

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

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  - 3. [§461] **Who May Verify.**
  - 4. **Form of Verification.**

- (a) [§462] Affidavit or Declaration.
- (b) [§463] Use of Statutory Form.
- (c) By Attorney or Other Person.
  - (1) [§464] Statement of Reasons.
  - (2) [§465] Verification by Attorney or Officer.

**5. When Verification Is Required.**

- (a) [§466] Complaint or Petition.
- (b) [§467] Answer.

**6. [§468] Effect of Failure To Comply.**

**M. [§469] Certification of Pleadings.**

**IX. THE COMPLAINT**

**A. In General.**

**1. Form and Content.**

- (a) [§470] Nature of Pleading.
- (b) [§471] Superior Court.
- (c) [§472] Limited Civil Cases.

**2. Names of Parties.**

- (a) [§473] Natural Persons.
- (b) [§474] Corporations and Associations.
- (c) [§475] Public Entity or Officer.
- (d) [§476] Persons in Representative Capacity.
- (e) [§477] Effect of Misnaming Defendant.

**3. Suing Defendant By Fictitious Name.**

- (a) [§478] In General.
- (b) [§479] True Name Known.
- (c) [§480] Amendment To Allege Initial Ignorance.
- (d) True Name Not Known.
  - (1) [§481] Actual Ignorance.
  - (2) [§482] Theory That Ignorance Must Be Excusable.
- (e) [§483] Speculative Listing of Fictitious Defendants.
- (f) Ignorance of Cause of Action.

(1) [§484] Problem and Rule.

(2) [§485] Illustrations.

(3) [§486] Exception: Public Entity Defendant.

**(g) Procedure.**

(1) [§487] Forms of Allegation.

(2) [§488] Service and Appearance.

(3) Amendment To Substitute True Name.

(aa) [§489] Application and Order.

(bb) [§490] Delay in Seeking Amendment.

(cc) [§491] When Venue Change Is Pending.

(dd) [§492] When Action Is No Longer Pending.

(ee) [§493] Effect of Amendment.

(ff) [§494] Effect of Failure To Amend.

**4. Prayer or Demand.**

- (a) [§495] Nature of Prayer.

- (b) [§496] Form.
- (c) Effect of Insufficient Prayer.
  - (1) [§497] Contested Case.
  - (2) [§498] Default Case.

**5. Bill of Particulars in Action on Account.**

- (a) [§499] Limited to Action on Account.
- (b) [§500] Other Procedures Distinguished.
- (c) What Constitutes Action on Account.
  - (1) [§501] Ordinary Contract and Quasi-Contract Actions.
  - (2) [§502] Account Stated or Other Superseding Contract.
- (d) Procedure in Obtaining Bill.
  - (1) [§503] Defendant's Demand.
  - (2) [§504] Delivery of Account.
  - (3) [§505] Amendment or Further Account.
- (e) [§506] Effect of Bill.
- (f) Effect of Failure To Comply With Demand.
  - (1) [§507] In General.
  - (2) [§508] Defective Bill and Motion for Further Account.
  - (3) [§509] Late Bill: Discretion To Withhold Penalty.
  - (4) [§510] Relief From Default.

**6. Damages Sought for Personal Injury or Death.**

- (a) Statement of Nature and Amount of Damages.
  - (1) [§511] In General.
  - (2) [§512] Service and Filing of Statement.
  - (3) [§513] Effect of Statement on Amount of Actual Award.
- (b) [§514] Statement Preserving Right To Seek Punitive Damages.

**B. Legal Actions Arising Out of Contract.**

**1. Damages for Breach of Contract.**

- (a) In General.
  - (1) [§515] Elements of Cause of Action.
  - (2) [§516] Common Types of Contract Actions.
  - (3) [§517] Judicial Council Forms.
- (b) The Contract.
  - (1) Written Contract.
    - (aa) [§518] Setting Out Copy.
    - (bb) [§519] Pleading Legal Effect.
    - (cc) [§520] Essential Terms Must Be Pleaded.
    - (dd) [§521] Consideration Need Not Be Pleaded.
  - (2) Oral Contract.
    - (aa) [§522] Pleading Legal Effect.
    - (bb) [§523] Negating Statute of Frauds: Memorandum.
    - (cc) [§524] Negating Statute of Frauds: Estoppel.
    - (dd) [§525] Consideration or Promissory Estoppel.
  - (3) [§526] Implied Contract.
  - (4) [§527] Contract Made by Agent.
  - (5) [§528] Interpretation.



- (6) [§529] Modification.
  - (c) Plaintiff's Performance or Excuse for Nonperformance.
    - (1) [§530] Conditions Precedent.
    - (2) [§531] Conditions Subsequent.
    - (3) [§532] Prevention by Defendant as Excuse.
    - (4) [§533] Waiver by Defendant as Excuse.
  - (d) Defendant's Breach.
    - (1) [§534] Specific Acts or Conduct.
    - (2) [§535] Negligent Performance.
    - (3) [§536] Bad Faith Breach.
    - (4) [§537] General Allegations.
    - (5) Obligation Conditional on Event.
      - (aa) [§538] Requirement of Specific Pleading.
      - (bb) [§539] Illustrations.
  - (e) [§540] Causation: Damage Resulting From Breach.
- 2. Restitution After Rescission.**
- (a) In General.
    - (1) [§541] Nature of Action.
    - (2) [§542] Elements of Cause of Action.
    - (3) [§543] Other Actions Distinguished.
  - (b) Grounds for Rescission.
    - (1) Fraud.
      - (aa) [§544] Must Plead Injury.
      - (bb) [§545] Need Not Plead Pecuniary Loss.
    - (2) [§546] Mistake or Innocent Misrepresentation.
    - (3) Undue Influence.
      - (aa) [§547] Nature of Ground and Distinctions.
      - (bb) [§548] Cases Involving Confidential Relationship.
      - (cc) [§549] Cases Not Involving Confidential Relationship.
    - (4) [§550] Duress.
    - (5) [§551] Mental Incapacity.
    - (6) [§552] Breach or Failure of Consideration.
- 3. Common Counts.**
- (a) Right To Plead.
    - (1) [§553] In General.
    - (2) Action Involving Express Contract.
      - (aa) [§554] Common Count Proper.
      - (bb) [§555] Common Count Improper.
    - (3) [§556] Action Involving Waiver of Tort.
  - (b) [§557] Essential Allegations of Any Common Count.
  - (c) Nonessential Allegations.
    - (1) [§558] Defendant's Request.
    - (2) [§559] Defendant's Promise.
    - (3) [§560] Date of Indebtedness.
  - (d) Particular Counts in General Use.
    - (1) Counts for Fixed Amounts.

