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PRACTICE QUESTIONS

The State Bar of California (Legal Specialist Examination) - Test Center

ACI

Appellate Civil Law

EDITION

Demo

QUESTIONS

9

FORMAT

Limited Edition PDF

Before you begin

What this is

9 practice questions for The State Bar of California (Legal Specialist Examination) - Test Center **ACI**, each with its answer key and an explanation. Answer a question before you read its key — the explanation is worth more once you have committed.

If something looks wrong

Send us three things and we will check it:

- the exam code, **ACI**
- the question number
- the email address on your order

Write to **support@mometrix.net**. We reply within one business day.

QUESTION 1

SINGLE CHOICE

In a California unlimited civil case, which court has subject matter jurisdiction over an appeal from a superior court judgment?

- ☐ A California Supreme Court
- ☒ B Court of Appeal in the appropriate district
- ☐ C Superior Court Appellate Division
- ☐ D United States Court of Appeals for the Ninth Circuit

ANSWER B

WHY Under the California Constitution, article VI, section 11, appeals from superior court in unlimited civil cases lie to the Court of Appeal. The Supreme Court has discretionary review (Cal. Const., art. VI, § 12). The Appellate Division hears appeals in limited civil and misdemeanor matters, not unlimited civil cases. The federal Ninth Circuit would only have jurisdiction if there were a federal question or diversity and the case had reached final judgment in federal court.

QUESTION 2

SINGLE CHOICE

A party wishes to appeal a judgment entered by a California superior court in an unlimited civil case after a noticed motion for reconsideration was denied. Under California Rules of Court, rule 8.104, what is the standard time within which a notice of appeal must be filed from the order denying the motion for reconsideration?

- ☐ A 30 days after service of notice of entry of judgment
- ☒ B 60 days after the clerk mails notice of entry of judgment, or 60 days after entry if no notice was mailed
- ☐ C 90 days after entry of judgment
- ☐ D 180 days after entry of judgment

ANSWER B

WHY California Rules of Court, rule 8.104(a)(1) sets the normal appeal period at 60 days after the clerk mails notice of entry of judgment or a file-stamped copy of the judgment, or 60 days after entry if the clerk does not mail notice. Rule 8.108 tolls this period while certain post-judgment motions (including motions for reconsideration under Code of Civil Procedure § 1008(a)) are pending, and rule 8.104(e) clarifies that the deadline runs from the order disposing of the last such motion. The 30-day period in (a)(2) applies only when the appealing party was not served with notice of entry. The 90-day period referenced in some federal contexts does not apply to California civil appeals from superior court.

QUESTION 3

SINGLE CHOICE

Under California Rules of Court, rule 8.130, which paper must the appellant designate to prepare the clerk's transcript?

- ☐ A A designation with the reviewing court within 30 days of filing the notice of appeal
- ☒ B A designation served on the trial court clerk with proof of service on opposing counsel within 10 days after the notice of appeal is filed
- ☐ C A written request filed with the court reporter within 30 days of the notice of appeal
- ☐ D An oral request to the trial court at the status conference

ANSWER B

WHY Rule 8.130(b)(1) requires the appellant to serve and file a designation of the clerk's transcript with the trial court clerk within 10 days after filing the notice of appeal. The reporter's transcript is governed by rule 8.130(b)(4)–(6), but the question addresses the clerk's transcript designation. The trial court clerk prepares the transcript; the designation is not filed with the reviewing court, and there is no oral-request mechanism at a status conference.

QUESTION 4

SINGLE CHOICE

Which of the following orders is appealable under Code of Civil Procedure § 904.1, as construed by California courts?

- ☐ A An order sustaining a demurrer with leave to amend
- ☐ B An order denying a motion to disqualify counsel under Code of Civil Procedure § 170.6
- ☒ C **A final judgment disposing of all causes of action between all parties**
- ☐ D An order granting summary adjudication of a single cause of action when other causes of action remain pending

ANSWER C

WHY Section 904.1 makes a final judgment appealable. An order sustaining a demurrer with leave to amend is not a final judgment; it is reviewable after judgment by election in the respondent's brief or on appeal from the final judgment. Under § 170.6(d), an order denying a § 170.6 motion is not directly appealable. Summary adjudication of one cause of action is generally not appealable while other causes of action remain pending because it is not final.

QUESTION 5

SINGLE CHOICE

On appeal of a superior court's order granting summary judgment, the Court of Appeal applies which standard of review?

