common Law as Rule of Decision.

4. [§485] Distinction: Statute as Precedent.

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

1. In General.

(a) [§486] Trial Courts and Administrative Tribunals.

(b) [§487] Superseded Cases: Former Procedure.

(c) [§488] Nonsuperseded Cases: Present Procedure.

2. Unreported or Unpublished Decisions.

(a) [§489] Early Unreported Cases.

(b) [§490] Unpublished Appellate Division Decisions.

(c) [§491] Unpublished Court of Appeal Decisions.

3. California Supreme Court Decisions.

(a) [§492] Effect on California Courts.

(b) [§493] Effect on Federal Courts.

(c) [§494] Subsequent Declaration of Legislative Intent.

(d) Criticisms by Lower Court.

(1) [§495] General Rule.

(2) [§496] Illustrations.

4. Court of Appeal Decisions.

(a) [§497] Binding on Lower Courts and Federal Courts.

(b) Weight in Other Courts of Appeal.

(1) [§498] Not Binding.

(2) [§499] Persuasive Effect.

(c) [§500] Weight in Supreme Court.

- (d) **Effect of Denial of Review.**
 - (1) **§501 View That Denial of Review Causes Stronger Precedent.**
 - (2) **§502 Contrary View.**
 - 5. **§503 Appellate Division Decisions.**
 - 6. **§504 Decisions of Sister State Courts.**
 - 7. **Decisions of Federal Courts.**
 - (a) **On Federal Questions.**
 - (1) **§505 Binding Authority of Supreme Court.**
 - (2) **§506 Lower Federal Court Decisions.**
 - (b) **§507 On Nonfederal Questions.**
 - 8. **§508 Decisions of Courts of Foreign Countries.**
- C. **What Constitutes Rule of Decision.**
 - 1. **§509 Ratio Decidendi and Dicta.**
 - 2. **§510 Determining Ratio Decidendi.**
 - 3. **§511 Persuasive Effect of Dicta.**
 - 4. **§512 Alternative Reasons for Decision.**
- D. **Reasons for Following Precedent.**
 - 1. **Rule of Property.**
 - (a) **§513 Stare Decisis Is Applicable.**
 - (b) **§514 What Constitutes Rule of Property.**
 - 2. **§515 Rule Long Accepted.**
 - 3. **Failure of Legislature To Act.**
 - (a) **§516 Theory of Legislative Approval.**
 - (b) **§517 Criticism and Departures From Theory.**
 - 4. **§518 Case Well Presented and Considered.**
- E. **Reasons for Departing From Precedent.**
 - 1. **Decision Contrary to Statute.**
 - (a) **§519 Decision Overlooking Existing Statute.**
 - (b) **§520 Subsequent Change in Statute.**
 - 2. **Decision Wrong on Principle or Policy.**
 - (a) **In General.**
 - (1) **§521 Governing Rules.**
 - (2) **§522 Illustrations.**
 - (b) **Cases on Practice and Procedure.**
 - (1) **§523 Evidence.**
 - (2) **§524 Other Rules of Practice and Procedure.**
 - (c) **Cases on Substantive Law.**
 - (1) **§525 Torts.**
 - (2) **§526 Workers' Compensation.**
 - (3) **§527 Family Law.**
 - (4) **§528 Crimes.**
 - (5) **§529 Property.**
 - 3. **Decision Contrary to Authority.**
 - (a) **Authorities Elsewhere.**
 - (1) **§530 Relation to Other Grounds.**