- (aa) [§561] Money Had and Received.
- (bb) [§562] Work and Labor (Services).
- (cc) [§563] Goods Sold and Delivered.
- (dd) [§564] Money Lent or Money Paid.
- (ee) [§565] Account Stated.

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

- (aa) [§566] Quantum Meruit (Services).
- (bb) [§567] Quantum Valebant (Goods Sold).

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

- (1) [§568] Separate Counts in One Pleading.
- (2) [§569] Specific Count in Superseded Pleading.
- (3) [§570] Distinction: Alternative Remedies or Legal Theories of Recovery.

**4. Bills and Notes.**

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

- (1) [§571] Execution and Terms.
- (2) [§572] Acquisition by Transferee.
- (3) [§573] Breach.
- (4) [§574] Other Allegations.

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

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

**1. In General.**

- (a) [§576] Elements of Cause of Action.
- (b) [§577] Matters That Need Not Be Pleaded.
- (c) [§578] Common Types of Negligence Actions.
- (d) [§579] Judicial Council Forms.

**2. Legal Duty of Care.**

**(a) In General.**

- (1) [§580] Traditional Approach.
- (2) [§581] Foreseeability of Risk.

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

- (1) [§582] Common Law Duty.
- (2) Statutory Duty.
  - (aa) [§583] Pleading Statute.
  - (bb) [§584] General Pleading.

**(3) Contractual Duty.**

- (aa) [§585] In General.
- (bb) [§586] Duty to Third Party.
- (cc) [§587] Election To Sue in Contract.

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

- (1) [§588] In General.
- (2) [§589] Duty to Invitee or Licensee.
- (3) [§590] Duty to Trespassing Child: Attractive Nuisance.
- (4) [§591] Duty of Landlord to Residential Tenant.
- (5) [§592] Duty of Manufacturer or Supplier of Goods.
- (6) [§593] Duty of Professional to Patient or Client.

- (7) [§594] Duty on Voluntary or Gratuitous Undertaking.
- 3. Breach of Duty by Negligent Act or Omission.
  - (a) [§595] In General.
  - (b) Pleading Negligence in General Terms.
    - (1) [§596] The Rule and Its Effect.
    - (2) [§597] Theory of The Rule.
    - (3) Form of General Allegations.
      - (aa) [§598] Failure To Refer to Act or Omission.
      - (bb) [§599] Reference to Broadest Act or Omission.
      - (cc) [§600] Malpractice and Negligent Medical Care Cases.
      - (dd) [§601] Deviations From Typical Form.
    - (4) [§602] Sufficiency of Pleading Against Special Demurrer.
    - (5) Pleading Breach of Affirmative Duty.
      - (aa) [§603] In General.
      - (bb) [§604] Where Complaint Discloses Obvious Danger.
  - (c) Pleading Negligence in Specific Terms.
    - (1) [§605] Nature and Form of Specific Pleading.
    - (2) Effect of Pleading in Res Ipsa Loquitur Case.
      - (aa) [§606] Rule Requiring General Pleading.
      - (bb) [§607] Where Pleading Is General and Specific.
  - (d) [§608] Pleading Negligence in Both General and Specific Terms.
  - (e) Pleading More Culpable Conduct.
    - (1) [§609] In General.
    - (2) [§610] Wilful Misconduct.
- 4. Proximate Cause.
  - (a) [§611] Causal Connection.
  - (b) [§612] Direct and Concurrent Causation.
  - (c) Foreseeable Intervening Cause.
    - (1) [§613] When General Pleading Is Sufficient.
    - (2) [§614] When Specific Pleading Is Required.
  - (d) [§615] Medical Malpractice.
  - (e) [§616] Legal Malpractice.
- D. Tort Actions Against Public Entities.
  - 1. [§617] Government Claims Act.
  - 2. [§618] Motor Vehicle Torts.
  - 3. Requirement of Filing Claim.
    - (a) [§619] In General.
    - (a) [§620] Conformance of Complaint to Claim.
  - 4. Dangerous Condition of Public Property.
    - (a) [§621] Elements of Cause of Action.
    - (b) [§622] Illustrations.
  - 5. [§623] Other Bases of Liability.
- E. [§624] Tort Actions Against Public Employees.
- F. Tort Actions Based on Absolute and Strict Liability.
  - 1. [§625] Injuries From Animals.

2. [§626] Ultrahazardous Activity.
3. Strict Products Liability.
  - (a) [§627] Nature of Liability.
  - (b) [§628] Elements of Cause of Action.
  - (c) [§629] Damage From Defective Real Property.
  - (d) [§630] Exposure to Toxic Materials.

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

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

1. Damages for Trespass or Injury.
  - (a) [§631] Elements of Cause of Action.
  - (b) [§632] Possession or Right to Possession.
  - (c) [§633] Other Allegations.
2. Recovery of Possession: Ejectment.
  - (a) [§634] In General.
  - (b) [§635] Elements of Cause of Action.
  - (c) [§636] Plaintiff's Ownership or Interest.
  - (d) [§637] Defendant's Possession and Withholding.
3. Recovery of Possession: Unlawful Detainer.
  - (a) In General.
    - (1) [§638] Nature of Remedy.
    - (2) [§639] Successive Actions.
    - (3) [§640] Procedure.
  - (b) Action by Landlord Against Tenant.
    - (1) [§641] Relationship and Possession.
    - (2) Grounds for Recovery of Possession.
      - (aa) [§642] In General.
      - (bb) [§643] Lessee Holding Over.
      - (cc) [§644] Lessee's Default or Breach.
    - (3) [§645] Damages.
    - (4) [§646] Facts Justifying Immediate Possession.
  - (c) [§647] Action by Owner Against Employee or Licensee.
  - (d) [§648] Action by Purchaser at Judicial Sale.
4. Recovery of Possession: Forcible Entry.
  - (a) [§649] In General.
  - (b) [§650] Plaintiff's Possession.
  - (c) [§651] Defendant's Forcible Entry.
  - (d) [§652] Defendant's Withholding and Damage.
5. [§653] Recovery of Possession: Forcible Detainer.
6. Quiet Title.
  - (a) In General.
    - (1) [§654] Nature and Scope of Action.
    - (2) [§655] Other Actions Distinguished.
    - (3) [§656] Statutory Development.
  - (b) Statutory Action.
    - (1) [§657] In General.
    - (2) [§658] Jurisdiction, Venue, and Process.