- ☐ A Substantial evidence review of the trial court's findings
- ☒ B Independent (de novo) review, examining the moving party's declarations and evidence to determine whether a triable issue of material fact exists
- ☐ C Abuse of discretion on all rulings, including legal determinations
- ☐ D Deference to the trial court's credibility findings on conflicting declarations

ANSWER B

WHY California courts review summary judgment de novo (e.g., *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826; *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763). The appellate court exercises independent judgment about whether triable issues of fact exist, viewing the evidence in the light most favorable to the non-moving party. Substantial evidence review applies to factual findings after trial, not summary judgment. Abuse of discretion is not the standard for the legal sufficiency question on summary judgment.

QUESTION 6

SINGLE CHOICE

A party seeks immediate review of a superior court order that, although not appealable, presents a claimed miscarriage of justice. Which mechanism is most appropriate?

- ☐ A Notice of appeal under Code of Civil Procedure § 904.1
- ☐ B Motion for reconsideration under Code of Civil Procedure § 1008 with the superior court
- ☒ C Petition for writ of mandate under Code of Civil Procedure § 1087 filed in the Court of Appeal
- ☐ D Peremptory writ of mandamus filed in the superior court

ANSWER C

WHY When an order is not directly appealable, a petition for an extraordinary writ (typically a petition for writ of mandate under Cal. Code Civ. Proc. § 1087, or a petition for writ of supersedeas/prohibition) in the Court of Appeal is the appropriate vehicle to seek immediate review. The Supreme Court in case law has emphasized use of extraordinary writs in trial-court settings only when the remedy by appeal is inadequate. A § 1008 motion for reconsideration is directed to the same court and is not appellate review.

QUESTION 7

SINGLE CHOICE

Under California Rules of Court, rule 8.108, filing a timely notice of intention to move for a new trial in an unlimited civil case has what effect on the time to appeal from the judgment?

- ☐ A It has no effect; the deadline for filing the notice of appeal is unchanged
- ☒ B It extends the time to appeal from the judgment until the earliest of 30 days after entry of the order denying the motion, 30 days after denial by operation of law, or 180 days after entry of judgment
- ☐ C It extends the time to appeal for a full year
- ☐ D It terminates the right to appeal until the trial court issues a final order

ANSWER B

WHY Rule 8.108(a)(1)(A)–(B) extends the time to appeal from the judgment when a valid notice of intention to move for new trial is filed within the deadlines set in Code of Civil Procedure § 660. The new deadline runs from the earliest of (1) entry of the order denying the motion, (2) denial by operation of law under § 660, or (3) 180 days after entry of judgment. The motion does not extinguish the appeal; rather, it tolls/extends the deadline. There is no automatic 1-year extension.

QUESTION 8

SINGLE CHOICE

Under California Rules of Court, rule 8.272, when does a Court of Appeal decision become final?

- ☐ A Immediately upon the issuance of the opinion
- ☐ B 30 days after filing if no rehearing is sought and no supersedeas is issued
- ☒ C 60 days after filing if no petition for review is filed, or upon final Supreme Court determination if review is granted and no supersedeas is issued
- ☐ D 90 days after filing if no petition for review is filed

ANSWER C

WHY Rule 8.272(a) provides the timelines for finality. A Court of Appeal decision is final 60 days after filing if no petition for review is filed in the Supreme Court, or 30 days after filing if no petition for rehearing pending and the time to seek Supreme Court review is exhausted differently. In practice, finality comes 60 days after filing of the opinion if no review is sought, and earlier if the Supreme Court denies review without further activity, or upon Supreme Court determination. Remittitur is governed by rules 8.272–8.276.

QUESTION 9

MULTIPLE CHOICE

An appellate practitioner is preparing a civil appeal in California. Which of the following are mandatory steps before briefing, under the California Rules of Court? (Choose two.)

- ☒ A File the notice of appeal within the applicable time period under rule 8.104, with the correct filing fee or waiver
- ☒ B Designate the clerk's transcript within 10 days after filing the notice of appeal under rule 8.130
- ☐ C File an opening brief within 10 days of filing the notice of appeal
- ☐ D File a petition for writ of supersedeas regardless of circumstances

ANSWER A - B

WHY Rule 8.104 sets the deadlines to file a notice of appeal from a final judgment; paying the filing fee or obtaining a waiver is required for the appeal to proceed. Rule 8.130(b)(1) requires the clerk's transcript designation within 10 days after the notice of appeal is filed. Opening briefs are due much later than 10 days after the notice of appeal (typically about 30–90 days after the record is filed under rule 8.25). A petition for writ of supersedeas is only appropriate when a stay of proceedings is sought and is not universally required.