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LA Law Library Locations

Main Library:

(Corner of 1st & Hill)
301 W. First Street
Los Angeles, CA 90012
(213) 785-2529

Mon, Wed, Thu, Fri: 8:30–6:00pm
Tue: 8:30–8:00 pm
Sat: 9:00–5:00 pm



Courthouse Branch Locations:

Long Beach, Torrance

Courthouse eBranch Locations:

Long Beach, Norwalk, Pomona, Torrance,

Public Library Partnerships:

Compton, Lancaster, Pasadena, Van Nuys, West Covina



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Remote Locations


- **Courthouse Branch Locations:**
Long Beach, Norwalk, Pomona and Torrance
- **Public Library Partnerships:**
Compton Library, Lancaster Regional Library,
Norwalk Public Library, Pasadena Public Library,
Los Angeles Public Library Van Nuys Branch,
West Covina Public Library

Visit www.lalawlibrary.org for more information



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A VARIETY OF CLASSES AIMED EDUCATING FOR THE PUBLIC, PARALEGAL AND LEGAL COMMUNITY.

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SEARCH OUR CATALOG


Searching for something specific? Enter the information below to go to our online catalog

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Or search our catalog with

BRIEFS

Our collection of California appellate briefs is the most complete in the State comprising over three miles of shelf space. The LA Law Library is digitizing this collection for online public access.



To read more or begin searching please

NEWS / EVENTS

MCLE Cram Day - 6 Participatory Credits in One Day
MCLE Cram Day 6 PARTICIPATORY CREDITS IN ONE DAY
elimination of bias * ethics *... Read more

MCLE Cram Day - Video, "Hot Topics in Legal Ethics"
Wednesday, January 29, 2014 9:00 a.m. — 12:00 p.m. Do you need last minute participatory MCLE credits?... Read more

MCLE Cram Day - Video, "Confidentiality,"



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Overview

- The LA Law Library was established in 1891
- The current building was opened in 1953
- Largest print collection in a public law library west of the Mississippi River
- Seven floors
- 35 miles of shelving
- 1,000,000 equivalent volumes including print and digital



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Print Collection

- Primary and secondary legal materials for all 50 states, federal and multi-state Foreign and International materials
- Extensive historical collection including early California and state colonial materials
- California and Ninth Circuit Appellate and Supreme Court briefs



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Electronic Databases

- California State Briefs
- CEB OnLAW
- Foreign Law Guide
- HeinOnline
- IndexMaster
- Index to Foreign Legal Periodicals
- LA Law Library Catalog
- LLMC Digital
- Legal Information Reference Center
- Legal Trac
- Lexis
- SmartRules
- U.S. Supreme Court Records and Briefs, 1832-1978
- Westlaw
- WestlawNext
- Wolters Kluwer – Law and Business
- Xspouse



LALAWLIBRARY

What We Do

- Suggest research avenues and sources for research, identify and locate citations
- Explain how to use legal materials
- Explain the law-making process
- Assist in finding forms
- Aid in the use of electronic resources including Westlaw and Lexis (online databases that contain cases, codes, and statutes for all 50 states and secondary materials), CEB OnLAW and HeinOnline
- Teach public classes



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Library Services

- Reference Service
 - in library, by phone, email, mail and live chat through 24/7 Reference Cooperative
- Document Delivery Service
- Members Program
 - Open to members of the State Bar of California
- Computer Services
- Circulation
 - Borrower registration program
 - Reserve books and more...
- Facility Rentals
 - Training Center
 - Conference Rooms
 - Office Space
 - Private Events (up to 500 ppl)
- Instruction
 - Public training classes
 - MCLE courses
 - Tours



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Civil Lawsuit Basics: Drafting, Filing & Responding to Complaints



Disclaimer

LA Law Library does not provide legal advice. LA Law Library provides legal resources and assistance with legal research as an educational service. The information presented in this program is not legal advice and is provided solely as an educational service to our patrons. For legal advice, you should consult an attorney.

Also, this class is limited to general civil cases in California state court.



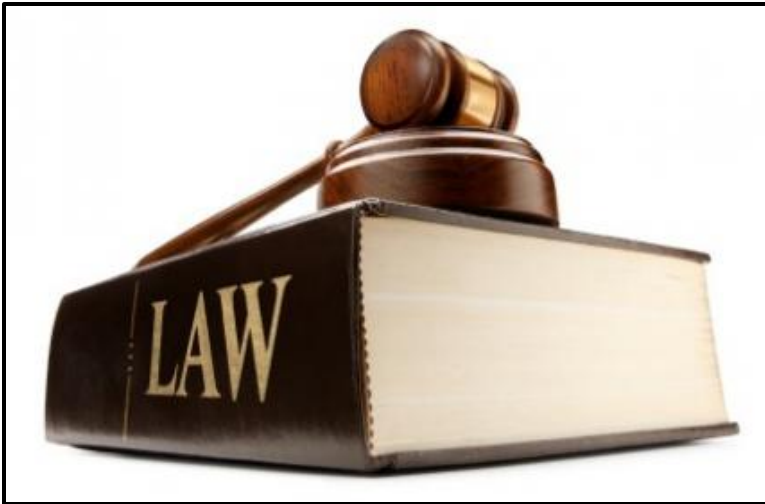
Is bringing a lawsuit a good idea?



- Can I settle the dispute without going to court?
- If I am suing for money, can the defendant afford to pay?
- Will a lawsuit be worth the expense, time and trouble? (Even without an attorney, there are costs.)
- Will they countersue me? (Do I have more to lose than to gain?)
- What happens if I change my mind?



What am I suing for? What are the causes of action (legal theories) I am trying to allege?



- Must do **legal research** to determine what causes of action apply to your situation.
- Basic library resources to use:
 - *California Causes of Action*
 - *California Elements of An Action*
 - *California Forms of Pleading and Practice*
 - *Rutter Guide on Claims and Defenses*
 - Also, “Causes of Action: Thinking Like a Lawyer” class held regularly at LA Law Library (keep eye on www.lalawlibrary.org/classes)



What are the elements of each cause of action?