- (3) [§659] Necessary Known Defendants.
- (4) [§660] Defendant or Interest Unknown.
- (5) [§661] Appearance and Rights of Defendant.
- (6) [§662] Trial and Judgment.
- (c) Elements of Cause of Action.
  - (1) [§663] Statutory Requirements for Complaint.
  - (2) Plaintiff's Title or Interest.
    - (aa) [§664] In General.
    - (bb) [§665] Title in Fee.
    - (cc) [§666] Legal Interest Less Than Fee.
    - (dd) [§667] Equitable Interest.
  - (3) Defendant's Adverse Claim.
    - (aa) [§668] General Pleading.
    - (bb) [§669] Specific Pleading of Fraud.
  - (4) [§670] Plaintiff's Offer To Do Equity.
- 7. Action To Remove Cloud.
  - (a) [§671] In General.
  - (b) [§672] Plaintiff's Title or Interest.
  - (c) [§673] Defendant's Instrument.
  - (d) [§674] Invalidity of Instrument.
- 8. Foreclosure of Mortgage.
  - (a) [§675] In General.
  - (b) [§676] Security.
  - (c) [§677] Defendant's Default.
  - (d) [§678] Interests of Defendants Other Than Mortgagor.
- 9. Partition.
  - (a) [§679] In General.
  - (b) [§680] Ownership of Described Property.
  - (c) [§681] Interests of Plaintiff and Defendant.
  - (d) [§682] Interests of Other Persons.
  - (e) [§683] Property and Interests Subject to Action.
  - (f) [§684] Additional Allegations.
- 10. Condemnation.
  - (a) [§685] In General.
  - (b) [§686] Parties.
  - (c) [§687] Right To Condemn.
  - (d) [§688] Map and Description of Land.
- 11. Inverse Condemnation (Damage to Property).
  - (a) [§689] In General.
  - (b) [§690] Impairment of Access.
  - (c) [§691] Injury From Improvement.
- H. Actions Involving Rights in Personal Property.
  - 1. Specific Recovery: Claim and Delivery.
    - (a) Nature of Action.
      - (1) [§692] In General.
      - (2) [§693] Common Law Forms.

- (b) [§694] Tangible Property.
- (c) Plaintiff's Right to Possession.
  - (1) [§695] Plaintiff Owner.
  - (2) [§696] Plaintiff With Special Property.
  - (3) [§697] Right at Time of Action.
- (d) Defendant's Wrongful Possession.
  - (1) [§698] In General.
  - (2) [§699] Original Possession Rightful.
  - (3) [§700] Possession at Time of Action.
- (e) [§701] Value of Property.

**2. Conversion.**

- (a) [§702] Nature of Action.
- (b) [§703] Plaintiff's Right to Possession.
- (c) [§704] Defendant's Conversion.
- (d) [§705] Damages.

**3. [§706] Action To Quiet Title.**

**4. Literary or Artistic Infringement.**

- (a) [§707] Contract and Tort Actions.
- (b) [§708] Copy or View of Production.

**I. Fraud and Deceit.**

**1. In General.**

- (a) [§709] Actions Involving Fraud.
- (b) [§710] Elements of Action for Deceit.
- (c) Specific Pleading Requirement.
  - (1) In General.
    - (aa) [§711] Particularity in Pleading.
    - (bb) [§712] Actions Against Corporations.
    - (cc) [§713] Actions Against Municipalities.
  - (2) Distinctions and Exceptions.
    - (aa) [§714] In General.
    - (bb) [§715] Election of Alternative Remedy.
    - (cc) [§716] Fraud in Advertising.
- (d) [§717] Pleading Constructive Fraud.

**2. Representation.**

- (a) [§718] In General.
- (b) [§719] Representation of Fact.
- (c) [§720] Actionable Representation of Opinion.
- (d) [§721] Representation of Intention: False Promise.
- (e) [§722] Active Concealment or Suppression.

**3. Falsity.**

- (a) [§723] Allegation Required.
- (b) [§724] Specific Pleading.
- (c) [§725] Sufficiency of General Allegation.

**4. Knowledge of Falsity (Scienter).**

- (a) [§726] Allegation Required.
- (b) [§727] Distinction: Negligent Misrepresentation.

**5. Intent To Deceive.**

- (a) [§728] General Intent To Deceive or Defraud.
- (b) [§729] Intent To Induce Particular Action.

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

- (a) [§730] Actual Reliance: Causal Connection Between Belief and Action.
- (b) [§731] Injury or Damage: Causal Connection Between Action and Injury.
- (c) Justifiable Reliance.
  - (1) [§732] Cases Denying Recovery.
  - (2) [§733] Cases Allowing Recovery.

**J. Miscellaneous Tort Actions.**

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

- (a) In General.
  - (1) [§734] Nature of Action.
  - (2) [§735] Elements of Cause of Action.
  - (3) [§736] Effect of Privilege.
  - (4) [§737] Defamation in Newspaper or Broadcast.
  - (5) [§738] Pleading of Falsity Is Not Required.
- (b) Publication of False and Defamatory Matter.
  - (1) [§739] Pleading of Exact Words or Other Matter.
  - (2) [§740] Publication to Third Persons.
- (c) [§741] Inducement: Extrinsic Circumstances Affecting Meaning.
- (d) Innuendo: Defamatory Meaning of Ambiguous Words.
  - (1) [§742] Nature and Purpose.
  - (2) [§743] Ascription of Unwarranted Meaning Is Not Allowed.
- (e) [§744] Colloquium: Publication Concerning Plaintiff.
- (f) [§745] Malice.

