

Chapter 3—Jurisdiction

A court may not impose liability on a person, affect his personal rights, or change his legal relationship with other persons and entities unless the court has *personal jurisdiction* over that person and *subject matter jurisdiction* over the type of claim that the plaintiff asserts.

“Personal jurisdiction” refers to the authority of the court to assert its power over a particular person. The requirement that the court refrain from exercising its power over a person unless it has personal jurisdiction over him promotes two independent policies. First, it assures that the court and jurisdiction have a sufficient relationship with the defendant that the court’s imposition of its coercive powers does not offend our sense of fairness. Second, it assures that the plaintiff will make reasonable efforts to notify the defendant of the lawsuit. The plaintiff notifies the defendant of the lawsuit by means of service of a summons and complaint.

➔ The Summons and
Service of Process

“Subject matter jurisdiction” refers to the authority of the court to adjudicate claims of the kind that the plaintiff has pleaded against the defendant. The requirement of subject matter jurisdiction is intended to assure that the magnitude, complexity, and posture of the case are commensurate with the competence of the tribunal responsible for adjudicating the case.

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[A] California’s Long Arm Statute

Code of Civil Procedure section 410.10 provides, “A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.” In order, therefore, to determine whether a California court may validly exercise its powers over a defendant, one must refer to our state and federal constitutions, principally the Fourteenth Amendment Due Process Clause, and to court decisions defining the limits that due process imposes on the exercise of personal jurisdiction.¹

The Supreme Court has established the basic principle that due process permits a court to assert jurisdiction over a defendant only if the defendant has had sufficient contacts with the forum that the maintenance of the suit would not offend “traditional notions of fair play and substantial justice.”² In establishing the due process limits of personal jurisdiction, the Court has defined two categories of cases, (1) those in which the defendant’s contacts with the forum have been so substantial that the forum may legitimately exercise judicial power over the defendant with respect to any claim, regardless of the claim’s connection with the forum (“general” personal jurisdiction), and (2) those in which the defendant’s contacts have only been limited, so that the forum may legitimately exercise judicial

¹ See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:195–200 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §§ 7, 81, 94 (3d ed. 1985).

² *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940).

power over the defendant only with respect to claims arising out of those limited contacts (“limited” personal jurisdiction).

[B] General Personal Jurisdiction

If a defendant engages in “continuous and systematic” activities within the forum, the forum may exercise personal jurisdiction over him as to any cause of action, including those unrelated to the defendant’s contacts with the forum.³

Example: *P* is injured in a hotel in Mexico. He files suit in California against against *D Corp.*, a membership organization to which the hotel belongs. The evidence shows that *D Corp.* had been authorized to do business in California since 1984, had designated an agent for service of process in California, had licensed approximately 295 members in California, maintained a business office in California from which it solicited guests for its members, advertised for its members in California, and maintained a reservation system that catered to California residents. *D Corp.* moves the court to quash service of the summons and complaint for lack of personal jurisdiction. The court grants the motion.

The court erred. *D Corp.* intentionally availed itself of benefits within California to such an extent that it subjected itself to general personal jurisdiction in California and was subject to the California

³ *Helicopteros Nacionales, S.A. v. Hall*, 466 U.S. 408, 414 (1984); *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 438, 445 (1952). See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:211–:221 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* § 128 (3d ed. 1985).

court's jurisdiction even though *P*'s injuries had no connection to *D Corp.*'s activities in California.⁴

The plaintiff, however, faces a difficult task in proving that an out-of-state defendant engaged in continuous and systematic activities locally. For instance, mere purchases in the forum, even if occurring at regular intervals, are not sufficient.⁵ The same is true of regular advertising in the forum (and maintenance of a toll-free telephone number),⁶ the marketing of products through independent, nonexclusive sales representatives,⁷ regular deliveries of goods to the forum,⁸ qualifying to do business in the forum and designating an agent for service of process.⁹

⁴ Hesse v. Best Western Int'l., Inc., 32 Cal. App. 4th 404, 410, 38 Cal. Rptr. 2d 74, 77 (1995).

⁵ Helicopteros Nacionales, S.A. v. Hall, 466 U.S. 408, 417 (1984).

⁶ Circus Circus Hotels, Inc. v. Superior Court, 120 Cal. App. 3d 546, 567, 174 Cal. Rptr. 885, 897 (1981), *disapproved on other grounds*, Vons Cos. v. Seabest Foods, Inc., 14 Cal. 4th 434, 464, 926 P.2d 1085, 1105, 58 Cal. Rptr. 2d 899, 919 (1996).

⁷ Congoleum Corp. v. DLW Aktiengesellschaft, 729 F.2d 1240 (9th Cir. 1984); Fisher Governor Co. v. Superior Court, 53 Cal. 2d 222, 225, 347 P.2d 1, 3, 1 Cal. Rptr. 1, 3 (1959). Although language in *Congoleum* suggests that the same would be true of an out-of-state defendant that sends its own employee sales representatives to the forum, one may plausibly distinguish this latter situation from cases like *Congoleum* on the ground that the out-of-state defendant (especially a corporation, which can only act through its human agents) has purposefully availed itself of the benefits of the forum on a continuous and systematic basis.

⁸ Cornelison v. Chaney, 16 Cal. 3d 143, 149, 545 P.2d 264, 267, 127 Cal. Rptr. 352, 355 (1976) (20 trips per year for a period of seven years).

⁹ Gray Line Tours v. Reynolds Elec. & Eng'g Co., 193 Cal. App. 3d 190, 194, 238 Cal. Rptr. 419, 421 (1987).

[C] Limited Personal Jurisdiction

If the plaintiff cannot establish California’s general personal jurisdiction over an out-of-state defendant, the plaintiff may nevertheless hold the defendant to answer the plaintiff’s suit in California if the California court has limited personal jurisdiction over the defendant by virtue of the fact that although the defendant’s contacts with California were not continuous and systematic, they were connected to the plaintiff’s cause of action.¹⁰

In order to establish a California court’s limited personal jurisdiction over an out-of-state defendant, the plaintiff must show that his cause of action against the defendant arose out of the defendant’s contacts with California, that the defendant purposefully availed himself of the benefits of conducting activities in California, and that the California court’s exercise of judicial power over the defendant would be reasonable and fair.

[1] Minimum Contacts

In order for a California court to exercise limited personal jurisdiction over an out-of-state defendant based on his minimum contacts with California, there must be a substantial connection between the defendant’s contacts with California and the plaintiff’s cause of action.¹¹ It is not necessary that the event giving rise to the cause

¹⁰ See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:225–:256 (1996).

¹¹ Professional Travel, Inc. v. Kalish & Rice, Inc., 199 Cal. App. 3d 762, 766, 245 Cal. Rptr. 159, 160 (1988). See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:233–:234, :241–:243 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, Jurisdiction §§ 104, 107, 128 (3d ed. 1985).

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of action occur in California, as long as the cause of action is connected to the defendant's contact with California.¹² Of course, if the event giving rise to the cause of action did occur in California, the basis for the California court's assertion of personal jurisdiction over the out-of-state defendant is all the stronger. The defendant's forum activities need not be directed at the plaintiff in order to give rise to personal jurisdiction. The nexus required to establish jurisdiction is between the defendant, the forum, and the litigation, not between the plaintiff and the defendant. For the purpose of deciding whether a defendant has minimum contacts or purposefully has availed itself of forum benefits, the relevant contacts are said to be with the forum, because it is the defendant's choice to take advantage of opportunities that exist in the forum that subjects it to jurisdiction.¹³ The plaintiff need not show that his injury would not have occurred but for the defendant's contact with the forum.¹⁴ A single act can support jurisdiction so long as it creates a "substantial connection," as opposed to an "attenuated affiliation," with the forum.¹⁵

¹² *Vons Cos. v. Seabest Foods, Inc.*, 14 Cal. 4th 434, 452, 926 P.2d 1085, 1096, 58 Cal. Rptr. 2d 899, 910 (1996) (California court had jurisdiction over Washington franchisee with respect to indemnity claims asserted by third party in California); *Cornelison v. Chaney*, 16 Cal. 3d 143, 149–50, 545 P.2d 264, 268, 127 Cal. Rptr. 352, 356 (1976) (California court had jurisdiction over an out-of-state trucker who, while en route to California, injured a California plaintiff in Nevada).

¹³ *Vons Cos. v. Seabest Foods, Inc.*, 14 Cal. 4th 434, 468–69, 926 P.2d 1085, 1108, 58 Cal. Rptr. 2d 899, 921–22 (1996).

¹⁴ *Vons Cos. v. Seabest Foods, Inc.*, 14 Cal. 4th 434, 452, 926 P.2d 1085, 1096, 58 Cal. Rptr. 2d 899, 910 (1996)

[2] Purposeful Availment

A forum may not assert even limited personal jurisdiction over a defendant unless the defendant purposefully availed himself of the privilege of conducting activities within the forum, thus invoking the benefits and protections of its laws.¹⁶ It is not enough that the defendant knew that his acts would cause an effect in the forum.¹⁷ The defendant's actions must have created a "substantial connection" with the forum,¹⁸ so that the defendant should have anticipated being "haled into court" in the forum.¹⁹ The "purposeful availment" requirement serves to inform the defendant when his conduct may subject him to another state's jurisdiction and allows him to reduce the risk of out-of-state litigation by buying insurance, raising his prices, or severing his connection with the forum.²⁰ If the defendant did not

¹⁵ Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 n.18 (1985); McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957).

¹⁶ Hanson v. Denckla, 357 U.S. 235, 253 (1958). See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:218, :226–:233, :240, :244–:246, :280, :287–:314, :320–:321, :334 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §§ 82–83, 109, 123 (3d ed. 1985).

¹⁷ Mansour v. Superior Court, 38 Cal. App. 4th 1750, 1759, 46 Cal. Rptr. 2d 191, 196 (1995) (no jurisdiction over Ohio residents who may have foreseen that their defamatory statements would harm the plaintiff's reputation in California); Walter v. Superior Court, 178 Cal. App. 3d 677, 681, 224 Cal. Rptr. 41, 43 (1986) (no jurisdiction over New Jersey defendant whose offer of lifetime support induced the plaintiff to move to New Jersey).

¹⁸ Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477–78 (1985).

¹⁹ World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

²⁰ World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

purposefully avail himself of the forum's benefits, it does not matter that a connection between the defendant and the forum was foreseeable (as when a manufacturer's product finds its way to the forum),²¹ or that the conduct of some third party, other than the defendant's agent, brought the defendant into contact with the forum.²² A nonresident may purposefully avail himself of the privilege of conducting activities within the forum any number of ways, including by

- delivering his products into the stream of commerce with the expectation that consumers in the forum will purchase them²³
- distributing a publication on a national basis²⁴
- designing, servicing, or repairing a product with the intention that forum residents will use it²⁵
- insuring forum residents²⁶

²¹ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

²² *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (out-of-state car dealer was not subject to the court's limited personal jurisdiction merely because a car sold by the dealer was involved in an accident in the forum); *Kulko v. Superior Court*, 436 U.S. 84, 97–98 (1978) (out-of-state father was not subject to the court's limited personal jurisdiction in an action for child support merely because his ex-wife moved herself and their daughter to the forum); *Hanson v. Denckla*, 357 U.S. 235, 253 (1958) (out-of-state trustee was not subject to the court's limited personal jurisdiction in an action for an accounting merely because a beneficiary of the trust moved to the forum).

²³ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297–98 (1980); *Secrest Mach. Corp. v. Superior Court*, 33 Cal. 3d 664, 671, 660 P.2d 399, 404, 190 Cal. Rptr. 175, 180 (1983).

²⁴ *Calder v. Jones*, 465 U.S. 783, 789 (1984); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 (1984).

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- providing liability insurance to an interstate business covering injuries from wrongs committed in the forum,²⁷ purchasing shares in a forum business²⁸
- hiring a local representative in the forum²⁹

²⁵ *Rice Growers Ass'n v. First Nat'l Bank*, 167 Cal. App. 3d 559, 580–81, 214 Cal. Rptr. 468, 483 (1985). *But see* *Alexander v. Heater*, 193 Cal. App. 3d 1241, 1245, 238 Cal. Rptr. 795, 797 (1987) (installers of defective truck lift gate were not subject to the personal jurisdiction of the California courts, even though the truck's use in California was expected).

²⁶ *A.I.U. Ins. Co. v. Superior Court*, 177 Cal. App. 3d 281, 291, 222 Cal. Rptr. 880, 885–86 (Bermuda insurer held subject to the jurisdiction of the California courts despite insurer's lack of contact with California where insurer had issued policies insuring substantial assets within California), *cert. denied*, 479 U.S. 821 (1986); *McClanahan v. Trans-America Ins. Co.*, 149 Cal. App. 2d 171, 174, 307 P.2d 1023, 1025 (1957) (out-of-state insurer held subject to the jurisdiction of the California courts in connection with an accident resulting from its nonresident insured's driving within California). *But see* *Great-West Life Assurance Co. v. Guarantee Co. of N. Am.*, 205 Cal. App. 3d 199, 208–09, 252 Cal. Rptr. 363, 368–69 (1988) (it would be unreasonable for a California court to assert jurisdiction over a Canadian insurer in a dispute with a Canadian insured arising out of its activities in California where insurer had not obligated itself to defend the insured in California).

²⁷ *Southeastern Express Sys. v. Southern Guar. Ins. Co.*, 34 Cal. App. 4th 1, 6, 40 Cal. Rptr. 2d 216, 219 (1995) (insurer subject to personal jurisdiction when denying a duty to defend alleged losses arising in California), *cert. denied*, ___ U.S. ___ (1996). *But see* *Benefit Ass'n Int'l, Inc. v. Superior Court*, 46 Cal. App. 4th 827, 833–34, 54 Cal. Rptr. 2d 165, 169 (1996) (insuring two foreign citizens, knowing they might travel in California, did not constitute purposefully availing oneself of the benefits of the economic market in California).

