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Agenda for Special Meeting  
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LAW REVISION COMMISSION

San Francisco, January 18, 1958

1. Study No. 32 - Arbitration (See Memorandum No. 1, enclosed)
2. Study No. 22 - Cut-off date, Motion for New Trial (See Memorandum No. 2, enclosed)
3. Study No. 24 - Mortgages for Future Advances (See Memorandum No. 3, to be sent)
4. Study No. 23 - Rescission of Contracts (See Memorandum No. 4, enclosed)

REPUBLIC OF CALIFORNIA  
OFFICE OF THE ATTORNEY GENERAL



STATE BAR OF CALIFORNIA  
OFFICE OF THE ATTORNEY GENERAL  
SAN FRANCISCO, CALIFORNIA

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MINUTES OF SPECIAL MEETING

OF

January 18, 1958  
San Francisco

PRESENT

Members

Mr. Thomas E. Stanton, Jr.  
Professor Samuel D. Thurman

Research Consultants

Mr. Sam Kagel  
Professor John H. Merryman

Staff

Mr. John R. McDonough, Jr.  
Miss Louisa R. Lindow

ABSENT

Mr. John D. Babbage, Vice Chairman  
Honorable James A. Cobey  
Honorable Clark L. Bradley  
Honorable Roy A. Gustafson  
Mr. Bert W. Levit  
Mr. Charles H. Matthews  
Mr. Stanford C. Shaw  
Mr. Ralph N. Kleps, ex officio

STUDY NO. 22 - CUT-OFF DATE MOTION NEW TRIAL

The Commission considered the research study prepared by Professor H. G. Pickering and Memorandum No. 2 relating to this study (a copy of which is attached to these minutes). After the matter was discussed it was agreed that Professor Pickering should be requested to make the following changes in his study: An analysis of the legislative history of Sections 659 and 663(a) of the Code of Civil Procedure; condense and summarize the material on statutes of other states, placing most of the material in footnotes; and further analyze and make a recommendation relating to a proposed statute requiring clerks of the court to mail notice of the entry of a judgment.

It was agreed that when Professor Pickering's revised study has been received it should be submitted to the Commission at a regular meeting.

It was agreed to recommend that the Commission recommend the changes in Sections 659 and 663(a) of the Code of Civil Procedure as drafted and recommended by Professor Pickering.

It was also agreed to recommend that the Commission recommend enactment of a statute requiring notice of the entry of a judgment to be mailed by the clerk.

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STUDY NO. 23 - RESCISSION OF CONTRACTS

The Commission had before it the research study prepared by Professor Lawrence A. Sullivan; Memorandum No. 4 relating to this study (a copy of which is attached to these minutes); copies of the portion of the minutes of meetings of the Northern Committee held on May 4, July 26, and September 19, 1957, relating to this study (copies of which are attached to these minutes); and a copy of a letter received from Professor Sullivan commenting on the matter discussed in the minutes of the meeting of September 19. After the matter was discussed it was agreed that since Mr. Levit was not present and since the impasse of September 19 had not been resolved this study should be submitted to the Commission at a regular meeting without further consideration at another special meeting.

STUDY NO. 24 - MORTGAGES FOR FUTURE ADVANCES

The Commission considered the research study prepared by Professor John H. Merryman; Memorandum No. 3 relating to this study (a copy of which is attached to these minutes); a copy of the portions of the minutes of meetings of the Commission and of the Northern Committee relating to this study (copies of which are attached to these minutes); a bill tentatively proposed by the California Law Revision Commission to be introduced at the 1959 Session of the Legislature (a copy of which is attached to these minutes); a memorandum from Professor Merryman relating to certain revisions in his study and to certain criticisms of proposed new Section 2975 of the Civil Code received in response to Professor Merryman's invitation to a number of attorneys to comment thereon (a copy of which is attached to these minutes); and copies of letters received by Professor Merryman relating to his study and the Commission's proposed statute from Messrs. Kenneth M. Johnson, George R. Richter, Percy A. Smith, J. F. Shuman, E. H. Corbin, and Edward D. Landels (copies of which are attached to these minutes). After the matter was discussed with Professor Merryman the following was agreed upon:

1. To recommend that the Commission recommend that no changes be made at this time in the law relating to real property mortgages for future advances.

2. That Professor Merryman be requested to give further consideration to how best reflect in his study the changes necessitated by the information obtained from the 1957 legislative changes and the field study.

3. To recommend that the definition of future advances be deleted from the bill tentatively proposed by the Commission.

4. To recommend that a cross reference be made in the proposed bill to Section 2941 of the Civil Code.

5. To recommend that the Commission recommend approval of the proposed bill as revised.

6. To bring the following matter before the Commission for its consideration at a regular meeting:

(a) Whether an express provision should be enacted to give unpaid interest the same priority as principal under a personal property mortgage for future advances; it was agreed that, although this is perhaps not within the scope of the present study, it should be considered.

(b) Whether, when principal, interest and expenditures to preserve the security exceed the amount stated in the mortgage the total should nevertheless be given the priority given principal.

