

**University of West Los Angeles
School of Paralegal Studies Course 230
Litigation Specialization 1
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Session Seven Materials

6-1 The Cause of Action

A cause of action is a theory of liability, such as negligence. California requires that the complaint must state facts that support each element of each cause of action in ordinary and concise language. Form pleadings are common in California. They are simple, and the forms for various causes of action are organized around the elements that make up each theory of liability. Each cause of action should be numbered within the complaint. The plaintiff's prayer for relief comes after the final cause of action, followed by the date and the lawyer's signature.

6-2 A Few Preliminary Items

The California Code of Civil Procedure and the California Rules of Court dictate the format and the basic organization for pleadings. Pleadings include the complaint, demurrer, answer, and cross-complaint. [See California Rules of Court, Rule 201.]

Pleadings must be written on one side of 8 ½ by 11 inch pleading paper. They must be consecutively numbered on the bottom of the page, and each page must include a footer identifying the document. The Rules require that two holes be punched on the top margin of each page and that recycled paper be used. Information about the lawyer and firm submitting the pleading is required in the upper left hand corner of the first page. The California Judicial Council has approved form pleadings for personal injury, property damage and wrongful death cases in tort. Similar forms have been approved for Contract cases, including breach of contract, fraud, and common counts. These forms are included in Appendix 2.

The use of form pleadings is optional. Form pleadings also exist for use in family law cases.

6-3 Choosing a Court

As we saw in Chapter 1, a California plaintiff is free to sue in any county or judicial district in which any of the defendants reside at the time suit is filed. In an action for personal injury or wrongful death, the plaintiff may sue the defendant in the county or judicial district in which the injury occurred. In contracts cases, the plaintiff may choose to sue the defendant in the county or district in which the contract was formed or where the contract was to be performed. In cases involving title to real property, the plaintiff may choose to sue in the county or district in which the property is located.

6-4 Drafting the Complaint

Fact Pleading and Notice-Pleading

California is a fact pleading, or "code pleading" jurisdiction. The plaintiff's complaint must include specific facts to support each element of each of the plaintiff's theories of liability, although clear and concise statements of fact are preferred to more elaborate ones.

California does not require specific facts to support causes of action for what are known as "common counts". These are suits in which the plaintiff is seeking money damages based on the most basic business relationships, such as lender-borrower, employer-worker, wholesaler-retailer. California does not require the plaintiff to plead the details of the business relationship beyond the most general and brief summary. A common count may be the plaintiff's only cause of action, or it may be one of several theories of liability. The Judicial Council has approved a form for common counts.

Verification

A verified complaint includes a statement under penalty of perjury that the contents of the complaint are true and correct. In California, it is permissible to verify any complaint. The immediate result when a plaintiff verifies the complaint is that the defendant must verify the answer and thus is prohibited from issuing a general denial. Some complaints involving real property title or possession must be verified in California. Corporate officers may sign to verify a complaint or answer on behalf of a corporation. Attorneys may verify a complaint on behalf of an absent client, but typically the client signs the verification forms. [The California law on verification is in the Code of Civil Procedure, Section 446.]

6-5 Preliminary Injunctive Relief

Pre-judgment equitable relief is available in California, in the form of temporary restraining orders and preliminary injunctions. A party may seek a temporary restraining order without giving notice to the other party if statutory requirements are satisfied. Preliminary injunctions are available only after notice and a hearing. [The California law on injunctions is in the Code of Civil Procedure, Sections 525-534; preliminary injunctive relief is discussed at section 527 et sec.]

6-6 Service of Process

California law requires that the defendant be served with a copy of the summons and complaint. It is common for local rules to require the service of additional documents, usually about fast track or other local requirements in the civil courts. Any person may serve a summons or complaint, so long as they are at least 18 years old and not a party to the action.

California allows four methods of service of process upon a defendant located in California: personal service, substituted service, service by mail, and publication. Personal service is the most traditional approach - the documents are delivered personally to the defendant, at which point service is completed and the time for the defendant to respond begins to run.

Substituted Service

Substituted service is available where diligent efforts have been made to affect personal service on an individual without success. In this approach, one copy of the documents are left with an adult in the defendant's household or with the person in charge at the defendant's workplace, and another copy is sent via first class mail to the person to be served at the same address.

Substituted service is available on corporations or other unincorporated associations or public entities where service of one copy is made at the office of the defendant during normal working hours and another copy is mailed to the same address. Prior diligent efforts at affecting personal service are not required. Substituted service is not available on corporations with an agent for service of process.

In all cases of substituted service, service is complete ten days after mailing.

Service by Mail

Service by mail requires cooperation from the defendant. Here, the plaintiff sends the summons and complaint to the defendant via first class mail, along with a self-addressed return envelope and two copies of the Judicial Conference Form for Notice and Acknowledgment of Receipt. Service is complete when the defendant signs the form and returns it, and this has to happen within 20 days.

Service by Publication

Service by publication is not available without a prior court order. This method of service is available only if the defendant cannot be served in another way. The result of service by publication is that the defendant can be subject to a default proceeding after receiving constructive notice of the plaintiff's lawsuit.

Service of Defendants outside of California

Defendants outside California can be served by any of the processes outlined above. California law also allows out-of-state defendants to be served by mail with return receipt required.

Service on Business Entities

Any business entity with an agent for service of process can be served via the appointed agent. Corporate officers or general managers are legal targets for service of process on the entity. General partners of general or limited partnerships are legal targets for service of process on partnerships.

Proof of Service

The plaintiff is required to document valid service of process. California requires that the Judicial Council form for proof of service be used for this purpose.

[The California law on service of process is in the Code of Civil Procedure from Section 413.10 through Section 417.40.]

Time for Service

California law allows local rules to require service of the summons and complaint as quickly as 60 days after a case is filed, pursuant to the local court fast track rules. Otherwise, the court has discretion to dismiss the case if service is not completed within two years of filing, and a case that is not served within three years of filing must be dismissed. Generally speaking, it is good practice to serve the summons and complaint as quickly as possible.

[The California law on time for service is in the Code of Civil Procedure, Section 583, and Government Code Section 68616.]

Amendments to the Complaint

The plaintiff may amend the complaint once as a matter of course, so long as the defendant has not yet filed an answer or a demurrer. Otherwise, a stipulation from the defendant or a court order is required before the plaintiff will be permitted to amend the complaint. California law requires courts liberally to allow plaintiffs to amend the complaint.

[The California law on Amendments is in the Code of Civil Procedure, Sections 472 - 474.]