

8 California Procedure (5th), Attack on Judgment in Trial Court

I. INTRODUCTION

A. Direct Attack.

- 1. [§1] Nature and Significance of Concept.**
- 2. Methods of Direct Attack.**
 - (a) [§2] In Trial Court.**
 - (b) [§3] In Reviewing Court.**
 - (c) [§4] Coram Nobis and Coram Vobis.**
- 3. [§5] Presumption of Jurisdiction.**

B. Collateral Attack.

- 1. [§6] Nature and Significance of Concept.**
- 2. Illustrations.**
 - (a) [§7] Subsequent Action.**
 - (b) [§8] Subsequent Motion.**
 - (c) [§9] Trial Court's Own Motion.**
 - (d) [§10] Collateral Attack in Reviewing Court.**
- 3. Limitation: Presumption of Jurisdiction.**
 - (a) [§11] In General.**
 - (b) [§12] Lack of Jurisdiction Shown by Record.**
 - (c) Exception: Showing by Extrinsic Evidence.**
 - (1) [§13] Waiver.**
 - (2) [§14] Foreign Judgment.**
 - (3) [§15] Judgment Against Dead Person or Dissolved Corporation.**
 - (d) [§16] Court of Limited or Special Jurisdiction.**
- 4. [§17] Other Limitations.**

II. MOTION FOR NEW TRIAL

A. In General.

- 1. [§18] Nature and Object of Motion.**
- 2. [§19] Statutory Grounds Are Exclusive.**
- 3. [§20] Statutory Procedure Is Mandatory.**
- 4. [§21] Necessity for Objection.**
- 5. Proceedings in Which New Trial May Be Had.**
 - (a) [§22] In General.**
 - (b) [§23] Decision Without Trial of Facts.**
 - (c) [§24] Exception: Complete Statutory Plan Excluding Motion.**

B. Grounds.

- 1. Irregularity in Proceedings.**
 - (a) [§25] Nature of Ground.**
 - (b) [§26] Misconduct of Court, Counsel, or Adverse Party.**
 - (c) [§27] Irregularities in Formation of Jury.**
- 2. [§28] Misconduct of Jury.**
- 3. Accident or Surprise.**
 - (a) [§29] Nature of Ground.**
 - (b) [§30] Conditions.**

- 4. Newly Discovered Evidence.**
 - (a) [§31] Nature of Ground.**
 - (b) Conditions.**
 - (1) [§32] Newly Discovered.**
 - (2) [§33] Material to Outcome.**
 - (3) [§34] Reasonable Diligence.**
- 5. Excessive or Inadequate Damages.**
 - (a) [§35] Nature of Ground.**
 - (b) [§36] Appellate Review Contrasted.**
- 6. Insufficient Evidence.**
 - (a) [§37] Nature of Ground.**
 - (b) [§38] Power and Duty To Weigh Evidence.**
 - (c) [§39] Other Forms of Review Contrasted.**
 - (d) [§40] Motion After Successive Trials or Determinations.**
- 7. Verdict or Decision Against Law.**
 - (a) [§41] Nature of Ground.**
 - (b) [§42] Improper Verdict.**
 - (c) [§43] Defective Statement of Decision.**
- 8. [§44] Error in Law.**
- 9. [§45] Other Grounds.**

C. Procedure.

- 1. Necessity of Motion.**
 - (a) [§46] In General.**
 - (b) [§47] Motion Improperly Labeled.**
- 2. Notice of Motion.**
 - (a) Form.**
 - (1) [§48] Statutory Requirements.**
 - (2) [§49] Failure To Designate Whether Motion Is Made on Minutes or Affidavits.**
 - (3) [§50] Other Defects.**
 - (b) [§51] Service on Adverse Party.**
 - (c) [§52] Filing Fee.**
 - (d) Time.**
 - (1) [§53] In General.**
 - (2) [§54] Late Filing Is Void.**
 - (3) Before Entry of Judgment.**
 - (aa) [§55] After Decision.**
 - (bb) [§56] What Constitutes Decision.**
 - (cc) [§57] Premature Notice Is Ineffective.**
 - (4) Fifteen Days After Notice of Entry of Judgment.**
 - (aa) [§58] Notice of Entry by Clerk.**
 - (bb) [§59] Notice of Entry by Party.**
 - (cc) [§60] Form of Notice.**
 - (dd) [§61] Waiver of Notice.**
 - (ee) [§62] Commencement and Running of Period.**
 - (5) [§63] Fifteen Days After Other Party's Notice of Motion.**

