

Superior Court of California
County of Fresno

Study Guide
For
Judicial Assistant
Written Examination

THE COURT SYSTEM

California Courts

Under the constitution of 1849, the Courts of the state consisted of a Supreme Court, district courts, county courts, probate courts, and justices of the peace. Legislation enacted in 1976 radically changed the lower court system by giving justice courts the same jurisdiction as municipal courts, by making the same provisions for an appellate department of the Superior Court, and by establishing the same grounds for appeal from the justice courts as those applicable to appeals from municipal courts. Justice courts were consolidated with municipal courts in 1995.

The current court structure in California includes the California Supreme Court, consisting of one Chief Justice and six Associate Justices; six Courts of Appeal; and a Superior Court in each of the 58 counties in California.

Appellate Courts

In California, there are two appellate courts; The California Supreme Court and the Courts of Appeal.

Supreme Court

The state's highest court, the Supreme Court may grant review of cases decided by the Courts of Appeal. Certain other cases, such as death penalty appeals and disciplinary cases involving judges and attorneys, are appealed directly to this court. At least four of the seven justices must agree on decisions of the Court. The Court's decisions are binding on all other state courts.

Courts of Appeal

Panels of three justices hear appeals from superior courts, except in death penalty cases. These courts determine whether a trial court committed a legal error in handling the case.

Superior Court

The Superior Court and the Municipal Court were unified in 1998. They have trial jurisdiction over all felony cases and all unlimited civil cases involving disputes valued over \$25,000. Superior Courts also serve as probate courts, juvenile courts, and family courts and can hear appeals of limited civil, infraction and misdemeanor decisions. They hear misdemeanor and infraction cases as well as limited civil matters involving claims for \$25,000 or less, including small claims cases that not exceed \$10,000 for individuals or \$5,000 for businesses or public entities. They also preside over arraignments and preliminary hearings to determine whether there is reasonable and probable cause to hold a defendant for further proceedings.

California Citizens' Rights in Court

California Citizens have rights guaranteed by the United States and California Constitutions. These rights include:

- The right to be presumed innocent if charged with a crime;
- The right to a public and speedy trial by jury if charged with a misdemeanor or a felony;
- The right to an attorney at the public's expense if you are charged with a felony or misdemeanor and cannot afford an attorney;
- The right to defend yourself against all criminal charges;
- The right to sue for money owed;
- The right to defend yourself against a lawsuit.

Appeals

An appeal is when someone that loses at least part of a case asks a higher court to review the decision. Generally, in an appeal, a higher court reviews the order or judgment of a lower court to see if there was enough evidence to support the judgment, whether the judge abused his/her discretion or whether errors of law were committed during or before trial, which prejudiced the appealing party.

- If the original decision was made by the Superior Court in an unlimited civil case or felony case, the appeal is to the **Court of Appeals**.
- If the decision being appealed from was in a limited civil case or concerned a misdemeanor or infraction, the appeal is to the **Appellate Division of the Superior Court**.

Most appeals are limited to a review of the record from the lower court. Parties cannot introduce new evidence, but are limited to what was said and introduced at the original trial or hearing. The appellate court reviews the lower court's application of the law to the facts as presented at the trial or hearing.

In some cases, however, such as an appeal from a small claims court, the appellate court conducts what is called a "trial de novo". In those cases, the reviewing court is not bound by the decision of the small claims judge, and new evidence can be presented.

Glossary of Terms - Appeals

Affirm. An act in which an appellate court finds that the judgment of a lower court is correct and should stand.

Appellant. The party who takes an appeal from one court or jurisdiction to another.

Appellate Court. A court having jurisdiction of appeal and review.

Appellee. The party against whom an appeal is made. See also **Respondent**.

Record on Appeal. A copy of the pleadings, exhibits, orders, or decrees filed in a case in a trial court, and a transcript of the testimony taken in the case.

Remand. To send back. The act of an appellate court when it sends a case back to the trial court and orders the trial court to conduct limited new hearings or an entirely new trial, or to take some other further action.

Remittitur of Record. The transfer of the records of a case from a court of appeal to the original trial court for further action or other disposition as ordered by the appellate court.

