

## **7 California Procedure (5th), Trial**

### **I. INTRODUCTION**

- A. Nature of Trial.**
  - 1. [§1] In General.**
  - 2. Trial of Facts or Law.**
    - (a) [§2] In General.**
    - (b) [§3] Trial on the Law.**
- B. [§4] Powers of Trial Judge.**
- C. [§5] Trial Practice.**
- D. [§6] Complex Litigation.**
- E. (New) Expedited Jury Trial.**
  - 1. [§6A] (New) In General.**
  - 2. [§6B] (New) Pretrial Proceedings.**
  - 3. [§6C] (New) Conduct of Trial.**
  - 4. [§6D] (New) Post-Trial Proceedings.**

### **II. CONTINUANCE**

- A. In General.**
  - 1. [§7] Nature of Continuance.**
  - 2. [§8] Limitations.**
  - 3. [§9] Judicial Council Rules.**
  - 4. Discretion of Trial Judge.**
    - (a) [§10] Discretion Upheld.**
    - (b) Discretion Abused.**
      - (1) [§11] Policy Considerations.**
      - (2) [§12] Illustrations.**
- B. Grounds for Continuance.**
  - 1. [§13] Unavailability of Attorney.**
  - 2. [§14] Substitution of Attorney.**
  - 3. [§15] Improper Withdrawal of Attorney.**
  - 4. Absence of Party.**
    - (a) [§16] When Continuance Will Be Granted.**
    - (b) [§17] When Continuance Will Be Denied.**
  - 5. [§18] Absence of Evidence.**
  - 6. Absence of Witness.**
    - (a) [§19] Death, Illness, or Unavailability.**
    - (b) [§20] Showing of Necessity.**
  - 7. [§21] Absence of Judge.**
  - 8. Similar Proceeding Pending.**
    - (a) [§22] When Continuance Will Be Granted.**
    - (b) [§23] When Continuance Will Be Denied.**
  - 9. [§24] Surprise at Trial.**
  - 10. [§25] Changes in Parties or Pleadings.**
  - 11. Membership in Legislature.**
    - (a) [§26] Persons Entitled.**
    - (b) [§27] Proceedings Covered.**

(c) [§28] Extent of Continuance.

(d) [§29] Exceptions to Mandatory Right.

12. [§30] Party in Armed Forces.

13. [§31] Particular Actions and Proceedings.

**C. Procedure.**

1. [§32] Motion.

2. [§33] Affidavits and Deposition.

3. Payment of Expenses.

(a) [§34] In General.

(b) [§35] Improper Expenses.

4. [§36] Stipulation.

**III. BRINGING CAUSE TO TRIAL**

**A. In General.**

1. [§37] Procedural Framework.

2. [§38] Trial Court Delay Reduction Act.

3. [§39] Management and Distribution of Court Business.

4. [§40] At-Issue Memorandum and Case Management Conference Statement.

**B. [§41] Notice of Settlement or Stay.**

**C. Case Management.**

1. [§42] In General.

2. Case Management Conference.

(a) [§43] Nature and Purpose.

(b) [§44] Former Systems.

(c) [§45] Current Procedure.

(d) [§46] Complex Cases.

(e) [§47] Preparation of Conference Order.

(f) Effect of Order.

(1) [§48] In General.

(2) [§49] Order Controls Inconsistent Pleadings.

(3) [§50] Order Precludes Attack on Pleadings.

(4) [§51] Order Does Not Preclude Trial on Different Theory.

(5) [§52] Order Does Not Preclude Amendment of Pleadings.

**D. [§53] Settlement Conference.**

**E. Trial Setting.**

1. [§54] In General.

2. [§55] Short and Long Causes.

**F. [§56] Duties of Trial Judge.**

**G. [§57] Appearance at Conferences by Telephone.**

**H. Sanctions for Violation of Rule or Order.**

1. [§58] In General.

2. [§59] Judicial Council Rules.

3. Local Rules.

(a) [§60] In General.

(b) [§61] Sanctions for Attorney's Negligence.

(c) [§62] Violation of Instruction Not Amounting to Rule.

4. [§63] Imposition of Ultimate Sanction in First Instance.

5. [§64] Right to Hearing.
6. [§65] Remedies of Sanctioned Attorney.