- (2) [§98] Scope of Power.
 - (3) [§99] Procedure.
 - (4) Interpretation of Order.
 - (aa) [§100] Grant of New Trial Treated as Denial.
 - (bb) [§101] Order Directing Reopening of Case.
 - (cc) [§102] Motions Made Both for New Trial and To Vacate Judgment.
 - (5) [§103] Where Motion Is Heard by New Judge.
- (c) Partial New Trial on Particular Issues.
 - (1) [§104] Nature of Power.
 - (2) Issue of Damages in Tort.
 - (aa) [§105] In General.
 - (bb) [§106] Limited New Trial Is Not Proper for Compromise Verdict.
 - (3) [§107] Other Issues.
 - (4) Relief Is Not Affected by That Sought in Motion.
 - (aa) [§108] Judge's Power To Make Unlimited Order Where Limited New Trial Is Sought.
 - (bb) [§109] Judge's Power To Make Limited Order Where Unlimited New Trial Is Sought.
 - (5) [§110] Interpretation of Order.
- (d) Conditional Order.
 - (1) In General.
 - (aa) [§111] Nature and Form.
 - (bb) [§112] Operation and Effect.
 - (cc) [§113] Specification Requirement.
 - (dd) [§114] Interpretation of Order.
 - (ee) [§115] Compliance After Jurisdictional Time Limit Expires.
 - (2) Remission Where Damages Are Excessive.
 - (aa) [§116] Nature of Remittitur.
 - (bb) [§117] Reapportionment of Liability Is Not Proper.
 - (cc) [§118] Form of Order.
 - (dd) [§119] Effect of Failure To Remit.
 - (3) Addition Where Damages Are Inadequate.
 - (aa) [§120] Judicial Recognition of Power.
 - (bb) [§121] Statutory Authorization.
 - (cc) [§122] Scope of Additur.
 - (dd) [§123] Procedure.
- 7. Effective Date of Order.
 - (a) [§124] Minute Entry or Signed Order.
 - (b) [§125] Permanent Minutes.
- 8. [§126] Effect of Order.
- 9. Review of Order.
 - (a) [§127] Void Order.
 - (b) Order Granting New Trial.

- (1) [§128] Appeal and Cross-Appeal.
- (2) Grounds on Which Affirmance May Be Based.
 - (aa) [§129] In General.
 - (bb) [§130] Order Based on Insufficient Evidence or Excessive or Inadequate Damages.
- (3) [§131] Necessity of Ground for New Trial.
- (4) [§132] Necessity of Prejudice.
- (5) Discretion of Trial Judge.
 - (aa) [§133] In General.
 - (bb) [§134] Abuse of Discretion.
- (6) [§135] Distinction: Review of De Facto Judgment Notwithstanding Verdict.
- (7) [§136] Waiver or Estoppel.
- (c) Order Denying New Trial.
 - (1) [§137] Order Is Not Directly Appealable.
 - (2) [§138] Review on Appeal From Judgment.

III. MOTION TO VACATE AND ENTER DIFFERENT JUDGMENT

- A. [§139] Nature and Grounds.
- B. [§140] Motion for New Trial Distinguished.
- C. [§141] Notice of Motion.
- D. [§142] Hearing and Determination.
- E. [§143] Review on Appeal.

IV. MOTION FOR RELIEF FROM JUDGMENT FOR MISTAKE, INADVERTENCE, SURPRISE, OR NEGLIGENCE

- A. In General.
 - 1. [§144] Nature of Relief.
 - 2. Scope of Statute.
 - (a) Actions and Special Proceedings.
 - (1) [§145] When Relief Is Available.
 - (2) [§146] When Relief Is Not Available.
 - (b) Procedural Steps.
 - (1) [§147] In General.
 - (2) [§148] Relief From Discovery Default.
 - 3. Persons Entitled to Relief.
 - (a) [§149] Party or Representative of Party.
 - (b) [§150] Relief to Plaintiff.
- B. Grounds for Relief.
 - 1. [§151] Fraud.
 - 2. [§152] Mistake of Fact.
 - 3. Mistake of Law.
 - (a) [§153] In General.
 - (b) [§154] Cases Upholding Relief.
 - (c) [§155] Cases Denying Relief.
 - 4. [§156] Inadvertence or Accident.
 - 5. [§157] Surprise.
 - 6. Neglect of Party.

- (a) [§158] In General.
- (b) [§159] Effect of Disability.

7. Neglect of Attorney.

- (a) [§160] In General.
- (b) Excusable Neglect.
 - (1) [§161] Office Errors or Press of Business.
 - (2) [§162] Reliance on Opposing Counsel.
 - (3) [§163] Reliance on Court Officers.
 - (4) [§164] Reliance on Other Persons.
 - (5) [§165] Illness or Mental Disturbance.
 - (6) [§166] Other Situations.
- (c) Inexcusable Neglect.
 - (1) When Neglect Is Inexcusable.
 - (aa) [§167] Failure To Plead or File Paper.
 - (bb) [§168] Failure To Appear.
 - (cc) [§169] Other Situations.
 - (2) Effect in Absence of Affidavit.
 - (aa) [§170] General Rule: No Excuse.
 - (bb) [§171] Relief for Neglect Amounting to Positive Misconduct.
 - (cc) [§172] Limits of Relief.