Periodic Table of the Elements

© www.elementsdatabase.com

hydrogen

alkali metals

alkali earth metals

transition metals

poor metals

nonmetals

noble gases

rare earth metals

1	H	2	He																																
3	Li	4	Be	5	B	6	C	7	N	8	O	9	F	10	Ne																				
11	Na	12	Mg	13	Al	14	Si	15	P	16	S	17	Cl	18	Ar																				
19	K	20	Ca	21	Sc	22	Ti	23	V	24	Cr	25	Mn	26	Fe	27	Co	28	Ni	29	Cu	30	Zn	31	Ga	32	Ge	33	As	34	Se	35	Br	36	Kr
37	Rb	38	Sr	39	Y	40	Zr	41	Nb	42	Mo	43	Tc	44	Ru	45	Rh	46	Pd	47	Ag	48	Cd	49	In	50	Sn	51	Sb	52	Te	53	I	54	Xe
55	Cs	56	Ba	57	La	58	Ce	59	Pr	60	Nd	61	Pm	62	Sm	63	Eu	64	Gd	65	Tb	66	Dy	67	Ho	68	Er	69	Tm	70	Yb	71	Lu		
87	Fr	88	Ra	89	Ac	90	Th	91	Pa	92	U	93	Np	94	Pu	95	Am	96	Cm	97	Bk	98	Cf	99	Es	100	Fm	101	Md	102	No	103	Lr		

- Do I have **facts** to support each element of each cause?
- Danger of malicious prosecution if any one cause of action brought without probable cause. (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 686.)
- TIP: look at the form jury instructions for each cause of action



What are the elements of each cause of action?

Periodic Table of the Elements © www.elementsdatabase.com

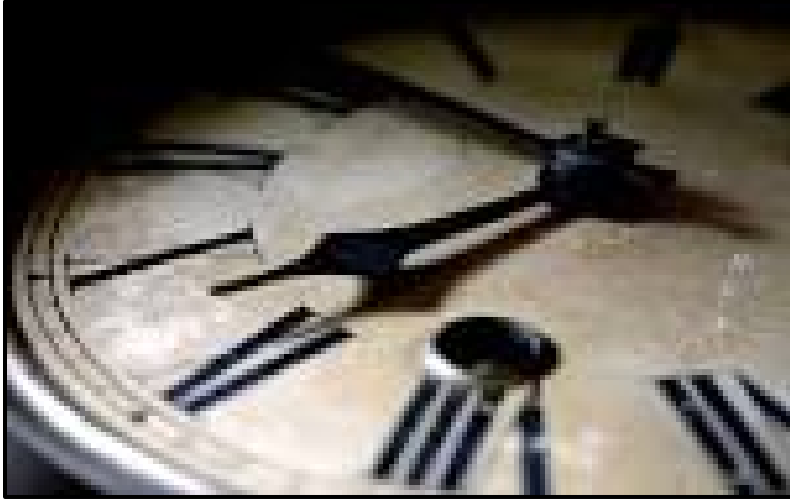
Legend:

- hydrogen
- alkali metals
- alkali earth metals
- transition metals
- poor metals
- nonmetals
- noble gases
- rare earth metals

- Example: Cause of action for **breach of contract** has 4 elements:
 1. Formation of contract
 2. “Consideration”
 3. Breach
 4. Damages
- Need facts to support *all 4 elements*



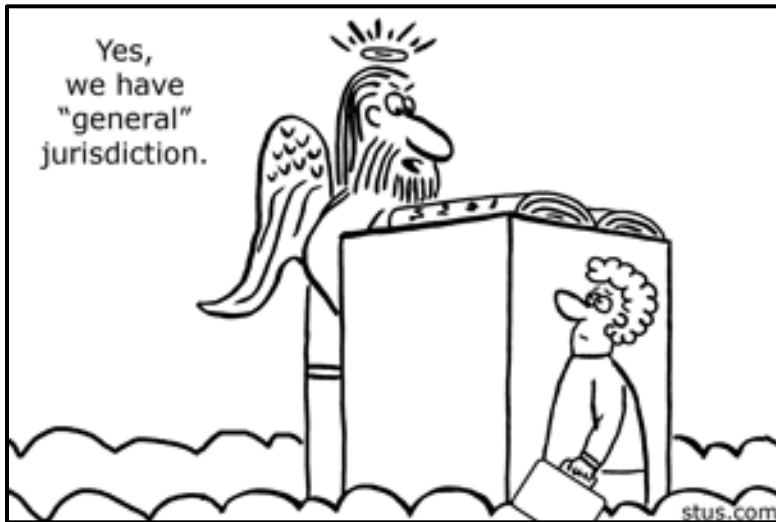
Statutes of Limitation



- Maximum time to bring a lawsuit set by different statutes of limitation
- Am I within the statute for each cause of action?
 - Statutes of limitation chapter of California code located at CCP §§ 312-366.3
- If not, has the statute been **tolled**?
 - Date of discovery and other matters **can** toll statute: See Rutter Guide on Statutes of Limitation



Jurisdiction

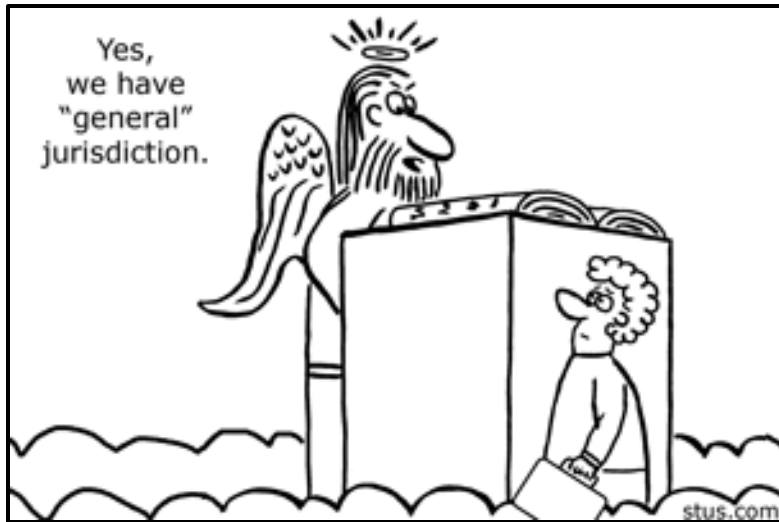


TIP: This presentation covers California Rules. Federal Rules are similar but not identical.