- (2) [§531] Illustrations.
 - (b) Resolving Conflicts in Authority.
 - (1) [§532] Higher Court Prevails.
 - (2) [§533] Latest Case Governs.
 - (3) [§534] Adopt the Better Rule.
 - 4. Weakness of Prior Decision.
 - (a) [§535] In General.
 - (b) [§536] Case Poorly Presented.
 - (c) [§537] Case Poorly Considered.
 - (d) [§538] Decision of Divided Court.
 - (e) [§539] No Hearing Sought.
 - F. Overruling Prior Decisions.
 - 1. Forms and Methods of Overruling.
 - (a) [§540] Overruling Expressly.
 - (b) [§541] Overruling Indirectly.
 - 2. Retroactive Effect of Overruling Decision.
 - (a) [§542] General Rule: Retroactivity.
 - (b) Illustrations.
 - (1) [§543] Punitive Damages: Intoxicated Driver Acting in Conscious Disregard of Safety of Others.
 - (2) [§544] Punitive Damages: Evidence of Defendant's Financial Condition.
 - (3) [§545] Plaintiff's Burden of Proving That Interference With Expectancy Was Wrongful.
 - (4) [§546] No Tort Action for Violation of Covenant of Good Faith and Fair Dealing.
 - (5) [§547] No Tort Action for Bad Faith Denial of Existence of Contract.
 - (6) [§548] Tax Not Approved by Local Electorate.
 - (7) [§549] Settlement Must Be Signed by Parties.
 - (8) [§550] Residential Landlord Is Not Strictly Liable for Latent Defects.
 - 3. Prospective Effect of Overruling Decision.
 - (a) [§551] Power Recognized.
 - (b) [§552] Policy Considerations.
 - (c) [§553] Tax Cases.
 - (d) [§554] Limited Retroactivity.

XIV. NOTICE OF APPEAL

- A. In General.
 - 1. [§555] Jurisdictional Requirement: Filing in Trial Court.
 - 2. [§556] Payment of Fees.
 - 3. [§557] Effect of Nonpayment.
 - 4. [§558] Waiver of Fees in Indigent Appeal.
 - 5. [§559] Notification by Clerk.
- B. Content, Form, and Construction of Notice.
 - 1. [§560] Statement That Party Appeals.

2. Specification of Judgment.

(a) [§561] In General.

(b) [§562] Erroneous Designation of Parties.

(c) Erroneous Specification of Nonappealable Decision.

(1) [§563] Former Strict Rule of Dismissal.

(2) Appeal Saved by Construction.

(aa) [§564] In General.

(bb) [§565] Notice Specifying Verdict or Decision.

(cc) [§566] Notice Specifying Wrong Entry.

(dd) [§567] Notice Specifying Wrong Judgment.

(ee) [§568] Notice Specifying Writ.

(ff) [§569] Notice Specifying Order Sustaining Demurrer.

(gg) [§570] Notice Specifying Order Denying New Trial.

(hh) [§571] Notice Specifying Order Denying Motion To Vacate.

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

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

C. Normal Time for Filing Notice.

1. [§574] Alternative Time Limits.

2. Sixty Days After Notice of Entry of Judgment.

(a) [§575] In General.

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

(c) What Constitutes Sufficient Notice.

(1) [§577] In General.

(2) File-Stamped Copy of Judgment.

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

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

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

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

4. [§582] Special Statutes.

5. [§583] Where Judgment Is Modified.

6. [§584] Where Motion Is Renewed.

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

D. Extension of Time and Cross-Appeal.

1. [§586] In General.

2. Motion for New Trial.

(a) Extension Where Motion Is Denied.

(1) [§587] Purpose of Rule.

(2) [§588] Valid Notice of Motion.

(3) [§589] Period of Extension.

(4) [§590] Forms of Extension.

(5) [§591] Entry of Order in Minutes.

(b) Cross-Appeal Where Motion Is Granted.

(1) [§592] Nature of Rule.

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

(3) [§594] Valid New Trial Order.