²⁸ *Bresler v. Stavros*, 141 Cal. App. 3d 365, 369, 189 Cal. Rptr. 58, 61 (1983) (defendant purchased shares in a medical corporation which he could not have purchased had he not had a California medical license).

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- employing interstate contractual arrangements to create continuing relationships and obligations with citizens of the forum.³⁰

On the other hand, one does not satisfy the purposeful availment requirement merely by

- accepting payment from the forum for services rendered elsewhere³¹
- providing health insurance to two foreigners, knowing that they might travel in California³²
- holding a license to practice law in California³³
- providing follow up medical consultations ancillary to treatment rendered out of state, including telephone calls about the patient's status and arrangements for continuation of prescription medication.³⁴

²⁹ *Dunne v. Florida*, 6 Cal. App. 4th 1340, 1345–46, 8 Cal. Rptr. 2d 483, 486 (1992) (California courts had jurisdiction over a fee dispute between Florida and the attorney it hired to prosecute a lawsuit in California).

³⁰ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985) (franchise contract); *Vons Cos. v. Seabest Foods, Inc.*, 14 Cal. 4th 434, 450–51, 926 P.2d 1085, 1095, 58 Cal. Rptr. 2d 899, 909 (1996) (franchise contract).

³¹ *Thomas J. Palmer, Inc. v. Turkiye Is Bankasi A.S.*, 105 Cal. App. 3d 135, 154, 164 Cal. Rptr. 181, 192 (1980). *But see* *Brown v. Watson*, 207 Cal. App. 3d 1306, 1314, 255 Cal. Rptr. 507, 512 (1989) (California court had jurisdiction over Texas lawyers hired by a California plaintiff to prosecute a personal injury action in Texas).

³² *Benefit Ass'n Int'l, Inc. v. Superior Court*, 46 Cal. App. 4th 827, 833–34, 54 Cal. Rptr. 2d 165, 169 (1996).

³³ *Crea v. Busby*, 48 Cal. App. 4th 509, 515–16, 55 Cal. Rptr. 2d 513, 515 (1996).

³⁴ *Prince v. Urban*, 49 Cal. App. 4th 1056, 1061, 57 Cal. Rptr. 2d 181, 184 (1996).

It is unclear whether mere knowledge that a product may end up in another state, unaccompanied by any other conduct directed towards that state, will satisfy the purposeful availment requirement.³⁵ California courts have taken the view that due process forbids a court from exercising personal jurisdiction over a foreign corporation merely on the basis that the corporation placed its products in the stream of commerce and may have foreseen that those products would ultimately find their way to California.³⁶ A contractual arrangement consummated in California can form the basis for jurisdiction over a tort cause of action for injuries inflicted in another state.³⁷

[3] Reasonableness

Even if the plaintiff has proved that the defendant purposefully established minimum contacts with the forum, the court must still consider whether the assertion of personal jurisdiction would comport with “traditional notions of fair

³⁵ See *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 108–13, 116–21, 121–22 (1987) (even split of opinion on the issue).

³⁶ *As You Sow v. Crawford Laboratories, Inc.*, 50 Cal. App. 4th 1859, 1869, 58 Cal. Rptr. 2d 654, 658 (1996); *Felix v. Bomoro Kommanditgesellschaft*, 196 Cal. App. 3d 106, 114, 241 Cal. Rptr. 670, 675 (1987), *relying on* *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) (no jurisdiction in Oklahoma over dealer that sold car in New York to New York residents).

³⁷ *Vons Cos. v. Seabest Foods, Inc.*, 14 Cal. 4th 434, 463–64, 926 P.2d 1085, 1104–05, 58 Cal. Rptr. 2d 899, 918–19 (1996) (franchise contract with California franchisor supported jurisdiction over indemnity claims for torts committed in Washington); *Dialysis at Sea, Inc. v. Superior Court*, 216 Cal. App. 3d 788, 795, 265 Cal. Rptr. 71, 76 (1989) (the arrangement in California of accommodations on a cruise supported the jurisdiction of a California court over the cruise operator for medical malpractice committed during the cruise).

play and substantial justice.”³⁸ In order to determine whether the defendant has a sufficient connection with the forum so that the court’s adjudication of a case arising out of that connection does not offend traditional notions of fair play and substantial justice, the courts look to a variety of factors, including

- the extent to which the cause of action arose out of the defendant’s local activities³⁹
- the burden on the defendant of having to appear in a distant forum⁴⁰
- the forum’s interest in adjudicating the dispute⁴¹
- the forum’s interest in regulating the business involved⁴²

³⁸ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985), quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945). See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:240.1–240.3, :247, :249, :255–:256, :282–:286, :341.9 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §§ 82–83 (3d ed. 1985).

³⁹ *Fisher Governor Co. v. Superior Court*, 53 Cal. 2d 222, 225, 347 P.2d 1, 4, 1 Cal. Rptr. 1, 4 (1959).

⁴⁰ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980); *As You Sow v. Crawford Laboratories, Inc.*, 50 Cal. App. 4th 1859, 1871, 58 Cal. Rptr. 2d 654, 660 (1996); *Great-West Life Assurance Co. v. Guarantee Co. of N. Am.*, 205 Cal. App. 3d 199, 209, 252 Cal. Rptr. 363, 369 (1988). Note that the defendant may be able to mitigate the burden by seeking a [change of venue](#) or by invoking the doctrine of [forum non conveniens](#). *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985).

⁴¹ *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957); *Vons Cos. v. Seabest Foods, Inc.*, 14 Cal. 4th 434, 477, 926 P.2d 1085, 1113–14, 58 Cal. Rptr. 2d 899, 927 (1996); *As You Sow v. Crawford Laboratories, Inc.*, 50 Cal. App. 4th 1859, 1871–72, 58 Cal. Rptr. 2d 654, 660 (1996). Note that the potential clash of the forum’s law with the policies of another state may be accommodated through the application of the forum’s choice-of-law rules. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985).

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- the relative availability of evidence⁴³
- the ease of access to an alternative forum⁴⁴
- the plaintiff's interest in obtaining convenient and effective relief (at least when that interest is not adequately protected by the plaintiff's power to choose the forum)⁴⁵
- the interstate judicial system's interest in obtaining the most efficient resolution of controversies, including the avoidance of multiplicity of suits and conflicting adjudications⁴⁶
- the shared interest of the states in furthering fundamental substantive social policies.⁴⁷

When these factors militate against the exercise of personal jurisdiction, then due process requires that the court refrain from adjudicating the dispute, even if the plaintiff's cause of action is connected to the defendant's contacts with the forum.⁴⁸ Note, however, that when an out-of-state defendant has purposefully directed his

⁴² Fisher Governor Co. v. Superior Court, 53 Cal. 2d 222, 225, 347 P.2d 1, 3, 1 Cal. Rptr. 1, 3 (1959).

⁴³ Fisher Governor Co. v. Superior Court, 53 Cal. 2d 222, 225, 347 P.2d 1, 3, 1 Cal. Rptr. 1, 3 (1959); As You Sow v. Crawford Laboratories, Inc., 50 Cal. App. 4th 1859, 1871, 58 Cal. Rptr. 2d 654, 660 (1996).

⁴⁴ Fisher Governor Co. v. Superior Court, 53 Cal. 2d 222, 225, 347 P.2d 1, 3, 1 Cal. Rptr. 1, 4 (1959).

⁴⁵ Kulko v. California Superior Court, 436 U.S. 84, 92 (1978); *cf.* Shaffer v. Heitner, 433 U.S. 186, 211 n.37 (1977) (raising but not deciding the question whether the presence of a defendant's property in a state is a sufficient basis for jurisdiction when no other forum is available to the plaintiff).

⁴⁶ World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980); Fisher Governor Co. v. Superior Court, 53 Cal. 2d 222, 225, 347 P.2d 1, 3, 1 Cal. Rptr. 1, 4 (1959).

⁴⁷ Kulko v. California Superior Court, 436 U.S. 84, 93, 98 (1978).

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activities at residents of the forum, in order to avoid the forum's personal jurisdiction he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.⁴⁹

With respect to acts committed outside California, the case for personal jurisdiction over the out-of-state defendant is strongest when the act foreseeably causes effects within California.⁵⁰ When the out-of-state defendant could not reasonably have expected his acts to cause tortious effects within California, the California court may not assert personal jurisdiction over the defendant based on the effects of his acts in California.⁵¹ Likewise, when the act and the harmful effect of

⁴⁸ *Brand v. Menlove Dodge*, 796 F.2d 1070, 1075 (9th Cir. 1986) (California court could not reasonably exercise jurisdiction over a Utah car dealer at the behest of an Arizona purchaser); *Fields v. Sedgwick Associated Risks, Ltd.*, 796 F.2d 299, 302 (9th Cir. 1986) (California court could not reasonably exercise jurisdiction over an English insurer at the behest of a British subject); *Great-West Life Assurance Co. v. Guarantee Co. of N. Am.*, 205 Cal. App. 3d 199, 252 Cal. Rptr. 363 (1988) (it would be unreasonable for a California court to assert jurisdiction over a Canadian insurer in a dispute with a Canadian insured arising out of its activities in California).

⁴⁹ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985).

⁵⁰ *Jamshid-Negad v. Kessler*, 15 Cal. App. 4th 1704, 1709–10, 19 Cal. Rptr. 2d 621, 624 (1993) (California had personal jurisdiction over Connecticut parents for negligent supervision of their National Merit Scholar son, a student at the University of California, who allegedly attempted to break into the plaintiff's apartment while intoxicated); *Schlussel v. Schlusel*, 141 Cal. App. 3d 194, 197, 190 Cal. Rptr. 95, 96 (1983) (making of obscene telephone calls from out of state to a California resident subjected the caller to the personal jurisdiction of the California court). *But see* *Farris v. Capt. J.B. Fronapfel Co.*, 182 Cal. App. 3d 982, 988–89, 227 Cal. Rptr. 619, 623 (1986) (California court did not have personal jurisdiction over a Florida defendant whose fraudulent misrepresentations in Florida caused a monetary loss in California).

the act both occur outside California, the propriety of a California court's asserting jurisdiction over the out-of-state defendant is doubtful.⁵²

When the defendant is a foreign national, the court must consider as well the policies of other nations whose interests are affected by the assertion of personal jurisdiction by a California court.⁵³ Because of the unique burdens on a foreign national of appearing in a California court, the court should be especially concerned about the reasonableness of the assertion of jurisdiction over foreign nationals, especially when a foreign plaintiff asserts a claim based on transactions occurring outside California.⁵⁴

[D] Separate Analysis for Each Defendant

The requirements of due process must be met as to each defendant over whom a state court seeks to exercise personal jurisdiction.⁵⁵ Jurisdiction over an employer does not imply jurisdiction over its employees,⁵⁶ and jurisdiction over a corporation

⁵¹ ; Wolfe v. City of Alexandria, 217 Cal. App. 3d 541, 547, 265 Cal. Rptr. 881, 884 (1990); Kaiser Aetna v. Deal, 86 Cal. App. 3d 896, 904, 150 Cal. Rptr. 615, 621 (1978).

⁵² Scott v. Breeland, 792 F.2d 925, 928 (9th Cir. 1986) (California court did not have personal jurisdiction over a Tennessee resident who committed an assault in Nevada upon a California stewardess merely because the site of the assault was an airplane about to depart to California); Beckman v. Thompson, 4 Cal. App. 4th 481, 486, 6 Cal. Rptr. 2d 60, 63 (1992) (California court did not have personal jurisdiction over an out-of-state finance company for inducing the breach of an employment contract to be performed in Tennessee).

⁵³ Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102, 115 (1987).

⁵⁴ Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102, 116 (1987) (California courts could not reasonably exercise personal jurisdiction over a Japanese corporation on an indemnity claim by a Taiwanese corporation).

does not automatically establish jurisdiction over its parent or over a subsidiary.⁵⁷ The contacts of a corporation with California may establish personal jurisdiction over a parent or subsidiary if a foreign parent manipulates the subsidiary to the detriment of creditors or if the identities of the two corporations have become so mingled that each corporation is the alter ego of the other.⁵⁸ A principal, by authorizing his agent to perform acts subjecting the agent to the personal jurisdiction of the forum, likewise subjects himself to the court's personal jurisdiction.⁵⁹ (But the acts of a resident are not imputed to a nonresident coconspirator and do not subject him to California jurisdiction.⁶⁰) Whether the California courts have personal jurisdiction over the representative of a decedent's estate who lives outside California depends on whether the California courts would have had personal jurisdiction over the decedent had he lived. If California law permits an action against the personal representative and if the decedent had sufficient contacts with California to have permitted the California courts to assert

⁵⁵ *Rush v. Savchuk*, 444 U.S. 320, 332 (1980). *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:203--:206, :357--:361 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §§ 115, 126, 136 (3d ed. 1985).

⁵⁶ *Calder v. Jones*, 465 U.S. 783, 790 (1984).

⁵⁷ *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13 (1984).

⁵⁸ *Empire Steel Corp. v. Superior Court*, 56 Cal. 2d 823, 831, 366 P.2d 502, 506, 17 Cal. Rptr. 150, 154 (1961); *Checker Motors Corp. v. Superior Court*, 13 Cal. App. 4th 1007, 1019, 17 Cal. Rptr. 2d 618, 625 (1993) (personal jurisdiction existed over holding company inextricably intertwined with its subsidiaries in the transaction and contacts which supported personal jurisdiction).