- Does California have **personal jurisdiction** over defendant? Four grounds for personal jurisdiction (*Muckle v. Superior Court* (2002) 102 Cal.App.218, 226, n. 6):
 - Domicile
 - Physical presence
 - Consent to jurisdiction
 - Minimum contacts



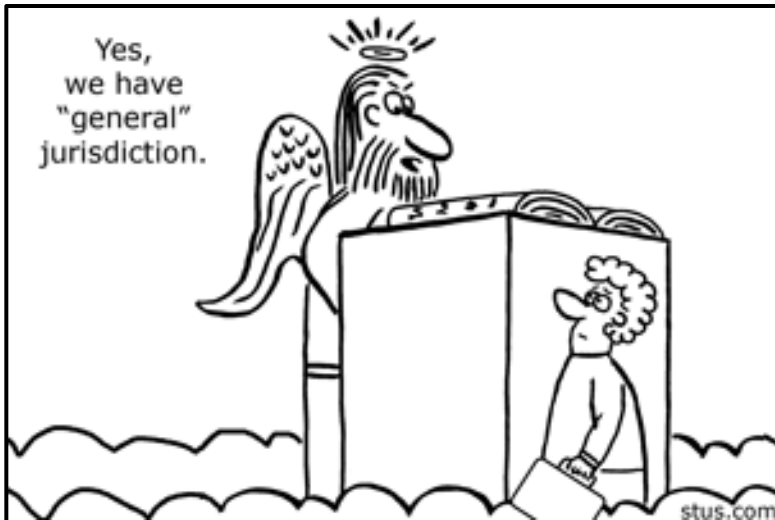
Jurisdiction, cont.



- Are you **required** to file in federal court?
 - Usually not: state courts have “general” jurisdiction
 - Unless a federal statute provides for **exclusive** federal jurisdiction over the cause of action
- Can you file in federal court?
 - Yes, if “diversity”: Do the parties reside in different states, and does the suit claim more than \$75,000?



Jurisdiction, cont.



- Have administrative remedies been exhausted?
 - Many claims **require** administrative claim first: otherwise, your lawsuit will be dismissed.
- Arbitration clause in contract?



Writ Petition vs. Complaint

- **Writ petition** seeks to reverse the decision of, or issues instructions to, a government agency
- Many of the same rules apply to each – but this presentation focuses on **complaints**
- Complaint can seek: **money damages, injunctions, and declaratory relief**



Drafting the Complaint



www.courts.ca.gov/forms

- Very important not to wait until last minute!
 - A technical error can cause clerk to reject your complaint, and then you might miss the statute of limitations
 - It takes much longer to write a complaint and prepare all of the paperwork than you might think



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Drafting the Complaint



www.courts.ca.gov/forms

- Finding **forms and templates** for drafting your complaint:
 - **Judicial Council forms** available for:
 - Personal injury
 - Property damage
 - Breach of contract/fraud, and
 - Unlawful detainer lawsuits (PLD-xxx forms).
 - **Pros** of Judicial Council forms: easier, faster to prepare complaint. Less room for technical errors.
 - **Cons**: not available for all types of suits; if facts are complicated may not save much time in drafting.



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alleges causes of action against defendant* (name or names):

3. a. Each plaintiff named above is a competent adult

(1) ☐ a corporation qualified to do business in California
(2) ☐ an unincorporated entity (describe):
(3) ☐ other (specify):

a. ☐ has complied with the fictitious business name laws and is doing business under the fictitious name (specify):

b. ☐ has complied with all licensing requirements as a licensed (specify):

c. ☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.

4. a. Each defendant named above is a natural person

☐ except defendant (name):

(1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity (describe):
(4) ☐ a public entity (describe):
(5) ☐ other (specify):

☐ except defendant (name):

(1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity (describe):
(4) ☐ a public entity (describe):
(5) ☐ other (specify):

Form Approved for Optional Use
Judicial Council of California
PLD-C-001 (Rev. January 1, 2007)

* If this form is used as a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

Page 1 of 2

COMPLAINT—Contract

Code of Civil Procedure, § 425.12

Drafting the Complaint: Forms & Templates



- Finding forms and templates for drafting your complaint:
 - If no Judicial Council form for your cause(s) of action, must draft complaint yourself on pleading paper.
 - Library resources for finding forms and templates for complaints: *Forms of Pleading and Practice*, and many more – ask at the reference desk!



Technical Requirements for Complaint: Important!

- Clerk will reject a complaint if these not followed! (So don't wait until last minute...)
- RULES CAN CHANGE: check before filing.
- California Rules of Court (CRC) 2.100-119
- Library makes available **pleading paper templates** for L.A. County Superior Court and Central District of California federal court, in print at the reference desk and on the public computer terminals
 - Paper: 8 ½ by 11, one-sided, “opaque, unglazed, white or unbleached, of a quality of at least 20-pound weight.”
 - Print must not be smaller than 12-point, and equivalent to Courier, Times Roman, or Helvetica.
 - Left margin one inch, right margin one-half inch.
 - Lines must be numbered with at least three numbers for each inch



1 YOUR NAME
Street Address
2 City, State, Zip
Phone Number (with area code)
3 Fax Number (If applicable)
Email Address (If applicable)
4 In Pro Per

5
6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10
11 NAME OF PLAINTIFF,

12 Plaintiff,

13 vs.

14 NAME OF DEFENDANT(s),

15 Defendant(s)

) Case No.: No. 12-3-456789-1

) DOCUMENT NAME (e.g., COMPLAINT FOR
) DAMAGES)

16
17
18 **Example**
19
20
21
22

23
24 Dated this 2nd day of August, 2010

25
26
27
28
DOCUMENT NAME (e.g., COMPLAINT FOR DAMAGES) - 1



Technical Requirements for Complaint: Important!

- Technical requirements, cont.
 - Pages must be numbered
 - Footers identifying document required on every page except exhibits
 - Pre-punched holes at top (two)
 - Legal citations must follow consistent format
 - SSNs and financial account numbers must be excluded or redacted
 - First page requirements:
 - Attorney/party information
 - Two inches of space at top of page next to party information
 - Caption: court name, party names (may be sued or sue in any name by which generally known), space for number of case, description of complaint, identification of limited case (if applicable)



Drafting the Complaint: Allegations



- Allegations of complaint typically include:
 1. **Names and capacities** of parties, including “Doe” defendants*
 2. **Jurisdictional and venue allegations** (not required, but good idea to establish)
 3. At least one **cause of action** (or “count”)
 4. **Demand** for judgment

*Cannot be someone you already know about.



MAR 04 2009

John A. Clarke, Secretary, Officer/Clerk
BY MARY GARCIA, Deputy

Alan S. Gutman, SBN 128514
Matthew E. Hess, SBN 214732
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email: mhess@gutmanlaw.com

Attorneys for Plaintiff MJJ PRODUCTIONS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MJJ PRODUCTIONS, INC.,

Plaintiff,

vs.

JULIEN'S AUCTION HOUSE, LLC,
DARREN JULIEN, DOES 1-25,
Inclusive,

Defendants.

Case Number **BC 408913**

COMPLAINT

1. CLAIM AND DELIVERY
[DETINUE]
2. CONVERSION
3. RESCISSION BASED ON FRAUD
4. FRAUD - PROMISSORY FRAUD
5. FRAUD - INTENTIONAL
MISREPRESENTATION
6. UNFAIR BUSINESS PRACTICES
7. BREACH OF FIDUCIARY DUTY
8. DECLARATORY RELIEF

Statement of the Case

1. Relying on an illegal contract secured by fraud, Defendants Julien's Auction House, LLC and its principal Darren Julien have effectively stolen Michael Jackson's personal property and are now publicizing their intent to sell the property at an auction starting on April 21, 2009.