**I. Priority and Special Setting.**

1. [§66] In General.
2. [§67] Declaratory Relief.
3. [§68] Unlawful Detainer.
4. [§69] Party Over Age 70.
5. [§70] Party Under Age 14.
6. [§71] Party's Survival in Doubt.
7. [§72] Miscellaneous Statutes.
8. [§73] Motion To Advance or Reset.

**J. [§74] Completion of Discovery.**

**K. Notice of Trial to Adverse Party.**

1. [§75] Statutory Provisions.
2. [§76] Mandatory Requirement.
3. [§77] Exceptions and Waiver.
4. [§78] Resumption of Trial After Continuance.

**IV. SECURING TRIAL BY JURY**

**A. Right to Trial by Jury.**

**1. Nature of Right.**

- (a) [§79] In General.
- (b) [§80] California Constitution and Statutes.
- (c) [§81] Jury Tries Issues of Fact Only.
- (d) [§82] Denial as Act in Excess of Jurisdiction.
- (e) [§83] Jury of Fewer Than Twelve Persons.

**2. Cases Triable by Jury.**

- (a) [§84] Actions Classified as Legal.
- (b) [§85] Common Law Actions With Equitable Characteristics.
- (c) Actions Involving Legal and Equitable Issues.
  - (1) [§86] Legal Issues Severable.
  - (2) [§87] Distinction: Mutually Exclusive Remedies Sought.
  - (3) [§88] Legal Issues Not Severable.
- (d) [§89] Civil Commitment Proceedings.
- (e) [§90] Other Proceedings.

**3. Cases Triable by Court.**

- (a) Equitable Actions.
  - (1) [§91] In General.
  - (2) [§92] Action Involving Paternity Issues.
  - (3) [§93] Action Involving Equitable Doctrines.
- (b) [§94] Special Proceedings.
- (c) [§95] Actions To Collect Taxes.

**4. [§96] Probate Proceedings.**

**5. [§97] Eminent Domain and Inverse Condemnation Proceedings.**

**B. Procedure To Obtain Jury Trial.**

1. [§98] Demand.
2. Deposit of Fees and Expenses.

(a) [§99] Advance and Subsequent Deposits.

(b) [§100] Refund or Forfeiture.

**C. Waiver of Jury Trial.**

1. [§101] In General.

2. Consent.

(a) [§102] In General.

(b) [§103] Predispute Agreement.

3. [§104] Noncompliance With Requirements.

4. [§105] Effect of Waiver on Retrial After Reversal.

**D. Jury Trial in Court's Discretion.**

1. Relief From Waiver.

(a) [§106] Discretion and Policy.

(b) [§107] Denial of Relief.

(c) [§108] Review of Order Denying Relief.

2. [§109] Where Jury Is Not Matter of Right.

3. [§110] Procedure.

**E. Jury Lists and Panels.**

1. [§111] Qualifications of Jurors.

2. Excuses From Jury Duty.

(a) [§112] In General.

(b) [§113] Rule of Court.

3. [§114] Length of Jury Service.

4. Jury Lists and Selection Methods.

(a) [§115] Former Law.

(b) [§116] Adoption of Uniform System.

(c) [§117] Types of Lists.

(d) [§118] Selection.

(e) [§119] Public Inspection of Juror Lists and Questionnaires.

5. Jury Panels.

(a) [§120] Ordinary Panel.

(b) [§121] Common Panel.

(c) [§122] Special Panel.

**V. SELECTION OF TRIAL JURY**

**A. [§123] Drawing Names.**

**B. Challenges.**

1. [§124] Nature and Kinds.

2. Peremptory Challenges.

(a) [§125] Purpose.

(b) [§126] Number.

(c) Improper Exclusion.

(1) [§127] In General.

(2) [§128] Race.

(3) [§129] Sex.

3. Challenges for Cause.

(a) [§130] Statutory Grounds.

(b) [§131] Membership in Health Plan.

