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DEERING'S CALIFORNIA CODES ANNOTATED
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7, AND 8, AND URGENCY LEGISLATION THROUGH CH 124 OF THE 2010 REGULAR SESSION

CODE OF CIVIL PROCEDURE
Part 4. Miscellaneous Provisions
Title 4. Civil Discovery Act
Chapter 2. Scope of Discovery
Article 1. General Provisions

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Cal Code Civ Proc § 2017.010 (2009)

§ 2017.010. What matters may be subject to discovery

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition, and location of any document, tangible thing, or land or other property.

HISTORY:

Added Stats 2004 ch 182 § 23 (AB 3081), operative July 1, 2005.

NOTES:

Historical Derivation:

Former CCP § 2017(a), added Stats 1986 ch 1334 § 2, amended Stats 1987 ch 86 § 2, Stats 1988 ch 160 § 19, ch 553 § 1 (ch 553 prevails), Stats 2001 ch 812 § 9.4.

Law Revision Commission Comments:

2004

Section 2017.010 continues former Section 2017(a) without change, except to replace "article" with "title."

Cross References:

"Action": *CCP § 2016.020*.

"Court": *CCP § 2016.020*.

"Document": *CCP § 2016.020*.

Stipulations modifying discovery procedures: *CCP § 2016.030*.

Protection for opponent's work product: *CCP § 2018.010* et seq.

Methods for discovery; restrictions: *CCP § 2019.010* et seq.

Sanctions for discovery abuse: *CCP § 2023.010* et seq.

Time limit on discovery: *CCP § 2024.010* et seq.

Admissibility of specific instances of plaintiff's sexual conduct: *Ev C § 1106*.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 190 "Depositions and Discovery".

Cal. Points & Authorities (Matthew Bender(R)) ch 80 "Discovery: Scope Regulation And Timing" § 80.10.

Cal. Points & Authorities (Matthew Bender(R)) ch 80 "Discovery: Scope Regulation And Timing" § 80.20.

Cal. Points & Authorities (Matthew Bender(R)) ch 80 "Discovery: Scope Regulation And Timing" § 80.24.

Cal. Points & Authorities (Matthew Bender(R)) ch 80 "Discovery: Scope Regulation And Timing" § 80.40.

Cal. Points & Authorities (Matthew Bender(R)) ch 81 "Discovery: Privileges And Other Discovery Limitations" § 81.10.

Cal. Points & Authorities (Matthew Bender(R)) ch 81 "Discovery: Privileges And Other Discovery Limitations" § 81.20.

Cal. Points & Authorities (Matthew Bender(R)) ch 81 "Discovery: Privileges And Other Discovery Limitations" § 81.297.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.31.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.45.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.50.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.100.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.101.

Cal. Points & Authorities (Matthew Bender(R)) ch 84 "Discovery: Interrogatories" § 84.11.

Cal. Points & Authorities (Matthew Bender(R)) ch 85 "Discovery: Production Or Inspection Of Tangible Evidence" § 85.11.

Cal. Points & Authorities (Matthew Bender(R)) ch 85 "Discovery: Production Or Inspection Of Tangible Evidence" § 85.30.

Cal. Points & Authorities (Matthew Bender(R)) ch 86 "Discovery: Requests For Admissions" § 86.12.

Cal. Points & Authorities (Matthew Bender(R)) ch 86 "Discovery: Requests For Admissions" § 86.21.

Cal. Points & Authorities (Matthew Bender(R)) ch 88 "Discovery: Exchange Of Expert Witness Information" § 88.20.

Cal. Points & Authorities (Matthew Bender(R)) ch 89A "Discovery: Review Of Discovery Orders" § 89A.21.

Cal. Points & Authorities (Matthew Bender(R)) ch 89 "Discovery: Preservation Of Evidence" § 89.10.

Cal. Points & Authorities (Matthew Bender(R)) ch 89 "Discovery: Preservation Of Evidence" § 89.11.

Cal. Fam. Law Practice & Procedure (Matthew Bender(R)), § 110.12.

Matthew Bender (R) Practice Guide: Cal. Debt Collection and Enforcement of Judgments § 9.39[2].

Matthew Bender (R) Practice Guide: Cal. Trial and Post Trial Civil Procedure § 7.15[4].

Matthew Bender(R) Practice Guide: California Civil Discovery, 1.11, 1.15, 1.19, 2.01-2.08.

Matthew Bender(R) Practice Guide: California E-Discovery and Evidence, 2.14.

Matthew Bender(R) Practice Guide: California E-Discovery and Evidence, 5.19.

Matthew Bender(R) Practice Guide: California E-Discovery and Evidence, 6.03.

Matthew Bender(R) Practice Guide: California E-Discovery and Evidence, 6.05.

Matthew Bender(R) Practice Guide: California E-Discovery and Evidence, 7.03.

Matthew Bender(R) Practice Guide: California E-Discovery and Evidence, 7.07.

Matthew Bender(R) Practice Guide: California E-Discovery and Evidence, 7.15.

Matthew Bender(R) Practice Guide: California E-Discovery and Evidence, 8.03.

Matthew Bender(R) Practice Guide: California E-Discovery and Evidence, 8.06.

Matthew Bender(R) Practice Guide: California E-Discovery and Evidence, 8.24.

Matthew Bender(R) Practice Guide: California E-Discovery and Evidence, 9.05.

Matthew Bender(R) Practice Guide: California E-Discovery and Evidence, 10.03.

Matthew Bender(R) Practice Guide: California E-Discovery and Evidence, 10.06.

Matthew Bender(R) Practice Guide: California E-Discovery and Evidence, 10.08.

Matthew Bender(R) Practice Guide: California Landlord-Tenant Litigation, ch. 1.

Matthew Bender(R) Practice Guide: Federal Pretrial Civil Procedure in California, 24.06

7 Witkin Summary (10th ed) Constitutional Law § 581.

Cal Jur 3d (Rev) Discovery and Depositions §§ 21 et seq.

Am Jur 2d (Rev) Depositions and Discovery §§ 21 et seq.

Preparing for Discovery Under the New Act. (1986, CEB) pp 28-29, 126-128.

Handling subpoenas: How and when to do it. CEB Action Guide, Spring 1990.

Obtaining discovery: Initiating and responding to discovery procedures. CEB Action Guide, Spring 1991.

Obtaining Discovery: Initiating and Responding to Discovery Procedures. CEB Action Guide, Winter 1993.

The risk of public disclosure of confidential discovery documents. CEB Civ Litig Rep (1985) Vol 8 No. 8, p 233.

Discovery scope and limits: USCS *FRCP Rule 26(b)*.

Rutter Cal Prac Guide, Personal Injury §§ 6:10 et seq., 6:39.5 et seq.

Rutter Cal Prac Guide, Civil Procedure Before Trial, 8:65 et seq.

Forms:

Suggested forms are set out below, following notes of decisions.

Law Review Articles:

The new relevancy: An end to trial by ordeal. *64 ABAJ 59.*

Effective use of expert witnesses in California. *12 LA Law No. 11 p 29.*

Behavior Modification: Laws Are Already in Place to Restrain Attorneys Who Engage in Uncivil and Offensive Behavior. *27 Los Angeles Lawyer 30.*

Potential Innovations in Civil Discovery: Lessons for California from the State and Federal Courts. *32 McGeorge LR 1051.*

Privacy limitations on civil discovery in federal and California practice. *17 Pacific LJ 1.*

Review of Selected 1987 Legislation. *19 Pacific LJ 514.*

Discovery of an insurer's files. *20 The Forum 20.*

Behavior Modification: Laws Are Already in Place to Restrain Attorneys Who Engage in Uncivil and Offensive Behavior. *27 Los Angeles Lawyer 30.*

A New Theory of Relativity: The Triumph of the Irrelevant at Depositions. *36 UWLALR 56.*

Case Strategy: Discovery Sanctions in Federal and State Court. *29 LA Law 29 (Fall, 2006).*

Annotations:

Discovery or inspection of trade secret, formula, or the like. *17 ALR2d 383.*

Power of court to order disinterment and autopsy or examination for evidential purposes in civil case. *21 ALR2d 538.*

Form, particularity, and manner of designation required in subpoena duces tecum for production of corporate books, records, and documents. *23 ALR2d 862.*

Court's power to determine, upon government's claim of privilege, whether official information contains state secrets or other matters disclosure of which is against public interest. *32 ALR2d 391.*

Names and addresses of witnesses to accident or incident as subject of pretrial discovery. *37 ALR2d 1152.*

Privilege against self-incrimination as to testimony before grand jury. *38 ALR2d 225.*

Propriety of compelling witness to testify, in pretrial proceeding, as to matters which would be prohibited in trial testimony by dead man's statute. *42 ALR2d 578.*

Discovery and inspection of income tax returns in actions between private individuals. *70 ALR2d 240.*

Statements of parties or witnesses as subject of pretrial or other disclosure, production, or inspection. *73 ALR2d 12.*

Availability of writ of prohibition to prevent illegal or unauthorized taking of depositions. *73 ALR2d 1169.*

Pretrial examination or discovery to ascertain from defendant in action for injury, death, or damages, existence and amount of liability insurance and insurer's identity. *13 ALR3d 822.*

Scope of defendant's duty of pretrial discovery in medical malpractice action. *15 ALR3d 1446.*

Discovery, in products liability case, of defendant's knowledge as to injury to or complaints by others than plaintiff, related to product. *20 ALR3d 1430.*

Commencing action involving physical condition of plaintiff or decedent as waiving physician-patient privilege as to discovery proceedings. *21 ALR3d 912.*

Pretrial discovery of defendant's financial worth on issue of damages. *27 ALR3d 1375.*

Privileged nature of communications between insurer and insured. *85 ALR3d 1161.*

Absent or unnamed class members in class action in state court as subject to discovery. *28 ALR4th 986.*

Right of attorney to conduct ex parte interviews with corporate party's nonmanagement employees. *50 ALR4th 652*.

Discovery of defendant's sales, earnings, and profits on issue of punitive damages in tort action. *54 ALR4th 998*.

Superseded by Bank's liability, under state law, for disclosing financial information concerning depositor or customer. *81 ALR4th 377*.

Propriety and extent of state court protective order restricting party's right to disclose discovered information to others engaged in similar litigation. *83 ALR4th 987*.

