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Dispute Resolution

in 47 jurisdictions worldwide

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California

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Litigation

1 Court system

What is the structure of the civil court system?

The California civil court system has three components: the California Supreme Court, the courts of appeal and the superior courts. The California Supreme Court, which comprises a chief justice and six associate justices, is the highest court in the state. The Supreme Court's jurisdiction includes reviewing decisions of the courts of appeal in any case, as well as reviewing orders of administrative agencies, disciplinary rulings issued to judges by the Commission on Judicial Performance and disciplinary decisions issued by the State Bar against attorneys. The Supreme Court also has original jurisdiction in habeas corpus proceedings, as well as mandamus, certiorari and prohibition proceedings or any other proceeding where extraordinary relief is sought.

In the hierarchy of the California court system, the courts of appeal are situated below the Supreme Court. There are six appellate divisions within California, with a court of appeal in each district. The courts of appeal have appellate jurisdiction over all lawsuits in which the superior court has original jurisdiction and they also have jurisdiction to review orders of administrative agencies.

The superior courts of California are courts of general jurisdiction, which means that these courts are vested with broad authority to adjudicate nearly all types of civil and criminal cases. Civil cases filed in the superior court are classified by the amount of damages sought by the party filing the lawsuit. Lawsuits in which the damages demanded exceed US$25,000 will be classified as cases of unlimited jurisdiction within the superior court system. A lawsuit in which the amount of recovery does not exceed US$25,000 is classified as a case of limited jurisdiction. The jurisdictional classification is significant because unlimited jurisdiction cases are subject to different discovery and trial procedures than those applied in cases of limited jurisdiction. The small claims courts are divisions within the superior court where the amount in controversy does not exceed US$10,000. The superior courts have appellate divisions that review appeals from limited civil cases and small claims cases.

2 Judges and juries

What is the role of the judge and the jury in civil proceedings?

The judge's role in a civil action is to resolve disputes between the parties by applying the applicable law in an unbiased manner. The judge rules on motions, determines the admissibility of evidence at trial, controls the timing and procedural aspects of the trial and instructs the jury on the law. A judge may preside over a trial as the finder of fact, but the jury is primarily responsible for drawing factual conclusions from the admitted evidence and to assess a witness' credibility. In order for a jury's verdict to be binding on the parties in a civil action, a minimum of nine out of 12 jurors must reach the same verdict. A judge may overturn a jury verdict only when it is unsupported by sufficient evidence or as a matter of law.

3 Limitation issues

What are the time limits for bringing civil claims?

An action must be commenced within the applicable time period as specified in the California Code of Civil Procedure (CCP). The CCP governs the practice of law in California state courts by, among other things, setting forth the statute of limitations for specific types of claims. The limitations period will vary in length depending on the nature of the lawsuit. California's statute of limitations includes:

Claim	Years
Enforcement of judgment	10
Recovery of real property	10
Breach of written contract	4
Breach of oral contract	2
Medical malpractice	3 (or 1 year from discovery, whichever is later)
Personal injury	2

4 Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

Prior to filing a lawsuit, a party is required to make a good-faith investigation into the allegations contained in the complaint in order to avoid frivolous lawsuits. It is common for a party to contact his or her adversary prior to filing a complaint to advise of the claim and to attempt a pre-lawsuit settlement.

Furthermore, depending on the type of lawsuit the plaintiff intends to bring against a party, the plaintiff may be required to provide notice to the defendant that he or she intends to file a lawsuit. For instance, a plaintiff is required to provide a physician with notice of his or her intent to file a lawsuit against the physician at least 90 days before the actual filing of the lawsuit. Also, in employment discrimination or harassment lawsuits, a plaintiff must first obtain a 'right to sue' notice from the California Department of Fair Employment and Housing before he or she may file a lawsuit against his or her employer.

5 Starting proceedings

How are civil proceedings commenced?

The act of filing the summons and complaint with the clerk of the court in the county where the action is brought commences the action. The court may dismiss the action if the complaint is not served on the defendant within two years of filing the complaint. The court must dismiss the action if the complaint is not served on the defendant within three years of filing the action. However, local superior court rules often require service of the summons and complaint on the defendant in a shorter time frame.

6 Timetable

What is the typical procedure and timetable for a civil claim?