**(c) Bias or Prejudice.**

**(1) [§132] Nature and Illustrations.**

**(2) [§133] Insufficient Showing.**

**4. Exercise and Trial of Challenges.**

**(a) [§134] Challenge for Cause.**

**(b) [§135] Peremptory Challenge.**

**C. Voir Dire Examination.**

**1. [§136] In General.**

**2. [§137] Voir Dire Procedure.**

**3. Examination by Judge.**

**(a) Proper Questions by Judge.**

**(1) [§138] In Any Case.**

**(2) [§139] In Condemnation Case.**

**(b) [§140] Improper Questions by Judge.**

**4. Examination by Attorneys.**

**(a) [§141] Conferences With Judge.**

**(b) [§142] Proper Questions by Attorneys.**

**(c) [§143] Improper Questions by Attorneys.**

**D. [§144] Completion and Oath.**

**E. Alternate Jurors.**

**1. [§145] In General.**

**2. [§146] Substitution After Deliberations Have Begun.**

**VI. CONDUCT OF TRIAL**

**A. In General.**

**1. Principal Steps in Trial.**

**(a) [§147] Trial by Jury.**

**(b) [§148] Trial by Court.**

**2. [§149] Order of Proof: In General.**

**3. Prior Trial of Special Defenses.**

**(a) [§150] Nature and Scope of Statute.**

**(b) [§151] Special Defenses Covered.**

**(c) [§152] Decision for Defendant.**

**(d) [§153] Decision for Plaintiff.**

**4. Prior Trial of Issues.**

**(a) [§154] In General.**

**(b) [§155] Motion and Order.**

**(c) [§156] Proceedings After Decision.**

**5. [§157] Separate Trial of Family Law Issues.**

**6. [§158] Where Defendant Is Incompetent.**

**7. [§159] Presence of Parties.**

**B. [§160] Opening Statements.**

**C. [§161] Introduction of Evidence.**

**D. Argument.**

**1. [§162] Trial by Jury.**

**2. [§163] Trial by Court.**

**3. [§164] Manner and Scope.**

- 4. [§165] Waiver.
  - E. [§166] Reopening Case After Submission.
  - F. [§167] Mistrial.
- VII. CONTEMPTS DURING TRIAL**
- A. In General.**
    - 1. [§168] Inherent Power.
    - 2. Who May Punish.
      - (a) [§169] Any Judicial Tribunal.
      - (b) [§170] Temporary Judge.
    - 3. [§171] Statutory Framework.
    - 4. [§172] Legislative Regulation.
  - B. [§173] Civil Contempt.**
  - C. Criminal Contempt.**
    - 1. [§174] In General.
    - 2. Indirect Contempt.
      - (a) [§175] Hearing.
      - (b) [§176] Review.
    - 3. Direct Contempt.
      - (a) [§177] Summary Punishment.
      - (b) [§178] Jailing Attorney in Midtrial.
      - (c) [§179] Notice and Hearing Where Order Is Delayed.
      - (d) Hearing Before Another Judge.
        - (1) [§180] In General.
        - (2) [§181] Personal Involvement of Original Judge.
      - (e) [§182] Review.
    - 4. [§183] Distinguishing Direct From Indirect Contempt.
    - 5. [§184] Order Affecting County Government.
    - 6. Right to Jury Trial.
      - (a) [§185] In General.
      - (b) Violation of Injunction.
        - (1) [§186] Right Under State Constitution.
        - (2) [§187] Fine as Punishment.
    - 7. [§188] Limitations on Punishment.
  - D. Conduct of Attorney.**
    - 1. [§189] Disrespectful or Offensive Behavior.
    - 2. Aggressive Advocacy.
      - (a) [§190] Conduct Constituting Contempt.
      - (b) [§191] Conduct Not Constituting Contempt.
      - (c) [§192] Effect of Judge's Provocation.
    - 3. Impugning Court's Integrity.
      - (a) [§193] In General.
      - (b) [§194] Attempt To Disqualify Judge.
    - 4. [§195] Deceiving or Taking Advantage of Court.
    - 5. [§196] Failure To Appear.
    - 6. Late Appearance.
      - (a) [§197] Contempt Order Affirmed.



- (1) [§233] Notice.
  - (2) [§234] Hearing.
  - (3) [§235] Order.
  - (h) [§236] Amount.
  - (i) [§236A] (New) Amendment and Extension of C.C.P. 128.5.
- 3. Certification of Pleadings (C.C.P. 128.7).
  - (a) [§237] Nature and Scope.
  - (b) [§238] Signing and Certification.
  - (c) [§239] Motion and Order.
  - (d) [§240] Safe Harbor Provision.
  - (e) [§241] Improper Use of Sanctions Statute.

## **IX. MISCONDUCT OF COURT**

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

- 1. [§242] Standards of Judicial Conduct.
- 2. [§243] Waiver or Cure.

