

**ESSAY APPROACH**  
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**CIVIL PROCEDURE**

FEDERAL CIVIL PROCEDURE  
CALIFORNIA CIVIL PROCEDURE

**CIVIL PROCEDURE ESSAY (FEDERAL)**

- I. DOES THE CT HAVE THE AUTHORITY TO DECIDE THE DISPUTE?
- a. Does the ct have authority over the parties?
    - i. Personal jdx
      - 1. Traditional ways of asserting jdx
        - a. Domicile
        - b. Presence in state when served
        - c. Consent
          - i. Appearing in the action
          - ii. By contract
          - iii. Appointment of agent for service
          - iv. Implied consent, e.g., non-resident motorist statutes
      - 2. Assertion of jdx over non-residents
        - a. State long-arm statute, and
        - b. Minimum contacts
          - i. Purposeful availment
          - ii. Foreseeability
        - c. Traditional notions of fair play and substantial justice
          - i. Relatedness between claim and contact (less important if contact is great)
          - ii. Convenience
          - iii. State's interest
    - ii. In rem jdx
    - iii. Quasi in rem jdx
    - iv. Notice – service of process
  - b. Does the ct have authority over the subject matter?
    - i. Subject matter jdx
      - 1. State cts are generally cts of unlimited jdx. The only limits are statutory.
      - 2. Federal cts only have jdx over 2 types of claims:
        - a. Federal questions
        - b. Diversity actions
          - i. Complete diversity

- ii. Good faith allegation over 75k
    - 3. Removal
    - 4. Supplemental jdx
  - c. Is the ct the proper place to resolve the dispute?
    - i. Venue in fed cts
      - 1. District where any D resides, if all Ds in same state
      - 2. Where a substantial part of the claim arose, or
      - 3. If no district meets 1 or 2
        - a. In diversity cases, district where any D is subject to personal jdx or
        - b. In other cases, where any D may be found
      - 4. Improper or inappropriate venue
        - a. Transfer
        - b. Forum non conveniens
- II. WHAT LAW GOVERNS THE DISPUTE?
  - a. Erie doctrine
    - i. Federal cts are required to apply state substantive law to nonfederal causes of action
    - ii. The necessary and proper clause allows federal cts to apply federal procedural rules. In addition, federal cts will apply some state procedural rules when those rules have no bearing on the mechanics of the fed ct system
- III. ARE THE PLEADINGS PROPER?
  - a. Federal cts use notice pleading – the pleading must put the opposing party on notice of the claim. By contrast, some states use code pleading
  - b. Complaint
    - i. Statement of SMJ
    - ii. Statement of the claim
    - iii. Demand for relief
  - c. D’s response
    - i. Answer
    - ii. Rule 12 motion (watch waivable defense)
  - d. Counterclaim
    - i. Compulsory
    - ii. Permissive
    - iii. Supplemental jdx (if needed) for compulsory
  - e. Cross-claims – supplemental jdx if needed
  - f. Amendments and supplemental pleadings
  - g. Rule 11
    - i. Certification
    - ii. Sanctions
- IV. ARE THE PROPER PARTIES AND CLAIMS BEFORE THE CT?
  - a. Joinder of parties
    - i. Compulsory joinder – necessary parties should be joined if possible

- ii. Permissive joinder – if joinder of necessary party not feasible (e.g., would destroy diversity) ct must either proceed without absentee or dismiss the case. If dismiss, call absentee indispensable.
- b. Joinder of claims
  - i. Class actions
    - 1. Initial requirements
      - a. Class is so numerous that joinder of all members is impracticable
      - b. Questions of law or fact common to the class
      - c. The claims of the representative parties are typical of the class
      - d. The representative parties will fairly and adequately protect the interest of the class
    - 2. Types
      - a. Prejudice
      - b. Injunction/declaratory judgment
      - c. Common question predominate
  - ii. Intervention
    - 1. Intervention as of right
    - 2. Permissive intervention
    - 3. Supplemental jdx if needed for intervention of right or D
  - iii. Impleader
    - 1. Indemnity or contribution
    - 2. Other claims: TPD v. P and P v. TPD
    - 3. Supplemental jdx if needed for impleader and TPD v. P
  - iv. Interpleader
    - 1. Rule 22 interpleader
    - 2. Statutory interpleader