Discovery for purposes of determining whether class action requirements under Rule 23(a) and (b) of Federal Rules of Civil Procedure are satisfied. *24 ALR Fed 872*.

Discovery of bank examination reports and use of bank examiner privilege or bank examination privilege in federal civil proceedings. *151 ALR Fed 643*.

Hierarchy Notes:

Pt. 4, Tit. 4 Note

NOTES OF DECISIONS

Decisions Under Current Law

1. Generally 2. Relevance 3. Admissibility of Evidence 4. Potential Witnesses

Decisions under Former CCP § 2017 (1986):

1. Generally 2. Construction 3. Application 4. Legislative Intent 5. Relevance 6. Privilege and Confidentiality 7. Admissibility of Evidence 8. Insurance 9. Sexual Tort 10. Actions Generally

Decisions under Former CCP § 2017 (1872, 1957):

1. Generally 2. Construction 3. Application 4. Legislative Intent 5. Relevance 6. Privilege and Confidentiality 7. Admissibility of Evidence 8. Insurance 9. Financial Condition of Party 10. Limitations on Scope 11. Actions Generally

Decisions Under Current Law

1. Generally

In a city's action seeking the return of funds deposited in a bank and pledged as collateral for a loan to a developer under the supervision of a local redevelopment agency, the trial court erred in denying the bank's motion for a continuance to obtain discovery because evidence of the origins and ownership of the pledged funds was relevant under *CCP § 2017.010* to show that the funds belonged to the agency and was not unreasonably cumulative or duplicative under *CCP § 2019.030(a)(1)*. *City of King City v. Community Bank of Central California* (2005, Cal App 6th Dist) 131 Cal App 4th 913, 32 Cal Rptr 3d 384, 2005 Cal App LEXIS 1219, modified, rehearing denied (2005, Cal App 6th Dist) 2005 Cal App LEXIS 1387, review denied (2005, Cal) 2005 Cal LEXIS 13081.

CCP § 2019.210 is not limited in its application to a cause of action under the Uniform Trade Secrets Act, *CCP §§ 3426-3426.11*, for misappropriation of the trade secret, but extends to any cause of action which relates to the trade secret. The trade secret designation mandated by § 2019.210 is not itself a pleading but functions like one in a trade secret case because it limits the scope of discovery in much the same way as the allegations of a complaint limit

discovery in other types of civil actions, and it means that a plaintiff must make some showing that is reasonable under all the circumstances to identify its alleged trade secret in a manner that will allow the trial court to control the scope of subsequent discovery, protect all parties' proprietary information, and allow them a fair opportunity to prepare and present their best case or defense at a trial on the merits. *Advanced Modular Sputtering, Inc. v. Superior Court* (2005, Cal App 2d Dist) 132 Cal App 4th 826, 33 Cal Rptr 3d 901, 2005 Cal App LEXIS 1433, rehearing denied (2005) 2005 Cal. App. LEXIS 1685, review denied (2005, Cal) 2005 Cal LEXIS 13061.

In a putative class action lawsuit alleging wage and hour violations, the employer's request for discovery of the identities of all putative class members who contacted the employees' counsel in response to a neutral letter was within the broad scope of discovery because some class members who contacted counsel might have relevant information. *Tien v. Superior Court* (2006, Cal App 2d Dist) 139 Cal App 4th 528, 43 Cal Rptr 3d 121, 2006 Cal App LEXIS 720.

Contact information regarding the identity of potential class members is generally discoverable, so that the lead plaintiff may learn the names of other persons who might assist in prosecuting the case. Such disclosure involves no revelation of personal or business secrets, intimate activities, or similar private information, and threatens no undue intrusion into one's personal life, such as mass-marketing efforts or unsolicited sales pitches. *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal 4th 360, 53 Cal Rptr 3d 513, 150 P3d 198, 2007 Cal LEXIS 553.

Right to inspect and copy documentary information under the provisions of *B & P C* § 809.2(d) is not subject to the California Civil Discovery Act, *CCP* § 2016.010 et seq. Apart from statute, there is no "common law" that authorizes terminating sanctions for the failure of a party to comply with *B & P C* § 809.2(d). *Mileikowsky v. West Hills Hospital and Medical Center* (2007, 2d Dist) 151 Cal App 4th 1249, 2007 Cal App LEXIS 951.

Federal Railroad Labor Act does not preempt California's Civil Discovery Act during the pendency of a Federal Employers' Liability Act, 45 USCS § 51 et seq., action where the discovery provisions provide an adequate means of obtaining medical information and employer's use of extra-judicial discovery is merely a pretext to gain an unfair advantage in the underlying action. *Pratt v. Union Pacific Railroad Co.* (2008, 3d Dist) 168 Cal App 4th 165, 2008 Cal App LEXIS 2027.

In employee's suit against his railroad company employer under the Federal Employers' Liability Act, 45 USCS § 51 et seq., and the federal Locomotive Inspection Act, 49 USCS § 20701 et seq., for personal injuries suffered at work, the federal Railroad Labor Act did not preempt trial court's authority to prohibit employer from compelling employee to attend a medical examination or conducting a disciplinary hearing to terminate employee's employment for refusing to provide employer with medical evidence justifying his continued absence from work because California's Civil Discovery Act granted employee an independent right to protective relief that could be resolved without considering the terms of employer's collective bargaining agreement; disciplinary hearing was nothing but a pretext to obtain an unfair advantage in the action by circumventing the rules of discovery and interfering with employee's right to counsel. *Pratt v. Union Pacific Railroad Co.* (2008, 3d Dist) 168 Cal App 4th 165, 2008 Cal App LEXIS 2027.

2. Relevance

In a consumer's action alleging fair credit reporting violations, evidence that other debtors were similarly subjected to inaccurate reporting was relevant because it could support the consumer's claim for punitive damages under *CC* § 1785.31(a)(2)(B); hence, a letter to other debtors requesting such information was permissible. *Experian Information Solutions, Inc. v. Superior Court* (2006, Cal App 4th Dist) 138 Cal App 4th 122, 41 Cal Rptr 3d 219, 2006 Cal App LEXIS 459.

In an action alleging tortious bad faith in a delayed payment of underinsured motorist coverage, information regarding claims-adjustment software was potentially discoverable under *CCP* § 2017.010, even if the adjuster did not use the software in evaluating claim. Deposition questions were not objectionable on the ground the answers might be excluded at trial. *Wilson v. 21st Century Ins. Co.* (2006, Cal App 2d Dist) 136 Cal App 4th 97, 38 Cal Rptr 3d 514, 2006

Cal App LEXIS 114, rehearing denied *Wilson v. 20th Century Insurance Company* (2005) 2006 Cal. App. LEXIS 305, aff'd *Wilson v. 21st Century Insurance Co.* (2007, Cal) 42 Cal 4th 713, 68 Cal Rptr 3d 746, 171 P 3d 1082, 2007 Cal LEXIS 13314.

As a special proceeding of a civil nature, a civil commitment proceeding under the California Sexually Violent Predators Act (SVPA), *Cal. Welf. & Inst. Code* § 6600 et seq., must apply the rules set forth in the California Civil Discovery Act of 1986, *CCP* § 2016 et seq. However, a defendant cannot claim the benefits of the civil discovery rules without demonstrating compliance with their requirements, and, accordingly, even though defendant in an SVPA proceeding was entitled to the victims' contact information, because he failed to make a timely demand for that information as required under the Civil Discovery Act, the trial court had no obligation to grant his request. *People v. Dixon* (2007, Cal App 4th Dist) 148 Cal App 4th 414, 56 Cal Rptr 3d 33, 2007 Cal App LEXIS 319.

Consumers pursuing an unfair competition claim against a finance company were entitled under *CCP*, § 2017.010 to discovery of how funds alleged to have been wrongfully collected were invested because that information was potentially relevant to restitution under *B & P C* § 17203. *Juarez v. Arcadia Financial, Ltd.* (2007, 4th Dist) 152 Cal App 4th 889, 2007 Cal App LEXIS 1046.

In considering whether claimant seeking underinsured motorist benefits was an insured entitled to compel arbitration, trial court was advised on remand to hear oral testimony of witnesses in the event the affidavits, declarations, and other documentary evidence submitted by the parties were sharply conflicting on the issue; Civil Discovery Act applied and the summary procedure contemplated by *CCP* § 1281.2 and *CCP* § 1290.2 would be appropriate. *Bouton v. USAA Casualty Ins. Co.* (2008, 4th Dist) 84 Cal Rptr 3d 152, 167 Cal App 4th 412, 2008 Cal App LEXIS 1569.

3. Admissibility of Evidence

In asbestos litigation, the trial court applied an incorrect standard when it limited discovery on the basis that the sought documents would be inadmissible. Under *CCP* § 2017.010 admissibility was not a prerequisite to discovery; therefore, the limitation was not justified by the argument that the sought documents were protected under *Ev C* §§ 1152 and 1154. *Volkswagen of America, Inc. v. Superior Court* (2006, Cal App 1st Dist) 139 Cal App 4th 1481, 43 Cal Rptr 3d 723, 2006 Cal App LEXIS 803.

4. Potential Witnesses

In a putative class action lawsuit alleging wage and hour violations, an opt-out notice was adequate to protect privacy rights of potential class members; they reasonably might be expected to want contact information disclosed to a class action plaintiff who sought unpaid wages, such disclosure was neither unduly personal nor overly intrusive, and their identities and locations were properly discoverable under *CCP* § 2017.010 because they were potential percipient witnesses. *Belaire-West Landscape, Inc. v. Superior Court* (2007, Cal App 2d Dist) 149 Cal App 4th 554, 57 Cal Rptr 3d 197, 2007 Cal App LEXIS 505, review denied (2007, Cal) 2007 Cal LEXIS 8065.

In a suit alleging wage and hour violations, it was error to restrict discovery of potential witnesses' addresses and telephone numbers by requiring an opt-in notification system; such information is within the scope of proper discovery under *CCP* § 2017.010 and would not significantly intrude upon potential witnesses' right to privacy under *Cal Const Art I* § 1. *Puerto v. Superior Court* (2008, 2d Dist) 2008 Cal App LEXIS 48.