Respondent. The party against whom an appeal is made; the responding party in a dissolution, nullity, adoption, probate matter, or to any petition. See also **Appellee**.

Trial de Novo. A form of appeal in which a court holds a trial as if no prior trial had been held. Not only may new evidence be presented, the evidence presented in the second trial may differ from the evidence submitted or admitted in the original trial.

Writ of Certiorari. An order by an appellate court granting or denying a review of judgment.

Civil

Civil cases are non-criminal cases. These cases involve a lawsuit in which one party sues another to:

- Recover money or property;
- To enforce a contract;
- To collect damages for injury;
- To protect some civil right.

Civil Jurisdiction – Limited Cases. Superior Court unlimited cases have original trial jurisdiction in actions involving \$25,000 or less.

Civil Jurisdiction – Unlimited Cases. Superior Court unlimited cases have original trial jurisdiction in civil matters involving over \$25,000 and in all civil matters excluding family law and probate.

Miscellaneous Civil Facts

- A civil action is commenced by filing a complaint or a petition with the Court.
- A judgment creditor may file a notice with the Department of Motor Vehicles requesting suspension of the judgment debtor's driving privileges to operate a motor vehicle when a judgment was the result of a motor vehicle accident on a California highway involving the judgment debtor, the judgment was for \$500 or more and the judgment has remained unsatisfied for more than 30 days after becoming final.
- A process in which a neutral person aids communication between the parties to an action to assist them in reaching a mutually acceptable agreement is called mediation.
- A tenant is guilty of unlawful detainer when he/she continues in possession of the property, without permission of the landlord, after default in payment of rent.

Glossary of Terms - Civil

Answer (Pleading). The response of a defendant to the plaintiff's complaint or petition, denying in part or in whole the allegations made by the plaintiff and setting out affirmative defenses.

Arbitration. A process of dispute resolution in which a neutral third party, or a panel, renders a decision after a hearing at which both parties have an opportunity to be heard. Arbitration is less formal and less complex than traditional court proceedings.

Attachment. The legal process of seizing another's property in accordance with a writ or judicial order for the purpose of securing satisfaction of a judgment yet to be rendered.

Change of Venue. The transfer of a civil or criminal case from one judicial district to another.

Civil Complaint. The original or initial pleading by which an action is commenced under statutes and rules of civil procedure. It is the pleading, which sets forth a claim for relief.

Contract. An agreement between two or more persons or entities that creates, changes, or eliminates a legal relationship; an agreement between two or more persons or entities which creates an obligation to do or not to do a particular thing.

Costs. An award of money, made to the successful party (and recoverable from the losing party), for expenses in bringing an action or defending an action or a distinct proceeding within an action.

Damages. Compensation or indemnity, which may be recovered in the Courts by any person who has suffered loss, detriment, or injury, whether to one's person, property, or rights, through the unlawful act or omission or negligence of another. A sum of money awarded to a person injured by the tort of another.

Demurrer. A demurrer raises issues of the law, not fact, regarding the form or content of the opposing party's pleading (complaint, answer or cross-complaint). Demurrers do not challenge the truthfulness of the complaint. For purposes of the demurrer, all facts alleged in the complaint are assumed to be true, however improbable.

Eminent Domain. The right of the government to take private property for public use and provide fair compensation to the owner.

Execute. To complete all terms of a contract or will; to sign a document; to take the life of a convicted person under the authority of the state.

Garnishment. The withholding of wages to satisfy a civil judgment.

Indemnity. The obligation resting on one person to make good any loss or damage that another has incurred.

Injunction. A court order prohibiting a person from doing or continuing to do a specific act or commanding someone to undo some wrong or injury.

Interpleader. A procedure to determine which of two or more persons who are bringing the same suit against another party is the rightful claimant.

Judgment. The final decision of the judge stating which party has prevailed and the terms of the decision.

Judgment (JNOV). The abbreviation for “judgment notwithstanding the verdict”. A court ruling in favor of one party despite the fact that there has been a jury verdict for the other party.

Levy. To assess; raise; execute; exact; tax; collect; gather; take up; seize.

