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CIVIL PROCEDURE

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James R. Devine

THOMSON  

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WEST

# WEST'S CALIFORNIA CODES

Includes laws through the 1979 portion of the  
1979—1980 Regular Session

COMPACT EDITION  
1980

EVIDENCE CODE

*Official Classification*

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## FOREWORD

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**T**his edition of the Evidence Code of California, *without court constructions and other annotations*, provides the members of the California Bench and Bar with a compact Code containing the full text of the law, completely indexed.

It is a companion work to WEST'S ANNOTATED CALIFORNIA CODES in which the user will find exhaustive annotations to the judicial construction and application of the Code, detailed historical notes explaining legislative changes in the provisions, references to law review commentaries, and many other informative features.

All legislative amendments and supplementary provisions through the 1979 portion of the 1979-1980 Regular Session are integrated in accordance with their official allocations.

This convenient handbook provides the practitioner with easy access to the Evidence Code for basic research and reference.

THE PUBLISHER

January, 1980

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# THE EVIDENCE CODE OF THE STATE OF CALIFORNIA

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**AN ACT to establish an Evidence Code, thereby consolidating and revising the law relating to evidence; amending various sections of the Business and Professions Code, Civil Code, Code of Civil Procedure, Corporations Code, Government Code, Health and Safety Code, Penal Code, and Public Utilities Code to make them consistent therewith; adding Sections 164.5, 3544, 3545, 3546, 3547, and 3548 to the Civil Code; adding Sections 631.7 and 1908.5 to the Code of Civil Procedure; and repealing legislation inconsistent therewith.**

**Stats.1965, c. 299.**

**Approved and filed May 18, 1965.**

**Effective January 1, 1967.**

**As amended through the 1979 portion of the 1979-1980 Regular Session.**

*The people of the State of California do enact as follows:*

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## Division 1

### PRELIMINARY PROVISIONS AND CONSTRUCTION

- |  |  |
|--|--|
| <p><b>Sec.</b></p> <ol style="list-style-type: none"> <li>1. Short title.</li> <li>2. Common law rule construing code abrogated.</li> <li>3. Constitutionality.</li> <li>4. Construction of code.</li> <li>5. Effect of headings.</li> <li>6. References to statutes.</li> <li>7. "Division," "chapter," "article," "section," "subdivision," and "paragraph."</li> <li>8. Construction of tenses.</li> <li>9. Construction of genders.</li> </ol> | <p><b>Sec.</b></p> <ol style="list-style-type: none"> <li>10. Construction of singular and plural.</li> <li>11. "Shall" and "may."</li> <li>12. Code becomes operative January 1, 1967; effect on pending proceedings.</li> </ol> <p><b>§ 1. Short title</b></p> <p style="padding-left: 2em;">This code shall be known as the Evidence Code. (Stats.1965, c. 299, § 1.)</p> |
|--|--|

**Historical Note**

Section 1 of Stats.1965, c. 299, provides: "This act shall be known as the Cobey-Song Evidence Act."

**§ 2. Common law rule construing code abrogated**

The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. This code establishes the law of this state respecting the subject to which it relates, and its provisions are to be liberally construed with a view to effecting its objects and promoting justice.

(Stats.1965, c. 299, § 2.)

**Cross References**

Similar provisions,  
Civil Code § 4.  
Code of Civil Procedure § 4.  
Commercial Code § 1102.  
Penal Code § 4.

**§ 3. Constitutionality**

If any provision or clause of this code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

(Stats.1965, c. 299, § 3.)

**Cross References**

Person, definition, see § 175.  
Similar provisions,  
Commercial Code § 1108.  
Vehicle Code § 5.

**§ 4. Construction of code**

Unless the provision or context otherwise requires, these preliminary provisions and rules of construction shall govern the construction of this code.

(Stats.1965, c. 299, § 4.)

**Cross References**

Reasonableness of interpretation, see Civil Code § 3542.  
Words and phrases, construction, see Civil Code § 13.

**§ 5. Effect of headings**

Division, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of the provisions of this code.

(Stats.1965, c. 299, § 5.)

**Cross References**

Statutes, subject and title, see Const. Art. 4, § 9.