(c) Whether the first sentence of the proposed bill should remain as presently stated or revised to incorporate essentially the language of the first sentence of the present Section 2975 of the Civil Code as suggested by Mr. Corbin in his letter to Professor Merryman.

STUDY NO. 32 - ARBITRATION

The Commission had before it the research study prepared by Mr. Sam Kagel; the memorandum to the Northern Committee relating to the research consultant's report on Uniform Arbitration Act prepared by the Executive Secretary (a copy of which is attached to these minutes); Memorandum No. 1 relating to this study (a copy of which is attached to these minutes); and questions for discussions prepared by the Executive Secretary and distributed at the meeting (a copy of which is attached to these minutes).

The Commission discussed with Mr. Kagel various matters considered in his first study for the Commission, questions raised in the Executive Secretary's memorandum relating thereto and questions raised by Members present. At the conclusion of this discussion it was agreed that Mr. Kagel would take the matters considered into account in preparing his new study. Mr. Kagel submitted the following list of attorneys who had indicated that they would be willing to serve on a State Bar Committee appointed to consider the Commission's recommendation and study on this subject:

Mr. Charles Scully  
Mr. Ralph Nutter  
Mr. George Baker

Mr. William French Smith  
Mr. Martin Gang  
Mr. Eddy Feldman

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It was agreed that the Chairman should request the State Bar to appoint such a committee and should submit names suggested by Mr. Kagel for consideration. It was also agreed that Mr. Kagel should not invite the Senate Interim Judiciary Committee to send a representative to the meetings which he arranges.

Respectfully submitted,

John R. McDonough, Jr.  
Executive Secretary

JRM  
LRL:m

Questions for Discussion

Re Discussion under Sec. 1 of Act

1. How treat oral agrmt to arbitrate.
2. Whether parties shld be free exclude agrmts between employer & employee from Act.  
If so, shld others be given same right?
3. Whether "common law arbitration" shld be abolished.
4. Whether to define "controversy" and, if so, how.
5. Whether to make act applicable to appraisals & valuations (This is agmts for same is it not?)
6. What is meant by "controversies" which may be collateral, incidental, precedent or subsequent to any issues between the parties"?

Re discussion under Sec. 2 of Act

1. Re 2(a). Enfcmt agrmt shld exception for waiver be written in to statute?  
Shld jury trial of Q whether agrmt to arbitrate be provided.
2. Re 2(b) Stay of arbitration proceeding. Isn't this necessary to forestall a default judgment under 5(a)?  
If keep, eliminate "substantial and bona fide"?  
Shld there be jury trial here if provide under 2(a)?
3. Re 2(d) Stay of actions. Shld statute deny stay if one seeking has waived arbitration or is in default in proceeding therefor? (What is difference between these?)  
Shld question deal with question of what, if anything, a person must do to be able to sue and avoid stay - i.e., how puts the other guy "in wrong".  
Shld statute require person seeking stay to initiate and press application for arbitration in order to get it?  
Shld statute not provide clearly that can't stay action as to severable issues not subject to arbitration?

4. Re 2(c) Court not to pass on merits of controversy.

Does this have anything to do with "arbitrability of claim"?

Assuming this is the place to discuss it, how distinguish whether there is an agreement to seek arbitrate from whether a particular claim or issue is arbitrate?

Re discussion under Sec. 3 of Act

1. Are designations "neutral arbitrator?" and "advocate arbitrator" desirable?
2. Should there be exception as to court appointment for cases in which parties wanted only a single person?
3. Is reference to lists desirable; do these people bear any certification of competence or experience?

Re discussion under Sec. 4 of Act.

1. Is sense of the provision that unless agreed otherwise (a) not all need act and (b) not less than majority may act. If not, needs revision.
2. Is notice provision desirable?

Re discussion under Sec. 5 of Act

1. Are notice provision and waiver provision desirable?
2. What is the difference between "adjournment" and "postponement" of hearing?
3. Would default award provision be new in Cal. law? Is it desirable?
4. Is Sec. 4 necessary if have 5(c)?
5. Shld statute state that ordinary rules of evidence do not apply?
6. Is it desirable to let less than all hear & decide?
7. See my questions re Sec. 5(a) of California Revision on pp. 6-7 memorandum.

Re discussion under Sec. 6 of Act

1. Why "prior to the proceeding or hearing"?

Re discussion under Sec. 7 of Act

1. Seems to me that this part of statute needs lots of work to make it sufficiently explicit on various points. Questions involved. See Questions pp. 8-9 memo.

Re discussion under Sec. 8 of Act.

1. See questions listed pp. 9-10 memo.

Re discussion under Sec. 9 of Act

1. See questions listed pp. 10-11 of memo.

Re discussion under Sec. 10 of Act

1. See questions p. 12 of memo.

Re discussion under Sec. 11 of Act

1. If time limit is provided, shld stat provide that failure file w/i time waives rights under award?
2. Shld statute provide (here and elsewhere) for notice of motion (and other applications) to parties affected?
3. See questions page 12 memo.

Re discussion under Sec. 12 of Act

1. See questions pp. 13-15 of memo.

Re discussion Sec. 13-15 of Act

See relevant parts of memo.