⁵⁹ *Indiana Ins. Co. v. Pettigrew*, 115 Cal. App. 3d 862, 866-68, 171 Cal. Rptr. 770, 772-73 (1981).

⁶⁰ *Mansour v. Superior Court*, 38 Cal. App. 4th 1750, 1761, 46 Cal. Rptr. 2d 191, 197-98 (1995).

personal jurisdiction over him, then a California court may assert personal jurisdiction over the out-of-state representative of his estate.⁶¹ Another state is subject to the personal jurisdiction of the California courts if its agents engage in activities establishing the requisite minimum contacts with California.⁶²

Due process does not require that the forum have any minimum level of contacts with the plaintiff. The plaintiff's residence in the forum may indirectly affect the issue of personal jurisdiction over the defendant by enhancing the forum's interest in the local adjudication of the dispute, but if the defendant has had sufficient contact with the forum to subject himself to the forum's personal jurisdiction, the plaintiff's own lack of contacts with the forum do not deprive the forum of personal jurisdiction over the defendant.⁶³

[E] Particular Contacts

[1] Presence

Traditionally, courts were viewed as having personal jurisdiction over anyone served with a summons within the forum's boundaries or anyone whose property could be found within the state.⁶⁴ In light of modern developments, one may question whether the Supreme Court would sustain a state court's assertion of

⁶¹ Mitsui Mfrs. Bank v. Tucker, 152 Cal. App. 3d 428, 430, 199 Cal. Rptr. 517, 518–19 (1984).

⁶² Hall v. University of Nev., 8 Cal. 3d 522, 526, 503 P.2d 1363, 1366, 105 Cal. Rptr. 355, 358 (1972).

⁶³ Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 780 (1984). The court, of course, may decline to exercise the jurisdiction it has based on the doctrine of *forum non conveniens*.

⁶⁴ Pennoyer v. Neff, 95 U.S. 714, 722 (1877). See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:132, :135–:152, :367–:370 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §§ 94, 189 (3d ed. 1985).

personal jurisdiction based exclusively on the defendant's service of process upon a defendant who is only briefly within the state. In *Shaffer v. Heitner*⁶⁵ the Court rejected the second traditional basis of personal jurisdiction and held that the mere presence of the defendant's property within the forum does not confer on the forum personal jurisdiction over the owner. Although *Shaffer* did not directly address jurisdiction based on the defendant's mere presence in the forum, the *Shaffer* court expressed its overruling in sweeping terms: "We therefore conclude that all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny."⁶⁶ If, as *Shaffer* holds, jurisdiction based on the mere presence of property in the forum does not satisfy due process requirements, then there is no reason in principle why jurisdiction based on the mere presence of the defendant in the forum would fare any better. The presence of the defendant in the forum is relevant only insofar as it sheds light on the issue whether the defendant has had continuous and systematic contact with the forum or has had purposeful minimum contacts, out of which the plaintiff's cause of action arose.

In *Burnham v. Superior Court*⁶⁷ the Supreme Court faced a case that squarely raised the issue of personal jurisdiction based exclusively on the defendant's presence in the forum when served with the summons and complaint. A father came to California to conduct business and to visit his daughter, who was living with his estranged wife. The wife served the husband with process in an action to dissolve their marriage, and the husband challenged the California court's personal

⁶⁵ 433 U.S. 186 (1977).

⁶⁶ *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977).

⁶⁷ 495 U.S. 604 (1990).

jurisdiction over him. The United States Supreme Court upheld the jurisdiction of the California court. Four justices based their decision on the proposition that a defendant's presence in the forum is a sufficient basis for personal jurisdiction, regardless of the nature of the defendant's conduct within the forum or the connection between the defendant's presence and the subject of the plaintiff's lawsuit;⁶⁸ four justices upheld jurisdiction on the ground that the husband had established the required minimum contacts to support limited personal jurisdiction.⁶⁹

Under the law as established in *Pennoyer*, an out-of-state defendant could avoid the personal jurisdiction of the forum by staying outside the forum. An out-of-state party whose presence within the forum was necessary in connection with other litigation would refrain from coming to the forum to participate in that other litigation in order to avoid being served with a summons and complaint. The rule therefore emerged that an out-of-state party who comes to the forum to participate in a trial, as a witness for instance, is immune from the service of process in any other pending litigation in that state. With the advent of Code of Civil Procedure section 410.10, however, a defendant can be served anywhere in the world, and if his contacts with California support a California court's assertion of personal jurisdiction over him, the court's judgment will bind him. Since out-of-state parties cannot avoid service of process simply by staying outside California, the reason for

⁶⁸ *Burnham v. Superior Court*, 495 U.S. 604, 608–19 (1990). *Accord*, *Silverman v. Superior Court*, 203 Cal. App. 3d 145, 149, 249 Cal. Rptr. 724, 727 (1988).

⁶⁹ *Burnham v. Superior Court*, 495 U.S. 604, 629–40 (1990). It is undecided whether a California court would have personal jurisdiction over a defendant whose presence in the state was procured by force or fraud or over a corporation based on the presence in the state of an agent of the corporation.

the immunity rule has vanished. Accordingly, the rule of immunity from service of process of out-of-state witnesses and parties to litigation while in California to participate in litigation proceedings is no longer the law in California.⁷⁰

[2] Domicile

A California court may exercise general jurisdiction over a defendant domiciled in California.⁷¹ One acquires one's domicile in a state by changing one's residence to the state with the intention of remaining either permanently or for an indefinite time without any fixed or certain intention to return to one's former residence.⁷² A corporation incorporated in California is domiciled in California.⁷³

The former domicile of the defendant in California is insufficient by itself to confer jurisdiction if the domicile has no relation to the litigation. But domicile at the time the cause of action arose, in addition to allegations that the action is based on the defendant's activities within California, afford the state a constitutional basis for personal jurisdiction.⁷⁴

⁷⁰ *Silverman v. Superior Court*, 203 Cal. App. 3d 145, 149, 249 Cal. Rptr. 724, 727 (1988) (out-of-state parties); *Severn v. Adidas Sportschuhfabriken*, 33 Cal. App. 3d 754, 762, 109 Cal. Rptr. 328, 333 (1973) (out-of-state witnesses).

⁷¹ *Milliken v. Meyer*, 311 U.S. 457, 462 (1940); *Allen v. Superior Court*, 41 Cal. 2d 306, 313, 259 P.2d 905, 909 (1953). *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:153–:156 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §§ 98–99 (3d ed. 1985).

⁷² *DeYoung v. DeYoung*, 27 Cal. 2d 521, 524, 165 P.2d 457, 458 (1946).

⁷³ *Fibreboard Paper Prods. Corp. v. Franchise Tax Bd.*, 268 Cal. App. 2d 363, 367, 74 Cal. Rptr. 46, 50 (1968).

⁷⁴ *Kroopf v. Guffey*, 183 Cal. App. 3d 1351, 1357, 228 Cal. Rptr. 807, 811 (1986).

[3] Consent

Because the requirement of personal jurisdiction exists to protect the defendant from unfair proceedings and does not concern the fundamental authority of the court, the defendant may agree to submit himself to the personal jurisdiction of the forum, thereby waiving any objections he might have to the forum’s exercise of judicial power over him.⁷⁵ The issue of personal jurisdiction based on consent normally arises in the context of contracts containing forum selection clauses. In *Smith, Valentino & Smith, Inc. v. Superior Court*,⁷⁶ the California Supreme Court held that “forum selection clauses are valid and may be given effect, in the court’s discretion and in the absence of a showing that enforcement of such a clause would be unreasonable.”⁷⁷ Factors affecting the reasonableness of a forum selection clause include:

- whether the party propounding the forum selection clause did so as a means to discourage the other party from pursuing legitimate claims
- whether the other party’s assent was procured by fraud or overreaching

⁷⁵ The signing of an Acknowledgment of Receipt of Summons form does not constitute consent to the jurisdiction of the California courts. *Marriage of Merideth*, 129 Cal. App. 3d 356, 362, 180 Cal. Rptr. 909, 912 (1982). Nor does a corporation’s qualification to do business and appointment of an agent for service of process. *Gray Line Tours v. Reynolds Elec. & Eng’g Co.*, 193 Cal. App. 3d 190, 194, 238 Cal. Rptr. 419, 421 (1987). See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:161, :177–:177.1, :181–:182.2, :182.4–:182.5 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* § 137 (3d ed. 1985).

⁷⁶ 17 Cal. 3d 491, 551 P.2d 1206, 131 Cal. Rptr. 374 (1976).

⁷⁷ *Smith, Valentino & Smith, Inc. v. Superior Court*, 17 Cal. 3d 491, 496, 551 P.2d 1206, 1209, 131 Cal. Rptr. 374, 377 (1976). *Accord*, *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10, 15 (1972).

- whether the other party had notice of the forum selection clause.⁷⁸

To be valid, a forum selection clause must reflect the parties' free and voluntary choice.⁷⁹ The presentation of a forum selection clause on a take-it-or-leave-it basis, however, does not deprive the clause of its status as free and voluntary, in the absence of disparity in the bargaining power of the parties to the contract.⁸⁰ The party attacking a forum selection clause must establish that the forum selected would be unavailable or unable to accomplish substantial justice.⁸¹ A forum-selection clause is prima facie valid and is to be enforced unless the resisting party shows enforcement would be unreasonable under the circumstances.⁸² A forum selection clause is reasonable if the choice of forum has some rational basis in light of the facts underlying the transaction.⁸³ The forum chosen need not have any particular connection to the parties or the transaction: the parties may choose to resolve their disputes in an unrelated, neutral forum.⁸⁴

⁷⁸ *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 595 (1991).

⁷⁹ *See Smith, Valentino & Smith, Inc. v. Superior Court*, 17 Cal. 3d 491, 495, 551 P.2d 1206, 1209, 131 Cal. Rptr. 374, 377 (1976) ("the policy [of favoring access to California courts by resident plaintiffs] is satisfied in those cases where . . . a plaintiff has freely and voluntarily negotiated away his right to a California forum").

⁸⁰ *Furda v. Superior Court*, 161 Cal. App. 3d 418, 426, 207 Cal. Rptr. 646, 651 (1984).

⁸¹ *Smith, Valentino & Smith, Inc. v. Superior Court*, 17 Cal. 3d 491, 494, 551 P.2d 1206, 1208, 131 Cal. Rptr. 374, 376 (1976).

⁸² *Benefit Ass'n Int'l, Inc. v. Superior Court*, 46 Cal. App. 4th 827, 835, 54 Cal. Rptr. 2d 165, 170 (1996).

⁸³ *Furda v. Superior Court*, 161 Cal. App. 3d 418, 426, 207 Cal. Rptr. 646, 651 (1984).

Neither inconvenience nor additional expense in litigating in the selected forum is part of the test of unreasonability.⁸⁵ Whether the defendant's assent to a forum selection clause subjects him to the court's personal jurisdiction with respect to causes of action other than a claim for breach of the contract in which the clause appears is a question of interpretation of the clause; whether a forum selection clause applies to tort claims depends on whether resolution of the claims relates to interpretation of the contract.⁸⁶

[4] Appearances

If a defendant takes part in the proceedings as a party⁸⁷ for any purpose other than to contest the court's jurisdiction over him, the defendant makes a "general appearance," impliedly consents to the court's jurisdiction, and forfeits any objection he might have raised to the court's jurisdiction over his person.⁸⁸ A

⁸⁴ *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 17 (1972); *Cal-State Business Prods. & Servs., Inc. v. Ricoh*, 12 Cal. App. 4th 1666, 1682, 16 Cal. Rptr. 2d 417, 426 (1993).

⁸⁵ *Smith, Valentino & Smith, Inc. v. Superior Court*, 17 Cal. 3d 491, 496, 551 P.2d 1206, 1209, 131 Cal. Rptr. 374, 377 (1976).

⁸⁶ *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 514 (9th Cir. 1988).

⁸⁷ Participation in the proceedings in some role other than as a party (*i.e.*, as a witness or spectator) does not constitute an appearance. *Slaybaugh v. Superior Court*, 70 Cal. App. 3d 216, 224, 138 Cal. Rptr. 628, 633 (1977). *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:161–165, :166.7, :166.9, :167, :169 :174–:175 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §§ 141, 145–147, 152–156 (3d ed. 1985).

⁸⁸ *Chitwood v. City of Los Angeles*, 14 Cal. App. 3d 522, 526, 92 Cal. Rptr. 441, 444 (1971). A general appearance by a party is equivalent to personal service of the summons on that party. CODE CIV. PROC. § 410.50(a).

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general appearance results in the court's jurisdiction over the person of the defendant, even if he purports to reserve his right to contest the court's personal jurisdiction.⁸⁹ A defendant may appear and submit to the court's jurisdiction by, for instance:

- giving the plaintiff written notice of his appearance⁹⁰
- answering the complaint⁹¹
- demurring⁹²
- filing a motion to strike⁹³
- filing a motion for change of venue⁹⁴
- acknowledging valid service of the summons and complaint⁹⁵
- filing a motion for a continuance⁹⁶
- filing a motion to disqualify opposing counsel⁹⁷

⁸⁹ *Neihaus v. Superior Court*, 69 Cal. App. 3d 340, 345, 137 Cal. Rptr. 905, 908 (1977) (disclaimer in defendant's answer ineffective in preventing jurisdiction from attaching).

⁹⁰ CODE CIV. PROC. § 1014.

⁹¹ CODE CIV. PROC. § 1014. Responding to a claim in another action or contained in the cross-complaint of a codefendant does not constitute a general appearance as to the plaintiff, at least for purposes of relieving the plaintiff of his duty to serve the summons and complaint on the defendant personally. *Botsford v. Pascoe*, 94 Cal App. 3d 62, 68, 156 Cal. Rptr. 177, 180 (1979).