2. Even though Julien's Auction House, LLC and Darren Julien are not legally entitled to retain possession of Michael Jackson's personal property – they have no ownership or other lawful interest in the property – they have refused to return the property despite repeated demands for its immediate return.

3. This action has been brought to compel the immediate return of Michael

MJJ/COMPLAINT

COMPLAINT

Plaintiff/plaintiff
attorney information

Caption

List causes of action

"Doe" defendants

Line numbering



Parties & jurisdictional/venue allegations

1 Jackson's personal property and to recover damages and costs for the Defendants'
2 wrongful conduct.

3 Parties

4 4. Plaintiff MJJ Productions, Inc. ("MJJ") is a California corporation.

5 5. Plaintiff is informed and believes and thereon alleges that Defendant Julien's
6 Auction House, LLC. ("Julien's Auctions") is a California limited liability company with its
7 principal place of business in West Hollywood, California.

8 6. Plaintiff is informed and believes and thereon alleges that Darren Julien
9 ("Julien") is an individual residing in the City of West Hollywood, State of California.

10 7. The true names and capacities, whether individual, corporate, associate, or
11 otherwise, of defendants DOES 1 through 25, inclusive, are unknown to Plaintiff at this
12 time. Plaintiff sues those defendants by such fictitious names pursuant to Code of Civil
13 Procedure § 474 and will amend this complaint to show their true names and capacities
14 when they have been ascertained. Plaintiff is informed and believes, and based on that
15 information and belief alleges, that each of the defendants designated as a DOE is legally
16 responsible for the events and happenings referred to in this complaint, and unlawfully
17 caused the injuries and damages to Plaintiff alleged in this complaint.

18 8. At all times mentioned in this complaint, each of the defendants were the
19 agents and employees of the other defendants, and in doing the things alleged in this
20 complaint, defendants were acting within the course and scope of their agency and
21 employment.

22 Allegations Common to All Causes of Action

23 9. Neverland Valley Ranch ("Neverland") is an approximately 2,800 acre ranch
24 located in the Santa Ynez Valley of California that was home to pop superstar Michael
25 Jackson.

26 10. In addition to a 13,000 square foot main house, Neverland had a 5,000
27 square foot theater, an approximate 1,500 square foot storage facility, numerous other
28 structures, as well as a private amusement park and zoo.

Common allegations

Page number



1 32. Neither Julien nor Julien's Auctions have any ownership interest in Michael
2 Jackson's personal property.

3 33. Julien's and Julien's Auctions' only interest in Michael Jackson's property is
4 as a consignee.

5 34. Julien's Auctions' illegal contract, procured by fraud, does not entitle them to
6 retain any of Mr. Jackson's property.

7 **FIRST CAUSE OF ACTION**

8 **CLAIM AND DELIVERY [DETINUE]**

9 **AGAINST ALL DEFENDANTS**

10 35. Plaintiff incorporates by reference all of the allegations set forth in paragraphs
11 1 through 34 as though they were set forth in their entirety herein.

12 36. The Defendants are consignees of personal property that belongs to Michael
13 Jackson and have no ownership interest in more than 2,000 items of Michael Jackson's
14 personal property that are currently being detained.

15 37. MJJ, on behalf of Michael Jackson, is entitled to the immediate possession
16 and return of all of Michael Jackson's property.

17 38. The Defendants and each of them are consignees (i.e., bailees) and have
18 refused to return the property despite repeated requests to do so.

19 39. As the direct and proximate result of the wrongful detention of the subject
20 property, Plaintiff is entitled to a writ of possession for the immediate return of all of Michael
21 Jackson's personal property in Defendants' possession, custody or control.

22 40. Plaintiff is also entitled to immediate injunctive relief (a) enjoining the transfer
23 of any interest in Michael Jackson's personal property by sale, pledge or grant of any
24 security interest; (b) enjoining any disposition or encumbrance of Michael Jackson's
25 personal property; (c) enjoining Defendants from concealing or otherwise removing any of
26 Michael Jackson's personal property in such manner to make it less available to seizure
27 by a levying officer; and, (d) enjoining any acts of destruction or failure to care for the
28 property in a reasonable manner.

Cause of action

Incorporate by reference
facts stated in common
allegations

Elements (supported
by facts in common
allegations)



**EIGHTH CAUSE OF ACTION
DECLARATORY RELIEF
AGAINST ALL DEFENDANTS**

87. Plaintiff incorporates by reference all of the allegations set forth in paragraphs 1 through 34 as though they were set forth in their entirety herein.

88. Defendants have proclaimed that they have the right to sell all of Michael Jackson's personal property.

89. Plaintiff has claimed that it has a right to approve of which items can be sold at auction and can refuse to sell anything. Plaintiff further claims that Defendants are fiduciaries, and merely bailees, who have an obligation to return Michael Jackson's personal property. Plaintiff also claims that the Agreement is illegal and unenforceable.

90. An actual controversy exists regarding Plaintiff's right to prevent Defendants from selling Michael Jackson's personal property.

91. A judicial declaration is necessary and appropriate so that the parties may ascertain and know their rights with respect to the selling of Michael Jackson's personal property.

WHEREFORE, Plaintiff prays for the following relief:

As to the first cause of action:

1. For a writ of possession;

As to the second cause of action:

2. For compensatory damages according to proof;

3. For punitive damages;

As to the third cause of action:

4. For an order rescinding the Agreement;

As to the fourth cause of action:

5. For compensatory damages according to proof;

6. For punitive damages;

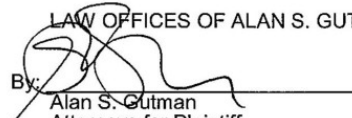
Demand for judgment



- 1 As to the fifth cause of action:
- 2 7. For compensatory damages according to proof;
- 3 8. For punitive damages;
- 4 As to the sixth cause of action:
- 5 9. For an order establishing that the Agreement is void and unenforceable;
- 6 As to the seventh cause of action:
- 7 10. For compensatory damages according to proof;
- 8 11. For punitive damages;
- 9 As to the eighth cause of action:
- 10 12. For declaratory relief;
- 11 As to all causes of action:
- 12 13. For such other and further relief as the court deems just and proper; and,
- 13 14. For costs of suit.

