

First Draft
7/31/56

STATE OF CALIFORNIA

REPORT OF THE

CALIFORNIA LAW
REVISION COMMISSION

To the Governor and the Legislature of the
State of California at the Legislative
Session of 1957

[November 1, 1956]
[January 1, 1957]

LETTER OF TRANSMITTAL

To HIS EXCELLENCY GOODWIN J. KNIGHT

Governor of California

and to the Members of the Legislature

The California Law Revision Commission, created in 1953 to examine the common law and statutes of the State and to recommend such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law and to bring the law of this State into harmony with modern conditions (Government Code, Sections 10300 to 10340), herewith submits this report of its transactions during the year 1956.

THOMAS E. STANTON, JR., Chairman

JOHN D. BABBAGE, Vice Chairman

JESS R. DORSEY, Member of the Senate

CLARK L. BRADLEY, Member of the Assembly

JOSEPH A. BALL

BERT W. LEVIT

STANFORD C. SHAW

JOHN HAROLD SWAN

SAMUEL D. THURMAN

RALPH N. KLEPS, Legislative Counsel,
ex officio

JOHN R. MC DONOUGH, JR.

Executive Secretary

[November 1, 1956]
[January 1, 1957]

TABLE OF CONTENTS

I. Function of Commission	2
II. Personnel of Commission	4
III. Summary of Work of Commission	5
IV. Calendar of Topics Selected for Study	6
A. Studies in Progress	6
1. Studies pursuant to Resolution Chapter 207, Statutes of 1955.	6
2. Studies pursuant to Resolution Chapters 35 and 42, Statutes of 1956.	8
3. Revision of Fish and Game Code pursuant to Resolution Chapter 204, Statutes of 1955	11
B. Topics Intended for Future Consideration.	13
V. Report on Statutes Repealed by Implication or Held Unconstitutional	14
VI. Recommendations	14

REPORT OF THE CALIFORNIA LAW REVISION COMMISSION
FOR THE YEAR 1956

I. FUNCTION OF COMMISSION

The California Law Revision Commission was created by Chapter 1445 of the Statutes of 1953. The commission consists of one Member of the Senate, one Member of the Assembly, seven members appointed by the Governor with the advice and consent of the Senate, and the Legislative Counsel who is an ex officio, nonvoting member.

The principal duties of the Law Revision Commission are set forth in Section 10330 of the Government Code which provides that the commission shall, within the limitations imposed by Section 10335 of the Government Code:

- (a) Examine the common law and statutes of the State and judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.
- (b) Receive and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.
- (c) Receive and consider suggestions from judges, justices, public officials, lawyers, and the public generally as to defects and anachronisms in the law.
- (d) Recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this State into harmony with modern conditions.

¹ The commission is also directed to recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States. CAL. GOVT. CODE § 10331.

The commission's program is fixed in accordance with Section 10335 of the Government Code which provides:

The commission shall file a report at each regular session of the Legislature which shall contain a calendar of topics selected by it for study, including a list of the studies in progress and a list of topics intended for future consideration. After the filing of its first report the commission shall confine its studies to those topics set forth in the calendar contained in its last preceding report which are thereafter approved for its study by concurrent resolution of the Legislature. The commission shall also study any topic which the Legislature, by concurrent resolution, refers to it for such study.

II. PERSONNEL OF COMMISSION

There were no changes in the personnel of the Law Revision Commission during 1956. As of the date of this report its membership is:

			<u>Term expires</u>
Thomas E. Stanton, Jr.	San Francisco	Chairman	October 1, 1957
John D. Babbage	Riverside	Vice Chairman	October 1, 1959
Hon. Jess R. Dorsey	Bakersfield	Senate Member	*
Hon. Clark L. Bradley	San Jose	Assembly Member	*
Joseph A. Ball	Long Beach	Member	October 1, 1959
Bert W. Levit	San Francisco	Member	October 1, 1957
Stanford C. Shaw	Ontario	Member	October 1, 1959
John Harold Swan	Sacramento	Member	October 1, 1957
Samuel D. Thurman	Stanford	Member	October 1, 1959
Ralph N. Kleps	Sacramento	ex officio member	**

* The legislative members of the commission serve at the pleasure of the appointing power.