⁹² CODE CIV. PROC. § 1014.

⁹³ CODE CIV. PROC. § 1014.

⁹⁴ CODE CIV. PROC. § 1014.

⁹⁵ *General Ins. Co. of Am. v. Superior Court*, 15 Cal. 3d 449, 543, 541 P.2d 289, 291, 124 Cal. Rptr. 745, 747 (1975).

- invoking the court’s discovery mechanisms (other than discovery limited to the issue of jurisdiction)⁹⁸
- responding to discovery requests.⁹⁹

An appearance of an attorney does not create jurisdiction unless the attorney was authorized to appear.¹⁰⁰ When an attorney appears in court on behalf of a client, there is a presumption that the attorney is authorized to act on behalf of that client. The plaintiff bears the burden of proving facts establishing personal jurisdiction, including the necessary foundation for the presumption—that the attorney represented the defendant.¹⁰¹ If the defendant can prove that his attorney appeared on his behalf without his authority, the defendant may move to withdraw the appearance.¹⁰²

⁹⁶ 366–386 Geary Street, *L.P. v. Superior Court*, 219 Cal. App. 3d 1186, 1194 n.2, 268 Cal. Rptr. 678, 681 n.2 (1990).

⁹⁷ *GHK Assocs. v. Mayer Group, Inc.*, 224 Cal. App. 3d 856, 884–85, 274 Cal. Rptr. 168, 186 (1990).

⁹⁸ *Creed v. Schultz*, 148 Cal. App. 3d 733, 740, 196 Cal. Rptr. 252, 256 (1983) (defendant submitted to court’s jurisdiction by noticing a deposition, even though the notice was not filed).

⁹⁹ *Chitwood v. City of Los Angeles*, 14 Cal. App. 3d 522, 528, 92 Cal. Rptr. 441, 445 (1971) (answering interrogatories).

¹⁰⁰ *Milrot v. Stamper Medical Corp.*, 44 Cal. App. 4th 182, 186, 51 Cal. Rptr. 2d 424, 426 (1996).

¹⁰¹ *Milrot v. Stamper Medical Corp.*, 44 Cal. App. 4th 182, 187, 51 Cal. Rptr. 2d 424, 427 (1996).

¹⁰² *Wilson v. Barry*, 102 Cal. App. 3d 778, 780, 228 P.2d 331, 333 (1951). Where an unauthorized general appearance is entered on behalf of an incorrectly identified defendant and the mistake is not disclosed until it is too late for the plaintiff to serve the true defendant, the general appearance of the incorrectly identified defendant will be imputed to the true defendant if necessary to prevent an injustice. *Omega Video, Inc. v. Superior Court*, 146 Cal. App. 3d 470, 481, 194 Cal. Rptr. 574, 581 (1983).

A plaintiff, by initiating a lawsuit in a California court, subjects himself to the court’s jurisdiction as to any cross-claim filed against him in the same action.¹⁰³ There is no authority on the issue whether a defendant, by making a general appearance in an action, subjects himself to the court’s personal jurisdiction with respect to any additional claims the plaintiff may add to his complaint by means of an amended pleading.¹⁰⁴

[a] Special Appearances

The Code of Civil Procedure provides a means by which one may make a “special appearance” to contest the court’s personal jurisdiction without thereby making a “general appearance,” submitting to the court’s jurisdiction, and rendering the objection moot. Section 418.10 provides that a defendant may file a [motion to quash service of the summons](#) on the ground of lack of personal jurisdiction,¹⁰⁵ and that such a motion shall not be deemed a general appearance.¹⁰⁶

¹⁰³ Adam v. Saenger, 303 U.S. 59, 67–68 (1938); Marriage of Aron, 224 Cal. App. 3d 1086, 1095, 274 Cal. Rptr. 357, 362 (1990).

¹⁰⁴ *But see* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶ 3:176 (1996) (stating that defendants are subject to the court’s personal jurisdiction on amended claims).

¹⁰⁵ CODE CIV. PROC. § 418.10(a)(1). *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶ 3:170 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §§ 161–162 (3d ed. 1985).

¹⁰⁶ CODE CIV. PROC. § 418.10(d).

[b] Other Exceptions

The Code of Civil Procedure and the cases recognize a number of actions in a proceeding that do not constitute a general appearance and subject the defendant to the court’s jurisdiction, including:

- an [acknowledgment of receipt of a summons](#)¹⁰⁷
- an appearance at a hearing at which ex parte relief is sought, or an appearance at a hearing for which an ex parte application for a provisional remedy is made¹⁰⁸
- an application to the court or a stipulation of the parties for an extension of the time to plead¹⁰⁹
- a motion to stay or dismiss the action on the ground of [forum non conveniens](#)¹¹⁰

¹⁰⁷ Marriage of Merideth, 129 Cal. App. 3d 356, 362, 180 Cal. Rptr. 909, 912 (1982). See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:180, :166.1, :166.2, :166.4–.6 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* § 137, 154, 157, 161, 162, 165–168 (3d ed. 1985).

¹⁰⁸ CODE CIV. PROC. § 418.11.

¹⁰⁹ CODE CIV. PROC. § 418.10(d). Note that Code of Civil Procedure section 583.220 provides that a stipulation extending the time within which service of the summons must be made, a motion to dismiss for delay in service of the summons, and an extension of time to plead after a motion to dismiss for delay in service of the summons are not general appearances “[f]or the purpose of this section.” Section 583.220 is not authority for the proposition that any of these acts is not a general appearance for purposes of personal jurisdiction.

¹¹⁰ CODE CIV. PROC. § 418.10(a)(2), (d).

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➡ Challenging the Court's
Subject Matter
Jurisdiction

- a {motion for relief from mistake, inadvertence, surprise, or excusable neglect} when joined with a motion to quash¹¹¹
- a motion to set aside a default for late service of the summons when joined with a motion to quash¹¹²
- a motion to dismiss for lack of subject matter jurisdiction¹¹³
- initiating or responding to discovery requests expressly limited to the jurisdictional issues raised by a motion to quash¹¹⁴
- a peremptory challenge to the judge hearing the motion to quash¹¹⁵
- a {motion to dismiss for lack of prosecution}.¹¹⁶

A corporate officer's participation in proceedings involving the corporation does not constitute a general appearance by the officer as an individual.¹¹⁷

[5] Contract

A nonresident defendant's contract with a California resident does not automatically establish sufficient minimum contacts with California to subject the defendant to California's personal jurisdiction.¹¹⁸ A contract is "ordinarily but an intermediate step serving to tie up prior business negotiations with future

¹¹¹ CODE CIV. PROC. §§ 418.10(d), 473(b).

¹¹² CODE CIV. PROC. §§ 418.10(d), 473.5.

¹¹³ *Goodwine v. Superior Court*, 63 Cal. 2d 481, 484, 407 P.2d 1, 4, 47 Cal. Rptr. 201, 203 (1965).

¹¹⁴ *Islamic Republic v. Pahlavi*, 160 Cal. App. 3d 620, 628, 206 Cal. Rptr. 752, 756-57 (1984).

¹¹⁵ CODE CIV. PROC. § 170.6; *Loftin v. Superior Court*, 19 Cal. App. 3d 577, 97 Cal. Rptr. 215 (1971).

¹¹⁶ CODE CIV. PROC. §§ 418.10(d), 583.110.

¹¹⁷ *Ikerd v. Warren T. Merrill & Sons*, 9 Cal. App. 4th 1833, 1843, 12 Cal. Rptr. 2d 398, 404 (1992).

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consequences which themselves are the real object of the business transaction.”¹¹⁹ The passage of title to property within California is not the critical inquiry for a minimum contacts analysis.¹²⁰ Prior negotiations, contemplated future consequences, the terms of the contract, and the parties’ actual course of dealing are the factors the court must evaluate in determining whether the defendant purposefully established minimum contacts with the forum.¹²¹ The fact that an out-of-state defendant negotiated and partially performed a contract in California would normally suffice to subject him to personal jurisdiction in California.¹²² When a manufacturer makes a direct effort to serve the market for its product in the forum state, the requisite level of foreseeability is met.¹²³ The nature and quality of the activity in California is what matters, not the quantity of goods sold or the proportion of the defendant’s local sales to its total sales.¹²⁴

¹¹⁸ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985). *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:166.8, :308–312 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* § 83A (3d ed. 1985).

¹¹⁹ *Hoopeston Canning Co. v. Cullen*, 318 U.S. 313, 317 (1943).

¹²⁰ *As You Sow v. Crawford Laboratories, Inc.*, 50 Cal. App. 4th 1859, 1868, 58 Cal. Rptr. 2d 654, 658 (1996).

¹²¹ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479 (1985).

¹²² *Safe-Lab, Inc. v. Weinberger*, 193 Cal. App. 3d 1050, 1053, 238 Cal. Rptr. 712, 713–14 (1987).

¹²³ *As You Sow v. Crawford Laboratories, Inc.*, 50 Cal. App. 4th 1859, 1876, 58 Cal. Rptr. 2d 654, 659 (1996).

¹²⁴ *As You Sow v. Crawford Laboratories, Inc.*, 50 Cal. App. 4th 1859, 1875–76, 58 Cal. Rptr. 2d 654, 659 (1996).

An out-of-state defendant's purchases of goods from a forum resident are not sufficiently "substantial, continuous, and systematic" to support the general personal jurisdiction of the forum.¹²⁵ Therefore, the forum may assert personal jurisdiction over the out-of-state buyer only if the plaintiff's claim relates to the defendant's purchases and if the defendant's connection with the forum satisfy the "minimum contacts" requirement. Jurisdiction over an out-of-state buyer must be premised on a substantial basis, such as an ongoing relationship or course of dealings with the plaintiff.¹²⁶ In *Rocklin De Mexico, S.A. v. Superior Court*¹²⁷ the court upheld the assertion of limited jurisdiction over a Mexican corporation that had repeatedly initiated substantial purchases of lumber in California, taking title to the lumber in California and using it for a commercial purpose. What minimum set of contacts is necessary to support limited jurisdiction is not clear. Presumably, an isolated purchase of goods for a personal, noncommercial, purpose, with the out-of-state buyer taking delivery in his state (for instance, a mail order purchase of consumer goods), would not support limited personal jurisdiction in the seller's state.

A defendant's acceptance of an assignment of a contract subjects the defendant to the personal jurisdiction of the forum if the making of the contract created sufficient contacts between the assignor and the forum to subject to the assignor to the personal jurisdiction of the forum.¹²⁸ A successor corporation submits itself to

¹²⁵ *Helicopteros Nacionales, S.A. v. Hall*, 466 U.S. 408, 418 (1984).

¹²⁶ *Futuresat Indus., Inc. v. Superior Court*, 3 Cal. App. 4th 155, 159, 4 Cal. Rptr. 2d 74, 76 (1992).

¹²⁷ 157 Cal. App. 3d 91, 98, 203 Cal. Rptr. 547, 551–52 (1984). *Accord*, *Vons Cos. v. Seabest Foods, Inc.*, 14 Cal. 4th 434, 451, 926 P.2d 1085, 1095, 58 Cal. Rptr. 2d 899, 909 (1996).

the jurisdiction of the forum by assuming the liability sued upon if the predecessor corporation would have been subject to the jurisdiction of the forum.¹²⁹

[a] Choice of Law Clauses

The fact that the defendant stipulated in the contract that the forum's law should govern the agreement does not automatically subject the defendant to the forum's personal jurisdiction. The choice of law clause is, however, a factor to consider when determining whether the defendant purposefully availed himself of the benefits and protections of the law of the forum.¹³⁰

[F] Special Cases

[1] Family Support

The same due process requirements apply to personal jurisdiction in actions for family support as apply to other cases, despite the heightened interest of the forum in assuring that family support obligations are met. Thus, in *Kulko v. Superior Court*¹³¹ the Supreme Court held that an out-of-state father who allowed his daughter to come to California to reside with his ex-wife did not purposefully avail himself of the benefits and protections of California law and was not subject to the personal jurisdiction of the California courts in the ex-wife's action to obtain additional child support.¹³² On the other hand, another court, applying the same

¹²⁸ *Bruns v. DeSoto Operating Co.*, 204 Cal. App. 3d 876, 882–83, 251 Cal. Rptr. 462, 465–66 (1988).

¹²⁹ *Sanders v. Arrow Mfg. Co.*, 95 Cal. App. 3d 779, 787, 157 Cal. Rptr. 252, 257 (1979).

¹³⁰ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 481–82 (1985). See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶ 3:312 (1996).

¹³¹ 436 U.S. 84 (1978).

principles, concluded that the California courts could exercise jurisdiction in an action for child support over a defendant whose act of sexual intercourse in California resulted in the conception of the child in question.¹³³

[2] Defamation

The First Amendment does not impose any higher jurisdictional requirements in defamation actions than apply to other actions.¹³⁴ Thus, if an out-of-state publisher prints a defamatory story about a forum resident in a national publication that continuously and deliberately exploits the forum market, the publisher may be subjected to the personal jurisdiction of the forum.¹³⁵ On the other hand, where an out-of-state publication has only insignificant circulation in the forum and the story does not concern a forum resident, the forum may not exercise personal jurisdiction over the publisher.¹³⁶

¹³² *Kulko v. Superior Court*, 436 U.S. 84, 94 (1978). *But cf.* *Kroopf v. Guffey*, 183 Cal. App. 3d 1351, 228 Cal. Rptr. 807 (1986) (a palimony suit is not a domestic relations matter; rather, it sounds in contract and is subject to the rules applicable to contract cases). *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:327–:329 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* § 113 (3d ed. 1985)

¹³³ *County of Humboldt v. Harris*, 206 Cal. App. 3d 857, 860, 254 Cal. Rptr. 49, 51–52 (1988).