Employee who filed a class action alleging wage and overtime violations could obtain discovery pursuant to *CCP* § 2017.010 of contact information for class members; there was no invasion of the privacy rights under *Cal Const Art I* § 1 of employees who had signed forms requesting nondisclosure while unaware of the litigation. *Crab Addison, Inc. v. Superior Court of Los Angeles County* (2008, 2d Dist) 169 Cal App 4th 958, 2008 Cal App LEXIS 2478.

Decisions under Former CCP § 2017 (1986): **1. Generally**

Neither *CCP § 2017(e)*, nor *CCP § 2019* provides a mechanism for the preservation of evidence; thus, a preliminary injunction issued under *CCP § 526* to prevent the employees from destroying evidence kept on electronic media was proper. *Dodge, Warren & Peters Ins. Services, Inc. v. Riley* (2003, Cal App 4th Dist) 105 Cal App 4th 1414, 130 Cal Rptr 2d 385, 2003 Cal App LEXIS 171.

CCP § 2019.210 is not limited in its application to a cause of action under the Uniform Trade Secrets Act, CCP §§ 3426-3426.11, for misappropriation of the trade secret, but extends to any cause of action which relates to the trade secret. The trade secret designation mandated by § 2019.210 is not itself a pleading but functions like one in a trade secret case because it limits the scope of discovery in much the same way as the allegations of a complaint limit discovery in other types of civil actions, and it means that a plaintiff must make some showing that is reasonable under all the circumstances to identify its alleged trade secret in a manner that will allow the trial court to control the scope of subsequent discovery, protect all parties' proprietary information, and allow them a fair opportunity to prepare and present their best case or defense at a trial on the merits. *Advanced Modular Sputtering, Inc. v. Superior Court* (2005, Cal App 2d Dist) 132 Cal App 4th 826, 33 Cal Rptr 3d 901, 2005 Cal App LEXIS 1433, rehearing denied (2005) 2005 Cal. App. LEXIS 1685, review denied (2005, Cal) 2005 Cal LEXIS 13061.

2. Construction

In applying former CCP § 2017(a), the courts had given the words "subject matter" a definition which is broader than the issues and was not limited to admissible evidence; thus, for discovery purposes, information was relevant to the "subject matter" of an action if the information might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. *Jessen v. Hartford Casualty Ins. Co.* (2003, Cal App 5th Dist) 111 Cal App 4th 698, 3 Cal Rptr 3d 877, 2003 Cal App LEXIS 1308.

3. Application

Although a motion to order a sex harassment plaintiff to submit to a psychiatric examination was made before the enactment of former CCP § 2017(d), designed to protect the privacy of plaintiffs in such cases, the statute was applicable because procedural changes generally govern pending as well as future cases. *Vinson v. Superior Court* (1987) 43 Cal 3d 833, 239 Cal Rptr 292, 740 P2d 404, 1987 Cal LEXIS 401.

In a discovery dispute over the admissibility of evidence, the issue was the admissibility of the evidence vel non. The possibility that evidence otherwise admissible might be excluded at trial under *Ev C § 352*, or some other evidentiary objection is not a relevant consideration for purposes of ruling on discovery motion. *Norton v. Superior Court* (1994, 2nd Dist) 24 Cal App 4th 1750, 30 Cal Rptr 2d 217, 1994 Cal App LEXIS 493.

4. Legislative Intent

The legislative intent of former CCP § 2017(d) (discovery of sexual history of plaintiff in sexual tort case), was that, absent extraordinary circumstances, inquiry into the plaintiff's sexual behavior should not be permitted, either in discovery or at trial. *Mendez v. Superior Court* (1988, 5th Dist) 206 Cal App 3d 557, 253 Cal Rptr 731, 1988 Cal App LEXIS 1152.

5. Relevance

Pursuant to *CCP § 2017(a)*, which makes discoverable information "relevant to the subject matter of the pending action," relevancy to the subject matter of the litigation was a broader concept than relevancy to the precise issues presented by the pleadings; the "subject matter of the action" consists of the circumstances and facts out of which the cause of action arose; it is the property, contract, or other thing involved in the dispute; it is not the act or acts that

constitute the cause of action, but it describes physical facts in relation to the suit that was being prosecuted. Information is "relevant to the subject matter" if its discovery would tend to promote settlement or assist the party in preparing for trial. *Norton v. Superior Court* (1994, 2nd Dist) 24 Cal App 4th 1750, 30 Cal Rptr 2d 217, 1994 Cal App LEXIS 493.

In an employee's action against her employer, a federal contractor, for gender-based discrimination alleging violations of the Fair Employment and Housing Act (*Gov C § 12970 et seq.*), *Cal Const Art I § 8*, and public policy, the trial court erred in denying plaintiff's discovery request (*CCP § 2031(a)*) for documents relating to defendant's affirmative action plans and their self-critical analysis required of federal contractors by federal law; the so-called "critical self-analysis" privilege recognized by some federal courts, is not a privilege that exists under California law; neither was the requested material protected from discovery by the attorney-client privilege (*Ev C § 954*), the work product doctrine (*CCP § 2018*), or the trade secret privilege (*Ev C § 1060 et seq.*). A showing that defendant failed to adhere to its own affirmative action plan as it applied to plaintiff, if that showing could be made, would be probative to her claim of gender bias, and is thus "relevant" for purposes of discovery because it appeared "reasonably calculated to lead to the discovery of admissible evidence." *Cloud v. Superior Court* (1996, Cal App 2d Dist) 50 Cal App 4th 1552, 58 Cal Rptr 2d 365, 1996 Cal App LEXIS 1079.

Pursuant to *CCP § 2017(a)*, a party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence; in the context of discovery, evidence is "relevant" if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating a settlement. Admissibility is not the test, and it is sufficient if the information sought might reasonably lead to other, admissible evidence. *Glenfed Development Corp. v. Superior Court* (1997, 2nd Dist) 53 Cal App 4th 1113, 62 Cal Rptr 2d 195, 1997 Cal App LEXIS 237.

In a sexually violent predator recommitment hearing, the defense was not entitled to confidentiality of evaluations performed by court-appointed psychological experts; *Ev C §§ 730, 732* do not authorize the appointment of confidential experts, and although *W & I C § 6603(a)* does not necessarily contemplate testimony by an appointed expert, psychological evaluations are relevant evidence under *CCP § 2017(a)*, to which the psychotherapist-patient privilege of *Ev C § 1014* does not apply because a sexually violent predator proceeding is not a criminal proceeding within the meaning of *Ev C § 1017(a)*. *People v. Angulo* (2005, Cal App 4th Dist) 129 Cal App 4th 303, 28 Cal Rptr 3d 483, 2005 Cal App LEXIS 755, reprinted as modified (2005, Cal App 4th Dist) 129 Cal App 4th 1349, 30 Cal Rptr 3d 189, 2005 Cal App LEXIS 944, modified, rehearing denied (2005) 2005 Cal. App. LEXIS 935.

6. Privilege and Confidentiality

As used in *CCP § 2017(a)*, "privileged" means the constitutional and statutory privileges, and the "qualified privileges" for such things as trade secrets, police personnel files, and tax returns. *Gonzalez v. Superior Court* (1995, 2nd Dist) 33 Cal App 4th 1539, 39 Cal Rptr 2d 896, 1995 Cal App LEXIS 342.

In an action against a sperm bank for selling sperm which allegedly transmitted a kidney disease to a child conceived by the sperm of an anonymous sperm donor, the parents and their child could compel the donor's deposition and the production of relevant documents based on the broad scope of discovery (*CCP § 2017*) and the absence of privilege or other right. The physician-patient privilege (*Ev C § 994*) was inapplicable, since the "patient" is the holder of the privilege and since the donor, who visited defendant for the sole purpose of selling his sperm, was not a patient; in addition, defendant's agreement with the parents precluding disclosure of the donor's identity and other information pertaining to the donor under all circumstances was contrary to public policy (*Fam C § 7613*) and unenforceable. As to the constitutional right to privacy (*Cal Const Art I § 1*), there were compelling state interests and, in the context of the facts presented, the state's interests, as well as those of plaintiffs, outweighed the donor's limited privacy interest; however, his identity should remain undisclosed to the fullest extent possible. *Johnson v. Superior Court* (2000, Cal App 2d Dist) 80 Cal App 4th 1050, 95 Cal Rptr 2d 864, 2000 Cal App LEXIS 390, review denied (2000, Cal) 2000 Cal

LEXIS 6741.

7. Admissibility of Evidence

Information that is not directly admissible in an action is nevertheless discoverable if it is reasonably calculated to lead to the discovery of admissible evidence; in accordance with the liberal policies underlying the discovery procedures, courts are broad-minded in determining whether a discovery request is reasonably calculated to lead to admissible evidence; since it is difficult to define at the discovery stage what evidence will be relevant at trial, the party seeking discovery is entitled to substantial leeway. California's liberal approach to discovery generally leads courts to resolve doubts in favor of permitting discovery; courts also take the view that, wherever possible, objections to discovery should be resolved by protective orders addressing the specific harm shown by the objector, as opposed to a more general attack on the relevancy of the information the proponent seeks to discover. *Norton v. Superior Court* (1994, 2nd Dist) 24 Cal App 4th 1750, 30 Cal Rptr 2d 217, 1994 Cal App LEXIS 493.

8. Insurance

Applicants for insurance are often required to divulge personal and financial information in an application, which is then incorporated into the contract of insurance; *CCP § 2017(b)*, providing for discovery of information as to insurance coverage, does not expressly exclude discovery of an application, but it does limit the discovery of insurance policies to their "contents." Thus, unless an application is made part of the policy, the application would not be separately discoverable; moreover, the discovery statutes provide ample protection against unwarranted disclosure of personal or financial information; the trial court may limit discovery on a proper showing under *CCP §§ 2017(c)* and *2019(b)*, considering whether the request is duplicative, cumulative, or unduly intrusive; *CCP § 2031(e)* permits a party on whom a request for production of documents is served to object or seek a protective order, and the trial court may make any order that justice requires to protect a party against unwarranted disclosure. *Irvington-Moore, Inc. v. Superior Court* (1993, 3rd Dist) 14 Cal App 4th 733, 18 Cal Rptr 2d 49, 1993 Cal App LEXIS 314.