- 3. Motion To Vacate.**
 - (a) Extension Where Motion Is Denied.**
 - (1) [§595] Nature of Motion.**
 - (2) [§596] Motion on Any Ground.**
 - (b) [§597] Cross-Appeal Where Motion Is Granted.**
- 4. Motion for Judgment Notwithstanding Verdict.**
 - (a) [§598] Extension Where Motion Is Denied.**
 - (b) [§599] Cross-Appeal Where Motion Is Granted.**
- 5. Motion To Reconsider.**
 - (a) [§600] In General.**
 - (b) [§601] Postjudgment Motion Does Not Extend Time.**
 - (c) [§602] Motion Denied by Entry of Judgment.**
 - (d) [§603] Reconsideration of Appealable Order.**
- 6. Other Party's Appeal.**
 - (a) [§604] In General.**
 - (b) [§605] First Appeal Need Not Be Valid.**
- 7. [§606] Judgment Against Public Entity.**

E. What Constitutes Entry.

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

F. Time Is Jurisdictional.

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

G. [§625] Case Information Statement.

XV. RECORD ON APPEAL

A. In General.

1. [§626] Nature of Record.
2. [§627] Notice Designating Record.
3. [§628] Duty of Appellant To Furnish Record.
4. Record Furnished Without Cost.
 - (a) [§629] In General.
 - (b) [§630] Lanterman-Petris-Short Conservatorship Proceeding.
5. [§631] Form of Record.
6. [§632] Time Limitations and Extension.
7. [§633] Use of Copy of Record.
8. [§634] Administrative Proceedings.

B. Reporter's Transcript.

1. [§635] Notice.
2. [§636] Effect of Pretrial Order.
3. Deposit.
 - (a) [§637] Deposit, or Substitute, for Cost.
 - (b) [§638] Failure To Make Deposit.
 - (c) [§639] Exception: Transcript Reimbursement Fund.
4. [§640] Clerk's Notification to Reporter.
5. [§641] Contents of Transcript.
6. [§642] Preparation and Filing.
7. [§643] Delinquent Clerk or Reporter.
8. [§644] Remedies Against Judge.
9. [§645] Electronic Recording of Proceeding.

C. Clerk's Transcript and Original Papers.

1. [§646] Matters Automatically Included.
2. [§647] Matters Designated.
3. [§648] Original Papers.
4. [§649] Cost and Preparation.

D. Appendixes.

1. [§650] Nature and Purpose of Appendix.
2. [§651] Notice of Election.
3. [§652] Contents and Form.
4. [§653] Exhibit Held by Other Party.
5. [§654] Filing and Service.
6. [§655] Sanctions for Improper Appendix.

E. [§656] Superior Court File in Lieu of Clerk's Transcript.

F. Settled Statement.

1. [§657] Nature of Record.
2. [§658] Motion.
3. [§659] Appellant's Proposed Statement.
4. [§660] Respondent's Proposed Amendments.
5. [§661] Settlement and Certification.
6. Refusal of Judge To Settle.
 - (a) [§662] Mandamus.
 - (b) [§663] No Settlement by Reviewing Court.

G. Agreed Statement.

1. [§664] Nature of Record.
2. [§665] Requirements.
3. [§666] Statement or Stipulation.

H. Judgment Roll or Clerk's Transcript.

1. [§667] Nature of Record.
2. [§668] No Review of Evidence.
3. [§669] Designation by Respondent.
4. [§670] Augmentation.

I. Record in Multiple Appeals.

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

J. Transcript Wholly or Partially Unavailable.

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

K. Transmission of Record to Reviewing Court.

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

L. Correction and Augmentation of Record.

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

M. [§687] Penalty for Excessive Record.

N. Default and Relief From Default.

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

O. [§691A] (New) When Record Is Complete.

XVI. BRIEFS IN COURT OF APPEAL

A. In General.

1. Nature and Types of Briefs.
 - (a) [§692] In General.
 - (b) [§693] Supplementary Briefs.
2. Form.

- (a) [§694] Separate Points and Headings.
- (b) [§695] References to Record.
- (c) [§696] Index and Tables.
- (d) [§697] Format.
- (e) [§698] Filing and Service of Original and Copies.
- (f) Limitations on Length.
 - (1) [§699] In General.
 - (2) [§700] Attachments.