**2. Invasion of Privacy.**

- (a) [§746] Elements of Cause of Action.
- (b) [§747] Complaint Sufficient.
- (c) [§748] Complaint Insufficient.

**3. [§749] Slander of Title.**

**4. Malicious Prosecution.**

- (a) In General.
  - (1) [§750] Nature of Action.
  - (2) [§751] Elements of Cause of Action.
  - (3) [§752] Effect of Privilege.
  - (4) [§753] Civil Action.
  - (5) [§754] Administrative Proceeding.
- (b) Lack of Probable Cause.
  - (1) [§755] General or Specific Pleading.
  - (2) [§756] Negating Inference From Conviction.
- (c) Favorable Termination.
  - (1) [§757] Necessity and Form of Allegations.
  - (2) [§758] Allegation of Final Termination Is Not Required.

- 5. Abuse of Process.**
  - (a) [§759] Nature of Action.
  - (b) [§760] Elements of Cause of Action.
  - (c) [§761] Excessive Attachment.
  - (d) [§762] Filing at Improper Venue.
- 6. False Imprisonment.**
  - (a) [§763] Nature of Action.
  - (b) [§764] Arrest Without Warrant.
  - (c) [§765] Arrest With Warrant.
- 7. Assault and Battery.**
  - (a) [§766] Nature of Action.
  - (b) [§767] Illustrations.
- 8. Intentional Infliction of Emotional Distress.**
  - (a) [§768] Nature of Action.
  - (b) [§769] Complaint Sufficient.
  - (c) [§770] Complaint Insufficient.
- 9. Interference With Contract and Business.**
  - (a) **Inducing Breach of Contract.**
    - (1) [§771] Nature of Action.
    - (2) [§772] Elements of Cause of Action.
    - (3) [§773] Illustrations.
  - (b) **Interference With Prospective Business Interests.**
    - (1) [§774] Nature of Action.
    - (2) [§775] Complaint Sufficient.
    - (3) [§776] Complaint Insufficient.
  - (c) [§777] Trademark or Tradename Infringement.
  - (d) [§778] Misappropriation of Trade Secrets.
  - (e) **Unfair Competition.**
    - (1) [§779] Nature of Action.
    - (2) [§780] Antitrust Violations.
    - (3) [§781] False Advertising.
- 10. [§782] Wrongful Discharge of Employee.**
- 11. [§783] Breach of Corporate Fiduciary Duty.**
- 12. [§783A] (New) Breach of Fiduciary Duty.**
- K. Suits in Equity.**
  - 1. Specific Performance.**
    - (a) **In General.**
      - (1) [§784] Nature of Action.
      - (2) [§785] Elements of Cause of Action.
      - (3) [§786] Recovery of Interim Rentals.
    - (b) **Specifically Enforceable Contract.**
      - (1) [§787] Certainty.
      - (2) **Avoiding Statute of Frauds.**
        - (aa) [§788] Estoppel: In General.
        - (bb) [§789] Estoppel: Contract To Make Will.
        - (cc) [§790] Part Performance of Land Contract.



- (c) Consideration Adequate, Contract Just and Reasonable.**
  - (1) [§791] Rule and Theory.**
  - (2) [§792] Exception Where Consideration Is Accepted.**
  - (3) [§793] General Pleading Is Insufficient.**
  - (4) Pleading Facts.**
    - (aa) [§794] Price Equals Value.**
    - (bb) [§795] Surrounding Circumstances.**
  - (5) Relaxation of Rule.**
    - (aa) [§796] Deviations of Form.**
    - (bb) [§797] Contract Terms as Sufficient.**
    - (cc) [§798] Cure by Trial and Judgment.**
  - (6) [§799] Self-Defeating Allegations.**
- (d) Plaintiff's Performance, Tender, or Excuse.**
  - (1) [§800] Necessity of Pleading.**
  - (2) [§801] Forms of Allegation.**
  - (3) [§802] Certainty of Counterperformance.**
- (e) Inadequacy of Remedy at Law.**
  - (1) [§803] In General.**
  - (2) [§804] Contract Concerning Personal Property.**
  - (3) [§805] Contract To Make Will.**

## **2. Reformation.**

- (a) In General.**
  - (1) [§806] Nature of Action.**
  - (2) [§807] Elements of Cause of Action.**
  - (3) [§808] Other Allegations.**
  - (4) [§809] Plaintiff's Interest.**
- (b) [§810] Intended Agreement.**
- (c) [§811] Form of Agreement in Writing.**
- (d) Grounds for Reformation.**
  - (1) [§812] Fraud.**
  - (2) Mistake.**
    - (aa) [§813] Particularity.**
    - (bb) [§814] General Pleading.**
    - (cc) [§815] Inferential Pleading.**
    - (dd) [§816] Materiality of Mistake.**
  - (3) [§817] Effect of Plaintiff's Negligence.**
- (e) [§818] When Reformation Is Unavailable.**

## **3. Accounting.**

- (a) [§819] Nature of Action.**
- (b) [§820] Elements of Cause of Action.**
- (c) [§821] Fiduciary Relationship.**

## **4. Injunction.**

- (a) In General.**
  - (1) [§822] Nature of Action.**
  - (2) [§823] Elements of Cause of Action.**
  - (3) [§824] Where Complaint Is Used as Affidavit.**

- (b) [§825] Tort or Other Wrongful Act.**
- (c) Inadequacy of Remedy at Law.**
  - (1) [§826] Irreparable Injury, Actual or Threatened.**
  - (2) [§827] Threatened Multiplicity of Actions.**
- (d) Illustrations: Particular Actions.**
  - (1) [§828] Injuries to Land.**
  - (2) [§829] Trademarks, Tradenames, and Trade Secrets.**
  - (3) [§830] Unfair Competition.**
  - (4) [§831] Labor Disputes.**
  - (5) [§832] Other Actions.**