In a legal malpractice action arising from defendant attorney's handling of a property damage lawsuit against a third party, the trial court erred in denying defendant's motion to compel production of documents relating to the terms and conditions of plaintiffs' recovery from their insurer for the property damage; although under the collateral source rule evidence of recovery from the insurer was not admissible to mitigate plaintiffs' damages, it was not yet determined whether the evidence was discoverable under *CCP § 2017(a)*, either as being admissible for another purpose, such as plaintiffs' motive in bringing the malpractice action, or as leading to the discovery of admissible evidence; thus, it was necessary for the trial court to inspect the requested documents in camera to determine whether they were discoverable. *Norton v. Superior Court* (1994, 2nd Dist) 24 Cal App 4th 1750, 30 Cal Rptr 2d 217, 1994 Cal App LEXIS 493.

In an action alleging that an insurer wrongfully denied a claim for theft of a vehicle, the insurer had to produce other vehicle theft claims files, which could be relevant to a discrimination theory. The insured had to obtain authorizations for all files, including new authorizations for those files previously discovered in another suit. *Permanent Gen. Assurance Corp. v. Superior Court* (2004, Cal App 4th Dist) 122 Cal App 4th 1493, 19 Cal Rptr 3d 597, 2004 Cal App LEXIS 1705, modified, rehearing denied *Permanent General Assurance Corp. v. Superior Court* (2004) 2004 Cal. App. LEXIS 1890, review denied and ordered not published *Permanent General Assurance Corp. v. S.C. (Hernandez)* (2005) 2005 Cal. LEXIS 568, 2005 Cal. Daily Op. Service 565, 2005 D.A.R. 765.

Trial court erred in denying a motion to quash deposition subpoenas seeking documents concerning a liability insurer's financial condition, including its reserves and any reinsurance agreements; this information was not discoverable under *CCP § 2017(b)* or under the general relevancy rules of *§ 2017(a)*. *Catholic Mutual Relief Society v. Superior Court* (2005, Cal App 2d Dist) 128 Cal App 4th 879, 27 Cal Rptr 3d 515, 2005 Cal App LEXIS 650, aff'd (2007, Cal) 42 Cal 4th 358, 64 Cal Rptr 3d 434, 165 P 3d 154, 2007 Cal LEXIS 8917.

CCP § 2017(b) does not authorize the discovery of information related to the financial condition of a defendant's

non-party insurer. *Catholic Mutual Relief Society v. Superior Court* (2005, Cal App 2d Dist) 128 Cal App 4th 879, 27 Cal Rptr 3d 515, 2005 Cal App LEXIS 650, aff'd (2007, Cal) 42 Cal 4th 358, 64 Cal Rptr 3d 434, 165 P 3d 154, 2007 Cal LEXIS 8917.

CCP § 2017(b) is intended to reach only a defendant's insurer, not that insurer's reinsurance agreements; instead, the discoverability of reinsurance information rests on the general relevancy standards of § 2017(a). *Catholic Mutual Relief Society v. Superior Court* (2005, Cal App 2d Dist) 128 Cal App 4th 879, 27 Cal Rptr 3d 515, 2005 Cal App LEXIS 650, aff'd (2007, Cal) 42 Cal 4th 358, 64 Cal Rptr 3d 434, 165 P 3d 154, 2007 Cal LEXIS 8917.

To the extent that *CCP § 2017(b)* is based on earlier California decisions which established the discoverability of insurance information as an adjunct to *Ins C § 11580*, it does not apply to reinsurance policies. *Catholic Mutual Relief Society v. Superior Court* (2005, Cal App 2d Dist) 128 Cal App 4th 879, 27 Cal Rptr 3d 515, 2005 Cal App LEXIS 650, aff'd (2007, Cal) 42 Cal 4th 358, 64 Cal Rptr 3d 434, 165 P 3d 154, 2007 Cal LEXIS 8917.

9. Sexual Tort

To meet constitutional privacy demands, the requirement of *CCP § 2017(d)* (discovery of sexual history of plaintiff in sexual tort case), that "specific facts showing good cause" must exist to allow such discovery must be interpreted as requiring factual assertions demonstrating a compelling public need for disclosure; i.e., that the requested discovery was essential to a fair resolution of the case; further, the statute's requirement that the "inquiry be relevant to the subject matter and reasonably calculated to lead to the discovery of admissible evidence" insured that the request would be narrowly drawn with specificity; these legislative protections of the plaintiff's privacy interest obviated the need to engage in an individualized balancing of constitutional privacy rights with discovery rights. *Mendez v. Superior Court* (1988, 5th Dist) 206 Cal App 3d 557, 253 Cal Rptr 731, 1988 Cal App LEXIS 1152.

In an action brought by a woman concrete truck driver for battery and employment discrimination after she was allegedly sexually harassed at work, the trial court erred in granting defendant's motion to compel discovery regarding two incidents of sexual violence suffered by plaintiff as a child; plaintiff was entitled to the protection of former *CCP § 2017(d)* (good cause required for discovery of plaintiff's sexual conduct with individuals other than defendant), notwithstanding that the prior sexual conduct involved was not consensual, and in any case defendant failed to make a showing under that subdivision sufficient to justify the trial court's order; further, even in the absence of § 2017(d), defendant would not be entitled to the discovery it sought, since that discovery was precisely the type that the legislature had declared offensive, intimidating, unnecessary, unjustifiable, and deplorable. *Knoettgen v. Superior Court* (1990, 2nd Dist) 224 Cal App 3d 11, 273 Cal Rptr 636, 1990 Cal App LEXIS 1033.

In an action by two dependent minors against a county and its employees for alleged emotional and mental injuries arising from sexual assaults in a foster home where they had been placed, the trial court erred in ordering the minors to answer deposition questions relating to sexual encounters other than those directly at issue in the litigation and in ordering the minors to undergo psychiatric examinations. The mere fact that a plaintiff has initiated an action seeking damages for extreme mental and emotional distress arising out of conduct of a sexual nature does not ipso facto provide "good cause" for discovery of other sexual conduct. The issue is resolved by balancing the right of privacy with the defendant's right to discovery, *Cal Const Art I § 1*; *CCP § 2017(d)*. Each of the questions ordered answered related to sexual activity of the minors other than incidents upon which the legal action was based; thus, it was the burden of the defendants to produce specific factual evidence to demonstrate that emotional distress resulting from this other sexual activity, if any, was directly related to injuries claimed in the litigation. Further, no declaration of a mental health professional was proffered to establish the relevance of other sexual conduct, whether before the incidents alleged or after. The defendants failed to carry their burden of proof to establish that the information sought was directly relevant to overcome the constitutional right of privacy. *Barrenda L. v. Superior Court* (1998, Cal App 2d Dist) 65 Cal App 4th 794, 76 Cal Rptr 2d 727, 1998 Cal App LEXIS 649.

In a wife's suit alleging that her husband infected her with HIV, discovery of the husband's prior sexual partners

was precluded by his constitutional right of sexual privacy. With certain limitations, the court allowed discovery of other circumstantial evidence that the husband knew or should have known that he had HIV, such as his observations of illness in prior partners and medical records that he had placed in controversy. *John B. v. Superior Court* (2004, Cal App 2d Dist) 121 Cal App 4th 1000, 18 Cal Rptr 3d 48, 2004 Cal App LEXIS 1378, rehearing denied (2004) 2004 Cal. App. LEXIS 1696, rehearing granted, depublished (2004) 21 Cal. Rptr. 3d 178, 100 P.3d 869, 2004 Cal. LEXIS 10638, 2004 Cal. Daily Op. Service 10103, affd in part and revd in part, superseded (2006) 38 Cal 4th 1177, 45 Cal Rptr 3d 316, 137 P3d 153, 2006 Cal LEXIS 8011.

10. Actions Generally

In an action for breach of contract and wrongful termination of employment in which the employer contended the plaintiff was terminated for good cause, the plaintiff was entitled to test the truth of this contention, in depositions, by exploring the chief executive officer's dealings with subordinates and posing questions designed to elicit information concerning his methods of dealing with employment-related issues, since the questions could have led to admissible evidence (CCP § 2017). The fact that some of the specific incidents took place shortly after plaintiff's termination had no significant bearing on their potential relevance; moreover, even were the questions designed to elicit irrelevant evidence, irrelevance alone was an insufficient ground to justify preventing a witness from answering deposition questions (CCP § 2025). Taken as a whole, § 2025 contemplated that deponents not be prevented by counsel from answering a question unless it pertained to privileged matters or deposing counsel's conduct had reached a stage where suspension was warranted. *Stewart v. Colonial Western Agency, Inc.* (2001, 2nd Dist) 87 Cal App 4th 1006, 105 Cal Rptr 2d 115, 2001 Cal App LEXIS 197.

Decisions under Former CCP § 2017 (1872, 1957): 1. Generally

Objections to form of question propounded under Discovery Act, such as that it assumes fact not in evidence or is compound, were for protection of witness on oral examination; when answer was to be made in writing, after due time for deliberation and consultation with counsel, answer may be framed which avoids pitfalls inherent in form of question. *West Pico Furniture Co. v. Superior Court of Los Angeles County* (1961) 56 Cal 2d 407, 15 Cal Rptr 119, 364 P2d 295, 1961 Cal LEXIS 304.

Where allegation and prayers of petition for relief from orders for discovery are broad enough to encompass appropriate remedy, it may be treated as petition for such relief and proper order may be granted. *O'Brien v. Superior Court of Alameda County* (1965, 1st Dist) 233 Cal App 2d 388, 43 Cal Rptr 815, 1965 Cal App LEXIS 1372.

The basic purpose of California's discovery statutes was to make available to litigants evidence which was relevant to the issues of an action, or matters reasonably calculated to lead to such admissible evidence; pursuant to former Ev C § 140, evidence meant testimony, writings, material objects, or other things presented to the senses that were offered to prove the existence or nonexistence of a fact; an additional purpose, where the issues were obscure, was to allow discovery of a party's contention, but not the legal reasoning or theory behind the contention. *City and County of San Francisco v. Superior Court* (1982, Cal App 1st Dist) 130 Cal App 3d 481, 181 Cal Rptr 775, 1982 Cal App LEXIS 1399.

2. Construction

Language of this section and former § 2030, relating to discovery by written interrogatories, was broad and inclusive and permits interrogatories regarding any matters relevant to pending action, including collateral matters to be decided on motion. *1880 Corp. v. Superior Court of San Francisco* (1962) 57 Cal 2d 840, 22 Cal Rptr 209, 371 P2d 985, 1962 Cal LEXIS 231.