Libel. Presentation of false and malicious written, printed, or published material that is defamatory and injures the reputation of an individual.

Lien. A claim that bars the sale or transfer of specific property until payment of a debt or obligation is made.

Mediation. A process in which a neutral third party assists disputing parties in reaching a mutually acceptable settlement. The neutral third party attempts to clarify the dispute for the parties and provides suggestions for resolution.

Negligence. The failure of a person to use the degree of care a reasonable person would exercise in a given situation to protect the rights, person, and property of others.

Personal Injury. A civil case that includes actions for damages for physical injury to persons and actions for wrongful death.

Respondent. The person against whom an appeal is made; the responding party in a dissolution, nullity, adoption, probate matter, or any petition.

Slander. Oral defamation of a person's character or reputation through false or malicious statements.

Summary Judgment (Summary). The Court's decision prior to a trial directing that the action has no triable issue of disputed fact and the one party is entitled to judgment as a matter of law.

Tenant. A person who rents or leases property.

Tort. A private or civil wrong not involving a contract; failure to perform some duty imposed by law or custom, resulting in injury to another.

Unlawful Detainer. The act of continuing to occupy real property when the right to it has been terminated.

Small Claims

Small Claims is a special court where disputes are resolved quickly and inexpensively. The rules are simple and informal. You may ask a lawyer for advice before you go to court, but you cannot have a lawyer in court. United States citizenship is not required to file or defend a Small Claims case, but the parties must be at least 18 years old. Only cases for money for actual damages can be filed in Small Claims court.

Glossary of Terms - Small Claims

Small Claims Case. A minor civil case for monetary judgment.

Small Claims Court. The division of a limited court that handles all civil cases claiming monetary awards of \$5,000 or less for businesses or public entities and \$10,000 or less for individuals. In such cases, there are no attorneys, no rules of evidence, no juries, and no formal findings.

Criminal

Criminal cases range from relatively minor offenses such as traffic infractions to serious ones like robbery and murder. The State makes the charge against someone accused of committing a crime because a crime is considered an act against society. The prosecuting attorney presents the charge against the accused person (defendant) on behalf of the State (plaintiff), and must prove to the judge or jury that the defendant is guilty beyond a reasonable doubt.

- A Felony is a criminal offense punishable by death or by imprisonment for more than one year in jail/prison.
- A Misdemeanor is a lesser offense than a felony and generally is punishable by fine or imprisonment in a city or county jail rather than in a state penitentiary.
- An Infraction is not punishable by imprisonment. A person charged with an infraction is not entitled to a trial by jury.

Miscellaneous Criminal Facts

- A criminal case begins when a prosecutor files formal charges, a person is arrested, or a grand jury issues an indictment.
- A postponement of a case is called a continuance.

- Grouping of multiple cases involving the same parties is called a consolidation.
- The Court jurisdiction where the offense will be tried is generally the county where the offense allegedly committed, even if only part of the offense was committed there.
- Evidence admitted at a trial may include: testimony, physical objects and documents.
- Except in cases where a different punishment is prescribed by any law of this state, misdemeanor offenses are punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding \$1000 (plus penalty assessments and fees), or by both.
- An official copy of a court document is certified. Any person who alters a certified copy of an official record is guilty of a misdemeanor.
- A "recidivist is a habitual offender.
- An infraction is a violation of, or failure to comply with, certain provisions of the Vehicle Code, local ordinance or other law or statute. An infraction is not punishable by imprisonment; the maximum sentence on most infractions is a \$250 fine (plus assessments and fees). You may not be sentenced to alternate jail time on an infraction and cannot have a trial by jury unless an infraction is combined with a misdemeanor charge.
- If you do not take care of your traffic citation in a timely manner, a hold or suspension may be placed on your driver's license by the Department of Motor Vehicles and a civil assessment of **\$300.00 will be added to the original bail amount.**
- The Court may authorize **collection actions** on the bail amount and the civil assessment, including wage garnishments, attachments of your bank accounts and personal property, and the filing of liens on your real property.