**§ 6. References to statutes**

Whenever any reference is made to any portion of this code or of any other statute, such reference shall apply to all amendments and additions heretofore or hereafter made.

(Stats.1965, c. 299, § 6.)

**Cross References**

Statute, definition, see § 230.

**§ 7. "Division," "chapter," "article," "section," "subdivision," and "paragraph"**

Unless otherwise expressly stated:

(a) "Division" means a division of this code.

(b) "Chapter" means a chapter of the division in which that term occurs.

(c) "Article" means an article of the chapter in which that term occurs.

(d) "Section" means a section of this code.

(e) "Subdivision" means a subdivision of the section in which that term occurs.

(f) "Paragraph" means a paragraph of the subdivision in which that term occurs.

(Stats.1965, c. 299, § 7.)

**§ 8. Construction of tenses**

The present tense includes the past and future tenses; and the future, the present.

(Stats.1965, c. 299, § 8.)

**§ 9. Construction of genders**

The masculine gender includes the feminine and neuter.

(Stats.1965, c. 299, § 9.)

**§ 10. Construction of singular and plural**

The singular number includes the plural; and the plural, the singular.

(Stats.1965, c. 299, § 10.)

**§ 11. "Shall" and "may"**

"Shall" is mandatory and "may" is permissive.

(Stats.1965, c. 299, § 11.)

**§ 12. Code becomes operative January 1, 1967; effect on pending proceedings**

(a) This code shall become operative on January 1, 1967, and shall govern proceedings in actions brought on or after that date and, except as provided in

subdivision (b), further proceedings in actions pending on that date.

(b) Subject to subdivision (c), a trial commenced before January 1, 1967, shall not be governed by this code. For the purpose of this subdivision:

(1) A trial is commenced when the first witness is sworn or the first exhibit is admitted into evidence and is terminated when the issue upon which such evidence is received is submitted to the trier of fact. A new trial, or a separate trial of a different issue, commenced on or after January 1, 1967, shall be governed by this code.

(2) If an appeal is taken from a ruling made at a trial commenced before January 1, 1967, the appellate court shall apply the law applicable at the time of the commencement of the trial.

(c) The provisions of Division 8 (commencing with Section 900) relating to privileges shall govern any claim of privilege made after December 31, 1966. (Stats.1965, c. 299, § 12.)

#### Cross References

Action, defined, see § 105.

Privileges, scope of application, see §§ 901, 910, 920.

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## Division 2

# WORDS AND PHRASES DEFINED

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100.	Application of definitions.
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110.	"Burden of producing evidence."
115.	"Burden of proof."
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140.	"Evidence."
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205.	"Real property."
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225.	"Statement."
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240.	"Unavailable as a witness."
250.	"Writing."
255.	"Original."
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### Cross References

Construction of code generally,

- Gender, see § 9.
- Plural number, see § 10.
- Singular number, see § 10.
- Tense, see § 8.

Other definitions of general application,

- Article, see § 7.
- Authentication of a writing, see § 1400.
- Chapter, see § 7.
- Cross-examination, see § 761.
- Direct examination, see § 760.
- Division, see § 7.
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- Leading question, see § 764.
- May, see § 11.
- Paragraph, see § 7.
- Presumption, see § 600.
- Presumption affecting the burden of producing evidence, see § 603.
- Presumption affecting the burden of proof, see § 605.
- Redirect examination, see § 762.
- Recross-examination, see § 763.
- Section, see § 7.
- Shall, see § 11.
- Subdivision, see § 7.

Words and phrases, construction, see Civil Code § 13.

### § 100. Application of definitions

Unless the provision or context otherwise requires, these definitions govern the construction of this code. (Stats.1965, c. 299, § 100.)

### § 105. "Action"

"Action" includes a civil action and a criminal action.

(Stats.1965, c. 299, § 105.)

### Cross References

Definitions,

- Civil action, see § 120.
- Criminal action, see § 130.

### § 110. "Burden of producing evidence"

"Burden of producing evidence" means the obligation of a party to introduce evidence sufficient to avoid a ruling against him on the issue.

(Stats.1965, c. 299, § 110.)

### Cross References

Evidence, definition, see § 140.

Order of proceedings, production of evidence, see Code of Civil Procedure § 607.

