

Courtroom Procedures and Evidence Codes

This information was created out of David-vs-Goliath.org's frustration of watching numerous people in court being slaughtered like sheep for their lack of knowledge on how the court system works.

We ask many people, would you go play poker with your life savings, everything you own if you don't know the house rules? We already know the answer to this question, but the people continue to participate in a system they have absolutely no knowledge of.

Then, we ask ourselves, why are the people going to court without knowing the court rules of engagement.

How many times have you heard that ignorance of the law is no excuse?

There is no way we can cover hundreds of years of courtroom proceedings, evolution of the judicial system, the laws that have been changed, amended or repealed.

This is not a manual of how to, but a quick down and dirty cheat sheet that may give you a little insight as to how and why most pro se litigants lose in court.

This information is not intended to give any legal advice, but to open the doors to questions.

How many of you can answer yes to the following questions:

How many of you know what a Judges position is?

How many of you know what a commissioner is?

How many of you know courtroom procedures?

How many of you know what personal Jurisdiction is?

How many of you know what Subject Matter Jurisdiction is?

How many of you know what in REM Jurisdiction is?

How many of you know what a verified complaint is?

How many of you know what is admissible evidence is?

How many of you know what objections are and when to object?

How many of you know what an attorney's position is?

How many of you know about evidence codes?

How many of you know about civil codes?

How many of you know about code of civil procedures?

How many of you know what a court reporter is?

How many of you know that you need to have a court reporter at every hearing?

How many of you know what gives the judge judicial authority to make a determination on your case?

How many of you have ever played Chess and didn't know the rules and expected to win?

How many of you played Chess and didn't know what each piece is on the Chess board and what their movement description are and expected to win?

I know what you're thinking, why is he talking about a Chess game when I want to learn about "Courtroom Procedures".

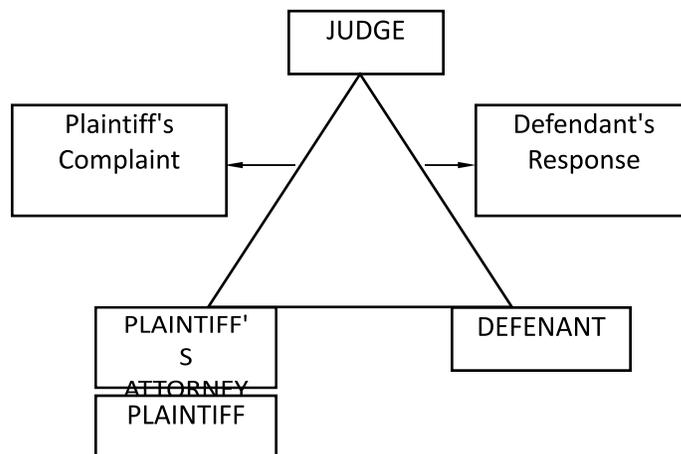
Well, let's take a moment and look at just two pieces of the Chess game. The King and the Queen.

They are both pieces of Royalty, but yet they both have two very distinct movement capabilities.

The King can move in any direction that he wants as long as there is no one blocking his movement, one space at a time. He can move forward, backward, sideways and diagonally in any direction, but remember, only one space at a time.

On the other hand the Queen can move in any direction as many spaces as she wants as long as there is no one blocking her movement. She can move forward, backward, sideways and diagonally in any direction as many spaces as she chooses.

Now, let's look at the courtroom game board. The Court room is usually structure like a triangle where a Judge or Commissioner sit at the head of the Triangle and the Plaintiff or Plaintiff's attorney sits at the lower right or left of the Triangle. The Defendant then sits at the opposite side. Sort of like this example:



We will discuss the Judges position, the attorneys position and the Defendant's position a little later. There are other pieces missing from this board game at the moment but we will add them and address them as we move along.

But first I must back up a little before we get to the courtroom.

Before you get to the courtroom there has to be a Complaint filed with the court.

In this instance we will look at a civil limited jurisdiction Unlawful Detainer Summons and Complaint filed with the court.