14 Dated: March 4, 2009

15 LAW OFFICES OF ALAN S. GUTMAN

16 By:  _____

17 Alan S. Gutman
Attorneys for Plaintiff
MJJ PRODUCTIONS, INC.

Asks for costs of suit &
other relief

Date & signature
(here, not verified)



Drafting the Complaint: Parties to Include



- Have to include “**necessary parties**”
- “Whenever feasible, the persons **materially interested** in the subject of an action ... should be joined as parties so that they may be heard and a complete disposition made.”*
- Otherwise, judge may dismiss case

*Countrywide Home Loans, Inc. v. Superior Court, 69 Cal. App. 4th 785 (1999)



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Drafting the Complaint: How Specific?



- Complaint should **strike balance between specific and general allegations**. Facts alleged must be sufficient to satisfy elements of cause of action, and cannot be uncertain. Getting too specific may result in some facts being pled that cannot be proven, or facts that are inconsistent with the general conclusion. (Specific allegations control on demurrer – *Melican v. Regents of the University of California* (2007) 151 Cal.App.4th 168, 174-175.)
- May plead on “**information and belief**,” except facts that plaintiff can ascertain without filing a lawsuit. *Ramsey v. City of Lake Elsinore* (1990) 220 Cal.App.3d 1530, 1541.



Drafting the Complaint: The Demand



- Demand for judgment:
 - Money damages
 - Need not state exact amount, but should be in excess of jurisdictional minimum for limited/unlimited case, and not too low, since demand sets upper limit on default judgment
 - Cannot state damages amount in personal injury or wrongful death cases (Civ. Proc. § 425.10(b))
 - Cannot state amount of any punitive damages sought (Civ. Code § 3295(e))
 - And/or declaratory or injunctive relief (e.g., return of property)



Drafting the Complaint: Special Pleading Requirements



- Special pleading requirements for certain types of cases include:
 - Complaint concerning **real estate** must describe piece of land with enough certainty to identify specifically
 - Complaint based on **contract** must plead terms of contract or incorporate contract itself
 - Complaint based on **contract** must state that plaintiff performed all duties required of him/her (CCP § 456)
 - Special, specific statements required of buyer of **consumer debt** bringing action to collect against consumer – see CCP § 1788.58(a)



Drafting the Complaint: Verification?



- **Verified complaint?**
 - Verification = affidavit (notarized) or declaration under penalty of perjury that allegations in complaint are true (CCP §§ 446, 2015.5)
 - Generally verification not required, except in: **quiet title** complaints (CCP § 761.020), **unlawful detainer** (CCP § 1166), and a few other narrow exceptions
 - **Disadvantages:**
 - Can be used to **impeach** plaintiff
 - Inconsistent facts can be **perjury**
 - **Advantage:**
 - Prevents defendant from using general denial & must verify answer.



Drafting the Complaint: Limited or Unlimited?



- Is case **limited** or **unlimited**? (Limited case if demanding less than \$25,000)
 - If limited, must state “Limited Civil Case” in caption (CCP § 422.30(b), CRC Rule 2.111(10)),
 - And first page of complaint must state “Amount demanded exceeds \$10,000” or “Amount demanded does not exceed \$10,000” (GC § 70613(b), CRC 2.111(9)).



Drafting the Complaint: Other Documents to Include



- Other documents that must be included with complaint:
 - Summons
 - Civil case cover sheet (CM-010)
 - Local rules may require additional forms under trial court delay reduction program
 - If applicable, fee waiver form



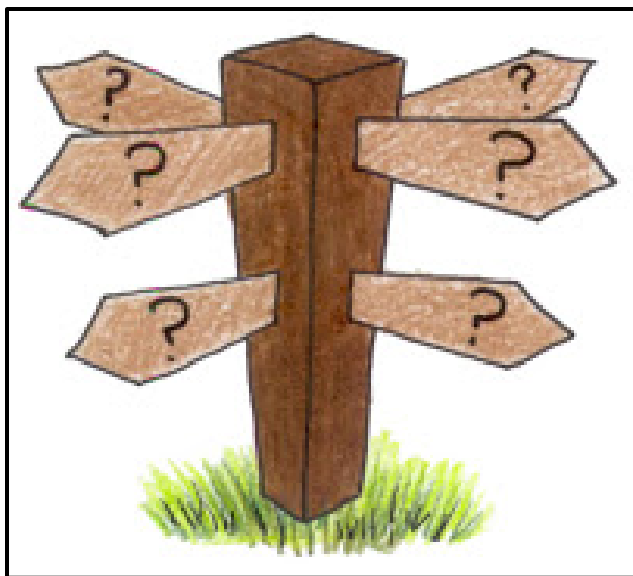
Drafting the Complaint: Important Library Resources



- Library resources for how to draft complaint:
 - *Litigation by the Numbers*,
 - *Nolo Win Your Lawsuit*,
 - *Bender California Pretrial Civil Procedure*
 - CEB and Rutter pretrial civil procedure guides



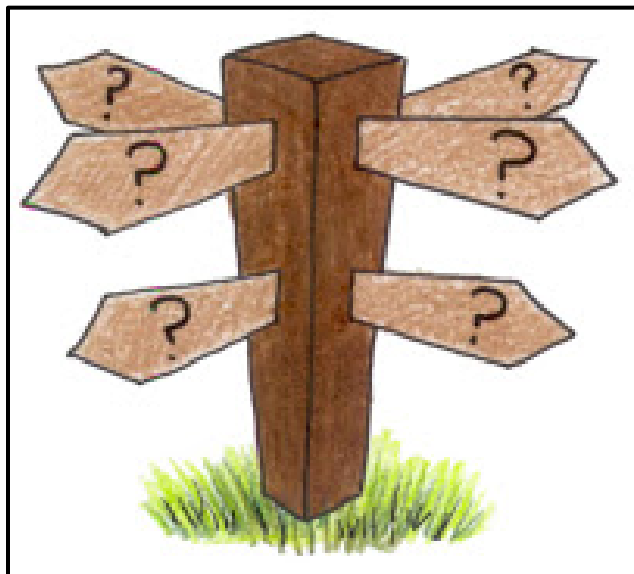
Where to File the Complaint



- Determine **venue** (which county superior court to file in)
 - General venue rules: **transitory** actions (against persons, businesses) vs. **local** actions (concerning real property – including unlawful detainer actions)
 - If a transitory action, must be filed in county where defendant, or some of group of defendants, reside(s). CCP § 395(a).
 - If a local action, must be filed in county where property located. CCP § 392(a).