¹³⁴ *Calder v. Jones*, 465 U.S. 783, 790–91 (1984). *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:277, :281 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* § 110 (3d ed. 1985)

¹³⁵ *Calder v. Jones*, 465 U.S. 783, 790–91 (1984) (California court had personal jurisdiction where national publication defamed a California resident, causing most of its harm in the forum); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 (1984) (New Hampshire court had jurisdiction over an Ohio publisher of a national magazine in a defamation action brought by a New York resident).

[3] Corporate Directors and Officers

When a corporate agent or employee takes actions on behalf of the corporation sufficiently connected to the forum to subject the corporation to the forum’s personal jurisdiction, the forum normally has jurisdiction over the agent or employee as well.¹³⁷ It was once the law that when the person acting on behalf of the corporation was a director or officer, the law regarded his actions as those of the corporation alone, since a corporation can only act through its directors and officers, and the director or officer was not subject to the forum’s personal jurisdiction, even though his actions were sufficient to subject the corporation to the forum’s personal jurisdiction.¹³⁸ Recently, however, this “fiduciary shield” doctrine has been repudiated.¹³⁹

[4] Businesses Subject to Special Regulation

The California legislature has determined that certain businesses have a particular impact on the public and therefore require special regulation. The fact that

¹³⁶ *Evangelize China Fellowship, Inc. v. Evangelize China Fellowship*, 146 Cal. App. 3d 440, 448–49, 194 Cal. Rptr. 240, 245 (1983) (only seven percent of Hong Kong publication’s circulation was in California); *Sipple v. Des Moines Register & Tribune*, 82 Cal. App. 3d 143, 151–52, 147 Cal. Rptr. 59, 64 (1978).

¹³⁷ *Calder v. Jones*, 465 U.S. 783, 789–90 (1984); *Mihlon v. Superior Court*, 169 Cal. App. 3d 703, 713, 215 Cal. Rptr. 442, 447 (1985).

¹³⁸ *Ruger v. Superior Court*, 118 Cal. App. 3d 427, 433, 173 Cal. Rptr. 302, 306 (1981); *see Mihlon v. Superior Court*, 169 Cal. App. 3d 703, 713, 215 Cal. Rptr. 442, 447 (1985) (corporate counsel does not enjoy directors’ and officers’ immunity from personal jurisdiction).

¹³⁹ *Seagate Technology v. A.J. Kogyo Co.*, 219 Cal. App. 3d 696, 702, 268 Cal. Rptr. 586, 589 (1990); *Taylor-Rush v. Multitech Corp.*, 217 Cal. App. 3d 103, 118, 265 Cal. Rptr. 672, 680 (1990).

a case implicates one of these specially regulated businesses enhances the reasonableness of a California court's exercise of personal jurisdiction over the parties to the case. For instance, in *Bresler v. Stavros*¹⁴⁰ the court considered the case of an out-of-state doctor who contracted to purchase shares in a California medical corporation. When sued on the contract, he contested the California court's jurisdiction over him. The court of appeal based its finding of personal jurisdiction in part on the ground that an out-of-state party's intentional participation in an activity that the state treats as exceptional and subject to special regulation is a basis for jurisdiction.¹⁴¹ The courts have likewise tended to uphold personal jurisdiction over out-of-state insurers, another heavily regulated business.¹⁴²

[G] Federal Law Limitations on the Exercise of Personal Jurisdiction

Federal laws constrain the California courts' authority to assert judicial power over certain individuals otherwise subject to the personal jurisdiction of California courts. For instance, a California court may not exercise personal jurisdiction over a

¹⁴⁰ 141 Cal. App. 3d 365, 189 Cal. Rptr. 58 (1983).

¹⁴¹ *Bresler v. Stavros*, 141 Cal. App. 3d 365, 369, 189 Cal. Rptr. 58, 61 (1983). *Accord*, *Jamshid-Negad v. Kessler*, 15 Cal. App. 4th 1704, 1708, 19 Cal. Rptr. 2d 621, 623 (1993). *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:240.1–:240.3, :333–:341 (1996).

¹⁴² *See, e.g.*, *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957) (jurisdiction based on single contact); *Travelers Health Ass'n v. Virginia*, 339 U.S. 643 (1950); *A.I.U. Ins. Co. v. Superior Court*, 177 Cal. App. 3d 281, 222 Cal. Rptr. 880, *cert. denied*, 479 U.S. 821 (1986); *McClanahan v. Trans-America Ins. Co.*, 149 Cal. App. 2d 171, 307 P.2d 1023 (1957). *But see* *Great-West Life Assurance Co. v. Guarantee Co. of N. Am.*, 205 Cal. App. 3d 199, 208–09, 252 Cal. Rptr. 363, 368–69 (1988) (California court lacked jurisdiction over dispute between foreign insurer and insured).

foreign national if the United States is a party to a treaty limiting the personal jurisdiction of United States courts.¹⁴³

[H] In Rem and Quasi in Rem Jurisdiction

Formerly, the law distinguished between jurisdiction based on the presence of the defendant's person in the forum (*in personam* jurisdiction) and jurisdiction based on the presence of the defendant's property in the forum (*in rem* and *quasi in rem* jurisdiction¹⁴⁴). In *International Shoe Co. v. Washington*¹⁴⁵ the Supreme Court rejected these traditional categories and analyzed the power of a state court to assert its jurisdiction in terms of the fairness of doing so in light of the defendant's contacts with the forum. *International Shoe* did not address the continued viability of traditional in rem and quasi in rem jurisdictional concepts, but *International Shoe* foreshadowed the reevaluation of in rem and quasi in rem jurisdiction in terms of fairness. This development came to pass in *Shaffer v. Heitner*,¹⁴⁶ which held that the "presence" in the forum of nonresidents' shares in a forum corporation did not

¹⁴³ *Shoei Kako Co. v. Superior Court*, 33 Cal. App. 3d 808, 819, 109 Cal. Rptr. 402, 410 (1973). See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶ 3:200 (1996).

¹⁴⁴ "In rem jurisdiction" refers to the power of the court to determine the status of property located within the forum and to render a binding judgment. "Quasi in rem jurisdiction" refers to the power of the court to adjudicate a claim against a defendant based on, and limited to, the forum's control of the defendant's property within the forum. See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:366--371 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §§ 180–182, 189 (3d ed. 1985).

¹⁴⁵ 326 U.S. 310, 316 (1945).

¹⁴⁶ 433 U.S. 186, 210–12 (1977).

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support the forum’s exercise of its jurisdiction over the nonresidents on claims unrelated to those shares. Following *Shaffer*, whether the presence of the defendant’s property in the forum is sufficient to support the forum’s personal jurisdiction must be analyzed in “minimum contacts” terms.

Code of Civil Procedure sections 492.010 through 492.090 provided the means for a plaintiff to assert quasi in rem jurisdiction over a nonresident defendant. Following *Shaffer*, these statutes no longer have much utility. If the defendant has sufficient “minimum contacts” with California, the court can assert full personal jurisdiction over him, unlimited by the value of his property located in the state. If the defendant does not have “minimum contacts” with California, then the court cannot exercise any jurisdiction over the defendant, limited or otherwise.

The presence of real property within the forum remains a sufficient “minimum contact” in actions to establish title to that property.¹⁴⁷ The same may be true for suits based on a nonresident’s breach of his duties as an owner of property located within the forum.¹⁴⁸

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Before filing a lawsuit, the plaintiff’s lawyer must determine which court has the legal authority to adjudicate the case. The consequences of filing the case in the wrong court are severe. A judgment rendered by a court without subject matter jurisdiction is void.¹⁴⁹ Except for the plaintiff’s option to invoke municipal court

¹⁴⁷ *Shaffer v. Heitner*, 433 U.S. 186, 208 (1977). *Accord*, *Khan v. Superior Court*, 204 Cal. App. 3d 1168, 1178, 251 Cal. Rptr. 815, 821 (1988) (court had jurisdiction over nonresident husband to establish ownership of marital property located in California).

¹⁴⁸ *Shaffer v. Heitner*, 433 U.S. 186, 208 (1977).

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➔ [Determining the Amount in Controversy](#)

jurisdiction by waiving the excess portion of his claim, the parties cannot, by their consent, confer subject matter jurisdiction upon a court that lacks it,¹⁵⁰ and the defendant does not forfeit his objection to the court's lack of subject matter by his delay in objecting.¹⁵¹

The parties and the courts circumvent this rule by various devices. The parties may stipulate to the facts establishing the court's jurisdiction.¹⁵² An appellate court may treat an appeal from a nonappealable order as an appeal from a subsequently entered appealable order¹⁵³ or as a petition for an extraordinary writ.¹⁵⁴ In rare cases, the appellate courts have ignored jurisdictional defects in the interest of judicial economy.¹⁵⁵

¹⁴⁹ *Residents for Adequate Water v. Redwood Valley County Water Dist.*, 34 Cal. App. 4th 1801, 1805, 41 Cal. Rptr. 2d 123, 125 (1995). *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:112–:115, :118–:120 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §§ 10–11, 13–14, 17 (3d ed. 1985).

¹⁵⁰ *Marlow v. Campbell*, 7 Cal. App. 4th 921, 928, 9 Cal. Rptr. 2d 516, 520 (1992).

¹⁵¹ *Kingston Constructors Inc. v. Washington Metro. Area Transit Auth.*, 44 Cal. App. 4th 1726, 1733, 52 Cal. Rptr. 2d 666, 670 (1996); *United Firefighters v. City of Los Angeles*, 231 Cal. App. 3d 1576, 1582, 283 Cal. Rptr. 8, 12 (1991).

¹⁵² *Chapin v. Gritton*, 178 Cal. App. 2d 551, 562–63, 3 Cal. Rptr. 250, 257 (1960).

¹⁵³ *Collins v. City and County of San Francisco*, 112 Cal. App. 2d 719, 723, 247 P.2d 362, 364–65 (1952).

¹⁵⁴ *U.S. Financial v. Sullivan*, 37 Cal. App. 3d 5, 12, 112 Cal. Rptr. 18, 21 (1974).

¹⁵⁵ *Argonaut Ins. Co. v. Workmen's Compensation Appeals Bd.*, 247 Cal. App. 2d 669, 671–72, 55 Cal. Rptr. 810, 812 (1967).

The California court system is divided into four levels, the [municipal courts](#) (including [small claims courts](#)), the [superior courts](#), the [courts of appeal](#), and the [supreme court](#). Each court exercises subject matter jurisdiction over particular kinds of cases.

[A] Municipal Courts

[1] Legal Actions

The municipal courts have jurisdiction in actions at law in which the plaintiff's demand for damages (not including interest) or the value of the property in controversy amounts to \$25,000 or less.¹⁵⁶ Provided that the jurisdictional limit is not exceeded, municipal courts have jurisdiction in the following cases:

- actions for “forcible entry” or “forcible or unlawful detainer”¹⁵⁷
- judgment collection actions seeking the recovery of an interest in personal property or to enforce the liability of a debtor of a judgment debtor¹⁵⁸
- all petitions relating to arbitration, except for uninsured motorist cases, when (1) the petition is based on the subject matter of a pending action properly filed

¹⁵⁶ CODE CIV. PROC. § 86(a)(1). *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:9–:11, :39 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Courts* §§ 198–199 (3d ed. 1985).

¹⁵⁷ CODE CIV. PROC. § 86(a)(4). A landlord can sue for ejectment in superior court, regardless of the amount in controversy, but he forfeits the summary remedy available for unlawful detainer if he does so. *Stokus v. Marsh*, 217 Cal. App. 3d 647, 653 n.2, 266 Cal. Rptr. 90, 93 n.2 (1990).

¹⁵⁸ CODE CIV. PROC. § 86(a)(9).

in the municipal court,¹⁵⁹ or (2) the petitioner seeks to confirm, correct, or vacate a binding fee arbitration award between an attorney and client¹⁶⁰

- actions under the Long-Term Care, Health, Safety, and Security Act of 1973¹⁶¹ unless the action seeks penalties exceeding \$25,000¹⁶²
- class actions that otherwise satisfy the requirements of municipal court jurisdiction.¹⁶³

The municipal courts do not have jurisdiction over cases involving the legality of any tax, impost, assessment, toll, or fine except for actions that involve the collection of delinquent unsecured property taxes and in which the defendant taxpayer does not contest the tax's legality.¹⁶⁴ Cases falling outside this exception come within the jurisdiction of the [superior court](#), regardless of the amount in controversy.¹⁶⁵

[2] Equitable Actions

The authority of a municipal court to grant equitable relief is severely limited.¹⁶⁶ Municipal courts may not issue permanent injunctions,¹⁶⁷ though they have the

¹⁵⁹ CODE CIV. PROC. § 86(a)(10)(A).

¹⁶⁰ CODE CIV. PROC. § 86(a)(10)(B).

¹⁶¹ HEALTH & SAFETY CODE §§ 1417 *et seq.*

¹⁶² CODE CIV. PROC. § 86.1. The municipal court may transfer actions under the Long-Term Care, Health, Safety, and Security Act of 1973 to the superior court for consolidation with any other citation enforcement action pending in the superior court, on the motion of either party. *Id.*

¹⁶³ *Little v. Sanchez*, 166 Cal. App. 3d 501, 506, 213 Cal. Rptr. 297, 299 (1985).

¹⁶⁴ CODE CIV. PROC. § 86(a)(1).

¹⁶⁵ *Cardellini v. Casey*, 181 Cal. App. 3d 389, 398, 226 Cal. Rptr. 659, 664 (1986).