Glossary of Terms - Criminal

Arraignment. The reading of the accusatory pleading to the defendant, delivering a copy to the defendant in some cases and asking the defendant if he/she pleads guilty or not guilty.

Bail. A sum of money or other form for security given to the Court in exchange for the release of the accused from custody, and a guarantee that the accused will appear in court.

Cited & Released. A citation is issued for an offense that gives the accused a time and date to appear for arraignment and the accused signs promising to appear and remains at liberty until arraignment.

Concurrent Sentence. Sentences that run together during the time that the periods overlap: e.g., sentences of 10 years and 5 years equal a total of 10 years served.

Consecutive Sentence. Two or more sentences served continuously, one right after the other: e.g., sentences of 10 years and 5 years equal a total of 15 years served. Sentences that run together during the time that the periods overlap.

Conviction. The determination of guilt based on a plea, a jury verdict, or a finding of a judicial officer.

Correctable Violations (Fix-It Tickets). The traffic citation will indicate if the violation(s) is correctable. If you show proof of correction and pay a transaction fee, the Court will dismiss the relevant charge. Some common tickets of this kind are: equipment violations, driver's license violations, and car registration / car insurance violations.

Courtesy Notice. A computer-generated notice sent for traffic violations, to advise a driver of their options. It is not mandatory that the Court send; it is strictly a "courtesy".

Held to Answer. To make a finding at a preliminary hearing that sufficient evidence exists to require a trial in the Superior Court on the charges made against the defendant.

Magistrate. All judges are magistrates. The office of magistrate is a statutory creation—a statutory office separate and distinct from the elective office of judge.

Preliminary Hearing. A hearing in front of a magistrate to determine if there is enough evidence to hold the defendant to answer in the trial court.

Probation. The suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation office.

Revocation. The act of voiding or canceling something, usually probation or a driver's license.

Search Warrant. A search warrant is a written order issued by a magistrate and directed to a peace officer, commanding the officer to search for personal property and bring it before the magistrate.

Verdict. The final decision or findings of a jury.

Warrant-Arrest. A warrant of arrest is a written order, normally issued by a magistrate, directing any peace officer to arrest a designated person charged with a crime and bring him or her before a judge or magistrate.

Warrant-Bench. A bench warrant is the process used to bring a non-appearing defendant before the court when his or her personal presence is required.

Family Court

A branch of civil law that generally concerns matters related to dissolution of marriage, legal separation of the parties, nullity of marriage, child custody and support matters, and domestic violence and elder abuse petitions.

Family Support

There is a general obligation of both parents to support their minor children “in the manner suitable to the child’s circumstances”. The statutory duty of support is owed to all minor children of the parents, regardless of whether they are natural or adopted children, born during the marriage, or out of wedlock.

Family Court Services

Family Court Services (FCS) provides mediation services when an action is started that involves custody and /or visitation.

Family Law Facilitator’s Office

The Family Law Facilitator’s Office was established to assist self-represented (pro-per) family law litigants and offers assistance to all members of the community, regardless of their economic status. Customers are assisted with the completions of legal forms and are provided general legal information concerning aspects of Family Law and Support. The Facilitator’s Office often helps both parties in the same case, and its services are not confidential.

Miscellaneous Family Court Facts

- A person may obtain a divorce three different ways: Stipulation; Default; or Trial.
- Marriage is dissolved only by one of the following:
 - The death of one the parties;

- Judgment of dissolution of marriage; and
 - Judgment of nullity of marriage.
- Guardianship of a minor may be granted in Family Law, Juvenile Court, Probate proceedings. Probate defers to a pending Family Law case and Family Law will defer to a pending case in Juvenile Dependency.
 - Child custody, support orders, and domestic violence orders are enforceable in other states, as well as, the state where the case was filed.

Glossary of Terms - Family Court

Adoption. The process by which the legal rights, duties and obligations between the child and his/her natural parent(s) terminate and similar rights and duties between the child and his/her adoptive parent(s) are substituted. This is an odd definition.

Arrearage. Debt or payment due and unpaid.

De Facto Parent. A person who has been found by the Court to have assumed, on a day-to-day basis, care, custody and control of a minor for substantial period of time.

