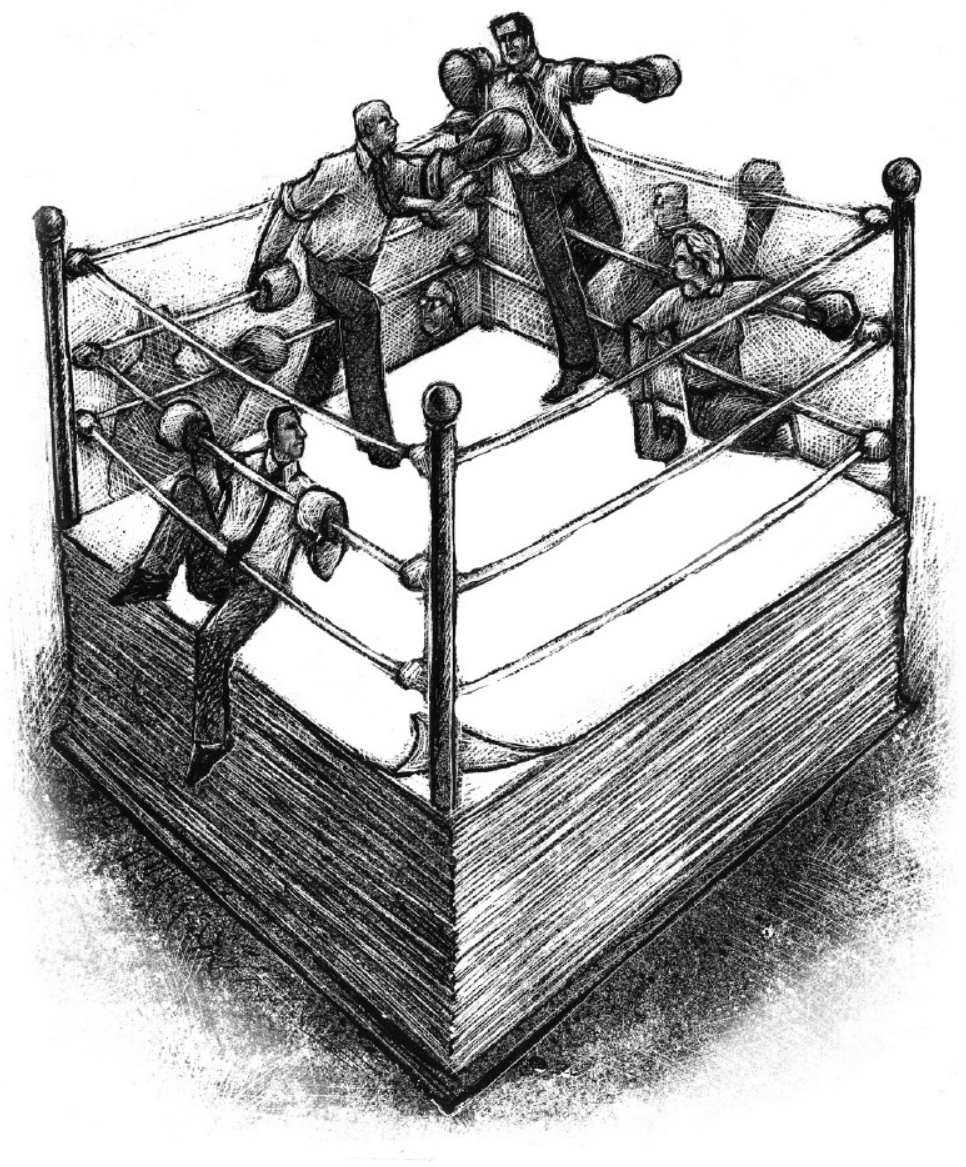
Action Satisfaction



By Daniel Lee Jacobson

What's a cause of action? Although this question is simple, its answer can have profound implications.

Dispositive motions are often at least partially defined by "cause of action" or restricted to the disposition of one or more "causes of action." For example, Code of Civil Procedure Section 437c(f)(1) says that, "[a] party may move for summary adjudication as to one or more causes of action;" Section 430.10(e) states that a demurrer is available to prove that a complaint "does not state facts sufficient to constitute a cause of action;" and Section 438(c)(2)(A) states that a motion for judgment on the pleadings may lie "as to any cause of action."

In fact, when a dispositive motion's attack is on a cause of action, the law will often require that that attack be successful as to the entire cause of action. Code of Civil Procedure Section 437c(f)(1) is explicit. "A motion for summary adjudication [that attacks a cause of action] shall be granted only if it completely disposes of a cause of action."

For a myriad of other reasons, ranging from the potential award of attorney fees (see generally Civil Code Section 1717, Code of Civil Procedure Section 1033.5(a)(10) and interpretive cases) to what in a complaint is dismissable (see Code of Civil Procedure Section 581(c) and (d)) the definition of "cause of action" can be paramount.

"The manner in which a plaintiff elects to organize his or her claims within the body of the complaint is irrelevant [to the determination of what causes of action have been asserted.]" *Hindin v. Rust*, 118 Cal.App.4th 1247 (2004). So a plaintiff may have more than one cause of action within what his complaint labels a single cause of action, or a plaintiff may have only one cause of action laid out in what the complaint labels multiple causes of action. The labeling within a complaint does not create the definition of a cause of action, the law does that.