**5. Action by Beneficiary of Trust.**

- (a) Express Trust.**
  - (1) [§833] In General.**
  - (2) [§834] Trust Intent.**
  - (3) [§835] Trust Property.**
  - (4) [§836] Breach of Trust.**
- (b) Resulting Trust.**
  - (1) [§837] Payment of Purchase Price.**
  - (2) [§838] Partial Payment.**
  - (3) [§839] Negating Presumption of Gift.**
- (c) Constructive Trust.**
  - (1) [§840] In General.**
  - (2) [§841] Breach by Fiduciary.**
  - (3) [§842] Fraud Without Fiduciary Relationship.**
  - (4) [§843] Promise To Buy Property for Plaintiff.**
  - (5) [§844] Gift on Unenforceable Trust.**
- (d) Effect of Pleading Wrong Kind of Trust.**
  - (1) [§845] Nature of Problem.**
  - (2) [§846] Resulting and Express Trust Confused.**
  - (3) [§847] Express and Constructive Trusts Confused.**
  - (4) [§848] Resulting and Constructive Trusts Confused.**

**6. Declaratory Relief.**

- (a) In General.**
  - (1) [§849] Statutory Basis.**
  - (2) [§850] Nature of Action.**
  - (3) [§851] Remedy Against Government or Officer.**
  - (4) [§852] Declaration on Criminal Liability.**
  - (5) [§853] Requisites of Pleading.**
  - (6) [§854] Effect of Mislabeling.**
- (b) Other Proceedings Compared.**
  - (1) [§855] Remedies for Breach With Declaratory Relief.**
  - (2) [§856] Special Kind of Declaratory Relief.**
  - (3) [§857] Expansion of Traditional Remedies.**
- (c) Subjects of Declaratory Relief.**
  - (1) [§858] Contract.**
  - (2) [§859] Statute, Ordinance, or Regulation.**

- (3) [§860] Other Subjects.
- (d) Actual Present Controversy.
  - (1) [§861] In General.
  - (2) [§862] Specific Pleading.
  - (3) [§863] Showing Sufficient.
  - (4) [§864] Showing Insufficient.
- (e) [§865] Probable Future Controversy.
- (f) Reasons for Denial of Relief.
  - (1) Discretion of Trial Court.
    - (aa) [§866] In General.
    - (bb) [§867] Abuse of Discretion.
  - (2) Other Remedy Available.
    - (aa) [§868] In General.
    - (bb) [§869] Accrued Cause of Action for Breach.
    - (cc) [§870] Special Statutory Procedure Available.
    - (dd) [§871] Decisions Granting Relief.
  - (3) [§872] Conflict of Jurisdiction.
  - (4) [§873] Express Prohibition by Statute.
  - (5) [§874] Circumvention of Statutory Right.
  - (6) [§875] Failure To Exhaust Administrative Remedy.
  - (7) [§876] Other Reasons.
- (g) Plaintiff Not Entitled to Favorable Declaration.
  - (1) [§877] Declaratory Judgment May Be Rendered.
  - (2) [§878] Determination Without Declaration.
  - (3) [§879] Improper Summary Determination.
- 7. Action To Set Aside Judgment.
  - (a) [§880] In General.
  - (b) [§881] Meritorious Case.
- 8. [§882] Action To Set Aside Fraudulent Conveyance.
- L. Proceedings Involving Domestic Relations.
  - 1. Dissolution, Nullity, and Legal Separation.
    - (a) [§883] Former Law.
    - (b) [§884] Family Law Act Changes.
    - (c) Rules of Court.
      - (1) [§885] Nature and Scope.
      - (2) [§886] Applicability of General Law.
    - (d) Parties.
      - (1) [§887] In General.
      - (2) [§888] Discretionary Joinder.
      - (3) [§889] Mandatory Joinder.
    - (e) [§890] Relief Available.
    - (f) Pleadings.
      - (1) [§891] In General.
      - (2) [§892] Petition.
      - (3) [§893] Other Papers.
    - (g) Other Proceedings.

- (1) [§894] Process and Appearance.
    - (2) [§895] Motions.
    - (3) [§896] Default.
    - (4) [§897] Judgment and Request for Judgment.
  2. [§898] Proceedings Involving Children.
- M. Miscellaneous Allegations.**
1. Capacity To Sue or Be Sued.
    - (a) [§899] In General.
    - (b) Principal Situations.
      - (1) [§900] Private Corporation.
      - (2) [§901] Partnership or Other Unincorporated Association.
      - (3) [§902] Personal Representative.
      - (4) [§903] Guardian, Conservator, or Guardian Ad Litem.
      - (5) [§904] Public Officer.
      - (6) [§905] Public Entity.
      - (7) [§906] Licensee.
    - (c) [§907] Distinction: Showing of Capacity.
  2. Right To Sue.
    - (a) [§908] In General.
    - (b) [§909] Assignee or Subrogee.
    - (c) [§910] Receiver or Trustee in Bankruptcy.
    - (d) [§911] Class Action.
    - (e) [§912] Shareholder's Action.
  3. [§913] Nonpayment.
  4. Malice.
    - (a) [§914] In General.
    - (b) [§915] Libel.
    - (c) [§916] Malicious Prosecution.
    - (d) Punitive or Exemplary Damages.
      - (1) [§917] General Allegation Is Sufficient.
      - (2) [§918] Inferential Pleading.
  5. Tort Liability for Acts of Others.
    - (a) Agency or Employment: Respondeat Superior.
      - (1) [§919] Necessity of Pleading.
      - (2) [§920] Form of Pleading.
    - (b) Conspiracy: Liability of Joint Tortfeasors.
      - (1) [§921] In General.
      - (2) [§922] Sufficient Pleading.
      - (3) [§923] Insufficient Pleading.
    - (c) [§924] Liability of Parent.
  6. Indemnity.
    - (a) [§925] Nature of Cause of Action.
    - (b) [§926] Illustrations.
  7. [§927] Disregard of Corporate Entity.
  8. [§928] Action Under Federal Civil Rights Act.
  9. Anticipating Defense of Limitations.

- (a) [§929] Delayed Accrual: Fraud or Mistake.
- (b) [§930] Delayed Accrual: Other Actions.
- (c) [§931] Suspension or Tolling.
- (d) [§932] Estoppel.