### **B. Acts Constituting Misconduct.**

- 1. [§244] Intemperance.
- 2. [§245] Partiality and Prejudging.
- 3. [§246] Gender Bias.
- 4. Interference With Control of Case.
  - (a) [§247] Coercing Waiver of Right.
  - (b) [§248] Coercing Settlement.
  - (c) [§249] Impairing Examination of Witnesses.
- 5. [§250] Receiving Evidence Out of Court.

### **C. Proper Participation by Judge.**

- 1. [§251] In General.
- 2. [§252] Suggesting Settlement.
- 3. [§253] Comment on Evidence.
- 4. When Party Appears in Pro. Per.
  - (a) [§254] Duty To Help Avoid Blunders.
  - (b) [§255] No Duty To Act as Counsel.

## **X. INSTRUCTIONS**

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

- 1. [§256] Nature of Instruction.
- 2. [§257] Criticisms and Reforms.
- 3. Party's Right to Instructions.
  - (a) [§258] General Rule.
  - (b) [§259] Point Covered by Other Instructions.
  - (c) [§260] Absence of Request.
- 4. [§261] Instructions on Court's Own Motion.
- 5. Proposal of Instructions by Attorney.
  - (a) [§262] Timely Presentation.
  - (b) [§263] Formal Requisites.
  - (c) Grant, Refusal, or Modification.
    - (1) [§264] In General.
    - (2) [§265] Modification by Judge.



## **B. Form and Style.**

- 1. [§266] General Principles.**
- 2. [§267] Gender Neutrality.**
- 3. [§268] Language of Statute.**
- 4. [§269] Extract From Opinion.**
- 5. [§270] Approved Forms.**
- 6. California Civil Jury Instructions (CACI).**
  - (a) [§271] In General.**
  - (b) [§272] Format and Coverage.**
- 7. California Jury Instructions, Civil (BAJI).**
  - (a) [§273] In General.**
  - (b) [§274] Format and Coverage.**

## **C. Subjects of Instructions.**

- 1. In General.**
  - (a) [§275] Principal Types.**
  - (b) [§276] Amount of Demand.**
  - (c) Definitions.**
    - (1) [§277] In General.**
    - (2) [§278] CACI.**
    - (3) [§279] BAJI.**
  - (d) [§280] Truisms and Commonplace Matters.**
  - (e) [§281] Functions of Court and Jury.**
  - (f) [§282] Issues.**
- 2. Substantive Law.**
  - (a) [§283] In General.**
  - (b) [§284] Legal Actions Arising Out of Contract.**
  - (c) [§285] Actions for Damages for Negligence.**
  - (d) [§286] Miscellaneous Tort Actions.**
  - (e) [§287] Actions Involving Rights in Property.**
- 3. [§288] Parties and Pleadings.**
- 4. Evidence and Witnesses.**
  - (a) In General.**
    - (1) [§289] Power To Instruct.**
    - (2) [§290] Singling Out Witness.**
  - (b) Types of Evidence.**
    - (1) [§291] Direct and Circumstantial.**
    - (2) [§292] Expert.**
    - (3) [§293] Depositions and Interrogatories.**
  - (c) Burden and Degree of Proof.**
    - (1) [§294] Proper Instructions.**
    - (2) [§295] Variant Forms.**
  - (d) [§296] Limited Admission.**
  - (e) [§297] Matters Not in Evidence.**
  - (f) [§298] Prejudice and Sympathy.**
  - (g) Evaluation of Evidence.**
    - (1) [§299] Credibility and Impeachment.**

- (2) [§300] Presumptions and Conflicting Testimony.
- (3) [§301] Witness False in Part.
- (4) [§302] Suppressed or Weaker Evidence.
- (5) [§303] Extrajudicial and Implied Admissions.

**D. Error in Instructions.**

- 1. [§304] Automatic Exception.
- 2. Principal Kinds of Error.
  - (a) [§305] Errors in Content.
  - (b) [§306] Errors in Form.
  - (c) [§307] Instructions Irrelevant or Prejudicial.
  - (d) [§308] Conflicting or Contradictory Instructions.
  - (e) [§309] Excessive Volume.
  - (f) [§310] Undue Repetition.
  - (g) [§311] Undue Emphasis.
  - (h) [§312] Argumentative Instructions.
  - (i) Formula Instructions.
    - (1) [§313] Danger of Error.
    - (2) [§314] Nonprejudicial Instructions.
- 3. When Error Is Not Reversible.
  - (a) [§315] Jury Not Misled.
  - (b) [§316] Error Invited.
  - (c) [§317] Omission or Conflict Cured by Other Instructions.