C. Procedure.

- 1. [§173] Necessity of Motion.
- 2. Notice of Motion.
 - (a) [§174] Form and Content.
 - (b) Jurisdictional Time.
 - (1) [§175] In General.
 - (2) [§176] When Time Begins To Run.
 - (3) [§177] Shortening Time in Property Action.
 - (c) [§178] Reasonable Time.
- 3. Showing in Support of Motion.
 - (a) [§179] Proof of Excuse and Diligence.
 - (b) [§180] Copy of Proposed Pleading.
 - (c) [§181] No Affidavit of Merits Is Required.
- 4. Order.
 - (a) [§182] Entry and Effect.
 - (b) Conditions.
 - (1) [§183] Nature and Purpose.
 - (2) [§184] Invalid Conditions.
 - (3) [§185] Statement of Reasons.
 - (c) [§186] Fees, Costs, and Penalties.
- 5. Review of Order.
 - (a) [§187] Appeal and Mandamus.
 - (b) Order Granting Relief.
 - (1) [§188] Order Affirmed.
 - (2) [§189] Order Reversed.

- (c) **Order Denying Relief.**
 - (1) **§190 Order Affirmed.**
 - (2) **§191 Order Reversed.**

D. Mandatory Relief on Attorney's Affidavit.

- 1. **§192 Governing Provisions.**
- 2. **When Relief Is Available.**
 - (a) **§193 In General.**
 - (b) **§194 Relief for Inexcusable Neglect.**
- 3. **When Relief Is Not Available.**
 - (a) **§195 Judgment Not Caused by Attorney's Fault.**
 - (b) **§196 Judgment Not Based on Default or Dismissal Within Scope of Statute.**
 - (1) **§196 In General.**
 - (2) **§197 Order Granting Summary Judgment.**
 - (3) **§198 Order Following Hearing on Merits.**
 - (4) **§199 Judgment Entered on Arbitration Award.**
 - (5) **§200 Dismissal for Noncompliance With Statute of Limitations.**
 - (6) **§201 Voluntary Dismissal Resulting From Settlement.**
- 4. **§202 Time Limit.**
- 5. **§203 Diligence.**
- 6. **§204 Conditions Prohibited.**
- 7. **§205 Mandatory Payment by Attorney.**

V. MOTION FOR RELIEF FROM VOID JUDGMENT

- A. **§206 In General.**
- B. **§207 Judgment Void on Its Face.**
- C. **Judgment Valid on Its Face.**
 - 1. **§208 No Jurisdiction of Person.**
 - 2. **§209 Timeliness of Motion.**

VI. MOTION FOR RELIEF FROM DEFAULT JUDGMENT ON CONSTRUCTIVE SERVICE

- A. **§210 Nature of Relief.**
- B. **Actual Notice Precludes Relief.**
 - 1. **§211 Statutory Rule.**
 - 2. **§212 Strict Construction.**
- C. **Procedure.**
 - 1. **§213 Notice of Motion.**
 - 3. **§214 Order.**

VII. EQUITABLE RELIEF AGAINST JUDGMENT

- A. **Nature of Remedy.**
 - 1. **§215 In General.**
 - 2. **§216 Scope of Relief.**
 - 3. **§217 Persons Entitled to Relief.**
 - 4. **§218 Relief by Action.**
 - 5. **Relief by Motion.**
 - (a) **§219 Propriety of Remedy.**

(b) [§220] Motion Is Not Prerequisite to Action.

(c) [§221] Effect of Denial of Motion.

6. Jurisdiction of Courts.

(a) [§222] In General.

(b) [§223] Probate Court.

B. Grounds for Relief.

1. [§224] Void Judgment.

2. Judgment Obtained by Extrinsic Fraud.

(a) [§225] In General.

(b) Fraud Preventing Appearance or Contest.

(1) [§226] In General.

(2) [§227] Probate Proceedings.

(3) [§228] Nonfiduciary Cases.

(c) [§229] Fraud Preventing Knowledge of Right.

3. Judgment Obtained by Extrinsic Mistake.

(a) [§230] In General.

(b) [§231] Incapacity of Attorney or Party.

(c) [§232] Reliance on Third Person.

(d) Reliance on Negligent Attorney.

(1) [§233] In General.

(2) [§234] Positive Misconduct Is Required.

4. [§235] Judgment Obtained by Duress.

C. Conditions for Relief.

1. Meritorious Case.

(a) [§236] Extrinsic Fraud or Mistake.

(b) [§237] Void Judgment.

2. Excuse and Diligence.

(a) [§238] In General.

(b) [§239] Diligence Shown.

(c) [§240] Diligence Not Shown.

D. No Relief for Intrinsic Fraud or Mistake.

1. [§241] Rule Denying Relief.

2. [§242] Illustrations.