Dependent. A person who is financially supported by another person, usually the parent.

Dissolution. The act of terminating a marriage; divorce.

Department of Child Support Services (DCSS). Agency responsible for the establishment, collection and enforcement of child support.

Guardian ad Litem. A court appointed adult who represents the interest of a minor.

Mediation. A process in which a neutral third party assists disputing parties in reaching a mutually acceptable settlement. Parents work with a marriage and family counselors to develop an agreement assuring that the child(ren) will have close and continuing contact with both parents if it's in the best interest of the child.

Nullity. A nullity is also a legal determination that a legal marriage never existed.

Paternity Suit. A suit initiated to establish the paternity of a child born out of wedlock.

Spousal Support. Financial allowance from one spouse to the other ordered by the Court during separation or after dissolution of marriage.

Restraining Order. A restraining order is a court order that can protect someone from being physically or sexually abused, threatened, stalked, or harassed.

Wage Assignment. Pursuant to a court order a party's employer must withhold money from the obligor's pay check and forward the money to the obligee for the payment of child support, spousal support, family support, attorney fees, or other legal claims.

Juvenile

The juvenile court has broad authority in juvenile delinquency and dependency cases. In dependency cases, it can remove children from their homes, order placement with relatives or to foster care or group homes, terminate parental rights, create new parental rights and collaborate with various agencies to provide needed services. In delinquency cases, the juvenile court can also order children confined in locked facilities.

Miscellaneous Juvenile Facts

- The first document filed in a juvenile case is a petition.
- ALL Juvenile Court cases and hearings are confidential.
- In Fresno Superior Court, juvenile traffic matters are processed and heard in the Traffic-Infraction Department.

Delinquency

The Superior Court Juvenile Delinquency Department has jurisdiction over minors who were under 18 at the time the offense is alleged to have occurred. Minors are not arrested, they are detained. There is no right to bail, but minors can be released from custody under supervision or electronic monitoring. Minors are not entitled to a jury trial.

The juvenile court is considered a civil rather than a criminal forum even though it adjudicates violations of criminal laws by minors. However, in juvenile court, a minor receives many of the same constitutional protections that an adult would receive. The juvenile court incorporates elements of both criminal court and dependency court. In juvenile court, there is no "conviction" within the meaning of the adult criminal law. The terminology used in juvenile court is that the minor is "found to come within the provisions of Welfare & Institutions Code §602." Minors "admit" or "deny" an offense,

rather than plead "guilty" or "not guilty." Juvenile petitions are "sustained," or found "true." Minors are "committed" to the Juvenile Justice Campus (aka, juvenile hall) or the Division of Juvenile Justice-DJJ (aka Youth Authority), rather than being sentenced to jail or prison.

Miscellaneous Juvenile Delinquency Facts

- The District Attorney's Office files the original petition.
- The Probation Department files a report regarding the minor, the severity of the crimes committed and a recommended sentence.
- Allegations against a minor are found to be true or not true.
- A judicial officer must find probable cause that the accused minor committed the alleged crime in order for the minor to be detained.

Dependency

The Superior Court Juvenile Dependency Department has jurisdiction over cases involving allegations of child abuse or neglect. The law says that Dependency Court has to protect the minors in the juvenile court. The Court tries to keep minors with their families and make the families stronger. The Court will take a minor from the parents if it has to for the child's well-being and safety. If the Court takes a minor from the home, the Court will work with the family and minor to improve the home conditions so the child can be return home. If the Court takes a minor away from the family, the Court will make sure that someone has custody of the minor. The minors will get the care and discipline they need to be safe and protected.

Miscellaneous Juvenile Dependency Facts

- The Department of Social Services (DSS) files the original petition.
- DSS investigates and prepares / files a report to the Court setting forth a recommendation as to the best interest of the minor child(ren).
- Pursuant to the law, a child may have more than one father.

Glossary of Terms – Juvenile

Court Appointed Special Advocate (CASA). A CASA volunteer is a trained citizen who is appointed by the dependency court judicial officer to represent the best interest of a child in court.