3. Legal Argument.

- (a) Waiver of Point Not Urged.
 - (1) [§701] General Rule.
 - (2) [§702] Relaxation of Rule.
- (b) [§703] Thoroughness of Research.
- (c) [§704] Admissions in Briefs.

4. Style and Method.

- (a) [§705] In General.
- (b) [§706] Decorum.
- (c) [§707] Brevity.
- (d) [§708] Honesty and Fairness.

5. Penalties for Defective Brief.

- (a) [§709] In General.
- (b) [§710] Dismissal for Failure To Correct.
- (c) [§711] Defective Brief as Abandonment of Appeal.

6. Filing.

- (a) [§712] When Filing Occurs.
- (b) [§713] Extension of Time by Stipulation.
- (c) Extension of Time for Good Cause.
 - (1) [§714] In General.
 - (2) [§715] Standards for Determining Good Cause.

B. Appellant's Opening Brief.

- 1. [§716] In General.
- 2. [§717] Service and Filing.
- 3. [§718] Late Filing: Dismissal and Relief From Default.

C. Respondent's Brief.

- 1. [§719] In General.
- 2. Penalties for Failure To File.
 - (a) [§720] Appellant's Statement of Facts Accepted.
 - (b) [§721] Rule Relaxed.

D. Appellant's Reply Brief.

- 1. [§722] Right To File.
- 2. [§723] New Points Are Improper.

E. [§724] Briefs of Party Who Is Both Appellant and Respondent.

F. Briefs of Amici Curiae.

- 1. [§725] In General.
- 2. [§726] Amicus Briefs in Court of Appeal or Appellate Division.

XVII. MOTIONS AND APPLICATIONS

A. Noticed Motions.

1. [§727] Filing.
2. [§728] Opposition.
3. [§729] Hearing and Determination.

B. [§730] Routine Applications.

XVIII. DISMISSAL OF APPEAL

A. Voluntary Abandonment or Dismissal.

1. Abandonment Before Record Is Filed.
 - (a) [§731] In General.
 - (b) [§732] Partial Abandonment.
 - (c) [§733] Vacation of Abandonment.
2. [§734] Dismissal After Record Is Filed.
3. Discretion To Deny Dismissal.
 - (a) [§735] In General.
 - (b) [§736] Dismissal Sought To Avoid Precedent.
4. [§737] Compromise of Claim of Minor or Incompetent.
5. [§738] Notice of Settlement.

B. Involuntary Dismissal.

1. [§739] Nature of Power.
2. Procedure on Motion To Dismiss.
 - (a) [§740] In General.
 - (b) [§741] Failure To Oppose Motion.
 - (c) Examination of Record.
 - (1) [§742] General Rule: Refusal To Dismiss.
 - (2) [§743] Exception: Defect Apparent.
 - (d) [§744] Vacating Order of Dismissal.
3. Grounds for Dismissal.
 - (a) [§745] Lack of Jurisdiction or Other Basic Defect.
 - (b) [§746] Procedural Defaults.
 - (c) Frivolous Appeal.
 - (1) [§747] Power and Illustrations.
 - (2) [§748] Practical Considerations.
 - (d) Moot Case: In General.
 - (1) [§749] Basic Rule.
 - (2) [§750] Mootness in United States Supreme Court.
 - (3) Acts or Events Rendering Case Moot.
 - (aa) [§751] Compromise or Settlement.
 - (bb) [§752] Performance of Challenged Act.
 - (cc) [§753] Issues Determined by Other Judgment.
 - (dd) [§754] Legislative or Constitutional Change.
 - (ee) [§755] Death or Emancipation.
 - (ff) [§756] Miscellaneous Events.
 - (e) Moot Case: Reasons for Denying Dismissal.
 - (1) Material Question Remaining.
 - (aa) [§757] In General.
 - (bb) [§758] Illustrations.