A defendant has 30 days after being personally served with the summons and complaint to either file an answer to the complaint or to file a motion seeking the dismissal of the complaint for lack of personal jurisdiction or improper service of the complaint. The defendant is precluded from filing a motion to dismiss the action for improper service of the summons and complaint once an answer is filed. In an action for an account, the defendant can demand a bill of particulars from the plaintiff asking for documents in support of the money allegedly owed by the defendant. The plaintiff is required to provide this information within 10 days of being served with a request for a bill of particulars. A party moving for summary judgment must provide at least 75 days notice of the summary judgment motion and the motion must be heard at least 30 days before trial. In addition, all discovery must be completed 30 days before trial, unless the parties agree to waive this deadline. Beyond these time frames, the length of a case can vary depending upon the discovery involved and the complexity of the issues. In a complex case, it is not unusual for the action to take some years before the action is resolved.

7 Case management

Can the parties control the procedure and the timetable?

The procedures governing a lawsuit are statutorily fixed; however, the parties can stipulate to change certain dates fixed by statute. For example, the parties to a lawsuit can stipulate to change the date by which all the parties must disclose their expert witnesses or the last day by which all discovery must be completed. However, the parties cannot change the trial date without approval by the court. Therefore, it is important to advise the court of the appropriate amount of time needed to conduct discovery based on the complexities of the case, and the nature and extent of the pretrial discovery that will be required before the court sets the trial date, because once the trial date is set, the court will be reluctant to change the trial date without a showing of good cause.

8 Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

In California a party has a duty to preserve all relevant documents once that party has been placed on notice that a lawsuit will be filed. Naturally, once a lawsuit is filed, a party must retain all documents that may be relevant to the claims of the parties, including documents that may be harmful to the preserving party's position. The obligation to preserve documents also extends to electronically stored documents. A party is obligated to disclose documents only after a formal written request identifying the documents sought is made by the opposing party. A party must produce all relevant documents responsive to a formal document request in the party's possession, custody or control, including documents that may be harmful to the party's cause, with the exception of documents protected by a legally recognised privilege.

9 Evidence – privilege

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

California's evidence code protects all documents and other communications exchanged between an attorney and his or her client from disclosure under the attorney-client privilege. In addition, the CCP prohibits, as attorney work product, the discovery of writings that reflect an attorney's impressions, conclusions, opinions or legal research or theories pertaining to an action. These privileges extend to advice received from in-house counsel. California courts also recognise communications between a husband and wife as privileged communications.

10 Evidence – pretrial

Do parties exchange written evidence from witnesses and experts prior to trial?

A party is not obligated to exchange written evidence from non-expert witnesses until a formal written request is made that specifically identifies the witness documents sought. With respect to expert witnesses, the CCP requires parties to disclose the identities of their expert witnesses 50 days before trial. Following the disclosure of expert witnesses, each party is permitted to depose the opposing party's expert witnesses. In the course of an expert witness' deposition, a party may request the expert witness to produce all documents relied upon in reaching his or her opinions and conclusions.

The parties to a lawsuit also have various discovery procedures available to them in California including interrogatories, requests for production and requests for admissions in order to obtain information from the opposing party. Interrogatories are written questions directed by one party to another requesting information relating to the pending litigation, including the whereabouts of relevant documents and other evidence. A party to a lawsuit may not direct interrogatories to a non-party witness; however, a party is permitted to conduct the deposition of a non-party using written questions, which is similar to propounding interrogatories.

11 Evidence – trial

How is evidence presented at trial? Do witnesses and experts give oral evidence?

Evidence, whether oral or written, is presented at trial through either an expert witness or a non-expert factual witness. In determining who shall introduce the evidence the party must determine who is able to authenticate the evidence to be introduced to the trier of fact. For example, a party seeking to admit into evidence a written statement made by a witness to an accident would need the witness who drafted the statement to verify that the written statement was in fact prepared by him or her before the court would admit the written statement into evidence.

Furthermore, expert witnesses are witnesses who, as a result of their education, training or experience have knowledge beyond that of the general public in a certain subject or field. Expert witnesses are utilised at trial by parties to explain complex issues to the jury. For example, a defendant in a product liability action may call an engineer at trial to explain how the defendant's product was not defective and functioned as it was designed to. Similarly, a plaintiff in a lawsuit alleging that a pharmaceutical drug caused him or her harm may call a scientist to explain to a jury how the drug at issue can be harmful to humans. Accordingly, an expert witness is used at trial to explain complicated matters to jurors in order to provide them with the information they need in order to reach a proper verdict.

12 Interim remedies

What interim remedies are available?

California law recognises five provisional remedies:

- attachment – operates by seizing the adverse party's property while an action is pending;
- injunction – prohibits a party from committing certain acts that may harm an adverse party's interest in a specific subject matter;
- appointment of receivers – appointed representatives or court officers take possession of designated property until the pending action is resolved;

- claim and delivery – permits a party to temporarily posses personal property before the pending action is completely resolved; and
- deposit in court – a pre-judgment remedy whereby money is deposited with the court pending the outcome of the action.