Interrogatories filed and served by party on adverse party should be answered though they may merely pertain to pleadings; since former § 2016(3), incorporated by reference into this section, provided that interrogatories may cover

"any matter, not privileged, which was relevant to subject matter involved in the pending action, whether it relates to the claim or defense of the examining party, or to the claim or defense of any other party," interrogatories to be proper must, of necessity, pertain to pleadings. *Singer v. Superior Court of Contra Costa County* (1960) 54 Cal 2d 318, 5 Cal Rptr 697, 353 P2d 305, 1960 Cal LEXIS 168.

Former CCP § 2017(b) confined all vehicles of discovery to those matters which were "relevant to the subject matter involved in the pending action," and authorizes discovery of facts or matters not privileged, which, though they will not be admissible at trial, appear "reasonably calculated to lead to the discovery of admissible evidence" regardless of whether such relates to claim or defense. *Suezaki v. Superior Court of Santa Clara County* (1962) 58 Cal 2d 166, 23 Cal Rptr 368, 373 P2d 432, 1962 Cal LEXIS 250, 95 ALR2d 1073.

Discovery by interrogatories may be had under former § 2017(b) as to any matter relevant to subject matter involved in pending action, if matter was not privileged; it was not necessary that such matter be relevant to issue in case and thus admissible at trial, as long as testimony sought "appears reasonably calculated to lead to the discovery of admissible evidence." *Darbee v. Superior Court of San Mateo County* (1962, 1st Dist) 208 Cal App 2d 680, 25 Cal Rptr 520, 1962 Cal App LEXIS 1848.

Interrogatories propounded under this section may relate to matters inquired into under former § 2016(b), and, therefore, could be propounded regarding any nonprivileged matter relevant to subject matter of pending action, whether it related to claim or defense of either party, including existence, description, nature, custody, condition and location of books, documents or other tangible things, as well as identity and location of persons with knowledge of relevant facts. *Flora Crane Service, Inc. v. Superior Court of San Francisco* (1965, Cal App 1st Dist) 234 Cal App 2d 767, 45 Cal Rptr 79, 1965 Cal App LEXIS 1063.

Discovery by way of deposition (former CCP § 2016) or by interrogatories (former CCP § 2030), was limited in scope by the provisions of former CCP § 2016(b), which provided in part that the deponent may be examined regarding any matter, not privileged, which was relevant to the subject matter involved in the action, whether it related to the claim or defense of the examining party, or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of relevant facts. *Columbia Broadcasting System, Inc. v. Superior Court of Los Angeles County* (1968, Cal App 2d Dist) 263 Cal App 2d 12, 69 Cal Rptr 348, 1968 Cal App LEXIS 2176.

3. Application

In light of rules relating to discovery as provided by former CCP § 2016, relating to both deposition and discovery, unless matters sought to be elicited by questions on deposition were privileged against disclosure under law on trial of action, or are clearly irrelevant as determined by subject matter of action and by potential as well as actual issues, questions should be answered. *Tatkin v. Superior Court of Los Angeles County* (1958, Cal App 2d Dist) 160 Cal App 2d 745, 326 P2d 201, 1958 Cal App LEXIS 2181.

While as general rule trial court has broad discretion in permitting or denying discovery where it is sought as to nonprivileged matter directly relevant to issues before court, there was no room for exercise of discretion; party seeking to discover was entitled to it as of right. *De Mayo v. Superior Court of Los Angeles County* (1961, 2nd Dist) 189 Cal App 2d 392, 11 Cal Rptr 157, 1961 Cal App LEXIS 2191.

In addition to requirement that material sought to be shown as basis for order of court permitting production or inspection of specified photographs or moving pictures must be within scope of examination permitted by former CCP § 2017(b), party seeking disclosure needed to show no more than that discovery may be granted without abuse of inherent rights of adversary. *Suezaki v. Superior Court of Santa Clara County* (1962) 58 Cal 2d 166, 23 Cal Rptr 368, 373 P2d 432, 1962 Cal LEXIS 250, 95 ALR2d 1073.

Personal and family psychiatric history of plaintiff who sues for damages for unlawful commitment was not remote to the subject matter of such suit and was reasonably calculated to lead to discovery of admissible testimony; it was, accordingly, testimony that was procurable on deposition under former CCP § 2017(b). *Regents of University of Cal. v. Superior Court of San Francisco* (1962, *Cal App 1st Dist*) 200 *Cal App 2d* 787, 19 *Cal Rptr* 568, 1962 *Cal App LEXIS* 2774.

Pretrial discovery of any factual information which will lead to the efficacious disposition of the pending litigation by settlement or by trial should be encouraged; such discovery depends in the first instance on whether the information was relevant to the subject matter of the litigation, but relevance to the subject matter was not always enough to require discovery. *Doak v. Superior Court of Los Angeles County* (1968, *Cal App 2d Dist*) 257 *Cal App 2d* 825, 65 *Cal Rptr* 193, 1968 *Cal App LEXIS* 2512.

Although the production and inspection procedures contemplated by former CCP § 2031, may be judicially enforced only upon a showing of "good cause" (former CCP § 2034(a)), and the party required to show good cause must show specific facts justifying discovery and that the matter was relevant to the subject matter of the action or reasonably calculated to lead to the discovery of admissible evidence (former CCP § 2036(a)), the moving party need only show, in addition to relevance (broadly construed), that his reasons for seeking discovery were within the declared purposes of the Discovery Act (that is, discovery will aid his case), and that discovery might be allowed without doing violence to equity, justice, or the inherent rights of the adversary. The trial court's determination of good cause necessarily depends on the facts and issues of the particular case. *Volkswagenwerk Aktiengesellschaft v. Superior Court* (1981, *Cal App 1st Dist*) 123 *Cal App 3d* 840, 176 *Cal Rptr* 874, 1981 *Cal App LEXIS* 2165.

4. Legislative Intent

That legislature had intended that deponent could be asked questions beyond scope of questions allowed at trial was indicated by inclusion of former CCP §§ 2017(d), (e), and (f). *Greyhound Corp. v. Superior Court of Merced County* (1961) 56 *Cal 2d* 355, 15 *Cal Rptr* 90, 364 *P2d* 266, 1961 *Cal LEXIS* 302, superseded by statute as stated in questionable precedent *Magill v. Superior Court* (2001, *Cal App 5th Dist*) 86 *Cal App 4th* 61, 103 *Cal Rptr 2d* 355, 2001 *Cal App LEXIS* 14, superseded by statute as stated in *Platt v. Superior Court* (1989, *Cal App 4th Dist*) 214 *Cal App 3d* 779, 263 *Cal Rptr* 32, 1989 *Cal App LEXIS* 1025.

5. Relevance

Relevancy of evidence on taking of deposition was to be determined by subject matter of action and by potential as well as actual issues. *Tatkin v. Superior Court of Los Angeles County* (1958, *Cal App 2d Dist*) 160 *Cal App 2d* 745, 326 *P2d* 201, 1958 *Cal App LEXIS* 2181.

Fact that ruling on demurrer has eliminated issues embraced by deposition does not prevent such issues from being classed as potential. *Tatkin v. Superior Court of Los Angeles County* (1958, *Cal App 2d Dist*) 160 *Cal App 2d* 745, 326 *P2d* 201, 1958 *Cal App LEXIS* 2181.

If information received by State Bar resulting in private reproof was relevant, there was no reason in proper case such information should not be available by discovery; in such case public interest, when weighed against interest of one desiring discovery, would not suffer. *Chronicle Publishing Co. v. Superior Court of San Francisco* (1960) 54 *Cal 2d* 548, 7 *Cal Rptr* 109, 354 *P2d* 637, 1960 *Cal LEXIS* 190.

Though bad reputation was not defense to libel action but can only be considered in assessing general damages, evidence which might lead to discovery of evidence of bad reputation may be relevant in discovery proceeding. *Chronicle Publishing Co. v. Superior Court of San Francisco* (1960) 54 *Cal 2d* 548, 7 *Cal Rptr* 109, 354 *P2d* 637, 1960 *Cal LEXIS* 190.

Description of what matter may be inquired into on discovery deposition under former § 2017(b), as being relevant to subject matter involved in pending action, was broader concept than relevancy to the issues. *Pettie v. Superior Court of Los Angeles County* (1960, Cal App 2d Dist) 178 Cal App 2d 680, 3 Cal Rptr 267, 1960 Cal App LEXIS 2643.

Former § 2017(b) expressly provided that discovery may be had as to any matter which was relevant to subject matter; if legislature had intended to specify that discovery was to be limited to matters relevant to issue determinable in pending action and matters reasonably calculated to lead to discovery of admissible evidence, it could have so stated. *Rolf Homes, Inc. v. Superior Court of San Mateo County* (1960, 1st Dist) 186 Cal App 2d 876, 9 Cal Rptr 142, 1960 Cal App LEXIS 1710.

Relevancy to subject matter involved in pending suit was broader concept than relevancy to issues, and there was substantial difference in meaning between language in former § 1985, requiring showing of materiality of matters sought for inspection through use of subpoena duces tecum to issues and requirement in former § 2017(b), which applies to former § 2031, requiring that matter sought to be inspected be relevant to subject matter involved. *Flora Crane Service, Inc. v. Superior Court of San Francisco* (1965, Cal App 1st Dist) 234 Cal App 2d 767, 45 Cal Rptr 79, 1965 Cal App LEXIS 1063.

Legislature's failure to amend former § 1985 to require that matters sought to be inspected through use of subpoena duces tecum be relevant rather than material to issues in case at time § 1985 was amended to require showing of good cause for production as required in former § 2031 indicated intention not to equate materiality to issues in § 1985 with relevancy to subject matter in § 2017(d) and § 2031. *Flora Crane Service, Inc. v. Superior Court of San Francisco* (1965, Cal App 1st Dist) 234 Cal App 2d 767, 45 Cal Rptr 79, 1965 Cal App LEXIS 1063.

The law provided no precise or universal test of relevancy, as required in depositions, and the question must be determined in each case according to the teachings of reason and judicial experience; but relevancy to the "subject matter" (former CCP § 2016(b)) was a broader concept than relevancy to the issues. *Morris Stulsaft Foundation v. Superior Court of San Francisco* (1966, Cal App 1st Dist) 245 Cal App 2d 409, 54 Cal Rptr 12, 1966 Cal App LEXIS 1480.