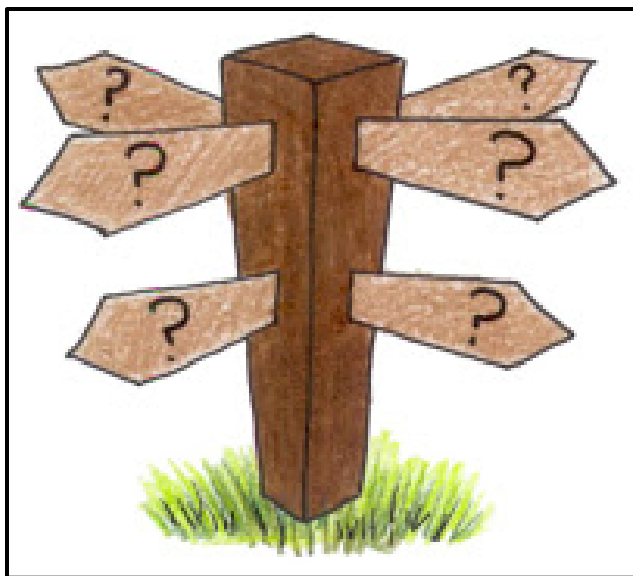
Where to File the Complaint



- In contract actions, venue also proper where contract formed or performed. CCP § 395(a).
- In personal injury and wrongful death actions, venue also proper where injury/death occurred. CCP § 395(a).
- Special rules can apply in variety of suits, including in those against trustees, corporations, and government entities. See, e.g., Matthew Bender's *California Pretrial Civil Procedure*, chapter 6.



Where to File the Complaint



- Each county also has rules determining which local court a case will be heard in.
- L.A. Superior Court filing court locator:
<http://www.lasuperiorcourt.org/filingLocatorNet/ui/filingsearch.aspx?ct=LO>



How to File the Complaint



- Documents to include when filing at courthouse:
 - Complaint
 - Civil case cover sheet(s)
 - Summons
 - Copies of all documents (enough for service on all defendants, plus copy for plaintiff's records) to be stamped 'filed'
- Make sure all formatting rules followed – clerk not allowed to accept otherwise (CRC 2.118(a)).
- Electronic filing has become mandatory in some county courts (not yet L.A.).



How to File the Complaint, cont.



- Civil case cover sheet required (CRC 3.220(a)), plus any additional cover sheet required by local rule. (L.A. requires Civil Case Cover Sheet Addendum, form LACIV-109 – Local Rule 2.3.)
- Copies must be same as original.
- For certain types of cases (consumer collection, unlawful detainer), must include an affidavit stating facts to show complaint is being filed in proper court.
- Filing fee (or fee waiver application) must be included with complaint when filed.



Service of Process



- Summons and complaint generally must be served by personal service on the defendant, by someone not a party to the action, who is at least 18 years old (CCP §§ 414.10, 415.10). Personal service = delivery by hand, face to face.
- Should draft separate summons for each defendant (CCP §§ 412.10, 412.20)
- Generally, service must be made, and proof of service filed, within 60 days of filing (CRC 3.110). TIP: there are exceptions; in some cases service must occur before S/L runs



Service of Process, cont.



- In some instances, “combination service” (good faith attempt at personal service + mailing) acceptable:
 - Can be used on businesses and public entities (CCP §§ 415.20(a), 415.95(a)).
 - May be used to serve individual after unsuccessful exercise of reasonable diligence in making personal service (CCP § 415.20(b)).
- Service may be made by return receipt mail to a defendant residing outside California (CCP § 415.40).
- Where service could not be made any other way, with court’s permission, service can be made by publication (CCP § 415.50).



Service of Process, cont.



- Service on an active corporation/LLC/ partnership may be made by service on designated agent for service of process (on file with Secretary of State), or on a corporate officer (CCP § 416.10(a)-(b)).
- Public entities may also be served by personal delivery to a clerk, officer, or other head of the entity (CCP § 416.50(b)).
- Substituted service on DMV for anyone who registers a car or has a driver's license with the CA DMV, may be made in an action arising out of ownership or operation of car (Veh. Code §§ 17454, 17455, 17456).
- After service made, file proof of service form with court. (60-day deadline after *filing* of complaint applies.)



Amend the Complaint?

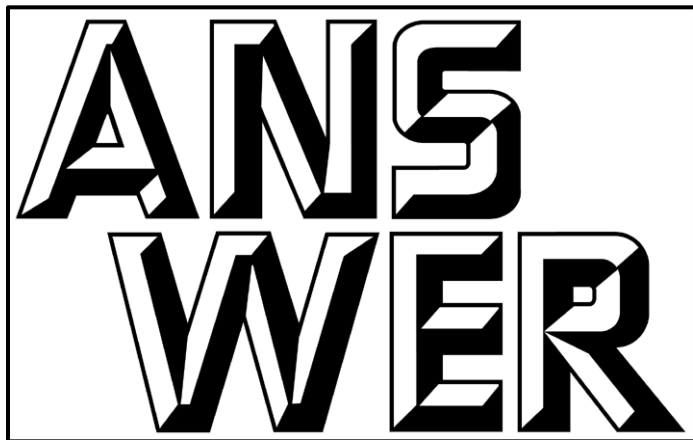
“To amend is
to change something.”

- Sometimes, the first draft isn't right
- Generally, you may amend “by right” (without asking the court's permission) once, before an answer has been filed.
- Otherwise, you have to ask the court's permission*, or agree with the other party to allow the amendment
- However, if the new allegations do not “**relate back**” to the old ones, you may be in trouble if the statute of limitations has run out!

*See Rutter guide, 6:611-687.5 (different procedures for different types of amendments)



Answering the Complaint



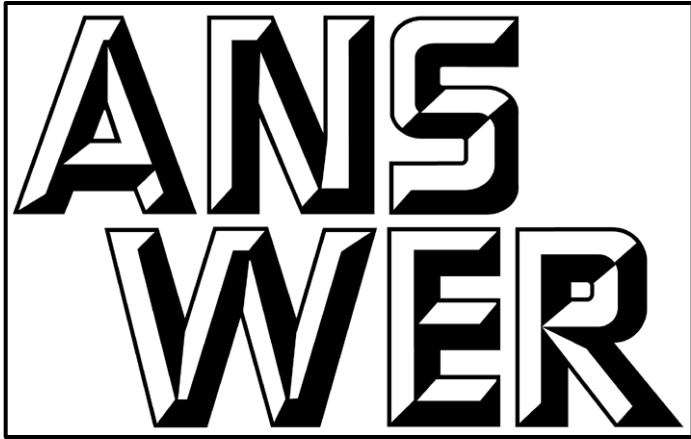
- An answer to a complaint serves two purposes:
 - As a general appearance in court, subjecting defendant to jurisdiction of court and preventing default.
 - To let plaintiff know of defendant's position with regard to allegations in complaint.
- Generally have 30 days after service of summons to answer **or otherwise plead**
 - Exception: Unlawful detainer
 - If you don't, you're in **default***