- (2) Public Interest in Decision.**
 - (aa) [§759] In General.**
 - (bb) [§760] Illustrations.**
 - (cc) [§761] Where Action Is Moot.**

4. [§762] Effect of Dismissal.

XIX. DETERMINATION ON MERITS

A. In General.

1. Calendars.

(a) [§763] In General.

(b) [§764] Statutory Preferences and Advancement.

2. [§765] Consolidation of Cases on Appeal.

3. [§766] Transfer of Cases.

4. [§767] Reference.

5. [§768] Prehearing Conference in Court of Appeal.

6. [§769] Supervision of Progress in Court of Appeal.

7. [§769A] (New) Consideration of New Authority.

B. Oral Argument.

1. [§770] Right and Waiver.

2. [§771] Regulation.

3. [§772] Practice.

C. Decision and Opinion.

1. Submission of Cause.

(a) [§773] Supreme Court.

(b) [§774] Court of Appeal.

2. Concurrence of Qualified Majority.

(a) [§775] In General.

(b) [§776] Absence, Disqualification, and Waiver of Argument.

(c) [§777] Invalid Change in Panel After Argument.

(d) [§778] Even Division on Differing Opinions.

3. Written Opinion.

(a) [§779] Constitutional Requirement.

(b) [§780] Exceptions: Decisions Not on Merits.

(c) [§781] Written Opinion Is Optional in Appellate Division.

4. Form of Opinion.

(a) [§782] In General.

(b) [§783] By the Court Opinion.

(c) Adoption of Another Opinion.

(1) [§784] Adoption of Court of Appeal Opinion.

(2) [§785] Other Adoptions.

(d) Short Opinions.

(1) [§786] In General.

(2) [§787] Issues Not Requiring Discussion.

(e) Memorandum Opinions.

(1) [§788] Nature and Constitutional Validity.

(2) [§789] Appellate Judges' Recommendation.

(3) [§790] Judicial Council Standard.

(4) [§791] Cases Appropriate for Memorandum Disposition.

5. Content of Opinion.

(a) [§792] Guidelines and Models.

(b) [§793] Elements of Full-Scale Opinion.

(c) Authorities.

(1) [§794] Cases and Statutes.

(2) [§795] Treatises, Restatements, and Law Reviews.

(3) [§796] Other Authoritative Sources.

(d) Material Outside Main Text of Opinion.

(1) [§797] Footnotes.

(2) [§798] Appendixes.

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

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

(g) [§801] Criticism of Judge.

(h) Suggestions to Others.

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

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

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

(4) [§805] Suggestions to Judge.

(5) [§806] Warning of Public Danger.

6. Concurring Opinion.

(a) [§807] In General.

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

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

7. Dissenting Opinion.

(a) [§810] Purpose.

(b) [§811] Format and Style.

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

8. Selective Publication.

(a) Publication or Nonpublication.

(1) [§813] In General.

(2) [§814] Supreme Court Rule.

(3) [§815] Standards for Certification.

(b) Depublication by Supreme Court.

(1) [§816] In General.

(2) [§817] Request for Depublication.

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

(c) [§819] Request for Publication.

(d) Citation of Unpublished Opinions.

(1) General Rule: No Citation or Reliance.

(aa) [§820] Nature of Problem.

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

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

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

(3) [§824] Exceptions.

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

(f) Partial Publication.

(1) [§826] Nature and Purpose.

(2) [§827] Guidelines.

(3) [§828] California Rule.

(4) [§829] Illustrations.

D. Judgment on Appeal.

1. [§830] Forms of Appellate Judgments.

2. [§831] Rendition: Filing of Opinion.

3. When Judgment Becomes Final.

(a) In General.

(1) [§832] Period Begins on Filing.

(2) [§833] Effect of Modification.

(b) Judgment of Court of Appeal.