In determining whether questions asked at a deposition pertain to matters "relevant to the subject matter involved in the pending action" (former CCP § 2016(b)), a court should bear in mind that the discovery statutes must be construed liberally in favor of disclosure unless the request was clearly improper by virtue of well-established causes for denial. *Morris Stulsaft Foundation v. Superior Court of San Francisco* (1966, Cal App 1st Dist) 245 Cal App 2d 409, 54 Cal Rptr 12, 1966 Cal App LEXIS 1480.

At a deposition, contestants of a will were entitled, under the discovery provisions of former CCP § 2016(b), to answers from a subscribing witness as to when, where, and how often he had been adjudicated a bankrupt, and whether he had then been represented by counsel, such questions being relevant to the issue of motive, where the will was prepared by that witness, was dated less than three weeks after the last codicil to a prior will, was tardily produced, and was alleged to be fraudulent, having left the entire estate of nearly \$8,000,000, instead of the prior will's \$50,000, to a woman who less than three months earlier had married decedent in hospital, had never lived with him and had already started negotiations for a divorce, and where the witness had not sought to limit the deposition under former CCP § 2019. *Morris Stulsaft Foundation v. Superior Court of San Francisco* (1966, Cal App 1st Dist) 245 Cal App 2d 409, 54 Cal Rptr 12, 1966 Cal App LEXIS 1480.

The "relevancy of the subject matter" criterion of former CCP § 2016(b), was a broader concept than the former test of "relevancy to the issues," and matters sought on a deposition were properly discoverable if they would aid in a party's preparation for trial. *Pacific Tel. & Tel. Co. v. Superior Court of San Diego County* (1970) 2 Cal 3d 161, 84 Cal Rptr 718, 465 P2d 854, 1970 Cal LEXIS 264.

The relevance of the subject matter standard as to the permissible scope of deposition testimony must be reasonably

applied, and, in accordance with the liberal policies underlying the discovery procedures, doubts as to relevance should generally have been resolved in favor of permitting discovery. *Pacific Tel. & Tel. Co. v. Superior Court of San Diego County* (1970) 2 Cal 3d 161, 84 Cal Rptr 718, 465 P2d 854, 1970 Cal LEXIS 264.

Under former CCP § 2016(b), related to the scope of deposition testimony, the relevancy of the subject matter of the action was to be determined by the potential as well as by the actual issues in the case, and, even if a party removes, perhaps temporarily, a given issue from the case, the scope of discoverable information was not necessarily narrowed. *Pacific Tel. & Tel. Co. v. Superior Court of San Diego County* (1970) 2 Cal 3d 161, 84 Cal Rptr 718, 465 P2d 854, 1970 Cal LEXIS 264.

In an action by a subscriber against a telephone company and certain of its employees for invasion of his privacy by wiretapping, the relevance of deposition questions involving deponent employees' knowledge of the illegality of their actions was clear, where the complaint specifically alleged that defendants eavesdropped with knowledge of the illegality of their acts, and the answer expressly denied such allegation. *Pacific Tel. & Tel. Co. v. Superior Court of San Diego County* (1970) 2 Cal 3d 161, 84 Cal Rptr 718, 465 P2d 854, 1970 Cal LEXIS 264.

The term "relevant" in former CCP § 2016, provided for the discovery of the identity and location of persons having knowledge of relevant facts, was liberally construed, and meant "relevant" to the subject matter of the lawsuit. *Henard v. Superior Court* (1972, Cal App 5th Dist) 26 Cal App 3d 129, 102 Cal Rptr 721, 1972 Cal App LEXIS 925.

Under former CCP § 2016(b), authorizing discovery as to matter relevant to the subject matter involved in a pending action, relevancy was a broader concept than relevancy to the issues, in that relevancy to subject matter was determinable by potential, not actual, issues in the case. *City of Los Angeles v. Superior Court* (1973, Cal App 2d Dist) 33 Cal App 3d 778, 109 Cal Rptr 365, 1973 Cal App LEXIS 932.

In applying former §§ 2016(b), 2031, under which information was discoverable if it is unprivileged and was either relevant to the subject matter of the action or reasonably calculated to reveal admissible evidence, the standard of relevance of the subject matter must be reasonably applied, and, in accordance with the liberal policies underlying the discovery procedures, doubts as to relevance should generally be resolved in favor of permitting discovery. *Valley Bank of Nevada v. Superior Court of San Joaquin County* (1975) 15 Cal 3d 652, 125 Cal Rptr 553, 542 P2d 977, 1975 Cal LEXIS 260.

6. Privilege and Confidentiality

Provision in former CCP § 2017(b) that Discovery Act shall not be construed to "incorporate by reference any judicial decisions on privilege of any other jurisdiction" did not bar consideration of reasoning of other courts, but provided only that their decisions are not binding in this state, and left courts free to consider those decisions for such persuasive value as their reasoning may have. *San Francisco v. Superior Court of San Francisco* (1958, 1st Dist) 161 Cal App 2d 653, 327 P2d 195, 1958 Cal App LEXIS 1788.

Provision in former CCP § 2017(b) that Discovery Act shall not be construed to "incorporate by reference any judicial decisions on privileges of any other jurisdiction" merely negated application of usual rule that, when statute of another jurisdiction are adopted in this state, it was presumed to have been adopted with construction given to it by judicial decisions of that jurisdiction. *San Francisco v. Superior Court of San Francisco* (1958, 1st Dist) 161 Cal App 2d 653, 327 P2d 195, 1958 Cal App LEXIS 1788.

Witnesses to motor vehicle accident, whose statements were gathered for defendant, which was ordered to disclose them for inspection, did not intend their remarks to be confidential, and they were not parties to attorney-client relationship between corporation and its attorney to whom statements were forwarded. *Greyhound Corp. v. Superior Court of Merced County* (1961) 56 Cal 2d 355, 15 Cal Rptr 90, 364 P2d 266, 1961 Cal LEXIS 302, superseded by statute as stated in questionable precedent *Magill v. Superior Court* (2001, Cal App 5th Dist) 86 Cal App 4th 61, 103

Cal Rptr 2d 355, 2001 Cal App LEXIS 14, superseded by statute as stated in *Platt v. Superior Court (1989, Cal App 4th Dist) 214 Cal App 3d 779, 263 Cal Rptr 32, 1989 Cal App LEXIS 1025*.

Communication that was not privileged at time of trial was not privileged as to pretrial discovery. *Oceanside Union School Dist. v. Superior Court of San Diego County (1962) 58 Cal 2d 180, 23 Cal Rptr 375, 373 P2d 439, 1962 Cal LEXIS 251*.

Rules declaring communications between attorney and his client to be privileged were not changed by new discovery legislation. *Brown v. Superior Court of Butte County (1963, Cal App 3d Dist) 218 Cal App 2d 430, 32 Cal Rptr 527, 1963 Cal App LEXIS 1798*.

Burden of establishing that matter sought by deposition was privileged was on party asserting privilege. *Huenergardt v. Huenergardt (1963, 2nd Dist) 218 Cal App 2d 455, 32 Cal Rptr 714, 1963 Cal App LEXIS 1802*.

When information was sought by deposition, deponent need not disclose privileged information. *Peck's Liquors, Inc. v. Superior Court of San Francisco (1963, Cal App 1st Dist) 221 Cal App 2d 772, 34 Cal Rptr 735, 1963 Cal App LEXIS 2214*.

While under some circumstances statements made by defendant's employee, concerning matters within his own knowledge, may be privileged, where testimony plaintiff sought by deposition was not statement of any employee of defendant as to facts of lawsuit, but information relating to conduct of investigator, dealing with other persons, none of whom were shown to be employees of defendant or in any way in position in which they would have intended as confidential anything said to, or done with, investigator, there was no basis for any claim of confidentiality. *Wilson v. Superior Court of Los Angeles County (1964, 2nd Dist) 226 Cal App 2d 715, 38 Cal Rptr 255, 1964 Cal App LEXIS 1531*.

Employer waived its privilege against disclosure of its employment tax returns under discovery proceedings, instituted by administrator of employee welfare and retirement fund to ascertain correct amount due to fund by employer, by becoming bound by welfare fund trust agreement providing that employer shall promptly furnish all necessary information on demand to those entrusted with operation and administration of fund, where inspection of tax returns was made necessary by destruction by fire of employer's payroll records, and where employer, during audits of fund for other years, opened its books and records, including in one instance copies of its employment tax returns, for audit and inspection by fund administrator. *Crest Catering Co. v. Superior Court of Los Angeles County (1965) 62 Cal 2d 274, 42 Cal Rptr 110, 398 P2d 150, 1965 Cal LEXIS 248*.

Unemp Ins C §§ 1094, 2111, providing that information furnished to Department of Employment by employing unit shall not be open to public or admissible in evidence in any action or special proceeding, not only made such material privileged at trial, but also made it immune from discovery in view of former CCP § 2017(b) of this section. *Crest Catering Co. v. Superior Court of Los Angeles County (1965) 62 Cal 2d 274, 42 Cal Rptr 110, 398 P2d 150, 1965 Cal LEXIS 248*.

Copies of adverse party's income tax returns were privileged from disclosure and not subject to production in discovery proceedings. *Flora Crane Service, Inc. v. Superior Court of San Francisco (1965, Cal App 1st Dist) 234 Cal App 2d 767, 45 Cal Rptr 79, 1965 Cal App LEXIS 1063*.

The privilege against testifying to communications between husband and wife was applicable in a proper case to testimony in court, in depositions and in required answers to interrogatories; however, the privilege does not cover everything that a man and wife may be jointly and severally interested in or make it incumbent on either to remain silent irrespective of the factual material involved; if it was clear that answers to none of the specific questions asked of one spouse would be evidence against the other spouse, the privilege was not involved. *Frey v. Superior Court of Kings County (1965, 5th Dist) 237 Cal App 2d 201, 46 Cal Rptr 747, 1965 Cal App LEXIS 1244*.

All matters which are privileged against disclosure upon trial under the law of California are privileged against disclosure through any discovery procedure. *Ascherman v. Superior Court of San Francisco* (1967, Cal App 1st Dist) 254 Cal App 2d 506, 62 Cal Rptr 547, 1967 Cal App LEXIS 1423.