Party who has burden of producing evidence, see § 550.

Presumptions affecting burden of producing evidence, see §§ 603, 604, 630.

### § 115. "Burden of proof"

"Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt.

Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

(Stats.1965, c. 299, § 115.)

**Cross References**

Assignment of burden of proof, see §§ 500 to 522.

Definitions,

Law, see § 160.

Proof, see § 190.

Presumptions affecting burden of proof, see §§ 605 to 607, 660.

**§ 120. "Civil action"**

"Civil action" includes civil proceedings.

(Stats.1965, c. 299, § 120.)

**Cross References**

Criminal action, definition, see § 130.

**§ 125. "Conduct"**

"Conduct" includes all active and passive behavior, both verbal and nonverbal.

(Stats.1965, c. 299, § 125.)

**§ 130. "Criminal action"**

"Criminal action" includes criminal proceedings.

(Stats.1965, c. 299, § 130.)

**§ 135. "Declarant"**

"Declarant" is a person who makes a statement.

(Stats.1965, c. 299, § 135.)

**Cross References**

Hearsay declarant, see §§ 1202, 1203.

Statement, definition, see § 225.

**§ 140. "Evidence"**

"Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

(Stats.1965, c. 299, § 140.)

**Cross References**

Books, maps and charts, see § 1341.

Definitions,

Evidence, see Water Code § 1076.

Proof, see § 190.

Writing, see § 250.

Hearsay evidence, see § 1200 et seq.

Judicial notice, instruction to jury, see § 457.

Jury's use of exhibits during deliberation, see Code of Civil Procedure § 612.

Jury view,

Civil case, see Code of Civil Procedure § 651.

Criminal case, see Penal Code § 1119.

Presumption not evidence, see § 600.

**§ 145. "The hearing"**

"The hearing" means the hearing at which a question under this code arises, and not some earlier or later hearing.

(Stats.1965, c. 299, § 145.)

**§ 150. "Hearsay evidence"**

"Hearsay evidence" is defined in Section 1200. (Stats.1965, c. 299, § 150.)

**§ 160. "Law"**

"Law" includes constitutional, statutory, and decisional law.

(Stats.1965, c. 299, § 160.)

**Cross References**

Definitions and sources of law, see Civil Code § 22 et seq.

Maxims of jurisprudence, see Civil Code § 3509 et seq.

**§ 165. "Oath"**

"Oath" includes affirmation or declaration under penalty of perjury.

(Stats.1965, c. 299, § 165.)

**Cross References**

Beliefs of witness, see Code of Civil Procedure §§ 2095 to 2097.

Form of oath, see Code of Civil Procedure § 2094.

**§ 170. "Perceive"**

"Perceive" means to acquire knowledge through one's senses.

(Stats.1965, c. 299, § 170.)

**§ 175. "Person"**

"Person" includes a natural person, firm, association, organization, partnership, business trust, corporation, or public entity.

(Stats.1965, c. 299, § 175.)

**Cross References**

Public entity, definition, see § 200.

**§ 180. "Personal property"**

"Personal property" includes money, goods, chattels, things in action, and evidences of debt.

(Stats.1965, c. 299, § 180.)

**Cross References**

Personal property, generally, see Civil Code § 946 et seq.

"Real property", defined, see § 205.

**§ 185. "Property"**

"Property" includes both real and personal property.

(Stats.1965, c. 299, § 185.)

**Cross References**

Definitions,  
 Personal property, see § 180.  
 Real property, see § 205.  
 Property, generally, see Civil Code § 654 et seq.

**§ 190. "Proof"**

"Proof" is the establishment by evidence of a requisite degree of belief concerning a fact in the mind of the trier of fact or the court.  
 (Stats.1965, c. 299, § 190.)

**Cross References**

Burden of proof, see § 115.  
 Definitions,  
 Evidence, see § 140.  
 Trier of fact, see § 235.  
 Jury as exclusive judges of all questions of fact, see Code of Civil Procedure § 608.  
 Order of proof, see §§ 320, 408; Code of Civil Procedure §§ 607, 681.7; Penal Code §§ 1093, 1094.  
 Party with burden of proof, see § 500.  
 Sufficiency of evidence, judgment notwithstanding verdict, see Code of Civil Procedure § 629.  
 Trial by court, see Code of Civil Procedure § 681 et seq.