(1) [§834] General Rule: 30 Days After Filing.

(2) [§835] Exceptions: Immediately After Filing.

(3) [§836] Effect of Setting Writ Matter for Oral Argument.

(4) [§837] Effect of Certification for Publication.

(5) [§838] Finality for All Purposes.

(c) [§839] Judgment of Supreme Court.

(d) [§840] Finality for United States Supreme Court.

E. Remittitur.

1. [§841] Nature of Remittitur.

2. [§842] Procedure.

3. [§843] Proceedings in Which Remittitur Issues.

4. [§844] Effect of Issuance.

5. [§845] Issuance Forthwith.

6. [§846] Stay of Issuance.

7. Recall of Remittitur.

(a) [§847] Nature of Remedy.

(b) [§848] Procedure.

(c) Grounds.

(1) [§849] Correction of Remittitur.

(2) [§850] Correction of Judgment.

(3) [§851] Response to United States Supreme Court Remand.

(d) [§852] Reasons for Denying Motion.

XX. AFFIRMANCE, MODIFICATION, OR REVERSAL OF JUDGMENT

A. General or Unqualified Affirmance.

1. [§853] Nature and Effect.

2. [§854] Affirmance With Directions.

B. Modification.

1. [§855] Nature of Power.

2. Procedure.

(a) [§856] Modification by Direct Order.

(b) [§857] Modification as Condition of Affirmance.

- (c) [§858] Remand With Directions To Modify.
 - 3. Types of Errors Corrected.
 - (a) [§859] Clerical Error or Inadvertence.
 - (b) [§860] Error Shown by Record.
 - (c) [§861] Error Admitted by Respondent.
 - (d) [§862] Facts Found on Appeal.
 - 4. Types of Erroneous Judgments Modified.
 - (a) [§863] Judgment Outside Issues or Demand.
 - (b) [§864] Judgment Contrary to Verdict or Statement of Decision.
 - (c) [§865] Judgment Contrary to Evidence.
 - (d) [§866] Judgment Erroneous in Law.
 - (e) [§867] Other Defective Judgments.
 - 5. [§868] Where Modification Is Improper.
- C. General or Unqualified Reversal.
- 1. [§869] Vacation of Judgment and Incidental Matters.
 - 2. Right to New Trial.
 - (a) [§870] General Rule: Automatic Right After Reversal.
 - (b) [§871] Distinction: Reversal for Insufficiency of Evidence.
 - 3. [§872] Right To Amend Pleadings.
 - 4. [§873] Reversal of Judgment Notwithstanding Verdict.
- D. Reversal With Directions.
- 1. Directions To Enter Judgment.
 - (a) When Directions Are Proper.
 - (1) [§874] Nature of Power.
 - (2) [§875] General Reversal Construed as Reversal With Directions.
 - (3) [§876] Error of Law Alone.
 - (4) [§877] Insufficient Evidence or Pleadings.
 - (5) [§878] Where Action Should Be Dismissed.
 - (b) Duty of Trial Court To Follow Directions.
 - (1) [§879] Nature of Duty.
 - (2) [§880] Remedies for Noncompliance.
 - (3) [§881] Directions Requiring Construction.
 - (c) [§882] Review of Judgment in Conformity With Directions.
 - 2. Other Directions.
 - (a) [§883] In General.
 - (b) [§884] Direction To Permit Amended Pleadings.
 - (c) Proceedings in Conformity With Opinion.
 - (1) [§885] Nature and Purpose of Direction.
 - (2) [§886] Criticism and Proposal for Reform.
 - (3) [§887] Illustrations.
- E. Partial Reversal.
- 1. [§888] In General.
 - 2. [§889] Where Appeal Is From Whole Judgment.
 - 3. Directions To Retry Particular Issue.
 - (a) [§890] In General.

(b) [§891] Whether Complete Retrial Is Required.