** The Legislative Counsel is an ex officio nonvoting member of the Law Revision Commission.

III. SUMMARY OF WORK OF COMMISSION

During 1956 the Law Revision Commission was engaged in four tasks:

1. Work on the several assignments given to the commission by the 1955 and 1956 Sessions of the Legislature to be completed for presentation to the 1957 and 1959 Sessions;²
2. Preparation of a calendar of topics selected for study to be submitted to the Legislature for its approval at the 1957 Session, pursuant to Section 10335 of the Government Code;³ and
3. A study, made pursuant to Section 10331 of the Government Code, to determine whether any statutes of the State have been held by the Supreme Court of the United States or by the Supreme Court of California to be unconstitutional or to have been impliedly repealed.⁴

The commission met seven times to the date of the preparation of this report in 1956: On January 6 and 7 at San Francisco; on March 12 at Los Angeles; on May 4 and 5 at Los Angeles; on June 1 and 2 at San Francisco; on July 13 and 14 at Long Beach; on August 10 and 11 at Stanford; and on September 20 and 21 at Los Angeles. In addition, committees of the commission met on several occasions during the year.

² See Part IV A of this report, p. 6 *infra*.

³ See Part IV B of this report, p. 13 *infra*.

⁴ See Part V of this report, p. 14 *infra*.

IV. CALENDAR OF TOPICS SELECTED FOR STUDY

A. STUDIES IN PROGRESS

1. Studies pursuant to Resolution Chapter 207, Statutes of 1955

The following topics, recommended by the Law Revision Commission and approved by the 1955 Session of the Legislature, were studied by the commission during 1956. (A description of each of these topics is contained in the 1955 report of the commission to the Legislature.)

1. Whether the sections of the Civil Code prohibiting the suspension of the absolute power of alienation should be repealed. ⁵
2. Whether the courts of this State should be required or authorized to take judicial notice of the law of foreign countries. ⁶
3. Whether the Dead Man Statute should be repealed or, if not, whether the rule with respect to waiver of the statute by the taking of a deposition should be clarified. ⁷
4. Whether California should continue to follow the rule that survival of actions arising outside California is governed by California law. ⁸
5. Whether Section 201.5 of the Probate Code should be revised [treatment of separate property brought into California].⁹

⁵ See REPORT OF CALIFORNIA LAW REVISION COMMISSION 18 (1955).

⁶ Id. at 19.

⁷ Id. at 20.

⁸ Id. at 21.

⁹ Id. at 22.

6. Whether Section 660 of the Code of Civil Procedure should be amended to specify the effective date of an order granting a new trial. ¹⁰
7. Whether, when the defendant moves for a change of place of trial of an action, the plaintiff should in all cases be permitted to oppose the motion on the ground of the convenience of witnesses. ¹¹
8. Whether the law with respect to the "for and against" testimonial privilege of husband and wife should be revised in certain respects. ¹²
9. Revision of Sections 1377 and 1378 of the Penal Code to eliminate certain obsolete language therein [compromise of misdemeanor charge]. ¹³
10. Resolution of conflict between Penal Code Section 19a, limiting commitment to a county jail to one year in misdemeanor cases, and other provisions of the Penal Code and other codes providing for longer county jail sentences in misdemeanor cases. ¹⁴
11. Whether Sections 2201 and 3901 of the Corporations Code should be made uniform with respect to notice to stockholders relating to sale of all or substantially all of the assets of a corporation. ¹⁵
12. Whether the jury should be authorized to take a written copy of the jury instructions into the jury room in civil as well as criminal cases. ¹⁶

¹⁰ Ibid.

¹¹ Id. at 23.

¹² Id. at 24.

¹³ Id. at 26.

¹⁴ Id. at 27.

¹⁵ Ibid.

¹⁶ Id. at 28.

13. Whether Sections 389 and 442 of the Code of Civil Procedure, relating to bringing additional parties into a civil action by cross-complaint, should be revised. ¹⁷
14. Whether a statute should be enacted to make it unnecessary to appoint an administrator in a quiet title action involving property to which some claim was made by a person since deceased. ¹⁸
15. Whether, when the defendant in a divorce or annulment action has defaulted, the court should be authorized to include an award of attorney's fees and costs in a decree of annulment or an interlocutory or final decree of divorce without requiring that an order to show cause or notice of motion be served on the defendant. ¹⁹
16. Whether there is need for clarification of the law respecting the duties of city and county legislative bodies in connection with planning procedures and the enactment of zoning ordinances when there is no planning commission. ²⁰

The commission will submit a report on each of these topics to the 1957 Session of the Legislature.