**10. General and Special Damages.**

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

**X. THE DEMURRER**

**A. In General.**

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

**B. General Demurrer.**

- 1. [§961] Form.**

**2. Special Defenses.**

- (a) [§962] Statute of Limitations.
- (b) [§963] Laches.
- (c) [§964] Not Real Party in Interest.
- (d) [§965] Res Judicata.
- (e) [§966] Defenses in Contract Actions.
- (f) [§967] Privilege in Tort Actions.

**C. Special Demurrer.**

**1. [§968] Form.**

**2. Particular Grounds.**

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

**D. Procedure.**

**1. [§979] Service and Filing.**

**2. [§980] Supporting Memorandum.**

**3. [§981] Hearing.**

**4. Order: In General.**

- (a) [§982] Overruling or Sustaining.
- (b) [§983] Notification and Service of Notice.
- (c) [§984] Reconsideration.

**5. [§985] Overruling and Right To Answer.**

**6. [§986] Striking and Right To Answer.**

**7. Sustaining.**

- (a) [§987] Specification of Grounds.
- (b) Sustaining With Leave To Amend.
  - (1) [§988] Form and Scope of Amendment.
  - (2) [§989] Waiver of Error by Amendment.
  - (3) [§990] Dismissal on Failure To Amend.
- (c) Sustaining Without Leave To Amend.
  - (1) When Denial of Leave Is Proper.
    - (aa) [§991] No Good Cause of Action.
    - (bb) [§992] Unsuccessful Attempts To State Cause.
    - (cc) [§993] Unsuccessful Attempts To Correct Defects of Form.
  - (2) When Denial of Leave Is Abuse of Discretion.
    - (aa) [§994] Defect of Form.
    - (bb) [§995] Curable Defect of Substance.

- (cc) [§996] One Count Good.
- (3) Judgment of Dismissal.
  - (aa) [§997] Necessity of Judgment.
  - (bb) [§998] Form.
- (d) [§999] Dismissal on Court's Own Motion.
- (e) [§1000] Review of Order.
- 8. [§1001] Time To Plead After Ruling on Partial Demurrer.
- E. Other Procedures Compared and Distinguished.
  - 1. Motions Similar to General Demurrer.
    - (a) [§1002] Motion for Judgment on Pleadings.
    - (b) [§1003] Motion To Quash Marital Proceeding.
    - (c) Former California Motion To Dismiss.
      - (1) [§1004] Theories Supporting Motion.
      - (2) [§1005] Principal Grounds for Motion.
      - (3) [§1006] Motion Treated as One for Summary Judgment.
    - (d) [§1007] Federal Motion To Dismiss.
  - 2. Motion To Strike.
    - (a) [§1008] Nature of Motion.
    - (b) [§1009] Statutory Provisions.
    - (c) Grounds.
      - (1) [§1010] Irrelevant and Redundant Matter.
      - (2) [§1011] Procedural Defects Not Subject to Demurrer.
      - (3) [§1012] Substantive Defects Not Subject to Demurrer.
      - (4) [§1013] Sham Pleading.
    - (d) Procedure.
      - (1) [§1014] In General.
      - (2) [§1015] Motion With or Without Demurrer.
      - (3) [§1016] Review of Order Granting Motion.
  - 3. Special Motion in Action Involving Public Issue (SLAPP Suits).
    - (a) In General.
      - (1) [§1017] Statutory Framework.
      - (2) [§1018] Statute Is Constitutional.
    - (b) Actions Subject to Motion.
      - (1) [§1019] In General.
      - (2) [§1020] Scope of “Arising From” Requirement.
      - (3) [§1021] Cases Involving Right of Petition.
      - (4) Cases Involving Free Speech.
        - (aa) [§1022] In General.
        - (bb) [§1023] Illustrations.
      - (5) [§1024] When Statement Need Not Concern Issue of Public Significance.
    - (c) Actions Not Subject to Motion.
      - (1) [§1025] In General.
      - (2) Restrictions on Covered Actions.
        - (aa) [§1026] In General.
        - (bb) [§1027] Illustrations.

- (3) [§1028] Public Significance, Issue, or Interest Lacking.
- (4) [§1029] Action Did Not Arise From Protected Activity.
- (5) [§1030] Illegal Speech.
- (6) [§1031] Miscellaneous Cases.
- (d) [§1032] Parties.
- (e) [§1033] Procedure.
- (f) Burden of Proof.
  - (1) [§1034] In General.
  - (2) [§1035] Affidavit on Information and Belief.
  - (3) [§1036] Intent To Chill Is Not Required.
  - (4) [§1037] Plaintiff's Inability To Meet Burden as Matter of Law.
  - (5) [§1038] Illustrations.
- (g) [§1039] Appeal.
- (h) Fees and Costs.
  - (1) [§1040] Right of Prevailing Defendant.
  - (2) [§1041] Right of Prevailing Plaintiff.
  - (3) [§1042] After Dismissal.
- 4. Motion To Strike SLAPPback Cause of Action.
  - (a) [§1043] In General.
  - (b) [§1044] Exceptions.

## **XI. THE ANSWER**

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

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

### **B. Denials.**

- 1. General Denial.
  - (a) [§1059] Where Complaint Is Not Verified.
  - (b) [§1060] Where Demand or Value Is Small.