F. [§892] Summary Reversal.

G. Stipulation To Reverse.

1. [§893] Presumption in Favor of Stipulation.
2. [§894] Extraordinary Circumstances Justifying Rejection of Stipulation.
3. [§895] Refusal To Apply Presumption Favoring Stipulation.
4. [§896] Abrogation of Presumption Favoring Stipulation.
5. [§897] Procedure.
6. [§898] No Stipulated Reversal in Criminal Case.
7. [§899] Consent to Vacation of Judgment.

H. Restitution After Reversal.

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

XXI. REHEARING IN COURT RENDERING DECISION

A. [§904] Nature of Power.

B. [§905] Grounds.

C. [§906] New Points Are Not Allowed.

D. Procedure.

1. [§907] Petition.
2. [§908] Answer.
3. [§909] Time for Order.
4. [§910] Grant of Petition.
5. Denial of Petition.

(a) [§911] In General.

(b) [§912] Summary Denial Final Forthwith.

XXII. REVIEW IN SUPREME COURT

A. In General.

1. [§913] Constitutional Authority.
2. [§914] Judicial Council Advisory Committee Report.

B. Grounds for Review.

1. [§915] Uniformity of Decision and Important Question.
2. [§916] Appellate Court Without Jurisdiction.
3. [§917] No Qualified Majority.
4. [§918] Transfer to Court of Appeal for Further Proceedings.
5. [§919] Other Grounds Formerly Recognized.

C. Examination of Record.

1. [§920] General Rule: No Examination.
2. [§921] When Record Will Be Reexamined.

D. Transfer of Cause Before Decision.

1. Power of Supreme Court.
 - (a) [§922] Nature and Grounds.
 - (b) [§923] Procedure.
2. [§924] Power of Court of Appeal.

E. Procedure.

- 1. Review on Court's Own Motion.**
 - (a) [§925] Time and Extension.
 - (b) [§926] Reasons for Granting Review.
- 2. Review on Petition of Party.**
 - (a) [§927] Petition.
 - (b) [§928] Answer and Reply.
 - (c) [§929] Form and Length Limitations.
 - (d) [§930] Statement of Issues.
 - (e) [§931] Transmission of Record.
- 3. Determination of Petition.**
 - (a) [§932] Court Conference and Orders.
 - (b) [§933] Time and Extension.
- 4. [§934] Issues on Review.**
- 5. [§935] Oral Argument.**
- 6. Brief on Merits.**
 - (a) [§936] In General.
 - (b) [§937] Form and Content.
 - (c) [§938] Amicus Briefs on Merits.
- 7. [§939] Letter in Lieu of Brief.**
- 8. Submission and Deposition of Causes.**
 - (a) [§940] Submission.
 - (b) [§941] Affirmance, Modification, or Reversal.
 - (c) [§942] Decision on Limited Issues.
 - (d) [§943] Dismissal.
 - (e) [§944] Transfer Where Justices of Supreme Court Are Recused.
 - (f) Retransfer With Directions.
 - (1) [§945] In General.
 - (2) [§946] Power To Exercise Discretion After Retransfer.
 - (3) [§947] Partial Decision and Retransfer.
- 9. Rehearing.**
 - (a) [§948] In General.
 - (b) [§949] Court Conference.
 - (c) [§950] What Constitutes Majority of Court.
- 10. Court of Appeal Opinion After Grant of Review.**
 - (a) [§951] Publication or Nonpublication.
 - (b) [§952] Distinction Between Practice of Granting Hearing and Review.

XXIII. COSTS AND ATTORNEYS' FEES

A. Costs on Appeal.

- 1. Right To Recover.**
 - (a) [§953] In General.
 - (b) Right of Prevailing Party.
 - (1) [§954] General Rule.
 - (2) [§955] Who Is Prevailing Party.
 - (3) [§956] Unsuccessful Owner-Appellant in Condemnation.
 - (4) [§957] Award Against Government or Officer.