***See our class on vacating defaults**



LALAWLIBRARY

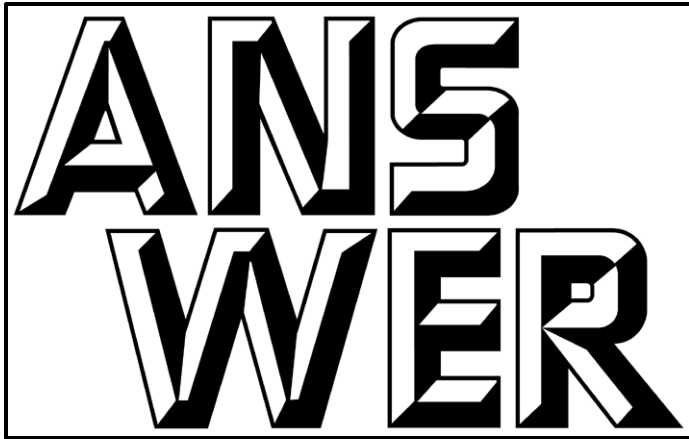
Answering the Complaint: Good Idea?



- Before filing an answer, defendant should first determine whether other courses of action might be better:
 - Motion to quash service of summons;
 - Motion for change of venue;
 - **Demurrer**, if complaint does not state facts sufficient to constitute a cause of action, or other reasons;
- Motion to strike improper allegations;
- Special motion to strike under anti-SLAPP law for meritless claims that arise from exercise of First Amendment rights;
- Removal to federal court;
- Motion for security where plaintiff a vexatious litigant.
- Motion to compel arbitration
- **TIP: Some of these, like motion to quash, cannot be brought if answer filed.**



Answering the Complaint: Info. on Other Options



***Motion procedure and practice generally is covered in the Civil Lawsuit Basics class, Making and Opposing Motions.**

- Non-answer options are covered on a basic level in library resources like:
 - Win Your Lawsuit
 - Litigation by the Numbers.
- More in-depth sources at the library include:
 - Rutter Guide on Civil Procedure Before Trial
 - Matthew Bender guide on California Pretrial Civil Procedure
 - CEB guide on California Civil Procedure Before Trial



One Other Option: Demurrer

DEMUR:

to object, challenge

DEMURE:

shy, modest

- Demurrers may be brought on grounds including:
 - Haven't alleged facts to support all of the elements
 - Lack of subject matter jurisdiction
 - Lack of legal capacity to sue
 - Another action pending between parties on same cause
 - Uncertain, ambiguous, or unintelligible allegations
 - Inability to determine whether contract is written, oral, or implied by conduct



Demurrers

DEMUR:

to object, challenge

DEMURE:

shy, modest

- Before filing a demurrer, you have to “meet and confer” with plaintiff to explain – with legal support – what you think is wrong with the complaint, and try to reach an agreement as to how to fix it. (CCP section 430.41.)
- May answer and demurrer together
- Must demurrer within 30 days of service, or within 10 days of answer
- Procedurally the same as a motion



Demurrers: Pros and Cons

DEMUR:

to object, challenge

DEMURE:

shy, modest

Advantages of demurrers:

- Eliminating causes of action that don't belong;
- Limiting scope of discovery (save time & money later);
- Get information you're entitled to, e.g., terms of contract

Disadvantages:

- Time and money now – prolongs the lawsuit;
- Often better to just amend
- Reviewable “de novo” – easy for plaintiff to overturn on appeal



Demurrers

DEMUR:

to object, challenge

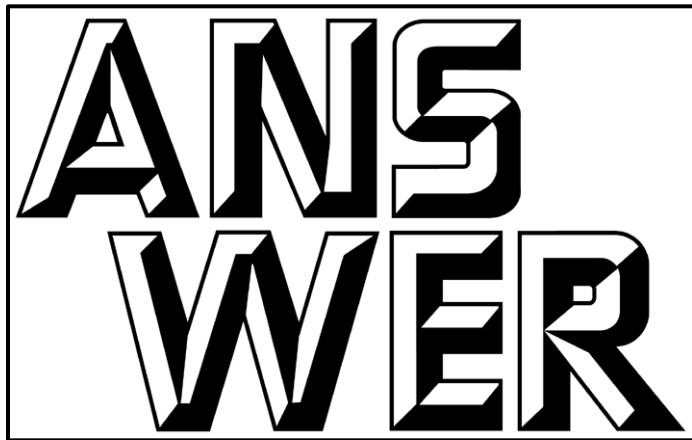
DEMURE:

shy, modest

- Demurrers are complicated
- More information on demurrers may be found in:
 - Rutter Guide on Civil Procedure Before Trial
 - Matthew Bender guide on California Pretrial Civil Procedure
 - CEB guide on California Civil Procedure Before Trial



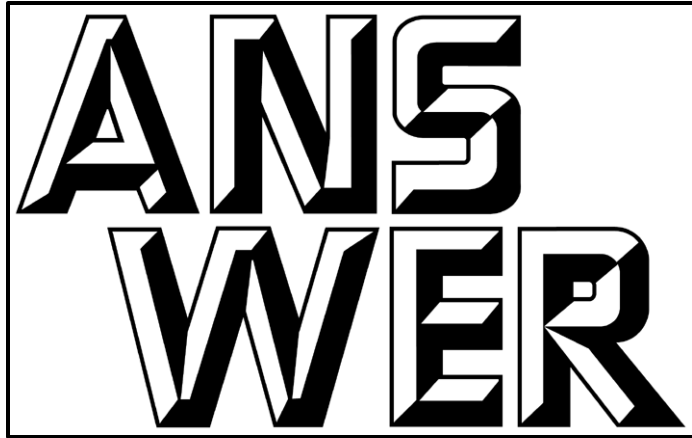
Answering the Complaint



- Answers include:
 - Denials and admissions as to allegations in the complaint
 - Defendant must be careful to respond to *each* factual allegation, otherwise an allegation may be deemed admitted (*Kennedy v. Rosecrans Gardens* (1952) 114 Cal.App.2d 87, 89).
 - Affirmative defenses.