One practical effect of letting the law define "cause of action" rather than leaving it to the labels in in a complaint is that sense can be made out of a poorly pleaded complaint. For example if a defendant wants to demurrer only to a cause of action for negligence, but the complaint purports to contain only a single cause of action that contains the factual elements of both negligence and breach of contract, the defendant is not precluded from asserting her demurrer. The demurrer for negligence lies, notwithstanding the intermingling of negligence and breach of contract allegations in what is labeled a single cause of action.

Understanding the meaning of 'cause of action' is vital to understanding what can be asserted in a complaint and what can be attacked in a complaint.

California defines a cause of action as instructed by professor John N. Pomeroy. Pomeroy postulated, "The primary right and duty and the delict or wrong combined constitute the cause of action in the legal sense of the term."

Just last year the Court of Appeal made Pomeroy's definition plainer. "A cause of action consists of (1) a *primary right* possessed by the plaintiff and a corresponding *primary duty* imposed upon the defendant, and (2) a delict or wrong committed by the defendant which constitutes a breach of such primary right and duty." *Niles Freeman Equipment v. Joseph*, 161 Cal. App. 4th 765 (2008).

Put even more simply, a cause of action consists of a primary right and corresponding primary duty, and breach thereof.

A 1996 decision explained the nature of Pomeroy's "primary right" this way: "The cause of action is based on the injury to the plaintiff, not on the legal theory or theories advanced to characterize it. Thus, if a plaintiff states several purported causes of action which allege an invasion of the same primary right he has actually stated only one cause of action. On the other hand, if a plaintiff alleges that the defendant's single wrongful act invaded two different primary rights, he has stated two causes of action, and this is so even though the two invasions are pleaded in a single count of the complaint." *Skrbina v. Fleming Cos.*, 45 Cal.App.4th 1353 (1996)

In *Skrbina*, what was labeled the "first cause of action" actually pleaded several causes of action. The defendant filed a demurrer that purported to challenge the entirety of the first count, but in fact only addressed one cause of action. Thus, the demurrer was not to the entire first count, but to only that one cause of action.

In practice, it often is important to know when there has been an attempt to plead a cause of action. After all, if a defendant demurrers to a cause of action that is not labeled as a cause of action, the defendant will have to educate the court not only about what a cause of action is, but also about how to tell when a plaintiff has attempted to plead a cause of action. Skrbina flushes out when there has been such an attempt.

Distilling *Skrbina* on this point leads to this simple conclusion: There has been an attempt to plead a cause of action when the invasion of a primary right has been pleaded.

In *Crowley v. Katleman*, 8 Cal.4th 666 (1994), the Supreme Court expounded on the definition of Pomeroy's primary right and explained the difference between that primary right and any resulting remedies. "[Pomeroy's primary right is] indivisible: the violation of a single primary right gives rise to but one cause of action. … [T]he primary right is simply the plaintiff's right to be free of the particular injury suffered. It must therefore be distinguished from the *legal theory* on which liability for that injury is premised: Even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief. The primary right must also be distinguished from the *remedy* sought: The violation of one primary right constitutes a single cause of action, though it may entitle the injured party to many forms of relief, and the relief is not to be confounded with the cause of action, one not being determinative of the other." [Internal citations and quotation marks omitted.]

Pomeroy's own writings support the distinction between the primary right and the remedies resulting from a violation of that right. Anthony J. Bellia Jr. pointed out in a 2004 Iowa Law Review article: "In [Pomeroy's] words, 'the relief is no part of the cause of action.' 'The remedial right,' [Pomeroy] explained, 'is the consequence, the secondary right which springs into being from the breach of the plaintiff's primary right by the defendant's wrong, while the remedy is the consummation or satisfaction of this remedial right.'" If one lawsuit alleging the violation of a primary right is pending, and then another lawsuit alleging a violation of the same right, albeit under a different legal theory, is filed, the second suit should be abated. *Wulfjen v. Dolton*, 24 Cal.2d 891 (1944). Also, under the doctrine of *res judicata*, if a lawsuit alleging a particular primary right is filed after a previous suit alleging the same primary right has been adjudicated, then the second suit should be dismissed, even if that second suit alleges the primary right under a different theory. *Johnson v. American Airlines*, 157 Cal.App.3d 427 (1984).

The monikers assigned to a cause of action do not necessarily define that cause of action. In *Card Construction Company v. Ledbetter*, 16 Cal.App.3d 472 (1971), the complaint purported to contain three separate causes of action labeled three different things. The court held, "The three causes of action only attempt to state a cause of action for recovery under implied indemnity on different theories."

California's definition of cause of action transcends law and equity. A single primary right can only be asserted in one lawsuit, even if legal remedies are sought in one lawsuit and equitable remedies are sought in another. Both brands of remedies must be sought in one lawsuit under the premise of the one primary right from which both sets of remedies spring. *Mycogen Corp. v. Monsanto*, 28 Cal.4th 888 (2002).

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