2. Studies pursuant to Resolution Chapters 35 and 42, Statutes of 1956

The following topics were approved for study by the commission by the 1956 Session of the Legislature. (A description of the topics in this group

¹⁷ Id. at 29.
¹⁸ Id. at 30.
¹⁹ Id. at 31.
²⁰ Id. at 32.

which were recommended for study by the commission pursuant to Government Code Section 10335 is contained in the 1956 report of the commission to the Legislature.):

1. Whether the Penal Code and the Vehicle Code should be revised to eliminate certain overlapping provisions relating to the unlawful taking of a motor vehicle and the driving of a motor vehicle while intoxicated.²¹
2. Whether the procedures for appointing guardians for nonresident incompetents and nonresident minors should be clarified.²²
3. A study of provisions of the Code of Civil Procedure relating to the confirmation of partition sales and the provisions of the Probate Code relating to the confirmation of sales of real property of estates of deceased persons to determine (1) whether they should be made uniform and (2) if not, whether there is need for clarification as to which of them governs confirmation of private judicial partition sales.²³
4. Whether the law relating to motions for new trial in cases where notice of entry of judgment has not been given should be revised.²⁴
5. Whether the provisions of the Civil Code relating to rescission of contracts should be revised to provide a single procedure for rescinding contracts and achieving the return of the consideration given.²⁵

²¹ See REPORT OF CALIFORNIA LAW REVISION COMMISSION 19 (1956)

²² Id. at 21.

²³ Id. at 22.

²⁴ Ibid.

²⁵ Id. at 23.

6. Whether the law respecting mortgages to secure future advances should be revised. ²⁶
7. Whether Probate Code Sections 259, 259.1 and 259.2, pertaining to the rights of non-resident aliens to inherit property in this State should be revised. ²⁷
8. Whether the law relating to escheat of personal property should be revised. ²⁸
9. Whether the law relating to the rights of a putative spouse should be revised. ²⁹
10. Whether the rule, applied in cases involving the value of real property, that evidence relating to sales of nearby properties is not admissible on the issue of value should be revised. ³⁰
11. Whether the law respecting postconviction sanity hearings should be revised. ³¹
12. Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised. ³²
13. Whether the doctrine of worthier title should be abolished in California. ³³
14. Whether the Arbitration Statute should be revised. ³⁴

26 Id. at 24.
 27 Id. at 25.
 28 Id. at 25.
 29 Id. at 27.
 30 Id. at 28.
 31 Id. at 29.
 32 Id. at 31.
 33 Id. at 33.
 34 Ibid.

15. Whether the law in respect of survivability of tort actions should be revised. ³⁵
16. Whether the law of evidence should be revised to conform to the Uniform Rules of Evidence drafted by the National Conference of Commissioners on Uniform State Laws and approved by it at its 1953 annual conference.
17. Whether the law respecting habeas corpus proceedings, in the trial and appellate courts should, for the purpose of simplification of procedure to the end of more expeditious and final determination of the legal questions presented, be revised.
18. Whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens.
19. A study of the various provisions of law relating to the filing of claims against public bodies and public employees to determine whether they should be made uniform and otherwise revised.

The commission will submit a report on each of these topics to the Legislature. It plans to report on Topics No. 8, 14 and 17 to the 1957 Session and on the other topics to the 1959 Session.

3. Revision of Fish and Game Code pursuant to Resolution Chapter 204, Statutes of 1955

Resolution Chapter 204 of the Statutes of 1955 [which was sponsored by Honorable Pauline Davis, Member of the Assembly for the Second Assembly District] directed the Law Revision Commission to undertake a study of the Fish and Game

³⁵ Id. at 34.

Code and to prepare a proposed revision of such code which would eliminate obsolete, superseded, ambiguous, anachronistic, and defective provisions thereof.