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authority to provide ancillary relief—to issue temporary restraining orders and preliminary injunctions, to order accountings, to appoint receivers, to entertain actions to enforce judgments, and to determine the ownership of seized personal property—provided that the court has jurisdiction over the main action.¹⁶⁸ Municipal courts may not determine the title to real property,¹⁶⁹ but they have the power determine the title to personal property seized in a pending action¹⁷⁰ and to personal property worth \$25,000 or less.¹⁷¹ They may not grant declaratory relief,¹⁷² except (1) in cross-actions for indemnity when the relief demanded in the complaint or cross-complaint does not exceed \$25,000,¹⁷³ (2) to conduct a trial after nonbinding fee arbitration between an attorney and client when the amount in

¹⁶⁶ See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:12–:19, :21–:28, :30–:33, :37–:38 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Courts* §§ 201–205, 229 (3d ed. 1985).

¹⁶⁷ *St. James Church of Christ Holiness v. Superior Court*, 135 Cal. App. 2d 352, 362, 287 P.2d 387, 392 (1955).

¹⁶⁸ CODE CIV. PROC. § 86(a)(8).

¹⁶⁹ *Flowers & Sons Dev. Corp. v. Municipal Court*, 86 Cal. App. 3d 818, 824, 150 Cal. Rptr. 555, 559 (1978).

¹⁷⁰ CODE CIV. PROC. § 86(a)(8).

¹⁷¹ CODE CIV. PROC. § 86(b)(1).

¹⁷² *Minor v. Municipal Court*, 219 Cal. App. 3d 1541, 1547–48, 268 Cal. Rptr. 919, 923 (1990). If the plaintiff seeks a declaratory judgment with respect to the consequences of the parties' past conduct, so that a money judgment not exceeding \$25,000 would provide complete relief, the municipal court has jurisdiction over the case, despite the prayer for a declaratory judgment. *Cardellini v. Casey*, 181 Cal. App. 3d 389, 396, 226 Cal. Rptr. 659, 663 (1986).

¹⁷³ CODE CIV. PROC. § 86(a)(7)(A).

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controversy does not exceed \$25,000,¹⁷⁴ or (3) in an action to declare a mobile home abandoned.¹⁷⁵ The municipal courts do not have authority to enforce orders under the Family Law Act.¹⁷⁶

In actions otherwise satisfying the jurisdictional limits of the municipal courts, the courts have the authority to exercise limited ancillary powers. The courts have jurisdiction to rescind or reform contracts.¹⁷⁷ Municipal courts have jurisdiction over actions for dissolution of partnerships and over {interpleader} actions.¹⁷⁸ Municipal courts have jurisdiction over actions to enforce or foreclose personal property liens¹⁷⁹ and to foreclose mechanics' liens or assessment liens on common interest developments (*i.e.*, condominiums).¹⁸⁰ A municipal court has jurisdiction over cases otherwise within the court's jurisdiction even though the plaintiff seeks to impose liability based on equitable principles¹⁸¹ or the defendant asserts an equitable defense.¹⁸² The municipal court has the power to vacate a judgment of the

¹⁷⁴ CODE CIV. PROC. § 86(a)(7)(B).

¹⁷⁵ CIV. CODE § 798.61(c); *Marlow v. Campbell*, 7 Cal. App. 4th 921, 926, 9 Cal. Rptr. 2d 516, 519 (1992).

¹⁷⁶ *Marriage of Lackey*, 143 Cal. App. 3d 698, 703, 191 Cal. Rptr. 309, 312 (1983).

¹⁷⁷ CODE CIV. PROC. § 86(a)(3).

¹⁷⁸ CODE CIV. PROC. § 86(a)(2).

¹⁷⁹ CODE CIV. PROC. § 86(a)(5).

¹⁸⁰ CODE CIV. PROC. § 86(a)(6). If the property is subject to an action pending in a superior court or if the total amount of all the liens sought to be foreclosed against the same property exceeds \$25,000, the action must be transferred to the proper superior court on the motion of any party. *Id.*

¹⁸¹ CODE CIV. PROC. § 86(c), *overruling Castellini v. Municipal Court*, 7 Cal. App. 3d 174, 176, 86 Cal. Rptr. 698, 699 (1970).

§ 3.02 Subject Matter Jurisdiction

➔ Collateral Attacks on Judgments

court obtained through extrinsic fraud, mistake, inadvertence, or excusable neglect.¹⁸³

➔ Small Claims Court versus Municipal Court

[3] Small Claims Courts

The small claims court is a division of the local municipal court.¹⁸⁴ Subject to a jurisdictional limit of \$5,000, the small claims court has jurisdiction over actions for damages,¹⁸⁵ actions to enforce the payment of delinquent unsecured personal property taxes (provided that the defendant taxpayer does not contest the legality of the tax),¹⁸⁶ actions by hotel keepers seeking a writ of possession with respect to personal property of guests subject to a lien for room charges under Civil Code sections 1861.5 and 1861.10,¹⁸⁷ and actions to confirm, correct, or vacate a fee arbitration award not exceeding \$5,000 between an attorney and client.¹⁸⁸ In any of the above cases, the court may grant equitable relief in the form of rescission, restitution, reformation, and specific performance.¹⁸⁹ The court may exercise jurisdiction over a defendant guarantor only if the demand does not exceed

¹⁸² CODE CIV. PROC. § 86(b)(2).

¹⁸³ CODE CIV. PROC. § 86(b)(3).

¹⁸⁴ See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:41–:42, :44–:44a, :44.1, :46 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Courts* §§ 226 (3d ed. 1985).

¹⁸⁵ CODE CIV. PROC. § 116.220(a)(1).

¹⁸⁶ CODE CIV. PROC. § 116.220(a)(2).

¹⁸⁷ CODE CIV. PROC. § 116.220(a)(3).

¹⁸⁸ CODE CIV. PROC. § 116.220(a)(4).

¹⁸⁹ CODE CIV. PROC. § 116.220(b).

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\$2,500.¹⁹⁰ The court may not exercise jurisdiction over an assigned claim.¹⁹¹ A plaintiff may not, in any calendar year, file more than two small claims actions seeking more than \$2,500.¹⁹²

[B] Superior Courts

The California courts of general subject matter jurisdiction are the superior courts.¹⁹³ They have jurisdiction over the trial of all cases except those within the exclusive jurisdiction of the [municipal courts](#) and the [federal courts](#) and disputes coming within the exclusive jurisdiction of special tribunals created for the purpose of adjudicating particular cases, such as the Workers' Compensation Appeals Board¹⁹⁴ and the Public Utility Commission. The work of the civil departments of the superior courts thus includes:

- actions for damages in which the amount in controversy exceeds \$25,000
- actions seeking permanent [injunctions](#)

¹⁹⁰ CODE CIV. PROC. § 116.220(c).

¹⁹¹ CODE CIV. PROC. § 116.420(a).

¹⁹² CODE CIV. PROC. § 116.231(a). This limitation does not apply to actions by local public entities. *Id.* § 116.231(d).

¹⁹³ CAL. CONST. art. VI, § 10. *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:3–:7.8 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Courts* §§ 160, 162, 164, 166, 167, 354–355 (3d ed. 1985).

¹⁹⁴ *American Int'l Adjustment Co., v. Crawford*, 51 Cal. App. 4th 1489, ____, 60 Cal. Rptr. 2d 123, 126 (1997) (exclusive jurisdiction of the Workers' Compensation Appeals Board is not limited to employees and employers, but extends to all suits over compensation and payment of benefits to injured workers, including bad faith or fraud claims against workers' compensation carriers and fraud claims against medical or medical-legal lien claimants).

§ 3.02 Subject Matter Jurisdiction

- actions seeking {declaratory judgments}
- actions to {quiet title} to real property
- actions arising under the Family Code (including actions concerning the status of a marriage, spousal support, child support and custody, and settlement of the spouses' property rights)¹⁹⁵
- probate proceedings¹⁹⁶
- guardianship and conservatorship proceedings¹⁹⁷
- adoptions¹⁹⁸
- eminent domain proceedings¹⁹⁹
- actions involving the legality of a tax, impost, assessment, toll, or municipal fine.²⁰⁰

It is sometimes said that if cases concerning the same subject matter are filed in separate superior courts, the first court to assume jurisdiction has exclusive and continuing jurisdiction until all necessarily related matters have been resolved and that the second court must abate the second action in recognition of the first court's exclusive jurisdiction.²⁰¹ This rule of exclusive concurrent jurisdiction is a judicial rule of

¹⁹⁵ FAM. CODE §§ 200, 2010.

¹⁹⁶ PROB. CODE § 7050(a).

¹⁹⁷ PROB. CODE § 2200.

¹⁹⁸ FAM. CODE § 200.

¹⁹⁹ CODE CIV. PROC. § 1250.010.

²⁰⁰ CODE CIV. PROC. § 86(a)(1).

²⁰¹ *Lawyers Title Ins. Corp. v. Superior Court*, 151 Cal. App. 3d 455, 460, 199 Cal. Rptr. 1, 4 (1984).

§ 3.02 Subject Matter Jurisdiction

► Special Demurrers—
Another Action Pending

priority or preference and is not jurisdictional in the true sense of the word, for a judgment issued in violation of the rule is merely erroneous, not void.²⁰²

[1] Determining the Amount in Controversy

In order to determine whether to file an action for damages in municipal or superior court, one must determine whether the amount in controversy—the “demand, exclusive of interest, or the value of the property in controversy”²⁰³—exceeds \$25,000. In order to gauge that amount, one looks to the prayer for relief or demand of the complaint, not the amount actually recovered.²⁰⁴ The plaintiff need

²⁰² People *ex rel.* Garamendi v. American Autoplan, Inc., 20 Cal. App. 4th 760, 772, 25 Cal. Rptr. 2d 192, 199 (1993).

²⁰³ CODE CIV. PROC. § 86(a)(1). “Interest” includes compound interest accruing before suit is filed. Christian v. Superior Court, 122 Cal. 117, 120, 54 P. 518, 519 (1898). *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:57–:111 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §§ 18–32 (3d ed. 1985).

The rules regarding “Economic Litigation for Municipal and Justice Courts,” CODE CIV. PROC. §§ 90–100, apply to municipal court cases based on the “amount in controversy,” defined as “the amount of the demand, or the recovery sought, or the value of the property, or the amount of the lien, which is in controversy in the action, exclusive of attorney fees, interest, and costs.” *Id.* § 91(a). Strictly speaking, section 91(a) determines the application of the Economic Litigation rules and should not define the boundary between the jurisdiction of the municipal court and the jurisdiction of the superior court. It would appear, therefore, that attorneys’ fees and costs are not excluded from the computation of the amount in controversy. The courts, however, have ignored this legislative discrepancy and held that because attorneys’ fees awarded by contract are treated as costs, CIV. CODE § 1717, they are excluded from the computation of the amount in controversy. *Stokus v. Marsh*, 217 Cal. App. 3d 647, 653, 266 Cal. Rptr. 90, 93 (1990); *but see* *Bakkebo v. Municipal Court*, 124 Cal. App. 3d 229, 236, 177 Cal. Rptr. 239, 242 (1981) (the award of attorneys’ fees cannot in itself exceed the jurisdictional limit).

§ 3.02 Subject Matter Jurisdiction

only pray for damage “in excess of” the jurisdictional limit of the municipal court in order to invoke the superior court’s jurisdiction.²⁰⁵ The court may not look beyond the complaint except to determine whether the complaint was filed in bad faith or was frivolous or vexatious and whether the allegations support the relief sought.²⁰⁶ If subsequent events deprive the court of jurisdiction, the court must transfer the case to the proper court,²⁰⁷ but the potential that such events may occur does not support subject matter jurisdiction before they occur.²⁰⁸ In personal injury, wrongful death, and punitive damages cases the plaintiff may not pray for a specific amount of damages;²⁰⁹ presumably, it should suffice to invoke superior court jurisdiction to plead generally, “The relief sought in this complaint is within the jurisdiction of the court,” as alleged in the Judicial Council form.

➔ {Form—Complaint
Personal Injury/
Property Damage/
Wrongful Death}

A plaintiff having a claim exceeding the municipal court’s jurisdictional limit may invoke the municipal court’s jurisdiction by limiting his demand to the jurisdictional limit.²¹⁰ The plaintiff may amend his complaint, even after judgment,

²⁰⁴ *Engebretson & Co. v. Harrison*, 125 Cal. App. 3d 436, 444, 178 Cal. Rptr. 77, 82 (1981).

²⁰⁵ *Engebretson & Co. v. Harrison*, 125 Cal. App. 3d 436, 444, 178 Cal. Rptr. 77, 82 (1981).

²⁰⁶ *Security Pac. Nat’l Bank v. Lyon*, 185 Cal. App. 3d Supp. 8, 12, 165 Cal. Rptr. 95, 97 (1980). If the plaintiff frivolously pleads excessive damages in order to defeat the jurisdiction of the municipal court, the superior court may transfer the case to the municipal court or deny the plaintiff costs. CODE CIV. PROC. §§ 396, 1033(a).

²⁰⁷ CODE CIV. PROC. § 396.

²⁰⁸ *Babcock v. Antis*, 94 Cal. App. 3d 823, 830, 156 Cal. Rptr. 673, 676 (1979) (municipal court had jurisdiction over an unlawful detainer case despite the possibility that future accrual of rent might push the amount in controversy above the jurisdictional limit).

²⁰⁹ CODE CIV. PROC. § 425.10(b); CIV. CODE § 3295(e).