**§ 195. "Public employee"**

"Public employee" means an officer, agent, or employee of a public entity.  
 (Stats.1965, c. 299, § 195.)

**Cross References**

Definitions,  
 Public entity, see § 200.  
 Public officers and employees, see Government Code § 8101;  
 Military and Veterans Code §§ 389, 395.3.

**§ 200. "Public entity"**

"Public entity" includes a nation, state, county, city and county, city, district, public authority, public agency, or any other political subdivision or public corporation, whether foreign or domestic.  
 (Stats.1965, c. 299, § 200.)

**Cross References**

State, definition, see § 220.

**§ 205. "Real property"**

"Real property" includes lands, tenements, and hereditaments.  
 (Stats.1965, c. 299, § 205.)

**Cross References**

"Personal property", defined, see § 180.  
 Real property, generally, see Civil Code § 755 et seq.

**§ 210. "Relevant evidence"**

"Relevant evidence" means evidence, including evidence relevant to the credibility of a witness or

hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.  
 (Stats.1965, c. 299, § 210.)

**Cross References**

Admissibility of relevant evidence, see §§ 350, 351.  
 Definitions,  
 Action, see § 105.  
 Declarant, see § 135.  
 Evidence, see § 140.  
 Proof, see § 190.

**§ 220. "State"**

"State" means the State of California, unless applied to the different parts of the United States. In the latter case, it includes any state, district, commonwealth, territory, or insular possession of the United States.  
 (Stats.1965, c. 299, § 220.)

**Cross References**

"State" as including District of Columbia and the territories, see Code of Civil Procedure § 17(7).

**§ 225. "Statement"**

"Statement" means (a) oral or written verbal expression or (b) nonverbal conduct of a person intended by him as a substitute for oral or written verbal expression.  
 (Stats.1965, c. 299, § 225.)

**Cross References**

Definitions,  
 Conduct, see § 125.

**§ 230. "Statute"**

"Statute" includes a treaty and a constitutional provision.  
 (Stats.1965, c. 299, § 230.)

**Cross References**

Written laws; constitution; statutes, see Code of Civil Procedure §§ 1895 to 1897.

**§ 235. "Trier of fact"**

"Trier of fact" includes (a) the jury and (b) the court when the court is trying an issue of fact other than one relating to the admissibility of evidence.  
 (Stats.1965, c. 299, § 235.)

**Cross References**

Evidence, definition, see § 140.  
 Jury as exclusive judges of all questions of fact, see Code of Civil Procedure § 608.  
 Trial by court, see Code of Civil Procedure § 681 et seq.



§ 240. "Unavailable as a witness"

(a) Except as otherwise provided in subdivision (b), "unavailable as a witness" means that the declarant is:

(1) Exempted or precluded on the ground of privilege from testifying concerning the matter to which his statement is relevant;

(2) Disqualified from testifying to the matter;

(3) Dead or unable to attend or to testify at the hearing because of then existing physical or mental illness or infirmity;

(4) Absent from the hearing and the court is unable to compel his attendance by its process; or

(5) Absent from the hearing and the proponent of his statement has exercised reasonable diligence but has been unable to procure his attendance by the court's process.

(b) A declarant is not unavailable as a witness if the exemption, preclusion, disqualification, death, inability, or absence of the declarant was brought about by the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the declarant from attending or testifying. (Stats.1965, c. 299, § 240.)

**Cross References**

Confronting adverse witnesses, right of defendant, see Penal Code § 686.

Definitions,

Declarant, see § 135.

Hearing, see § 145.

Statement, see § 225.

Depositions and discovery, see Code of Civil Procedure § 2016 et seq.

Disqualification of witness, see §§ 700, 701.

Examination of witnesses conditionally in criminal cases, see Penal Code § 1335 et seq.

Former testimony, see §§ 1290 to 1292; Penal Code § 686.

Immunity of foreign witnesses, see Penal Code § 1334.4.

Privileges, see § 900 et seq.

Subpoenaed witness, attendance, see Code of Civil Procedure § 2064.

