

Writing the Ultimate Appellate Brief
OCBA Appellate Section - May 7, 2008
Useful Citations

Record and issues on appeal:

“[T]he appellant has the duty to fairly summarize all of the facts in the light most favorable to the judgment.” (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) This duty increases with the complexity of the record. (*Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278, 290.) Failure to do so may result in a waiver of any question of the existence of substantial evidence. (*Foreman & Clark Corp. v. Fallon, supra*, 3 Cal.3d at p. 881.)

“‘The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment. . . . [E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.’ (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 594, p. 627.)” *McComber v. Wells* (1999) 72 Cal.App.4th 512, 522.

Do not raise issues without authority. “‘[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration. [Citation.]’” (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

“[T]he appellant must present argument and authorities on each point to which error is asserted, or else the issue is waived.” (*Kurini v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 865.) See also *Duarte v. Chino Community Hosp.* (1999) 72 Cal.App.4th 849, 856.

“An appellate court is not required to examine undeveloped claims, nor to make arguments for parties. [Citations.]” (*Paterno v. California* (1999) 74 Cal. App. 4th 68, 106.)

Each issue raised must have a separate heading. Every argument not preceded by a separate heading is waived. (*Roe v. McDonald's Corp.* (2005) 129 Cal.App.4th 1107, 1114.)

Appellants bear the burden of furnishing a record sufficient to support the claim they were prejudiced by the trial court’s rulings, and failure to designate an adequate record will result in an unsuccessful appeal. (See, e.g., *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440.)

An argument or theory will generally not be considered if it is raised for the first time on appeal. (*American Continental Ins. Co. v. C & Z Timber Co.* (1987) 195 Cal.App.3d 1271, 1281.)

Standards of review:

Pure questions of law are reviewed de novo. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799.)

Interpretation of a statute is a question of law subject to de novo review. (*Sutco Construction Co. v. Modesto High School Dist.* (1989) 208 Cal.App.3d 1220, 1228.)

“When a party challenges the jury's findings based on insufficient evidence to support those findings, we apply the substantial evidence standard of review. [Citations.] In applying this standard of review, we ‘view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor....’ [Citation.]” (*Zagami, Inc. v. James A. Crone, Inc.* (2008) 160 Cal. App. 4th 1083, 1096.)

“‘Substantial evidence’ is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value.” (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.)

Mixed questions of fact and law – see *Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888.

“Broadly speaking, an appellate court reviews any ruling by a trial court as to the admissibility of evidence for abuse of discretion.” (*People v. Alvarez* (1996) 14 Cal.4th 155, 201.) Even where evidence has been erroneously excluded or admitted, the judgment or decision shall not be reversed unless the reviewing court believes the error resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13; Evid. Code, §§ 353, 354.)

“ ‘A motion to vacate a default and set aside [a] judgment (§ 473) ‘is addressed to the sound discretion of the trial court, and in the absence of a clear showing of abuse . . . the exercise of that discretion will not be disturbed on appeal.’ ” (*Lint v. Chisholm* (1981) 121 Cal.App.3d 615, 619-620.)

An exercise of discretion is subject to reversal on appeal where no reasonable basis for the action is shown. (*Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 522.)

Other issues:

Constitutionality of statute raised for first time on appeal: See *Preserve Shorecliff Homeowners v. City of San Clemente* (2008) 158 Cal.App.4th 1427

Appellate court’s authority – in unusual circumstances – to treat an improper appeal as a petition for an extraordinary writ, see *Olson v. Cory* (1983) 35 Cal.3d 390, 401; *Rogers v. Municipal Court* (1988) 197 Cal.App.3d 1314, 1317.

Only relevant evidence is subject to judicial notice. (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063.) We do not take judicial notice of the facts therein. (*Ibid.*)