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to bring the case within the municipal court's jurisdiction, so long as the judgment does not exceed the jurisdictional limit.²¹¹

[a] Multiple Claims and Multiple Parties

If a single plaintiff sues a single defendant on separate causes of action properly joined, the aggregate of the demands determines jurisdiction.²¹² If, however, the plaintiff alleges damages in two separate counts on different theories for the same harm, the two counts are treated as alternative pleadings of a single cause of action.²¹³ The assignee of multiple claims against the same defendant may combine the claims in a single action and aggregate the amounts so as to come within the jurisdictional limits of the superior court.²¹⁴ In class actions, the claims of the class members are aggregated to determine jurisdiction.²¹⁵

If a single plaintiff sues several defendants on a single liability, the amount of the plaintiff's demand against all of them determines jurisdiction.²¹⁶ If the plaintiff pleads a separate claim against each defendant, then jurisdiction depends on the

²¹⁰ CODE CIV. PROC. § 396.

²¹¹ Babcock v. Antis, 94 Cal. App. 3d 823, 830, 156 Cal. Rptr. 673, 677 (1979).

²¹² Hammell v. Superior Court, 217 Cal. 5, 6, 7 P.2d 101, 102 (1932). *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:97–:109, :111 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §§ 32, 33, 35–37 (3d ed. 1985).

²¹³ Perry v. Farley Bros. Moving & Storage, Inc., 6 Cal. App. 3d 884, 888, 86 Cal. Rptr. 397, 400 (1970).

²¹⁴ Hammell v. Superior Court, 217 Cal. 5, 8, 7 P.2d 101, 103 (1932).

²¹⁵ Archibald v. Cinerama Hotels, 15 Cal. 3d 853, 861, 544 P.2d 947, 953, 126 Cal. Rptr. 811, 817 (1976).

²¹⁶ Kane v. Mendenhall, 5 Cal. 2d 749, 757, 56 P.2d 498, 502 (1936).

§ 3.02 Subject Matter Jurisdiction

➔ Joinder of Causes of Action

amount of each claim. The superior court has jurisdiction over any one claim only if (1) that claim satisfies the superior court's jurisdictional limitation,²¹⁷ or (2) that claim is properly joined with a claim that does.

➔ Permissive Joinder of Plaintiffs

If multiple plaintiffs join to sue on an obligation owed to them jointly, then the amount of their joint demand determines jurisdiction.²¹⁸ If multiple plaintiffs join to sue for separate injuries caused to each of them, then the court must determine jurisdiction as to each claim, without aggregating them.²¹⁹ If one of the plaintiffs asserts a claim within the superior court's jurisdictional limits, the court has jurisdiction over the claims of other properly joined plaintiffs, even though their claims do not satisfy the court's jurisdictional limits.²²⁰

If the plaintiff brings an action within the superior court's jurisdiction, the defendant's right to assert a cross-complaint is not undermined by the fact that the defendant's claimed damages do not satisfy the court's jurisdictional limit.²²¹ If, however, the plaintiff's claim is dismissed before trial, the superior court may transfer the defendant's cross-claim for trial in the municipal court.²²² If the plaintiff brings an action within the municipal court's jurisdiction and the defendant files a cross-complaint, the municipal court may not award the defendant damages exceeding the court's jurisdictional limit. If the defendant asserts a cross-claim

²¹⁷ Hammell v. Superior Court, 217 Cal. 5, 6, 7 P.2d 101, 102 (1932).

²¹⁸ Frost v. Mighetto, 22 Cal. App. 2d 612, 615–16, 71 P.2d 932, 934 (1937).

²¹⁹ Hammell v. Superior Court, 217 Cal. 5, 6, 7 P.2d 101, 102 (1932).

²²⁰ Emery v. Pacific Employers Ins. Co., 8 Cal. 2d 653, 668, 67 P.2d 1046, 1049 (1937).

²²¹ Emery v. Pacific Employers Ins. Co., 8 Cal. 2d 653, 667, 67 P.2d 1046, 1049 (1937).

²²² CODE CIV. PROC. § 396.

► [Motions to Transfer](#)

exceeding the municipal court's jurisdictional limit, the court must transfer the case to the superior court.²²³

[2] Church Controversies

The First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice and requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. Subject to these limitations, a state may adopt any one of various approaches for settling church property disputes so long as the decision involves no consideration of doctrinal matters.²²⁴ This rule is sometimes expressed as a jurisdictional limitation.²²⁵ It is questionable, however, whether the First Amendment limitation on court involvement in church property disputes is truly a jurisdictional limitation.

Suppose that a court quiets title to church property based on forbidden doctrinal considerations and that the court could have decided the matter based on permissible neutral principles of law. If the court had decided the case on the correct basis, the court's determination as to title would bind the whole world. If, however, the court's reliance on doctrinal considerations deprives the court of subject matter jurisdiction, then the judgment is void. If neither party thinks to challenge the court's "jurisdiction," then this void judgment could become final without any indication on the face of the judgment of its invalidity. It is questionable whether the First Amendment mandates the instability in property titles inherent in this

²²³ CODE CIV. PROC. § 396.

²²⁴ *Jones v. Wolf*, 443 U.S. 595, 602 (1979).

²²⁵ *Vukovich v. Radulovich*, 235 Cal. App. 3d 281, 292, 286 Cal. Rptr. 547, 554 (1991).

scenario. Would not First Amendment concerns be satisfied by a holding that a court's reliance on doctrinal considerations to resolve a dispute as to title to property is an error, which is waived if no one raises an objection?

[C] Appellate Courts

The appellate department of each superior court exercises jurisdiction over appeals from the local municipal courts, but trials de novo of small claims matters are heard in the superior courts generally, not the appellate departments.²²⁶ The courts of appeal have appellate jurisdiction in all civil cases in which superior courts have original jurisdiction and in other causes prescribed by statute.²²⁷ Specifically, the courts of appeal have jurisdiction over final judgments of the superior court,²²⁸ certain interlocutory judgments,²²⁹ post-judgment orders,²³⁰ various prejudgment orders,²³¹ and appealable probate court orders.²³² The courts of appeal have no original jurisdiction, except over proceedings for writs of mandamus,²³³ prohibition,²³⁴ and certiorari.²³⁵ The supreme court has discretionary appellate

²²⁶ CODE CIV. PROC. § 77(e). *See generally* 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Courts* §§ 243, 258, 259, 265, 267, 269 (3d ed. 1985); 9 B.E. WITKIN, CALIFORNIA PROCEDURE, *Appeal* §§ 21, 35, 43, 115 (3d ed. 1985).

²²⁷ CAL. CONST. art. VI, § 11.

²²⁸ CODE CIV. PROC. § 904.1(a)(1).

²²⁹ CODE CIV. PROC. § 904.1(a)(8), (9), (11).

²³⁰ CODE CIV. PROC. § 904.1(a)(2).

²³¹ CODE CIV. PROC. § 904.1(a)(3)–(8), (12)

²³² PROB. CODE § 7240.

²³³ CODE CIV. PROC. § 1085.

jurisdiction over judgments of the courts of appeal²³⁶ and the same limited jurisdiction as the courts of appeal with respect to issuing extraordinary writs.²³⁷

[D] Federal Courts

In addition to the state court alternatives, the plaintiff's lawyer must consider the possible jurisdiction of the federal courts. In certain cases, the plaintiff has no choice except to sue in federal court. In other cases, the plaintiff may choose to sue in either state or federal court. If the plaintiff chooses to sue in state court but could have sued in federal court, the defendant may have the prerogative to move the case to federal court.

[1] Exclusive Federal Jurisdiction

The federal courts have exclusive jurisdiction to adjudicate claims arising under certain federal statutes. Whether one must sue in federal court depends on the provisions of the federal statute which supports one's cause of action. Congress has accorded the federal courts exclusive jurisdiction over numerous claims arising under federal law,²³⁸ including claims under the Securities Exchange Act of 1934²³⁹ and the Investment Company Act of 1940,²⁴⁰ federal antitrust claims,²⁴¹

²³⁴ CODE CIV. PROC. § 1103.

²³⁵ CODE CIV. PROC. § 1068.

²³⁶ CAL. CONST. art. VI, § 12.

²³⁷ CODE CIV. PROC. §§ 1068, 1085, 1103.

²³⁸ See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:611--:618 (1996).

²³⁹ 15 U.S.C. § 78aa.

maritime claims,²⁴² bankruptcy proceedings,²⁴³ patent and copyright claims,²⁴⁴ tort claims against the United States,²⁴⁵ and suits to enforce the duties owed to employee benefit plans.²⁴⁶

[2] Concurrent State and Federal Jurisdiction

In addition to the specific grants of jurisdiction in individual statutes,²⁴⁷ Congress has enacted general grants to the federal courts of *concurrent* (i.e., nonexclusive) jurisdiction²⁴⁸ in two classes of cases: those arising under federal law and those involving litigants of diverse citizenship. In these cases, the plaintiff may choose between bringing his action in state or federal court.

²⁴⁰ 15 U.S.C. § 80a-35(b)(5).

²⁴¹ 15 U.S.C. § 4; *General Inv. Co. v. Lake Shore & M.S. Ry.*, 260 U.S. 261, 287 (1922).

²⁴² 28 U.S.C. § 1333(1).

²⁴³ 28 U.S.C. § 1334(a).

²⁴⁴ 28 U.S.C. § 1338(a).

²⁴⁵ 28 U.S.C. § 1346(b).

²⁴⁶ 29 U.S.C. § 1132(e)(1). The state courts, however, have concurrent jurisdiction over actions by plan beneficiaries to obtain benefits due under a plan. *Id.*

²⁴⁷ *See, e.g.*, 15 U.S.C. § 1125(a) (trademark actions under the Lanham Trade-Mark Act).

²⁴⁸ When a federal court and a state court each acquire jurisdiction over a dispute, neither acquires exclusive jurisdiction, and each may proceed at its own pace until one or the other achieves a final judgment, which then becomes *res judicata* as to the other court. *Fowler v. Ross*, 142 Cal. App. 3d 472, 477, 191 Cal. Rptr. 183, 186 (1983). *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶ 3:619–:626 (1996); 9 B.E. WITKIN, CALIFORNIA PROCEDURE, *Appeal* § 348 (3d ed. 1985).

[a] Federal Question Jurisdiction

Title 28, section 1331, of the United States Code provides, “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” Whether a case arises under federal law depends on whether the plaintiff bases his *claim* on federal law. The federal courts do not acquire federal question jurisdiction merely because the defendant may base his *defense* on federal law.²⁴⁹

[b] Diversity of Citizenship Jurisdiction

Title 28, section 1332, of the United States Code provides:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$50,000, exclusive of interest and costs, and is between—

- (1) citizens of different States;
- (2) citizens of a State and citizens or subjects of a foreign state;
- (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
- (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

In order for a federal court to exercise judicial power under section 1332, there must be complete diversity of citizenship between the plaintiffs and the defendants: if any plaintiff shares citizenship of the same state with any defendant, then the court does not have jurisdiction based on diversity of citizenship.²⁵⁰ The parties cannot confer subject matter jurisdiction on the court by their consent.²⁵¹ For purposes of section

²⁴⁹ Louisville & Nashville R.R. v. Mottley, 211 U.S. 149, 152 (1908).

§ 3.02 Subject Matter Jurisdiction

→ Domicile

1332, a litigant is a citizen of a state if he resides there with the intention of remaining indefinitely. A corporation is a citizen of “any State by which it has been incorporated and of the State where it has its principal place of business.”²⁵² The authority of the federal court depends on the parties’ circumstances at the moment the action is filed.²⁵³ If any of the parties changes his domicile during the litigation, destroying diversity of citizenship, the federal court nevertheless retains its power to adjudicate the case.²⁵⁴ The parties, however, cannot create federal jurisdiction through such artificial devices as changing their domiciles,²⁵⁵ collusively joining parties,²⁵⁶ or assigning their claims to out-of-state parties²⁵⁷ for the purpose of manufacturing nominal diversity of citizenship.

[c] The Amount in Controversy

Section 1332, affording the federal courts concurrent jurisdiction over actions involving diversity of citizenship, limits its application to cases in which the amount in controversy exceeds \$50,000. A plaintiff cannot circumvent the amount in

²⁵⁰ *Strawbridge v. Curtiss*, 7 U.S. 267 (1806). See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶ 3:624 (1996).

²⁵¹ *Capron v. VanNoorden*, 6 U.S. 126, 127 (1804).

²⁵² 28 U.S.C. § 1332(c).

²⁵³ *Mollan v. Torrance*, 22 U.S. 537, 539 (1824).

²⁵⁴ *Smith v. Sperling*, 354 U.S. 91, 93 n.1 (1957).

²⁵⁵ *Morris v. Gilmer*, 129 U.S. 315, 328–29 (1889).

²⁵⁶ 28 U.S.C. § 1359.

²⁵⁷ 28 U.S.C. § 1359.

controversy limitation by demanding compensation exceeding the jurisdictional limit when his claim does not support a recovery of that magnitude.²⁵⁸

[d] Pendent and Ancillary Jurisdiction

If a plaintiff has multiple claims against a defendant, some of which support federal question jurisdiction and some of which arise under state law, a federal court has the discretion to exercise *pendent jurisdiction* over the state law claims if they derive from a common nucleus of operative fact.²⁵⁹ Similarly, if a federal court has jurisdiction over the plaintiff’s claim, the court may exercise *ancillary jurisdiction* over compulsory counterclaims and cross-claims permitted by the Federal Rules of Civil Procedure but not independently supporting federal jurisdiction.²⁶⁰

[e] Removal Jurisdiction

If the federal courts and the state courts have concurrent jurisdiction over an action and the plaintiff elects to sue in state court, the defendant may transfer (remove) the case to federal court, provided that, in cases in which federal jurisdiction rests upon diversity of citizenship, no defendant is a citizen of the forum.²⁶¹ [Fictitious “Doe” defendants](#) have no bearing on the existence of removal jurisdiction based on diversity of citizenship.²⁶²

²⁵⁸ Arnold v. Troccoli, 344 F.2d 842, 846 (2d Cir. 1965).