A preliminary study of this assignment revealed that it would involve a substantial revision of the Fish and Game Code. Accordingly, the commission contracted to have the Legislative Counsel prepare a draft of a revised code for the commission's consideration. The commission also discussed revision of the code with representatives of the Fish and Game Commission and the Department of Fish and Game and was assured of their cooperation. In addition, the commission sent approximately 900 letters to interested persons and groups throughout the State calling attention to its assignment to revise the code and soliciting suggestions for such revision.

The draft code was prepared by the Legislative Counsel and distributed to interested persons throughout the State with a request that they study it and send their comments to the commission. Copies of the draft were also sent to the Fish and Game Commission and the Department of Fish and Game. The Department made a careful study of the draft and submitted many helpful suggestions to the Law Revision Commission. The commission then decided, on the basis of consideration of the draft code and the comments of the Department and of interested persons and groups, what revisions of the Fish and Game Code should be recommended.

The commission plans to submit a bill embodying a revised Fish and Game Code to the 1957 Session of the Legislature for its consideration.

B. TOPICS INTENDED FOR FUTURE CONSIDERATION

Section 10335 of the Government Code provides:

The commission shall file a report at each regular session of the Legislature which shall contain a calendar of topics selected by it for study, including a list of the studies in progress and a list of topics intended for future consideration. After the filing of its first report the commission shall confine its studies to those topics set forth in the calendar contained in its last preceding report which are thereafter approved for its study by concurrent resolution of the Legislature. The commission shall also study any topic which the Legislature, by concurrent resolution, refers to it for such study.

Pursuant to this section the commission reported a list of topics which it had selected for study to the 1955 Session of the Legislature; 16 of these topics were approved and reports concerning them will be made to the 1957 Session. The commission also reported a list of 15 topics which it had selected for study to the 1956 Session; all of these topics were approved and studies of them are in progress. The 1956 Session of the Legislature also referred four other topics to the commission for study and work on them is under way.

The commission expects to complete the bulk of its work on the studies now in progress by July 1, 1957. It has, therefore, selected new topics for study during Fiscal Year 1957-58. The legislative members of the commission will introduce at the 1957 Session of the Legislature a concurrent resolution authorizing the commission to study these topics. The new topics selected by the commission for study are the following:

[Topics to be included in 1957 Concurrent Resolution will be listed and described here rather than in an Appendix as was done in the 1955 and 1956 Reports].

V. REPORT ON STATUTES REPEALED BY IMPLICATION
OR HELD UNCONSTITUTIONAL

Section 10331 of the Government Code provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.

In 1955 the commission reported that it had examined the cases decided by the Supreme Court of the State and the Supreme Court of the United States since January 1, 1953, the date of the most recent report of the Legislative Counsel which included a report of statutes held unconstitutional or repealed by implication. In 1956 the commission reported that it had examined the cases decided by the Supreme Court of the State and the Supreme Court of the United States since its 1955 report was prepared. The commission has examined the cases decided by the Supreme Court of the State and the Supreme Court of the United States since its 1956 report was prepared. No decision of either court holding any statute of the State either unconstitutional or repealed by implication has been found. [Note to Commission: This study has not been made. If any cases are found when it is made, the last sentence will, of course, be different].

VI. RECOMMENDATIONS

The Law Revision Commission respectfully recommends:

(1) That the Legislature enact the statutes recommended by the commission in connection with studies made pursuant to Resolution Chapter 207, Statutes of 1955 and Resolution Chapter 42, Statutes of 1956.

(2) That the Legislature consider for enactment the revised Fish and Game Code prepared under the commission's direction pursuant to Resolution Chapter 204, Statutes of 1955.

(3) That the Legislature authorize the commission to study the topics listed in Part IV B of this report.

Respectfully submitted,

THOMAS E. STANTON, JR., Chairman

JOHN D. BABBAGE, Vice Chairman

JESS R. DORSEY, Member of the Senate

CLARK L. BRADLEY, Member of the Assembly

JOSEPH A. BALL

BERT W. LEVIT

STANFORD C. SHAW

JOHN HAROLD SWAN

SAMUEL D. THURMAN

RALPH N. KLEPS, Legislative Counsel, ex officio

JOHN R. MC DONOUGH, JR.

Executive Secretary