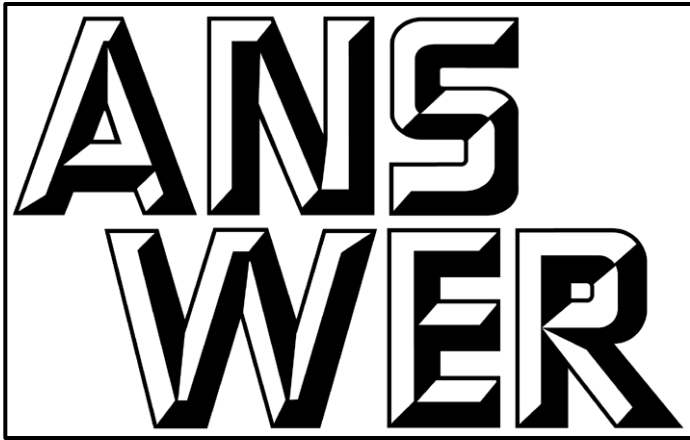
Answering the Complaint: Denials



- For denials, a defendant may “**specifically**” deny an allegation, or “**generally**” deny all allegations.
 - General denials may be made to an entire complaint, in a single Judicial Council form pleading called “General Denial.”
 - However, general denials can only be made to unverified complaints, or most types of complaints in a limited civil action (CCP § 431.30(d)).



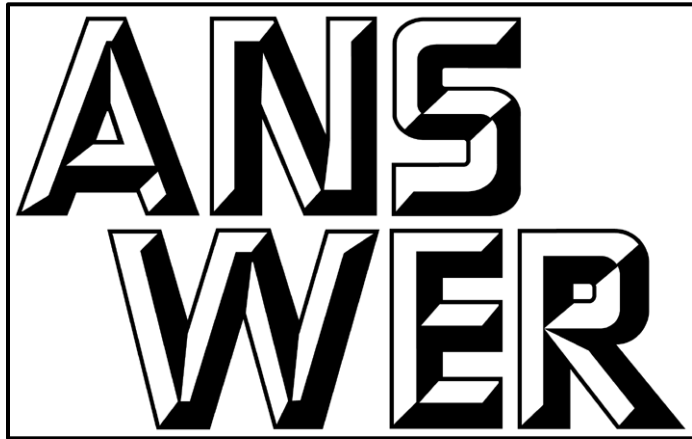
Answering the Complaint: Denials



- **Specific denials** must be made to verified complaints in unlimited cases.
- Each denial/admission should be written one by one, numbered to correspond to each numbered paragraph in the plaintiff's complaint. (CCP § 431.30.)
 - Requires self-drafted document with line numbering, etc.



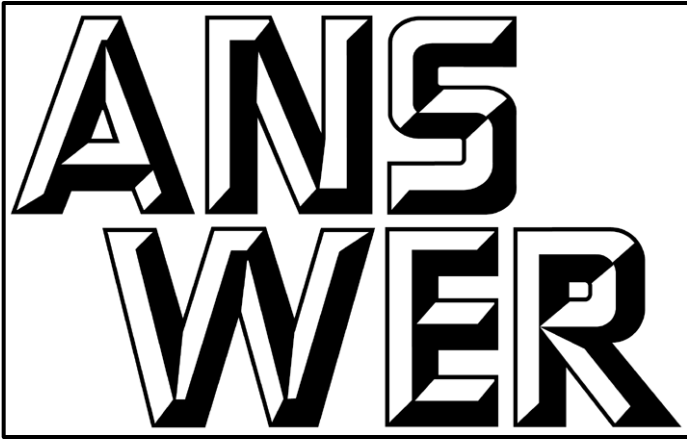
Answering the Complaint: Admissions



- **Admissions** serve the purpose of narrowing the scope of the lawsuit so not everything has to be litigated.
- They can also serve to avoid having evidence as to embarrassing or sensitive matters presented at trial.



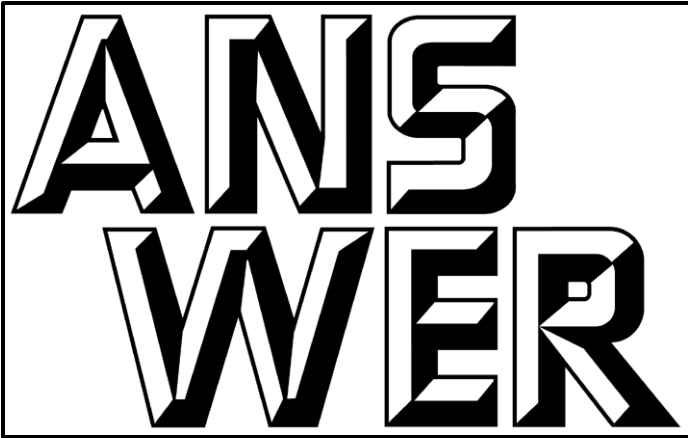
Answering the Complaint: Affirmative Defenses



- Independent reasons why the plaintiff is not entitled to relief, other than the allegations of the complaint being untrue.
- Affirmative defenses must generally be stated in the answer, or they are considered waived.
- There are many different affirmative defenses.
- Good library sources to use:
 - California Affirmative Defenses
 - Rutter Guide on Claims and Defenses,
 - Chapter 26 of California Forms of Pleading and Practice (Table of Affirmative Defense Forms).



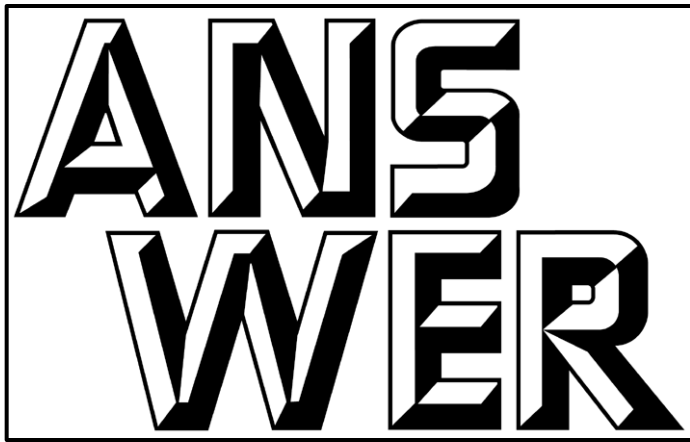
Answering the Complaint: Affirmative Defenses



- Common affirmative defenses include:
 - Failure to raise claim in prior action
 - Related action pending
 - Failure to state a cause of action
 - Assumption of risk
 - Comparative negligence
 - Statute of limitations
 - Accord and satisfaction
 - Duress or undue influence
 - Fraud or mistake
 - Res judicata
- TIP: if uncertain about whether it is an affirmative defense, include it in answer.



Answering the Complaint: Important Technicalities



- Answer must follow same technical requirements as a complaint and other court papers (margins, font, paper size & type, caption page, etc.).
- Can be served by mail rather than in-person – requirements for service of summons do not apply to answer since court already has jurisdiction over plaintiff (CCP §§ 1010, 1012).



Questions?