²⁵⁹ United Mine Workers v. Gibbs, 383 U.S. 715, 725–26 (1966).

²⁶⁰ Moore v. New York Cotton Exch., 270 U.S. 593, 608–10 (1926).

²⁶¹ 28 U.S.C. § 1441.

²⁶² 28 U.S.C. § 1441(a).

§ 3.03 Tactical Considerations in Choosing a Forum

[A] State Court versus Federal Court

The decision whether to file a case in state or federal court or whether to remove a case from state to federal court will turn on any of several considerations.²⁶³

There are many procedural differences between trying cases in state or federal court. The most important difference is the federal requirement that jury verdicts be unanimous. In California state courts, a jury verdict requires the support of only three-fourths of the jurors. A plaintiff facing a close case may prefer federal court because of the greater chance of mistrial due to the failure of the jurors to agree on a verdict.

The rules of procedure vary in other respects as well. Certain federal statutes permit nationwide service of process.²⁶⁴ The federal courts are more hostile to class actions than are their state court counterparts.²⁶⁵ State courts are courts of general jurisdiction, whereas the federal courts exercise limited jurisdiction and may not have the power to adjudicate all of the claims between the parties. The Code of Civil

²⁶³ See generally ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:647–:661 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Courts* §§ 113–118 (3d ed. 1985).

²⁶⁴ See, e.g., 15 U.S.C. § 78aa (actions under the Securities Exchange Act of 1934); 28 U.S.C. § 2361 (statutory interpleader actions). This consideration has minimal impact on California practice because California law provides for the broadest possible assertion of personal jurisdiction consistent with due process.

²⁶⁵ For instance, California law aggregates the claims of class members to compute the amount in controversy; federal law requires that each class member’s claim satisfy the amount in controversy requirement. *Snyder v. Harris*, 394 U.S. 332, 338 (1969).

➔ California’s Long Arm Statute

➔ Multiple Claims and Multiple Parties

§ 3.03 Tactical Considerations in Choosing a Forum

▶ Fictitious Defendants

Procedure permits a plaintiff to name fictitious defendants in order to prevent the running of the statute of limitations against defendants whose identities are unknown; the Federal Rules of Civil Procedure contain no such provision. Federal courts use six-person juries, and the judge conducts the jury voir dire. In state court, on the other hand, 12-person juries are used, and the lawyers take an active role in examining the prospective jurors. Litigants in federal court have only three peremptory challenges,²⁶⁶ whereas state court litigants have six peremptory challenges.²⁶⁷

Federal cases require more preparation and are more expensive. The Federal Rules of Civil Procedure contemplate much more active judicial supervision of cases, and this supervision requires the attorneys to work harder. Federal judges hold pretrial conferences requiring extensive preparation²⁶⁸ and have the option to maintain a tighter grip on discovery.²⁶⁹ The plaintiff's attorney must investigate the merits of the plaintiff's case before filing suit, for, by signing a complaint, the attorney certifies the existence of good cause for suing and exposes himself to sanctions if the court disagrees.²⁷⁰

The rules of evidence also differ. For example, the two systems apply different rules with respect to witness privileges. In federal court the judge can order the in camera inspection of documents in order to rule upon an assertion of the attorney-

²⁶⁶ 28 U.S.C. § 1870.

²⁶⁷ CODE CIV. PROC. § 601.

²⁶⁸ FED. R. CIV. P. 16.

²⁶⁹ FED. R. CIV. P. 26(f).

²⁷⁰ FED. R. CIV. P. 11.

§ 3.03 Tactical Considerations in Choosing a Forum

client privilege;²⁷¹ a California judge may not do so.²⁷² In federal court one may use a witness's prior inconsistent statement to prove the truth of the matter stated only if the witness made the statement under oath;²⁷³ state court procedure imposes no such requirement.²⁷⁴ In federal court one may use a learned treatise to prove the truth of a matter stated in the treatise;²⁷⁵ in state court one may use a learned treatise only to impeach a witness.²⁷⁶

→ Venue

The choice of court systems may affect the place of trial. The federal courts try cases only at the federal courthouses in Sacramento, San Francisco, San Jose, Fresno, Los Angeles, Santa Ana, and San Diego; the California venue rules, however, may dictate trial in any of California's counties. Also, the filing of a case in, or removal of a case to, federal court exposes the litigants to the federal court's broader transfer powers. The federal court can transfer an action outside California, to any district in which the action could have been filed, "[f]or the convenience of parties and witnesses, in the interest of justice."²⁷⁷ When related cases are pending in different districts, the federal courts can transfer all of them to any district, even one in which an action could not have been filed.²⁷⁸ In state court, on the other

²⁷¹ United States v. Zolin, 491 U.S. 554, 572 (1989).

²⁷² EVID. CODE § 915(a).

²⁷³ FED. R. EVID. 801(d).

²⁷⁴ EVID. CODE § 1235.

²⁷⁵ FED. R. EVID. 803(18).

²⁷⁶ EVID. CODE § 721.

²⁷⁷ 28 U.S.C. § 1404(a).

²⁷⁸ 28 U.S.C. § 1407(a).

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→ Actions Commenced in an Inconvenient Court

hand, the court can merely transfer an action to another county within California “[w]hen the convenience of witnesses and the ends of justice would be promoted by the change.”²⁷⁹

Finally, a federal case is handled from beginning to end by a single judge, whereas state court cases do not receive the undivided attention of a single judge until the presiding judge assigns the case to a department for trial.²⁸⁰ Because of this individual attention, the judge responsible for a federal case may actively push the matter to trial, holding regular pretrial conferences, demanding speedy preparation of the case for trial, and insisting that the lawyers conform to the Federal Rules of Civil Procedure, the district’s local rules, and the judge’s personal rules. Conversely, if the judge’s calendar is full, or dominated by one or more complex cases, less significant cases may find themselves at the end of the que. The quality of judging in federal cases thus depends exclusively on the competence of the single judge to whom the case is assigned, whereas a state court case will reflect the skills of all the judges who participate in the handling of the case.²⁸¹ Out-of-state parties sometimes perceive federal judges as being more impartial than state court judges. Lawyers sometimes perceive federal judges as being more willing than state court judges to enforce claims and defenses based on federal law, as federal

²⁷⁹ CODE CIV. PROC. § 397(c).

²⁸⁰ But see {single-judge assignments pursuant to fast-track rules}.

²⁸¹ Note that a litigant in state court has one [peremptory challenge](#) against the judge assigned to try a case. CODE CIV. PROC. § 170.6. Litigants in federal court have no comparable privilege. The plaintiff can dismiss his case and refile in state court if he regards the assigned judge as biased or incompetent. He cannot, however, repeat the process of dismissing and refile in federal court until the case is assigned to a judge he likes.

judges have more acquaintance with federal law than do state court judges. Lawyers also perceive federal judges as being more willing to grant dispositive motions, perhaps because the single-judge assignment system allows federal judges to become acquainted with issues earlier and motivates federal judges to dispose of cases by motion, thereby avoiding the burden of trial. Finally, federal judges, perhaps because of their lifetime tenure, are often perceived as assuming divine prerogatives more frequently than their state court counterparts.

Beyond these mostly procedural matters, there is little reason to prefer one court system over the other. With respect to claims governed by state law, a federal court is bound to apply state law.²⁸²

[B] Small Claims Court versus Municipal Court

What you saw on *People's Court* is what you get in small claims court. Hearings are conducted informally.²⁸³ No attorneys may take part in the prosecution or defense of a small claims action.²⁸⁴ The defendant may obtain a trial de novo in the superior court,²⁸⁵ but neither party can demand a jury.²⁸⁶

A small claims court judgment does not have collateral estoppel effects, even if the loser seeks a trial de novo in superior court.²⁸⁷ By filing his case in small claims

²⁸² *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938). If the plaintiff's success depends on a change in state common law, the defendant should remove the case to federal court if he can, for the federal court has no power to change rules of law well-established in existing California Supreme Court decisions.

²⁸³ CODE CIV. PROC. § 116.510. *See generally* ROBERT I. WEIL & IRA A. BROWN, JR., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶¶ 3:48.1–:53.1, :54.2, :55 (1996); 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Courts* §§ 223–224, 230A, 232, 242–243, 245, 247–248 (3d ed. 1985); 7 B.E. WITKIN, CALIFORNIA PROCEDURE, *Judgment* §§ 159, 202 (3d ed. 1985).

§ 3.03 Tactical Considerations in Choosing a Forum

court, the plaintiff waives the portion of the claim exceeding the court's jurisdictional limit and may not seek a transfer of the case to the municipal or superior court under Code of Civil Procedure section 396 for lack of jurisdiction.²⁸⁸ A small claims court action will not support an action for malicious prosecution,²⁸⁹ even if the defendant loses in small claims court but wins in superior court.²⁹⁰

²⁸⁴ CODE CIV. PROC. § 116.530(a). A corporation or partnership may appear in small claims court through a regular employee or an officer or director who has some function other than representing that party in small claims court. *Id.* § 116.540(b), (c). A sole proprietorship may appear through someone regularly employed for some purpose other than representing that party in small claims court, provided that the claim can be proved or disputed by evidence of an account coming within the business record hearsay exception, that there is no other issue of fact in the case, and the employee is competent to testify to the identity and mode of preparation of the business record. *id.* § 116.540(d). Attorneys may appear in actions by or against themselves or their law firms, *id.* § 116.530(b), and may advise parties to small claims court actions, testify, represent a party in an appeal to the superior court, and may assist in the enforcement of a small claims court judgment, *id.* § 116.530(c).

²⁸⁵ CODE CIV. PROC. §§ 116.710(b), .770(a). The plaintiff may likewise appeal an adverse judgment on the defendant's cross claim. *Id.* § 116.710(b). The defendant's insurer may appeal a judgment exceeding \$2,500 if it stipulates that its policy with the defendant covers the matter to which the judgment applies. *Id.* § 116.710(c). A party appealing an adverse claim against him may not use the trial de novo as a vehicle to appeal his own unsuccessful claim against the other party. *Davis v. Superior Court*, 102 Cal. App. 3d 164, 170, 162 Cal. Rptr. 167, 171 (1980).

²⁸⁶ CODE CIV. PROC. § 116.770(b); *Crouchman v. Superior Court*, 45 Cal. 3d 1167, 1173, 755 P.2d 1075, 1077-78, 248 Cal. Rptr. 626, 628 (1988).

²⁸⁷ *Rosse v. DeSoto Cab Co.*, 34 Cal. App. 4th 1047, 1051, 40 Cal. Rptr. 2d 680, 683 (1995).

²⁸⁸ *Jellinek v. Superior Court*, 228 Cal. App. 3d 652, 656, 279 Cal. Rptr. 6, 8 (1991).

²⁸⁹ *Pace v. Hillcrest Motor Co.*, 101 Cal. App. 3d 476, 479, 161 Cal. Rptr. 662, 664 (1980).

²⁹⁰ *Cooper v. Pirelli Cable Corp.*, 160 Cal. App. 3d 294, 299, 206 Cal. Rptr. 581, 584 (1984).

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The superior court has the discretion to grant a party an additional award of up to \$150 in attorney's fees and up to \$150 in lost wages and travel and lodging expenses.²⁹¹ A finding that an appeal was "without substantial merit and not based on good faith" but was "intended to harass or delay the other party, or to encourage the other party to abandon the claim" will raise these limits to \$1,000.²⁹²

If your client's case is worth no more than \$5,000, then your best service would be to send him to the small claims court with the appropriate forms:

- [Information for the Plaintiff \(Small Claims\)](#)
- [Plaintiff's Claim and Order to Defendant \(Small Claims\)](#)
- [Attorney-Client Fee Dispute \(Attachment to Plaintiff's Claim\) \(Small Claims\)](#)
- [Additional Plaintiffs and Defendants \(Small Claims\)](#)
- [Fictitious Business Name Declaration \(Small Claims\)](#)
- [Proof of Service \(Small Claims\)](#)
- [Defendant's Claim and Order to Plaintiff \(Small Claims\)](#)
- [Notice of Motion and Declaration \(Small Claims\)](#)
- [Declaration for Subpena Duces Tecum \(Small Claims\)](#)
- [Notice of Entry of Judgment \(Small Claims\)](#)
- [Attorney-Client Fee Dispute \(Attachment to Notice of Entry of Judgment\) \(Small Claims\)](#)
- [Request to Correct or Vacate Judgment \(Small Claims\)](#)

²⁹¹ CODE CIV. PROC. § 116.780(c).

²⁹² CODE CIV. PROC. § 116.790.

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Table of Contents

- [Notice of Motion to Vacate Judgment and Declaration \(Small Claims\)](#)
- [Judgment Debtor's Statement of Assets \(Small Claims\)](#)
- [Notice of Appeal \(Small Claims\)](#)
- [Request to Pay Judgment to Court \(Small Claims\)](#)

[C] Municipal Court versus Superior Court

Depending on the application of [fast track](#) rules, rules regarding mandatory nonbinding arbitration, and the lengths of the [{civil active lists}](#) of the local municipal and superior courts, the decision whether to sue in one or the other may have a significant impact on the wait until trial. Municipal courts have the advantage that discovery is limited, and one may introduce affidavits, declarations, and depositions in place of live testimony.²⁹³ On the other hand, one can appeal a municipal court judgment only to the superior court appellate department,²⁹⁴ and municipal court judgments do not enjoy collateral estoppel effect.²⁹⁵

→ [\(Discovery in Municipal Court\)](#)

²⁹³ CODE CIV. PROC. § 98. *See generally* 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Courts* §§ 269–271, 329–330 (3d ed. 1985).

²⁹⁴ CODE CIV. PROC. § 77(e).

²⁹⁵ CODE CIV. PROC. § 99.