In a proceeding for appointment of a guardian of a minor child committed to the care of the welfare department and placed in a foster home for adoption, the trial court abused its discretion in ordering the welfare department to answer interrogatories as to the identity of persons having custody of the child following commitment and other particulars concerning the activities of the department in connection with attempts to arrange adoptive placement for the child, where the information concerning the placement and adoption of the child was acquired in confidence by the department and its employees in the course of their duties, and was not open or officially disclosed to the public prior to the time a claim of privilege was made, and where no preliminary basis had been established for finding that the adoption procedure was not running its proper course, and that the agency was unfit to have temporary custody of the child, or that it was improbable that the child would be adopted; while there was no absolute statutory ban on disclosure of such information, nor any absolute privilege with respect thereto, *Ev C § 1040* required a weighing of necessity for preserving confidentiality with the necessity for disclosure in the interest of justice. *Terzian v. Superior Court* (1970, Cal App 1st Dist) 10 Cal App 3d 286, 88 Cal Rptr 806, 1970 Cal App LEXIS 1841.

In an action by victims of alleged police misconduct against a city and certain of its police officers for assault and battery, intentional infliction of mental distress, false imprisonment, and violation of the Federal Civil Rights Act, the trial court erred in its order that had the effect of requiring one of the officers to answer interrogatories inquiring whether he had ever received psychiatric treatment, and if so, where, when, and by whom, and the nature of any condition for which he had received treatment. Although the information sought by the interrogatories, other than the nature of any psychiatric treatment he had received, might be regarded as outside the psychotherapist-patient privilege in that it did not pertain to any communications between the officer and a psychotherapist, the information was nevertheless within the privilege in that its disclosure of necessity would also have resulted in the disclosure of the nature of any psychiatric condition he had been treated for; the patient-psychotherapist privilege was to be construed liberally in favor of the patient and his right of privacy. *City of Alhambra v. Superior Court* (1980, Cal App 2d Dist) 110 Cal App 3d 513, 168 Cal Rptr 49, 1980 Cal App LEXIS 2273.

In an action for personal injuries, plaintiff's spouse, as a person for whose "immediate benefit" the action was prosecuted, was subject to deposition by notice upon plaintiff, former CCP § 2019(a)(4), and she was not entitled to interpose the spousal privilege by virtue of *Ev C § 973(b)*, which provides there is no privilege in a civil action brought for the immediate benefit of a spouse. At the time the testimony was sought, plaintiff's marriage was intact; thus, the unliquidated claim for community property personal injury damages was community property, in which the noninjured spouse had had a present interest and entitlement to a share of the proceeds when recovered, and it was for her immediate benefit. *Hand v. Superior Court* (1982, Cal App 3d Dist) 134 Cal App 3d 436, 184 Cal Rptr 588, 1982 Cal App LEXIS 1784.

7. Admissibility of Evidence

Former § 2017(b) does not limit discovery to testimony that would be admissible at trial since it states that it was not ground for objection that testimony will be inadmissible at trial if testimony sought "appears reasonably calculated to lead to the discovery of admissible evidence," and expressly provides that discovery may be had as to "any matter" which was relevant to subject matter involved in pending action. *Chronicle Publishing Co. v. Superior Court of San Francisco* (1960) 54 Cal 2d 548, 7 Cal Rptr 109, 354 P2d 637, 1960 Cal LEXIS 190.

Inasmuch as legislature had intentionally provided that inadmissibility of evidence at trial is not of itself bar to disclosure on pretrial discovery, claim of inadmissibility predicated on alleged incompetency, rather than on irrelevancy or immateriality, would not be entertained, but this holding in regard to competency was not applicable to questions propounded on deposition. *Greyhound Corp. v. Superior Court of Merced County* (1961) 56 Cal 2d 355, 15 Cal Rptr 90, 364 P2d 266, 1961 Cal LEXIS 302, superseded by statute as stated in questionable precedent *Magill v. Superior*

Court (2001, Cal App 5th Dist) 86 Cal App 4th 61, 103 Cal Rptr 2d 355, 2001 Cal App LEXIS 14, superseded by statute as stated in Platt v. Superior Court (1989, Cal App 4th Dist) 214 Cal App 3d 779, 263 Cal Rptr 32, 1989 Cal App LEXIS 1025.

In action against finance company alleging that certain transactions between parties in form of sales were in reality loans to plaintiff at usurious rates of interest, an interrogatory propounded by plaintiff to company requesting names and addresses of all employees who participated in various transactions between parties, duties performed by each and period of time during which each participated, was "reasonably calculated to lead to the discovery of admissible evidence," since from such list of names, together with some indication of dates and duties, plaintiff would be placed in position so that it could select one or more employees for purpose of taking depositions. *West Pico Furniture Co. v. Superior Court of Los Angeles County (1961) 56 Cal 2d 407, 15 Cal Rptr 119, 364 P2d 295, 1961 Cal LEXIS 304.*

In action to recover damages for breach of contract on theory that individual was alter ego of corporation, request by written interrogatories for description of corporation's books and records was reasonably calculated to lead to discovery of admissible evidence and to place interrogating party in position to call for production of books and records, either by appropriate motion or through issuance of subpoena duces tecum. *Flora Crane Service, Inc. v. Superior Court of San Francisco (1965, Cal App 1st Dist) 234 Cal App 2d 767, 45 Cal Rptr 79, 1965 Cal App LEXIS 1063.*

In an action by a subscriber against a telephone company and certain of its employees for invasion of his privacy by wiretapping, the trial court did not abuse its discretion in concluding that questions relating to the monitoring of other subscribers were relevant to the subject matter of the action, even though defendants had admitted tapping plaintiff's phone; moreover, such questions could have led to the discovery of admissible evidence on the issue of "reasonableness" raised by the answer, as well as on the disputed issue of defendant company's malice. *Pacific Tel. & Tel. Co. v. Superior Court of San Diego County (1970) 2 Cal 3d 161, 84 Cal Rptr 718, 465 P2d 854, 1970 Cal LEXIS 264.*

That answers to questions asked of a deposition witness might not prove helpful and might not uncover admissible evidence did not preclude a party from posing the questions. *Pacific Tel. & Tel. Co. v. Superior Court of San Diego County (1970) 2 Cal 3d 161, 84 Cal Rptr 718, 465 P2d 854, 1970 Cal LEXIS 264.*

By use of the phrase "reasonably calculated to lead to the discovery of admissible evidence," former CCP § 2016(b), gave some guidance in determining what deposition testimony was "relevant to the subject matter," but no precise or universal test of relevancy was furnished by the law, and the question must be determined in each case according to the teachings of reason and judicial experience. *Pacific Tel. & Tel. Co. v. Superior Court of San Diego County (1970) 2 Cal 3d 161, 84 Cal Rptr 718, 465 P2d 854, 1970 Cal LEXIS 264.*

In an action under the Federal Employers' Liability Act, the trial court abused its discretion in wholly sustaining defendant railroad's objection to plaintiff's interrogatories requesting information relative to claim settlements with other employees over the preceding six-year period, where plaintiff sought the information to support his claim that his signature on a release was induced by false representations of a claims adjuster, where, though the breadth of the request was excessive, burdensome, and oppressive, without some such information, plaintiff's attorneys might be deprived of all reasonable opportunity to corroborate plaintiff's claim, and where reasonably limited, the names and addresses requested by plaintiff were reasonably calculated to lead to the discovery of admissible evidence. *Borse v. Superior Court (1970, Cal App 3d Dist) 7 Cal App 3d 286, 86 Cal Rptr 559, 1970 Cal App LEXIS 2160.*

8. Insurance

Insured automobile owner and his insurance carrier could not successfully offer to file "as a sealed instrument" insurance contracts insuring owner against liability for personal injuries, which party injured in automobile accident sought to examine by way of perpetuation of testimony, nor could such insured and insurer avoid production of policies on promises to "preserve these records and make them available after any final judgment is obtained in a personal injury

action." *Superior Ins. Co. v. Superior Court of Los Angeles County (1951) 37 Cal 2d 749, 235 P2d 833, 1951 Cal LEXIS 330.*

Plaintiff in malpractice action was entitled to learn, through interrogatories, whether defendant carried malpractice insurance at time in issue, and, if so, name and address of insurer and policy limits, since such policy evidenced contractual relation that enured to benefit of every person who might be injured by insured, and plaintiff had "discoverable interest" in such policy. *Laddon v. Superior Court of San Francisco (1959, 1st Dist) 167 Cal App 2d 391, 334 P2d 638, 1959 Cal App LEXIS 2344.*

Plaintiff in personal injury action arising out of defendant's alleged negligent operation of automobile was entitled to learn, through written interrogatories, whether defendant was covered by policy of automobile liability insurance at time of accident and, if so, names and addresses of insurers, liability limits of each policy and total combined liability limits of all such policies, since, under *Ins C § 11580*, relating to provisions required in automobile liability policies giving action to injured party against insurer on policy to recover on judgment secured against insured; contractual relation was created between insured under policy and plaintiff who was negligently injured by insured, thus giving plaintiff discoverable interest in defendant's liability insurance and making policy limits matter relevant to subject matter involved in personal injury action. *Pettie v. Superior Court of Los Angeles County (1960, Cal App 2d Dist) 178 Cal App 2d 680, 3 Cal Rptr 267, 1960 Cal App LEXIS 2643.*

Since it was public policy of this state that provisions of liability insurance policy are not matters for sole knowledge of named insured and insurance carrier to exclusion of injured person, revelation of liability limits of such policy through discovery procedures may tend to have promoted efficacious disposition of negligence litigation by settlement or by trial. *Pettie v. Superior Court of Los Angeles County (1960, Cal App 2d Dist) 178 Cal App 2d 680, 3 Cal Rptr 267, 1960 Cal App LEXIS 2643.*

In view of statutory and case law in this state establishing that contractual relation existed between insurer under policy of liability insurance and third person injured as result of insured's negligence and that such person had discoverable interest in insured's liability insurance arising with very pendency of his personal injury action against insured, matter of liability policy limits was relevant to subject matter involved in such personal injury action and subject to discovery. *Pettie v. Superior Court of Los Angeles County (1960, Cal App 2d Dist) 178 Cal App 2d 680, 3 Cal Rptr 267, 1960 Cal App LEXIS 2643.*

Information concerning malpractice insurance for civil engineers was discoverable; it was relevant, if not indispensable, that counsel for plaintiff suing such engineers have knowledge of existence of insurance in order to prepare for case he had to meet and be apprised of his real adversary; such knowledge would also have led to more purposeful discussions of settlement, and thereby effectuate dispatch of court business. *Rolf Homes, Inc. v. Superior Court of San Mateo County (1960, 1st Dist) 186 Cal App 2d 876, 9 Cal Rptr 142, 1960 Cal App LEXIS 1710.*

9. Financial Condition of Party

It was an abuse of the trial court's discretion to order a defendant in an action for damages for wrongful death to answer questions in pretrial discovery proceedings relating to his present financial responsibility and his ability to respond in damages in the event the plaintiff obtained a judgment against him, such order being an unwarranted invasion of defendant's right to privacy and contrary to public policy. *Doak v. Superior Court of Los Angeles County (1968, Cal App 2d Dist) 257 Cal App 2d 825, 65 Cal Rptr 193, 1968 Cal App LEXIS 2512.*

In an action for wrongful death, the right of plaintiff to recover punitive damages could not be a potential issue so as to justify pretrial discovery of defendant's financial condition, though the death was allegedly caused by defendant's reckless and wanton misconduct; in this state exemplary or punitive damages were not recoverable in such an action, whether the death was caused by the negligence of the defendant or by his wanton and willful misconduct. *Doak v. Superior Court of Los Angeles County (1968, Cal App 2d Dist) 257 Cal App 2d 825, 65 Cal Rptr 193, 1968 Cal App*

LEXIS 2512.