13 Remedies

What substantive remedies are available?

California courts may grant any type of remedy within their jurisdiction, including nominal, compensatory, liquidated and punitive damages. In order to recover punitive damages in California, the plaintiff must establish that the conduct of the defendant was fraudulent, oppressive or malicious. Courts may also issue equitable remedies if there is no other adequate remedy available at law. Furthermore, when a plaintiff obtains a judgment against a defendant, the plaintiff is entitled to 10 per cent interest on the judgment until the judgment is satisfied.

14 Enforcement

What means of enforcement are available?

A party awarded a money judgment has several recovery mechanisms under both execution and contempt schemes. The most common procedure for recovering a money judgment is by means of execution. A prevailing party may execute on a money judgment by obtaining a writ of execution from the court, pursuant to which a levying officer searches for and takes custody of the real or personal property under the writ, sells it and delivers the proceeds to the prevailing party to satisfy the judgment. A prevailing party can also seek an execution to garnish the debtor's wages or income. In the event a debtor violates a court order to make payment or deliver property, the court may hold the debtor in contempt. The court can also issue an order subjecting the debtor to arrest should he or she fail to comply with a court's order to satisfy the judgment.

A judgment awarding possession of real or personal property may be enforced by having a levying officer search for and take custody of the property identified in a writ of possession and delivering the property to the creditor to satisfy the judgment. If custody is not obtained, the judgment for possession of the property may be enforced in the same way as a money judgment for the value of the property.

A judgment in equity is enforceable through the contempt remedy. The prevailing party may personally serve a certified copy of the judgment on the non-prevailing party, who must then satisfy the judgment or be punished for contempt.

15 Public access

Are court hearings held in public? Are court documents available to the public?

Unless the court orders otherwise, all hearings and documents filed with the court are accessible to the public.

16 Costs

Does the court have power to order costs?

The right to recover court costs in California is determined by statute. Although there are many statutory references to costs, the primary provisions addressing the recovery of costs are contained in the CCP. Under certain circumstances, a party is entitled to the recovery of costs as a matter of right; this includes a defendant who obtained a dismissal of an action in his or her favour. The court has discretion to award costs in favour of a party for egregious conduct committed by the opposing party's counsel (eg, filing frivolous motions) and in certain other instances. As a general rule, attorneys' fees are not recoverable under a costs order, but attorneys' fees may be recovered as part of a costs award if specifically authorised by contract or statute.

17 Funding arrangements

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

An attorney and a client are free to enter into a contract for legal services upon terms that are fair to both parties. Contingency fee agreements are valid in California and allow a party to retain an attorney without having to pay an hourly fee to prosecute the action. Most contingency fee arrangements allow an attorney to recover the costs for prosecuting a claim out of the judgment or settlement and to receive a certain percentage of the judgment or settlement as payment for legal services. By the same token, if no money damages are awarded, an attorney may not receive any monetary compensation. Contingency fee agreements are prohibited in divorce proceedings.

18 Insurance

Is insurance available to cover all or part of a party's legal costs?

An individual can obtain liability insurance to protect against potential lawsuits. If a defendant has liability insurance that covers the type of loss he or she is being sued for (eg, automobile insurance to cover losses for third-party injury claims arising out of an automobile accident), the liability insurer will pay the defence costs and a settlement or judgment within the liability limits of the insurance policy.

19 Class action

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Plaintiffs are permitted to join their individual lawsuits into a single lawsuit, commonly referred to as a class action lawsuit, if the plaintiffs are able to establish that their claims comply with one of the two standards set forth in the CCP. Specifically, the plaintiffs must show: that the plaintiffs' claims arise out of the same transaction, occurrence or series of transactions or occurrences and a common question of law or fact among the plaintiffs will arise in the action; or that the plaintiffs have a claim, right or interest adverse to the defendant in the property or controversy that is the subject of the action. If the court finds the plaintiffs' claims fall into one of these two categories, the court may certify a class action allowing all plaintiffs' claims to be resolved in one action.