- 2. **Specific Denials.**
    - (a) **[§1061] Where Complaint Is Verified.**
    - (b) **[§1062] Denial by Affirmative Allegation.**
  - 3. **[§1063] Specific Denial by Parts and Qualified General Denial.**
  - 4. **Information and Belief or Lack of Either.**
    - (a) **Nature and Form of Allegations.**
      - (1) **[§1064] Information and Belief.**
      - (2) **[§1065] Lack of Information or Belief.**
    - (b) **When Denial on Information and Belief Is Improper.**
      - (1) **[§1066] Defendant's Actual or Presumed Knowledge.**
      - (2) **[§1067] Matters of Public Record.**
  - 5. **Negative Pregnant.**
    - (a) **[§1068] General Rule.**
    - (b) **[§1069] Illustrations.**
    - (c) **[§1070] Analysis and Criticism.**
  - 6. **[§1071] Conjunctive Denial.**
- C. Issues Raised by Denial.**
- 1. **Defenses in Contract Actions.**
    - (a) **[§1072] Statute of Frauds.**
    - (b) **[§1073] Purported Contract Is Void.**
    - (c) **[§1074] Payment.**
    - (d) **[§1075] Defenses to Common Counts.**
    - (e) **[§1076] Mitigation Where Other Income Is Earned.**
  - 2. **Defenses in Tort Actions.**
    - (a) **[§1077] Actions Based on Negligence.**
    - (b) **[§1078] Actions Based on Intentional Torts.**
  - 3. **Defenses in Property Actions.**
    - (a) **[§1079] Ejectment and Quiet Title.**
    - (b) **[§1080] Specific Recovery of Personal Property.**
- D. New Matter Constituting Defense.**
- 1. **Nature of New Matter.**
    - (a) **[§1081] Distinguished From Denial.**
    - (b) **[§1082] Method of Pleading.**
    - (c) **[§1083] New Matter Is Deemed Controverted.**
  - 2. **Pleading Several Defenses.**
    - (a) **[§1084] In General.**
    - (b) **Inconsistent Defenses.**
      - (1) **[§1085] Right To Plead.**
      - (2) **[§1086] Illustrations.**
      - (3) **[§1087] Limitations on Right.**
- E. Issues Raised by New Matter.**
- 1. **Defenses in Contract Actions.**
    - (a) **[§1088] In General.**
    - (b) **[§1089] Lack of Consideration.**
    - (c) **[§1090] Mistake, Fraud, Duress, or Undue Influence.**
    - (d) **[§1091] Minority or Incompetency.**

**(e) [§1092] Plaintiff's Default or Defendant's Excuse.**

**(f) Discharge of Liability.**

**(1) [§1093] Rescission or Release.**

**(2) [§1094] Novation or Account Stated.**

**(3) [§1095] Accord and Satisfaction.**

**(4) [§1096] Other Kinds of Discharge.**

**(g) Illegality.**

**(1) [§1097] Pleading Is Not Essential.**

**(2) [§1098] When Illegality Should Be Pleaded.**

**(3) [§1099] Method of Pleading.**

**(h) [§1100] Mitigation of Damages.**

**2. Defenses in Tort Actions.**

**(a) [§1101] Justification or Privilege.**

**(b) [§1102] Release.**

**(c) [§1103] Comparative Negligence.**

**(d) [§1104] Assumption of Risk.**

**(e) [§1105] Workers' Compensation Exclusive Remedy.**

**(f) [§1106] Mitigation of Damages.**

**(g) [§1107] Public Entity and Officer Defenses.**

**3. Defenses in Property Actions.**

**(a) In General.**

**(1) [§1108] Right To Plead.**

**(2) [§1109] Form.**

**(b) Ejectment and Quiet Title.**

**(1) [§1110] Purchaser's Right (Specific Performance).**

**(2) [§1111] Fraud (Rescission or Affirmance).**

**(c) Unlawful Detainer.**

**(1) [§1112] In General.**

**(2) [§1113] Particular Defenses.**

**(3) [§1114] Action by Purchaser.**

**4. [§1115] Answer in Condemnation Action.**

**5. [§1116] Answer in Partition Action.**

**6. Miscellaneous Defenses.**

**(a) Statute of Limitations.**

**(1) [§1117] Requirement of Special Pleading.**

**(2) [§1118] Exceptions.**

**(3) Form.**

**(aa) [§1119] Pleading Facts.**

**(bb) [§1120] Pleading Section Where No Subdivision.**

**(cc) [§1121] Pleading Subdivision.**

**(b) Estoppel and Waiver.**

**(1) Requirement of Special Pleading.**

**(aa) [§1122] Estoppel.**

**(bb) [§1123] Waiver.**

**(2) [§1124] Exception: Defense Not Known.**

**(c) [§1125] Laches.**

- (d) [§1126] Unclean Hands.
- (e) Res Judicata.
  - (1) [§1127] Requirement of Special Pleading.
  - (2) [§1128] Exceptions.

## **F. Pleas in Abatement.**

### **1. In General.**

- (a) [§1129] Nature of Plea.
- (b) Plea as a "Disfavored" Defense.
  - (1) [§1130] Strict Construction.
  - (2) [§1131] Waiver by Delay in Raising Objection.
  - (3) [§1132] Cure of Defect.

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

- (a) [§1133] In General.
- (b) [§1134] Corporation.
- (c) [§1135] Business With Fictitious Name.

### **3. Defect of Parties.**

- (a) [§1136] Nonjoinder.
- (b) [§1137] Misjoinder.

### **4. Other Action Pending.**

- (a) [§1138] General Rule and Theory.
- (b) When Plea Is Available.
  - (1) Pendency of First Action.
    - (aa) [§1139] What Constitutes Pendency.
    - (bb) [§1140] When Action Must Be Pending.
    - (cc) [§1141] Distinction: Action Pending in Another State.
  - (2) What Actions Will Be Abated.
    - (aa) [§1142] Same Cause of Action and Parties.
    - (bb) [§1143] Special Rule in Condemnation.
    - (cc) [§1144] Special Rules Under Probate Code.
  - (3) What Actions Will Not Be Abated.
    - (aa) [§1145] Different Causes of Action.
    - (bb) [§1146] Parties in Different Relationship.
    - (cc) [§1147] Different Remedies Sought.
- (c) [§1148] Manner of Pleading.
- (d) Nature and Effect of Ruling.
  - (1) [§1149] Plea Sustained.
  - (2) [§1150] Plea Rejected.

### **5. Action Prematurely Brought.**

- (a) [§1151] Earlier Theory of Defense of Substance.
- (b) [§1152] Present Theory of Plea in Abatement.
- (c) [§1153] Illustrations.

## **XII. THE CROSS-COMPLAINT**

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

- 1. [§1154] Origin and Nature.
- 2. Former California Law.
  - (a) [§1155] Nature of Former Counterclaim.