V. HAVE THE PARTIES PROPERLY PROPOUNDED AND REPLIED TO DISCOVERY?

- a. Types of discovery
  - i. Depositions
  - ii. Interrogatories
  - iii. Requests to produce
  - iv. Physical or mental examinations
  - v. Requests for admission
  - vi. Required disclosures
- b. Scope of discovery
  - i. Anything reasonably calculated to lead to admissible evidence
  - ii. Privileged matter not discoverable
  - iii. Work product
- c. Enforcement of discovery rules (sanctions)
  - i. Total or partial failure to provide discovery: motion to compel plus costs and certify good faith attempt to obtain discovery.
  - ii. Sanctions include
    - 1. Treat matters as admitted

2. Disallow evidence on an issue
  3. Establish the issue adverse to the violating party
  4. Strike the pleadings
  5. Dismiss the cause of action or the entire action (bad faith)
    - a. Enter a default judgment (bad faith)
    - b. Hold in contempt, except for refusal to submit to physical or mental exam
  6. Immediate or automatic sanction
- VI. CAN THE DISPUTE BE RESOLVED WITHOUT A TRIAL?
- a. 12(b)(6) – failure to state a claim
  - b. Dismissal
    - i. Voluntary
    - ii. Involuntary
  - c. Summary judgment
    - i. The moving party must show that there is no triable issue of fact and entitled to judgment as matter of law
    - ii. Partial summary judgment can be granted
- VII. IF THERE IS A TRIAL, WHO WILL DECIDE THE MATTER?
- a. 7<sup>th</sup> Am guarantees a right to jury trial for actions at common law, but not for equitable actions. State constitutional provisions and statutes also guarantee jury trials.
  - b. Written demand
  - c. When an action contains legal and equitable claims, legal claim tried first to jury
  - d. The verdict can be a general verdict, a special verdict or a general verdict with interrogatories
  - e. If there is a jury, can the jury be disregarded?
    - i. Nonsuit
    - ii. Judgment as a matter of law
    - iii. Renewed motion for judgment as a matter of law
    - iv. Motion for a new trial
- VIII. CAN THE DECISION BE APPEALED?
- a. The final judgment rule requires a final judgment of the entire case before an appeal may be taken
  - b. Exception to the final judgment rule
    - i. Pretrial orders involving temporary remedies
    - ii. Final judgment on collateral matters
    - iii. Interlocutory orders of great importance that may be determinative of the ultimate decision
- IX. IS THE DECISION BINDING IN FUTURE CASES?
- a. Res judicata
    - i. When there is a final judgment on the merits, res judicata prevents re-assertion of the claimant’s cause of action
    - ii. On the merits is any judgment except one based on jdx, venue, or indispensable parties or if first ct said it was not on merits
  - b. Collateral estoppel

- i. Issues of fact actually litigated and essential to a judgment in a first action are conclusive in a subsequent, although different, action between the P and D or their privies
- ii. Default and consent judgments do not involve litigation of the merits and therefore do not give rise to collateral estoppel
- c. Who is bound by the judgment?
  - i. Parties
  - ii. Privies to parties are also bound including those who control the litigation and will be affected by the outcome
  - iii. Strangers are not bound, but may take advantage of collateral estoppel if jdx rejects mutuality doctrine
  - iv. Other jdx
    - 1. The constitution requires full faith and credit be given to public acts, records, and judicial proceedings of sister states. Federal statutes compel recognition of federal ct judgments.
    - 2. Full faith and credit is only required when the ct had personal jdx over the parties and the ct issued a final judgment on the merits.
    - 3. Full faith and credit is not required for foreign country judgments.