20 Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

California has three levels of appellate courts: the superior court (which has jurisdiction over appeals from judgments in small claims cases and in limited civil cases), the courts of appeal and the Supreme Court. The courts of appeal have appellate jurisdiction over all cases in which the superior courts have original jurisdiction. A party may appeal a final judgment, certain interlocutory judgments and judgments directing payment of sanctions exceeding US$5,000. An appeal may be taken from certain interlocutory orders, including, but not limited to: orders denying a motion to quash service of summons or granting a motion to stay or dismissal of an action on the grounds of inconvenient forum; and orders granting a new trial or denying a motion for judgment notwithstanding the verdict. A party that loses an appeal in a court of appeal may appeal to the Supreme Court in any case. The Supreme Court has original jurisdiction in habeas corpus proceedings and proceedings for extraordinary relief in the form of mandamus, certiorari and prohibition. The Supreme Court may also exercise original jurisdiction over legal matters that involve controversial public issues that require immediate resolution.

21 Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

Foreign nation money judgments are governed by the Uniform Foreign Money-Judgments Recognition Act (CCP sections 1713–1724) and are enforced in California by means of an action to obtain a domestic judgment. A foreign money judgment that is final and conclusive in the country where the judgment is rendered is enforceable under the Act, even if an appeal is pending or it is subject to appeal. A judgment is deemed not conclusive if the judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law, or the foreign court did not have personal jurisdiction over the defendant or the foreign court did not have jurisdiction over the subject matter of the lawsuit.

Where a foreign judgment is not covered by the Uniform Foreign Money-Judgments Recognition Act, the Act does not preclude the recognition or non-recognition of the judgment.

22 Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

The Interstate and International Depositions and Discovery Act (CCP sections 2029.100–2029.900) sets forth the procedures for taking depositions and obtaining documentary evidence in California for use in actions pending in a foreign jurisdiction. Under the act, when a subpoena for testimony or documents is issued under authority of a court of record of a foreign jurisdiction, a California subpoena incorporating the terms of the foreign subpoena may be issued by either an attorney licensed to practise in California or the superior court. Any disputes concerning the enforcement of the subpoena are governed by California law.

Arbitration

23 UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

California has enacted an international arbitration statute based on the UNCITRAL Model Law for international commercial arbitrations. The California statute defines international arbitrations as arbitrations conducted pursuant to an agreement between parties that have different states for their places of business at the conclusion of their agreement and the dispute arises out of a relationship that is considered to be located in one state for purposes of the statute (CCP sections 1297.11–1297.432 (California International Arbitration Act)). Other applicable arbitration legislation includes the Federal Arbitration Act (9 USC section 1 et seq) and the California Arbitration Act (CCP sections 1280–1294.2).

24 Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

If an arbitration agreement complies with one of the three primary arbitration statutes applicable in California, namely the California International Arbitration Act, the California Arbitration Act and the Federal Arbitration Act, it is deemed to be valid and irrevocable, except for reasons that allow for the revocation of any contract. In order for an arbitration agreement to be enforceable it must be in writing. Depending on the type of arbitration agreement (labour agreements) additional enforceability requirements may be imposed under specific California statutes.

25 Choice of arbitrator

If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

The California Arbitration Act only allows for a single, neutral arbitrator to conduct the arbitration in the absence of a contravening agreement. The court, upon petition, can appoint the arbitrator by:

- nominating five persons from lists supplied jointly by the parties or obtained from an appropriate governmental agency or a private disinterested association;
- permitting the parties to jointly select the arbitrator; and
- appointing the arbitrator from the court's list provided to the parties if the parties cannot agree on an arbitrator following the receipt of the court's list.

The California International Arbitration Act also provides that only one arbitrator shall preside over an arbitration in the absence of a contravening agreement. The statute further provides that if the parties cannot agree on the arbitrator the superior court will make the appointment. A party may challenge the arbitrator selected only if there are justifiable doubts about the arbitrator's independence and impartiality, or qualifications as specified by the parties.

California's ethics standards for arbitrators require mandatory disclosure of certain information relevant to conflicts of interest and impartiality. If an arbitrator fails to make the requisite disclosures to a party, that party can move to disqualify the arbitrator by filing a notice of disqualification within 15 days after the party was to receive the disclosure information.

26 Arbitral procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

The California Arbitration Act details the arbitration procedures that must be adhered to, which include pre-arbitration discovery, representation by counsel, the presenting of evidence at arbitration and the cross-examination of witnesses. The arbitrator is also required to disclose matters relevant to conflicts of interest and impartiality.

27 Court intervention

On what grounds can the court intervene during an arbitration?

The California International Arbitration Act allows a court to intervene in an arbitration to:

- compel arbitration when a party institutes a civil action that is subject to arbitration;
- decide a party's challenge to an arbitral tribunal's jurisdiction;
- provide interim measures of protection;
- enforce an arbitral award for interim measures of protection; and
- consolidate arbitration proceedings when permitted by the arbitration agreement.