**XI. VERDICT**

**A. Conduct and Deliberations of Jury.**

- 1. [§318] In General.
- 2. [§319] Length of Deliberations.
- 3. [§320] Secrecy of Deliberations.
- 4. [§321] Jury's Right To Select Foreperson.
- 5. [§322] Juror Temporarily Absent.
- 6. [§323] Papers and Exhibits in Jury Room.
- 7. [§324] Return for Reading of Testimony.
- 8. [§325] Return for Instructions.
- 9. [§326] Assisting Jury at Impasse.
- 10. Misconduct of Jury.
  - (a) [§327] Unauthorized Papers in Jury Room.
  - (b) [§328] Unauthorized Reception of Evidence.
  - (c) [§329] Experiments.
  - (d) Improper Communications.
    - (1) [§330] In General.
    - (2) [§331] With Party, Attorney, or Witness.
    - (3) [§332] With Judge or Court Officer.
  - (e) [§333] Unauthorized Discussion or Separation.
  - (f) [§334] Inattentiveness at Trial.
  - (g) [§335] Intoxication.
  - (h) [§335A] (New) Other Illustrations.
- 11. Misconduct of Court: Coercing Jury.

- (a) [§336] Conduct Held Prejudicial.
- (b) [§337] Conduct Held Not Prejudicial.

**B. Return of Verdict.**

**1. Procedure.**

- (a) [§338] Blank Verdict Forms.
- (b) [§339] Receipt of Verdict.
- (c) [§340] Entry of Verdict.

**2. [§341] General Verdict.**

**3. Special Verdict.**

- (a) [§342] Nature of Special Verdict.
- (b) [§343] Partial Acceptance of Special Verdict.
- (c) [§344] Future Damages.
- (d) [§345] Punitive Damages.
- (e) [§346] Form of Questions.

**4. Special Interrogatories To Test General Verdict.**

- (a) [§347] Nature of Special Findings.
- (b) [§348] Procedure and Judge's Discretion.
- (c) [§349] Form of Interrogatories.

**C. Sufficiency of Verdict.**

**1. Assent of Jurors.**

- (a) [§350] Polling Jury.
- (b) [§351] Agreement on Elements of General Verdict.
- (c) [§352] Agreement on Elements of Special Verdict.
- (d) [§353] Special Findings To Test General Verdict.

**2. Conformity to Issues and Evidence.**

- (a) [§354] General Verdict Where There Are Several Counts.
- (b) [§355] Compromise Verdict.
- (c) [§356] Improper Apportionment of Recovery.

**3. [§357] Conformity to Instructions.**

**4. Inconsistency and Failure To Find.**

- (a) Verdict Against Fewer Than All Defendants.
  - (1) [§358] Joint Liability.
  - (2) Dependent or Derivative Liability.
    - (aa) [§359] Verdict Exonerating Employee or Driver.
    - (bb) [§360] Exceptions and Distinctions.

- (b) Verdict Silent as to Party.

- (1) [§361] Plaintiff or Plaintiffs.
- (2) [§362] Defendant or Defendants.

- (c) [§363] Verdict Inconsistent as to Damages.

- (d) [§364] Special Findings Inconsistent With General Verdict.

**5. [§365] Uncertainty.**

**D. Defective Verdict Saved by Construction.**

- 1. [§366] In General: Disregarding Surplusage.
- 2. [§367] Construction in Light of Law and Instructions.
- 3. [§368] Construction by Reference to Pleadings and Evidence.
- 4. [§369] Intention Apparent From Form of Verdict.

5. [§370] Construction by Appellate Court.
- E. Defective Verdict Saved by Correction.
  1. [§371] Judge's Power To Order Correction.
  2. [§372] Judge's Duty To Order Correction.
  3. [§373] Different Verdict After Retirement.
  4. [§374] Distinction: Verdict Erroneous but Not Defective.
- F. Reversible Error and Waiver of Defects.
  1. [§375] What Constitutes Prejudicial Error.
  2. [§376] Waiver of Error.
  3. [§377] Invited Error.
- G. Impeachment of Verdict by Jurors.
  1. Former Rule Against Impeachment.
    - (a) [§378] In General.
    - (b) [§379] Exceptions.
  2. Chance or Quotient Verdict.
    - (a) [§380] What Constitutes Chance or Quotient Verdict.
    - (b) [§381] Permissible Agreements.
  3. Rule Permitting Impeachment.
    - (a) [§382] Repudiation of Former Rule.
    - (b) [§383] Evidence of Overt Acts Is Admissible.
    - (c) [§384] Evidence of Jurors' Intentions Is Not Admissible.
    - (d) [§385] Distinction: Questioning Jurors Prior to Verdict.
    - (e) Affidavits on New Trial Motion.
      - (1) [§386] No-Knowledge Affidavit of Attorney and Party.
      - (2) [§387] Jurors' Affidavits of Misconduct.
    - (f) [§388] Criticism of Impeachment Practice.