(c) Discretion of Reviewing Court.

- (1) [§958] In General.**
- (2) [§959] Request for Exercise of Discretion.**
- (3) [§960] No Costs Award.**
- (4) [§961] Costs Apportioned.**
- (5) [§962] Award to Respondent on Modification.**
- (6) [§963] Award to Respondent on Reversal.**
- (7) [§964] Award to Appellant on Affirmance.**
- (8) [§965] Award to Appellant on Reversal With Directions To Dismiss.**
- (9) [§966] Award to Appellant on Affirmance of Order Denying Mandamus.**

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

2. Items Recoverable.

- (a) [§968] In General.**
- (b) [§969] Record.**
- (c) [§970] Briefs.**
- (d) Expenses on Surety Bond.**
 - (1) [§971] In General.**
 - (2) [§972] Test of Necessity.**
- (e) [§973] Other Expenses.**

3. Procedure.

- (a) [§974] Award and Entry.**
- (b) Cost Bill in Trial Court.**
 - (1) [§975] Requirements.**
 - (2) [§976] Abandonment of Appeal.**
- (c) [§977] Motion To Tax.**
- (d) [§978] Enforcement of Award.**

B. Attorneys' Fees on Appeal.

- 1. [§979] Right To Recover.**
- 2. [§980] Jurisdiction of Reviewing Court.**
- 3. [§981] Jurisdiction of Trial Court.**
- 4. [§982] Procedure for Request.**

XXIV. SANCTIONS FOR FRIVOLOUS OR DILATORY APPEAL

A. In General.

- 1. [§983] Nature of Power.**
- 2. [§984] Partially Frivolous Appeal.**
- 3. [§985] Frivolous Continuation of Appeal.**
- 4. [§986] Bankruptcy Is No Bar to Sanctions.**

B. Detriment and Benefit.

- 1. [§987] Persons Sanctioned.**
- 2. [§988] Persons Compensated.**

C. Standards for Determining Frivolousness.

- 1. [§989] Objective and Subjective Standards.**
- 2. [§990] Standards Applicable to Pro. Per. Appellants.**

D. Where Delay Is Sole Ground for Sanction.

1. [§991] In General.
2. [§992] Standard of Proof.

E. Procedure.

1. [§993] Due Process Requirements.
2. [§994] Noticed Motion Procedure.
3. [§995] Use of Referee.

F. Illustrations.

1. [§996] Sanction Under \$1,000.
2. [§997] Sanction of \$1,000 to \$5,000.
3. [§998] Sanction Over \$5,000, But Less Than \$100,000.
4. [§999] Sanction Over \$100,000.
5. [§1000] Sanction Denied.

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

XXV. APPEAL IN LIMITED CIVIL CASE

A. [§1002] In General.

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

C. Appealability.

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

D. Procedure.

1. Notice of Appeal.

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

2. Record on Appeal.

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

3. [§1015] Briefs.

4. [§1016] Abandonment and Dismissal.

5. Hearing and Determination.

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

6. [§1019] Rehearing.

E. Hearing in Court of Appeal.

1. [§1020] Nature and Scope of Power.

2. Certification and Transfer.

- (a) [§1021] In General.
- (b) Certification by Superior Court.
 - (1) [§1022] Application, Opposition, and Determination.

(2) [§1023] Certification and Transmission of Record.

(3) [§1024] Denial or Grant of Transfer.

(c) [§1025] Transfer by Court of Appeal on Own Motion.

(d) [§1026] Transfer by Court of Appeal on Party's Petition.

(e) [§1027] Remedies When Certification or Transfer Is Refused.

3. Proceedings in Court of Appeal.

(a) [§1028] Notice of Order Granting or Denying Transfer.

(b) [§1029] Stay of Proceedings Below.

(c) [§1030] Record.

(d) [§1031] Briefs and Oral Argument.

(e) [§1032] Decision and Remittitur.