- (b) [§1156] Nature of Former Restricted Cross-Complaint.
  - (c) [§1157] Effect of Improper Designation.
- 3. Statutory Reforms of 1971.
  - (a) [§1158] Abolition of Counterclaim.
  - (b) [§1159] Revision of Cross-Complaint Statute.
- 4. No Cross-Complaint in Summary Proceeding.
  - (a) Unlawful Detainer.
    - (1) [§1160] Pleading Is Not Permitted.
    - (2) [§1161] Exceptions and Distinctions.
  - (b) [§1162] Summary Restitution.
- 5. [§1163] Defenses Distinguished.
- 6. Compensation of Cross-Demands Without Action.
  - (a) [§1164] Former Law.
  - (b) [§1165] Revised Law of Set-off.
  - (c) [§1166] When Set-off Is Improper.
- B. Revised Cross-Complaint Statute.
  - 1. [§1167] Nature and Scope.
  - 2. [§1168] Time To File.
  - 3. Unrestricted Cross-Complaint Against Plaintiff.
    - (a) [§1169] In General.
    - (b) [§1170] Exceptions.
  - 3A. [§1170A] (New) Unrestricted Cross-Complaint Against Codefendant.
  - 4. Restricted Cross-Complaint Against New Parties.
    - (a) [§1171] Related Causes of Action.
    - (b) [§1172] Joinder of Cross-Defendants.
  - 5. [§1173] New Party Cross-Complainant.
  - 6. [§1174] Joinder of Causes of Action.
  - 7. [§1175] Cross-Complaint to Cross-Complaint.
  - 8. [§1176] Special Answer by Third-Party Defendant.
  - 9. Compulsory Cross-Complaint.
    - (a) [§1177] Failure To Plead as Bar.
    - (b) Exceptions.
      - (1) [§1178] Court Without Jurisdiction.
      - (2) [§1179] Other Exceptions.
    - (c) [§1180] Relief From Failure To Plead.

### **XIII. OTHER PLEADINGS**

- A. Demurrer to Answer.
  - 1. [§1181] Nature of Pleading.
  - 2. [§1182] Grounds.
  - 3. [§1183] Procedure.
- B. [§1184] Answer to Cross-Complaint.
- C. [§1185] Demurrer to Cross-Complaint.

### **XIV. AMENDMENT OF PLEADINGS**

- A. In General.
  - 1. [§1186] Right To Amend Pleadings.
  - 2. Effect of Amended Complaint.

- (a) [§1187] Original Is Superseded.**
- (b) Remaining Effect of Original.**
  - (1) [§1188] Statute of Limitations and Dismissal.**
  - (2) [§1189] Sufficiency of Original Answer.**
  - (3) Omitted Matter Destructive.**
    - (aa) [§1190] General Rule.**
    - (bb) [§1191] Illustrations.**

**B. Amendment Without Leave of Court.**

- 1. [§1192] In General.**
- 2. [§1193] Amendment of Answer.**

**C. Amendment With Permission of Court.**

- 1. Discretion To Allow Amendment.**
  - (a) [§1194] Policy of Liberal Allowance.**
  - (b) [§1195] Imposition of Conditions.**
  - (c) Review of Order Denying Leave.**
    - (1) [§1196] Appeal.**
    - (2) [§1197] Mandamus.**
- 2. Reasons for Denial.**
  - (a) Subject Matter of Amendment.**
    - (1) [§1198] Insufficient Amendment.**
    - (2) [§1199] Disfavored Plea in Answer.**
  - (b) Conduct of Party.**
    - (1) [§1200] Failure To Submit Amendment.**
    - (2) Lack of Diligence or Prejudicial Delay.**
      - (aa) [§1201] Inexcusable Delay.**
      - (bb) [§1202] Excusable Delay.**
    - (3) [§1203] Inequitable Conduct in Negotiations.**
- 3. Stage of Proceedings.**
  - (a) During Trial.**
    - (1) [§1204] Amendment Permitted.**
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  - (b) [§1206] After Trial but Before Judgment.**
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- 4. Amendment To Conform to Proof.**
  - (a) [§1209] Doctrine of Variance.**
  - (b) [§1210] Immaterial Variance.**
  - (c) Material Variance Cured by Amendment.**
    - (1) [§1211] Liberal Allowance of Amendment.**
    - (2) [§1212] Procedure.**
    - (3) [§1213] Court's Duty To Order Amendment.**
  - (d) [§1214] Substantial Variance Cured by Trial.**
  - (e) [§1215] Noncurable Failure of Proof.**
  - (f) [§1216] Prejudice to Adverse Party.**
- 5. Amendment Changing Nature of Action.**
  - (a) [§1217] In General.**

- (b) [§1218] Improvement of Defective Statement.**
- (c) Change in Parties or Relationship.**
  - (1) Correction of Name.**
    - (aa) [§1219] In General.**
    - (bb) [§1220] Distinction: Wrong Person Named as Plaintiff.**
  - (2) Correction of Capacity.**
    - (aa) [§1221] Plaintiff.**
    - (bb) [§1222] Defendant.**
  - (3) [§1223] Substitution of Parties.**
  - (4) Addition of Parties Plaintiff.**
    - (aa) [§1224] In General.**
    - (bb) [§1225] After Denial of Class Certification.**
  - (5) Addition of Parties Defendant.**
    - (aa) [§1226] In General.**
    - (bb) [§1227] Corporation and Individuals.**
    - (cc) [§1228] Substitution for Fictitious Defendants.**
- (d) [§1229] Change in Remedy.**
- (e) Change in Legal Theory.**
  - (1) [§1230] In General.**
  - (2) [§1231] Contract Actions.**
  - (3) [§1232] Property Actions.**
  - (4) [§1233] Tort Actions.**
- (f) Change in Cause of Action.**
  - (1) [§1234] In General.**
  - (2) [§1235] Modern View.**
  - (3) Tort Actions.**
    - (aa) [§1236] Earlier Cases.**
    - (bb) [§1237] Cases Applying Modern View.**
    - (cc) [§1238] Distinction: Different Accident or Instrumentality.**
    - (dd) [§1239] Distinction: Subsequently Arising Cause of Action.**

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

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

### **XV. SUPPLEMENTAL PLEADINGS**

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

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

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

- 1. [§1248] In General.**
  - 2. [§1249] Illustrations.**
  - 3. [§1250] Premature Action.**
  - 4. Change in Cause of Action.**
    - (a) [§1251] General Rule.**
    - (b) [§1252] Distinctions and Qualifications.**
    - (c) [§1253] Relation Back.**
- C. [§1254] Supplemental Answer.**