The California Arbitration Act provides courts with the authority to intervene in an arbitration to:

- compel arbitration;
- determine whether a claim is subject to arbitration;
- stay an arbitration pending resolution of a related action; and
- join parties to an arbitration proceeding.

The Federal Arbitration Act authorises courts to:

- compel arbitration; and
- determine whether a particular dispute is subject to arbitration.

28 Interim relief

Do arbitrators have powers to grant interim relief?

The California International Arbitration Act provides arbitrators with the authority to order interim measures of relief, unless the parties agreed otherwise. An arbitrator may also make an interim arbitral award on any matter in which he or she is vested with the authority to make a final award. An interim arbitral award may be enforced in the same manner as a final award.

The California Arbitration Act grants arbitral tribunals the authority to issue interim awards granting provisional relief. The Federal Arbitration Act has been construed to permit relief similar to that available under the California Arbitration Act.

29 Award

When and in what form must the award be delivered?

The California International Arbitration Act requires awards to be in writing, made by a majority of the tribunal and reasoned. The California International Arbitrational Act does not address the time within which an award must be issued.

The California Arbitration Act requires that the award be in writing and signed by the arbitrators agreeing to the award. The award shall be rendered within the time provided for in the agreement or, if no time is fixed, a party may petition the court for an order setting a fixed time for the issuance of the award. The Federal Arbitration Act does not mandate any formal requirements with respect to the form or timing of an award.

30 Appeal

On what grounds can an award be appealed to the court?

Arbitral awards are not subject to appeal to a court of law. However, in certain circumstances an award can be challenged or vacated, or both. The California International Arbitration Act does not provide the grounds upon which an arbitration award may be vacated. Both the California Arbitration Act and the Federal Arbitration Act set forth specific grounds upon which an arbitration award may be vacated (eg, award procured by corruption, fraud or undue means). Furthermore, under the California Arbitration Act, a neutral arbitrator's failure to adhere to the disclosures standards set forth in the California Ethics Standards can result in the arbitration award being vacated.

31 Enforcement

What procedures exist for enforcement of foreign and domestic awards?

The primary mechanism to enforce foreign awards is the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards treaty (the New York Convention). Under the New York Convention, courts must recognise foreign awards pursuant to the rules of procedure of the territory where the arbitration award is initially made. The grounds upon which a court may refuse to enforce a foreign arbitration award are very limited and include an invalid arbitration agreement, lack of opportunity to present one's case or if enforcement of the arbitration award would contravene public policy.

Domestic arbitration awards are enforceable under the California Arbitration Act or the Federal Arbitration Act. These statutes allow a party to petition the court to confirm an award and enter a judgment thereon. Under the California Arbitration Act, such a petition must be served and filed within four years of the date of service of the award on the petitioner. Under the Federal Arbitration Act, at any time within one year after the award is made a party may apply to the court for enforcement of the award.

32 Costs

Can a successful party recover its costs?

The California International Arbitration Act provides that the allocation of costs is at the sole discretion of the arbitral tribunal, unless the parties agree otherwise. Included within the definition of 'costs' are the fees and expenses of the arbitrators and expert witnesses, legal fees and expenses and any administrative fees.

The California Arbitration Act provides that each party shall pay its pro rata share of the expenses and fees of the neutral arbitrator, along with other related arbitration expenses or those costs approved by the neutral arbitrator, not including counsel's fees or witness fees or other expenses incurred by a party for his or her own benefit, unless the parties otherwise agree. The Federal Arbitration Act allows the prevailing party to recover costs only if the parties' agreement expressly provides for the recovery of costs.

Alternative dispute resolution

33 Types of ADR

What types of ADR process are commonly used? Is a particular ADR process popular?

The most common ADR processes used in California include mediation, arbitration and early neutral evaluation. Of the three, mediation is the most common ADR process in California. Mediations allow the parties an opportunity to present their case to a neutral third party without incurring the costs associated with arbitration or trial (or both). Moreover, mediators are frequently seasoned attorneys or former judges who are able to provide insightful feedback on the strength and weaknesses of a party's case, allowing for an objective evaluation of the case.

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34 Requirements for ADR

Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

It is becoming more common for ADR to occur prior to litigation or arbitration in an attempt to resolve the dispute without incurring unnecessary legal fees. Mandatory participation can occur under different forms of authority. Parties can require participation in mediation as a condition precedent to filing a lawsuit pursuant to contractual clauses. Also, California state courts are required at the initial case management conference to decide whether to assign a case to an ADR process.

Miscellaneous

35 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

California has enacted statutes that prohibit the disclosure of communications made in connection with mediation proceedings. In addition, settlement demands and offers made during mediation may not be disclosed to the jury at trial.

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