## **XII. STATEMENT OF DECISION**

- A. In General.
  1. [§389] Former Law on Findings and Conclusions.
  2. [§390] Nature and Scope of Requirement.
  3. [§391] When Statement Is Required.
  4. [§392] When Statement Is Not Required.
- B. Procedure.
  1. [§393] In General.
  2. [§394] Announcement of Tentative Decision.
  3. [§395] Request by Party.
  4. [§396] Preparation of Statement.
  5. [§397] Proposed Judgment Where Statement Is Not Required.
  6. [§398] Objections.
  7. [§399] Signing, Filing, and Amending.
  8. [§400] Procedure in Bifurcated Trial.
- C. Sufficiency of Statement.
  1. [§401] In General.
  2. [§402] Insufficient Statement.
  3. [§403] Reporter's Transcript Is Not Statement.
  4. [§404] Waiver by Failure To Object.

**D. [§405] Failure To Issue Statement.**

**XIII. NONSUIT**

**A. In General.**

1. [§406] Nature of Motion.
2. [§407] Partial Nonsuit.
3. [§408] Other Proceedings Distinguished.

**B. Restrictions on Granting.**

1. [§409] Disregard of Conflicting Evidence.
2. Disregard of Weight of Evidence.
  - (a) [§410] In General.
  - (b) [§411] Evidence Sufficient Against Nonsuit.

**C. Procedure.**

1. [§412] Necessity of Motion.
2. Time for Motion.
  - (a) [§413] After Evidence Is Presented.
  - (b) [§414] After Plaintiff's Opening Statement.
3. Statement of Grounds.
  - (a) [§415] Requirement of Specific Statement.
  - (b) [§416] Good Grounds Existing, Incorrect Grounds Stated.
4. Hearing.
  - (a) [§417] In General.
  - (b) [§418] Reopening Plaintiff's Case.
5. [§419] Order.

**XIV. DIRECTED VERDICT**

**A. [§420] In General.**

**B. Restrictions on Granting.**

1. [§421] Disregard of Conflicting Evidence.
2. [§422] Disregard of Weight of Evidence.
3. [§423] New Trial Rule Distinguished.

**C. Procedure.**

1. Motion.
  - (a) [§424] Time for Motion.
  - (b) [§425] Statement of Grounds.
  - (c) [§426] Opposition.
2. Verdict and Judgment.
  - (a) [§427] Duty of Jurors To Comply.
  - (b) [§428] Order by Judge After Jury Is Discharged.

**XV. MOTION FOR JUDGMENT IN COURT TRIAL**

**A. [§429] Criticism of Former Nonsuit Rule.**

**B. [§430] Motion.**

**C. Court's Duty To Weigh Evidence.**

1. [§431] Statutory Rule.
2. [§432] Evidence From Examination of Adverse Party.
3. [§433] All Evidence and Opportunity To Rebut.

**D. Judgment.**

1. [§434] In General.

**2. [§435] New Trial and Appeal.**

**XVI. JUDGMENT NOTWITHSTANDING VERDICT**

**A. In General.**

**1. [§436] Nature of Power.**

**2. [§437] Evidence Not Weighed.**

**3. [§438] Motion for Directed Verdict Is Unnecessary.**

**B. Procedure.**

**1. [§439] Motion.**

**2. [§440] With Motion for New Trial.**

**3. [§441] Ruling on Motion.**

**4. [§442] Granting on Court's Own Motion.**

**5. [§443] Partial Judgment.**

**C. Appellate Review.**

**1. [§444] Orders Denying Both Motions.**

**2. [§445] Order Granting New Trial Motion.**

**3. [§446] Orders Granting Both Motions.**

**4. [§447] Standard of Review.**