In an action for damages for wrongful death allegedly caused by the willful, reckless and negligent conduct of the defendant, pretrial discovery with respect to the financial condition of the defendant and his assets other than his public liability insurance is not permissible under the provisions of former CCP § 2016(b). *Doak v. Superior Court of Los Angeles County* (1968, Cal App 2d Dist) 257 Cal App 2d 825, 65 Cal Rptr 193, 1968 Cal App LEXIS 2512.

In an action by victims of alleged police misconduct against a city and certain of its police officers, including its chief of police, for assault and battery, intentional infliction of mental distress, and violation of the Federal Civil Rights Act, the trial court did not err in granting the victims' motion requiring the city and the police officers to answer interrogatories relating to financial records, where the records were relevant to the issue of punitive damages. The court did not abuse its discretion in granting the motion, despite the police chief's objection that the interrogatories were premature in that trial was still several years away; the matter was one properly committed to the court's sound discretion; the court was not required to conclude the inquiry was premature; it could have concluded that counsel for the victims showed admirable diligence in promptly and vigorously preparing his case. *City of Alhambra v. Superior Court* (1980, Cal App 2d Dist) 110 Cal App 3d 513, 168 Cal Rptr 49, 1980 Cal App LEXIS 2273.

While personal financial information falls within the zone of privacy protected by *Cal Const Art I § 1*, discovery of such information is not completely precluded if the information was relevant to the subject matter in issue; when objection is made to discovery of such information, the trial court had to carefully weigh the competing factors in fashioning an order, considering the purpose of the information sought, the effect that disclosure will have on the parties and on the trial, the nature of the objections urged by the party resisting disclosure, and the ability of the court to make an alternative order which may grant partial disclosure, disclosure in another form, or disclosure only in the event that the party seeking the information undertakes certain specified burdens which appear just under the circumstances; when possible courts should impose partial limitations rather than outright denial of discovery. *Dompeling v. Superior Court* (1981, Cal App 5th Dist) 117 Cal App 3d 798, 173 Cal Rptr 38, 1981 Cal App LEXIS 1600, overruled *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal 3d 488, 213 Cal Rptr 256, 698 P 2d 159, 1985 Cal LEXIS 271.

10. Limitations on Scope

In those situations wherein the only valid objection to disclosure was that it entailed undue burden on other party, trial court should give consideration to various alternatives provided in discovery statute; requiring such party to pay costs of disclosure was not only method; in many instances justice might be served by approving such portion of request which appears to court to be of sufficient importance to override considerations of burden, while disapproving such portions which do not. *Greyhound Corp. v. Superior Court of Merced County* (1961) 56 Cal 2d 355, 15 Cal Rptr 90, 364 P2d 266, 1961 Cal LEXIS 302, superseded by statute as stated in questionable precedent *Magill v. Superior Court* (2001, Cal App 5th Dist) 86 Cal App 4th 61, 103 Cal Rptr 2d 355, 2001 Cal App LEXIS 14, superseded by statute as stated in *Platt v. Superior Court* (1989, Cal App 4th Dist) 214 Cal App 3d 779, 263 Cal Rptr 32, 1989 Cal App LEXIS 1025.

In a wrongful death action, an order requiring plaintiff to answer interrogatories pertaining to his extramarital sexual relationships during the two years prior to his wife's death, was not drawn with the required narrow specificity necessary when dealing with the constitutionally protected right of privacy, where the order required plaintiff to divulge the names, addresses, and phone numbers of the women he dated and had sexual intercourse with during the period in question; the governmental objective of a fair trial would be served if plaintiff was required to state only whether, during some relevant period, he dated and had extramarital contacts with other women, and, if so, when; such information would permit defendants to explore the impairment of the marital relationship by means consistent with the right of privacy of others. *Morales v. Superior Court* (1979, 5th Dist) 99 Cal App 3d 283, 160 Cal Rptr 194, 1979 Cal App LEXIS 2503.

In an action by victims of alleged police misconduct against a city and certain of its officers for assault and battery,

intentional infliction of mental distress, false imprisonment, and violation of the Federal Civil Rights Act, in which the victims were denied the right to answers to interrogatories that would have disclosed whether the officer who had allegedly assaulted and abused them had previously had psychiatric treatment, the victims could submit new interrogatories to the city and the officers, other than the one who had allegedly assaulted and abused them, to discover any information outside the psychotherapist-patient privilege relevant to their action; interrogatories that sought information as to the disclosure by the officer protected by the psychotherapist-patient privilege to the city and the other officers relating to his receipt of psychiatric treatment, disclosed prior to the alleged assault and abuse, would have been permissible insofar as the information sought would have been relevant to the victims' claim of liability of the city and of other of the officers on account of their alleged prior knowledge of the propensity for violence and unfitness for police service of the officer who allegedly assaulted and abused the victims. *City of Alhambra v. Superior Court* (1980, Cal App 2d Dist) 110 Cal App 3d 513, 168 Cal Rptr 49, 1980 Cal App LEXIS 2273.

11. Actions Generally

At a deposition, contestants of a will were entitled under the discovery provisions of former CCP § 2016(b) to answers from a subscribing witness as to whether he had ever appeared, been charged, or served a prison sentence or been subject to any court order in connection with a crime, such questions being relevant to the issue of motive, intent, knowledge or plan, where the will, admittedly prepared by him, was alleged to be fraudulent, where he had in any event laid himself open to impeachment by a blanket denial of any prior felony conviction, and where he had not sought to limit the deposition under former CCP § 2019(d). *Morris Stulsaft Foundation v. Superior Court of San Francisco* (1966, Cal App 1st Dist) 245 Cal App 2d 409, 54 Cal Rptr 12, 1966 Cal App LEXIS 1480.

In actions by a doctor seeking reinstatement of hospital staff privileges, encompassing questions relating to the professional ethics of the plaintiff, questions propounded upon the taking of another doctor's deposition as to the name of the latter's patient who charged plaintiff with soliciting employment as a surgeon were relevant to enable plaintiff to prepare a response to possible testimony by the patient at the trial, and to meet expected testimony of the doctor regarding the solicitation of the patient and a claimed subsequent offer to split fees with the doctor. *Ascherman v. Superior Court of San Francisco* (1967, Cal App 1st Dist) 254 Cal App 2d 506, 62 Cal Rptr 547, 1967 Cal App LEXIS 1423.

In an action by a subscriber against a telephone company and certain of its employees for invasion of his privacy by wiretapping and for causing his arrest, the trial court did not abuse its discretion in concluding that deposition questions inquiring into defendant company's communications with police were relevant to the subject matter of the action, where defendants expressly denied in their answer that any information relayed to the police resulted in plaintiff's arrest or that plaintiff had suffered any damages from the arrest, and where information obtained by such questioning might be useful in framing objections to the admission of evidence obtained by the wiretapping. *Pacific Tel. & Tel. Co. v. Superior Court of San Diego County* (1970) 2 Cal 3d 161, 84 Cal Rptr 718, 465 P2d 854, 1970 Cal LEXIS 264.

In an action by a subscriber against a telephone company and certain of its employees for invasion of his privacy by wiretapping, the trial court did not abuse its discretion in determining that questions inquiring into defendant company's general monitoring procedures were relevant to the subject matter of the action, where, though defendant's amended answer admitted participation in the eavesdropping and that defendant employees were acting within the scope of their employment, it denied listening to all conversations from plaintiff's phone and asserted the defense of reasonableness of defendants' actions, and where the questions asked could lead to discovery of evidence useful in challenging defendants' allegations as to the extent of the interception as well as in rebutting the contention that defendants' conduct was reasonable. *Pacific Tel. & Tel. Co. v. Superior Court of San Diego County* (1970) 2 Cal 3d 161, 84 Cal Rptr 718, 465 P2d 854, 1970 Cal LEXIS 264.

In an action by victims of alleged police misconduct against a city and certain of its police officers, for assault and battery, intentional infliction of mental distress, and violation of the Federal Civil Rights Act, the trial court did not err in granting the victims' motion requiring the city and police officers to answer interrogatories relating to the police

officers' possible involvement in prior suits for bodily injuries, where the information sought was undoubtedly more accessible to the city and to the police officers than to the victims, even though, as a matter of public record, the information was in fact also accessible to the victims; the court did not abuse its discretion in ordering the city and the police officers to share, in effect, their more convenient source of information as to such bodily injury suits involving the police officers. *City of Alhambra v. Superior Court* (1980, Cal App 2d Dist) 110 Cal App 3d 513, 168 Cal Rptr 49, 1980 Cal App LEXIS 2273.

SUGGESTED FORMS

Notice of Motion for Order Limiting Scope of Discovery

Declaration Supporting Motion for Order Limiting Scope of Discovery

Order Limiting Scope of Discovery

Notice of Motion to Discover Information Concerning Plaintiff's Sexual Conduct

Declaration Supporting Motion for Discovery Concerning Plaintiff's Sexual Conduct