Witnesses in criminal actions, see Penal Code § 1321 et seq.

**United States Code Annotated**

Right to be confronted with witnesses, see U.S.C.A.Const. Amend. 6.

§ 250. "Writing"

"Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

(Stats.1965, c. 299, § 250.)

**Cross References**

Writing, defined, see, also, Uniform Commercial Code § 1201; Code of Civil Procedure § 17.

§ 255. "Original"

"Original" means the writing itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

(Added by Stats.1977, c. 708, § 1.)

**Cross References**

Definitions,

Person, see § 175.

Writing, see § 250.

§ 260. "Duplicate"

A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, or by chemical reproduction, or by other equivalent technique which accurately reproduces the original.

(Added by Stats.1977, c. 708, § 2.)

**Cross References**

Original, see § 255.

## Division 3

# GENERAL PROVISIONS

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### CHAPTER 1. APPLICABILITY OF CODE

Sec.  
300. Applicability of code.

#### § 300. Applicability of code

Except as otherwise provided by statute, this code applies in every action before the Supreme Court or a court of appeal, superior court, municipal court, or justice court, including proceedings in such actions conducted by a referee, court commissioner, or similar officer, but does not apply in grand jury proceedings.

(Stats.1965, c. 299, § 300. Amended by Stats.1967, c. 17, § 35.)

#### Cross References

Administrative proceedings, see Government Code § 11513.  
 Conciliation proceedings, see Code of Civil Procedure § 1768.  
 Court commissioners, see Code of Civil Procedure § 259 et seq.; Government Code § 70141 et seq.  
 Criminal action, applicability of rules of evidence, see Penal Code § 1102.  
 Definitions,  
   Action, see § 105.  
   Statute, see § 230.  
 Depositions and discovery, see Code of Civil Procedure § 2016 et seq.  
 Dissenting shareholders, determination of issues, see Corporations Code § 1304.  
 Grand jury proceedings, reception of evidence, see Penal Code § 939.6.  
 Probation officer's report, see Penal Code § 1203.  
 Recovery of specific, real or personal property, trial by referee of issues of fact, see Code of Civil Procedure § 592.  
 References and trials by referees, see Code of Civil Procedure § 638 et seq.  
 Small claims courts, see Code of Civil Procedure § 116 et seq.  
 Social study by probation officer, use in juvenile court, see Welfare & Institutions Code § 706.

### CHAPTER 2. PROVINCE OF COURT AND JURY

Sec.  
310. Questions of law for court.  
 311. Procedure when foreign or sister-state law cannot be determined.  
 312. Jury as trier of fact.

#### § 310. Questions of law for court

(a) All questions of law (including but not limited to questions concerning the construction of statutes and other writings, the admissibility of evidence, and other rules of evidence) are to be decided by the court. Determination of issues of fact preliminary to the admission of evidence are to be decided by the court as provided in Article 2 (commencing with Section 400) of Chapter 4.

(b) Determination of the law of an organization of nations or of the law of a foreign nation or a public entity in a foreign nation is a question of law to be determined in the manner provided in Division 4 (commencing with Section 450).

(Stats.1965, c. 299, § 310.)

#### Cross References

Charge to jury, see Code of Civil Procedure § 608.  
 Comment on evidence, see Const. Art. 6, § 10; Penal Code § 1127.  
 Criminal action, questions for court and jury, see Penal Code §§ 1124 to 1127.  
 Definitions,  
   Evidence, see § 140.  
   Law, see § 160.  
   Statute, see § 230.  
   Writing, see § 250.  
 Distrust of evidence produced when stronger evidence available, see § 412.  
 Failure to explain or deny evidence, see § 413.  
 Foreign law, see § 311.  
 Instructions,  
   Burden of proof, see § 502.  
   Matter judicially noticed, see § 457.  
 Issue of law, trial by court, see Code of Civil Procedure § 591.  
 Judicial notice, see § 450 et seq.  
 Jury as exclusive judges of all questions of fact, see Code of Civil Procedure § 608.  
 Jury as trier of fact, see § 312.  
 Office of judge in construing statute or instrument, see Code of Civil Procedure § 1858.  
 Pleading of statute or ordinance, judicial notice, see Penal Code § 963.