Dependent. A juvenile who is in custody of the Court because her/she has been abused, neglected, or molested or is physically dangerous to the public due to mental or physical disorder.

Delinquent. A minor who has committed an act that would be a crime if it were committed by an adult.

Detention. Removal of a child from the person(s) entitled to custody.

Fitness Hearing. A hearing held in Juvenile Court to determine if a minor would be amenable to treatment in the event that he or she is declared to be a ward.

Jurisdictional Hearing. Hearing at which the Juvenile Court determines if the allegations set forth on the petition are true or untrue can be sustained.

Juvenile. A person under the age of 18 years.

Non-minor Dependent. An adult 18 or over who elects to stay in the foster care system, to continue receiving services, until 21 years of age.

Non-minor. An 18 year old in foster care placement, where the Court has dismissed dependency but over whom the Court has retained general jurisdiction.

True Finding. The juvenile court's equivalent of a guilty verdict.

Ward of the Court. A minor who is under the care and control of the Court rather than his parent(s).

Probate

In probate proceedings, the Civil Code and the Code of Civil Procedure govern any matters not covered under the Probate Code. In Fresno Superior Court, the Probate Department has jurisdiction over the following matters:

- Conservatorships
- Guardianships
- Mental Health
- Trusts
- Wills
- Various other cases under the Probate and Health & Safety Codes.

Miscellaneous Probate Facts

- A person with dementia can be placed in a locked care facility by a probate conservator who has been granted the power to do so by the Court.

- An LPS (Lanterman Prentiss Short act) Conservatorship can be established for a person who is gravely disabled in order for them to be placed in a locked care facility.
- Conservatorships are established for adults and guardianships for minors, however a minor can be subject to an LPS conservatorship.
- If there is a family law case pending, a person desiring to be a guardian of a child should join into the family law case because the probate court will defer to the family law court's jurisdiction.
- Most trusts are NOT under the jurisdiction of the Court.
- Personal representatives, trustees, guardians, conservators and attorney-in-fact are ALL fiduciaries under probate law.
- Petitions to Determine Fact of Birth, Death or Marriage are filed with the Probate Department.
- In Fresno County, the Public Guardian is the petitioner in ALL LPS Conservatorship cases and usually represented in court by County Counsel.

Glossary of Terms - Probate

Beneficiary. A beneficiary is a person who receives assets from a probate estate or trust.

Conservatee. A person who is unable to care for self and who has a court-appointed conservator.

Conservator. A person appointed by the Court to take care of a Conservatee and/or the conservatee's property.

Conservatorship. A conservatorship is a protective court proceeding. In a conservatorship of the person, a court-appointed fiduciary, the conservator, manages the personal care of a person who cannot properly provide for his or her personal needs for physical health, medical care, food, clothing, or shelter. In a conservatorship of the estate, a court-appointed conservator manages the financial affairs of a person who is substantially unable to manage his or her own financial resources or to resist fraud or undue influence.

Decedent. A person who is no longer living.

Fiduciary. A person who has a duty to act primarily for the benefit of another.

Guardian ad Litem. A guardian ad litem is a guardian appointed only to prosecute or defend a suit on behalf of a minor or an adult who is incapacitated. This person is NOT the guardian of the child for all purposes.

Intestate. To die without making a will.

Probate. The legal process in which a will is reviewed to determine whether it is valid and authentic. Probate also refers to the general administering of a deceased person's will or the estate of a deceased person with a will.

Probate Examiners. Court staff who review documents for technical and legal accuracy. They provide written notes to the Court regarding all matters set before the Court.

Probate Investigators. Court staff who are responsible for the investigation and preparation of a report and recommendation regarding the best interest of an adult in a conservatorship or a minor in a guardianship.

Testate. Having made a legally valid will before death.

Trust. A trust is a written estate planning document that may be effective during the trustor's lifetime or after death.

Trustee. A person or persons who hold legal title to property that is in a trust.

Trust Fund. Money, stocks, bonds, or securities held by or under the control of someone for the use and benefit of another.

Will. A "will" is a written instrument in which a person makes a disposition of his/her property that takes effect after his or her death.