A civil limited jurisdictional court adjudicates (litigates) matter that are \$25,000.00 and under.

The civil limited jurisdiction Unlawful Detainer courtroom is a very different breed of judicial proceedings that was originally intended for Landlord/Tenant matters.

The unlawful detainer action was created to provide property owners who sought to recover possession of their property with a relatively inexpensive and quick legal remedy, thus discouraging property owners from resorting to self-help methods.

In 1917, however, this court decided *Francis v. West Virginia Oil Co.* (1917) 174 Cal. 168, holding that the unlawful detainer remedy was limited to landlord–tenant disputes, and therefore a new owner could not bring an unlawful detainer action against a former owner who refused to relinquish possession. In 1929, in apparent response to *Francis*, section 1161a was added to the Code of Civil Procedure, expanding the unlawful detainer remedy to bring within its scope actions by property owners who acquired ownership as a result of: (1) an execution against the former owner, (2) a foreclosure of a mortgage executed by the former owner, or (3) a power of sale clause in a deed of trust executed by the former owner. (Stats. 1929, ch. 393, § 1, p. 719; see *Vella v. Hudgins* (1977) 20 Cal.3d 251, 255 (*Vella*)). Since 1929, section 1161a has been expanded in several ways, but as to its general structure, it has not been substantively changed. Significantly, there is no indication, in the history of section 1161a or in the case law interpreting it, that the Legislature intended the unlawful detainer remedy that the statute affords to be available to a party that does not strictly satisfy all the conditions of one of the statute’s “cases.”

California Code of Civil Procedure Section 367

Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.

California Evidence Code Section 1401

(a) Authentication of a writing is required before it may be received in evidence.

(b) Authentication of a writing is required before secondary evidence of its content may be received in evidence.

EVIDENCE CODE SECTION 1200-1205

1200. (a) "Hearsay evidence" is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.

(b) Except as provided by law, hearsay evidence is inadmissible.

(c) This section shall be known and may be cited as the hearsay rule.

California Evidence Code Section 702

(a) Subject to Section 801, the testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter. Against the objection of a party, such personal knowledge must be shown before the witness may testify concerning the matter.

(b) A witness' personal knowledge of a matter may be shown by any otherwise admissible evidence, including his own testimony.

California Evidence Code Section 703

(b) Against the objection of a party, the judge presiding at the trial of an action may not testify in that trial as a witness. Upon such objection, the judge shall declare a mistrial and order the action assigned for trial before another judge.

California Evidence Code 710

Every witness before testifying shall take an oath or make an affirmation or declaration in the form provided by law, except that a child under the age of 10 or a dependent person with a substantial cognitive impairment, in the court's discretion, may be required only to promise to tell the truth.

California State Bar Rule 3.7

California Rule 3.7, titled "Lawyer as Witness," governs a lawyer's ability to act as an advocate in a trial where the lawyer is likely to be called as a witness. The rule states that a lawyer shall not act as an advocate in such a trial unless one of three conditions is met: (1) the lawyer's testimony relates to an uncontested issue or matter; (2) the lawyer's testimony relates to the nature and value of legal services rendered in the case; or (3) the lawyer has obtained informed written consent from the client. If the lawyer represents the People or a governmental entity, the consent must be obtained from the head of the office or a designee of that office

California Evidence Code 403

(a) The proponent of the proffered evidence has the burden of producing evidence as to the existence of the preliminary fact, and the proffered evidence is inadmissible unless the court finds that there is evidence sufficient to sustain a finding of the existence of the preliminary fact, when:

(1) The relevance of the proffered evidence depends on the existence of the preliminary fact;

(2) The preliminary fact is the personal knowledge of a witness concerning the subject matter of his testimony;

(3) The preliminary fact is the authenticity of a writing; or

(4) The proffered evidence is of a statement or other conduct of a particular person and the preliminary fact is whether that person made the statement or so conducted himself.

California Commercial Code Section 3302

(a) Subject to subdivision (c) and subdivision (d) of Section 3106, "holder in due course" means the holder of an instrument if both of the following apply:

(1) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity.