

Min

A G E N D A

for Meeting of

CALIFORNIA LAW REVISION COMMISSION

Sacramento

January 16-17, 1959

1. Minutes December meeting (enclosed).
2. Report on personnel matters.
3. Law Review Publication Requests (Van Alstyne, Merryman)(See Van Alstyne letter enclosed).
4. Determination of Commission policy on authorship of bills.
5. Items on 1959 Legislative Program:
 - A. Study No. 37(L) - Claims Statute (See Memorandum No. 1 enclosed)
 - B. Study No. 31 - Doctrine of Worthier Title (See Memorandum No. 2, enclosed).
 - C. Study No. 22 - Time Within Which Motion For New Trial May Be Made (See Memorandum No. 3, enclosed).
 - D. Study No. 6 - Effective Date New Trial Order (See Memorandum No. 4 enclosed).
 - E. Study No. 58 - Codification of Grand Jury Law (Memorandum 4-A enclosed)
6. Items Possibly To Be Included in 1959 Legislative Program:
 - A. Study No. 32 - Arbitration (See Memorandum No. 5, enclosed).
 - B. Study No. 44 - Suit In Common Name (See Memorandum No. 6, to be sent).
 - C. Study No. 21 - Confirmation Partition Sales (See Memorandum No. 7, to be sent).
7. Deferred matters:
 - A. Study No. 36 - Condemnation (See Memorandum No. 8, enclosed).

- B. Study No. 33 - Survival of Tort Actions (See Memorandum No. 4 for the OCTOBER 1958 meeting sent to you prior to that meeting).
- C. Study No. 38 - Inter Vivos Rights, Probate Code § 201.5 Property (See Memorandum No. 9, enclosed).
- D. Study No. 49 - Rights Unlicensed Contractor (See Memorandum No. 10, to be sent).

8. New Matters:

- A. Study No. 48 - Juvenile Court Procedure (See Memorandum No. 11 to be sent).
- B. Study No. 42 - Rights Good Faith Improver (See Memorandum No. 12, to be sent).

MINUTES OF MEETING
of
January 16 and 17, 1959
SACRAMENTO

Pursuant to the call of the Chairman, there was a regular meeting of the Law Revision Commission on January 16 and 17, 1959 in Sacramento.

PRESENT: Mr. Thomas E. Stanton, Jr., Chairman
Mr. John D. Babbage, Vice Chairman
Honorable James A. Cobey
Honorable Roy A. Gustafson
Mr. Charles H. Matthews
Professor Samuel D. Thurman
Mr. Ralph N. Kleps, ex officio

ABSENT : Honorable Clark L. Bradley

Mr. John R. McDonough, Jr. and Miss Louisa R. Lindow, members of the Commission's staff, were also present.

Mr. Robert Nibley of the law firm of Hill, Farrer & Burrill of Los Angeles, the research consultant for Study No. 36(L) was present during a part of the meeting on January 17, 1959.

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The minutes of the meeting of December 12 and 13, 1958, were unanimously approved after the following changes were made:

(a) Page 2. The last two lines of the first paragraph should read ". . . the annual meeting of the Association of American Law Schools in Chicago."

(b) Page 15. The word "tacitly" should be deleted from the next to last line.

I. ADMINISTRATIVE MATTERS

A. Personnel Developments:

(1) Vacancies on Commission. The Chairman announced that Messrs. Bert W. Levit and Stanford C. Shaw had resigned from the Commission upon taking their new positions, respectively, as Director of Finance and Member of the Senate. He reported that he had written the Governor expressing the hope that their successors would be appointed soon and suggesting various persons, previously agreed upon by the Commission, for consideration. It was agreed that Senator Cobey would also exert his influence to have the appointments made at an early date.

(2) Executive Secretary. The Executive Secretary raised the question of whether it would be possible for the State to share with Stanford expenses incurred by persons interested in being considered for the position who travel to Stanford for interviews. Mr. Kleps stated that it would be extremely difficult and complicated and probably impossible for the Commission to submit a claim for expenses incurred by persons not connected with the State.

The Executive Secretary then reported that Dean Spaeth and Messrs. Stanton, Thurman and McDonough had interviewed a number of persons interested in being considered for the position at the annual meeting of the Association of American Law Schools in Chicago during the latter part of December and that several other people including John DeMouilly, Chief Deputy Legislative Counsel of the State of Oregon, had been interviewed at Stanford both before and since the Chicago interviews but that the Law School was not yet prepared to recommend the appointment of anyone. It was suggested that it

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might be necessary for the Commission to act upon a Law School recommendation between Commission meetings. After the matter was discussed, it was agreed that the Chairman should be authorized to act and make the appointment if necessary but that the members of the Commission would prefer to have a report and the opportunity to meet the person before an appointment is made.

(3) Assistant Executive Secretary. The Executive Secretary reported that Mr. Glen E. Stephens will be working for the Commission on a TAU appointment as Assistant Executive Secretary beginning January 19. He also reported that the examination for this position is scheduled for January 31, and that he is informed by the Personnel Board that 100 or more persons may take the examination.

B. Concurrent Resolution - Approval for Continuation of Studies:

The Commission had before it a draft of the proposed concurrent resolution relative to approving continuation of studies by the Commission. (A copy of which is attached hereto.) After the matter was discussed, it was agreed that the resolution should be introduced in the Assembly.

It also was agreed that the resolution should be revised as follows and introduced as soon as possible:

(a) The phrase "all of which the Legislature has heretofore approved for study by the Commission" should be inserted after "studies in progress" in paragraph 2.

(b) The phrase "heretofore approved" should be inserted before "topics" in the last paragraph.

C. Policy Determination of Proposed Revisions after Recommendation

Printed: During the course of the meeting the Commission considered several suggestions which had been made by the State Bar with respect to various studies which had been published before the views of the State Bar were communicated to the Commission. In the course of this discussion, the Commission considered what policy it should adopt with regard to whether the bills which it introduces should ever differ substantially from the legislation proposed in its published recommendation and study.

During the discussion Senator Cobey stated that if the bills which are introduced do differ from those recommended in the Commission's published material the purpose of the Commission's printed report insofar as it reflects the legislative intention is defeated.

Mr. Stanton pointed out that the Commission's published report of the legislative history of the measures it introduces gives a brief statement of the reasons for amendments to the bills made during their consideration by the Legislature.

After the matter was discussed, it was agreed to adopt the policy that ordinarily bills will be introduced in the form in which they are published by the Commission and amended to reflect changes which the Commission believes are desirable.

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D. Senate Interim Judiciary Committee. The Executive Secretary reported that the presentation of the Commission's 1959 legislative program to the Senate Interim Judiciary Committee is presently scheduled for the 28th and 29th of January. He also reported that Mr. Bohn had made the suggestion that if those of the Commission's bills which are approved by the Committee were made the bills of the Committee there would not be the necessity of a second hearing. The Commission considered the policy it should adopt regarding authorship of its bills. After the matter was discussed, a motion was made by Mr. Babbage, seconded by Senator Cobey, and unanimously adopted to have the Commission's legislative members introduce all of the Commission bills. It also was agreed that the Commission would not be adverse to letting other Members of the Legislature be co-author's of its bills.

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E. New Studies to be Referred to Commission. Mr. Stanton reported that the most recent issue of the State Bar Journal reports that the Board of Governors has placed on the State Bar's 1959 legislative program the reference of two new studies to the Commission. He suggested that the Commission should consider what action, if any, it should take on this matter. After the matter was discussed, it was agreed that the Chairman should talk to Mr. Hayes and the President of the State Bar, explaining to them that the Commission has a heavy agenda at present and requesting that the State Bar defer referral of any proposed new studies to the 1960 Session. It was also agreed that he should suggest to them the possibility of a standing arrangement between the State Bar and the Commission under which the State Bar would discuss proposals for additional Commission studies with the Commission before the Board of Governors acts formally on such proposals.

F. Law Review Publication Requests:

(a) Request of Professor Van Alstyne. The Commission considered a letter dated 12/16/58 from Professor Van Alstyne (a copy of which is attached hereto) formally requesting the Commission's permission to publish the claims statute study in a revised form as a law review article with an acknowledgment that the article is based upon a study made under the auspices of the Law Revision Commission. After the matter was discussed, the Chairman was authorized to grant Professor Van Alstyne such permission. It was also agreed that the proposed acknowledgment is acceptable to the Commission with the following change in the last line to read "or any member thereof."

(b) Request of Professor Merryman. The Commission then considered the request by Professor Merryman for authorization of the Commission to publish an article in the Stanford Law Review on the study "Rights of Good Faith Improvers of Property" which he had recently submitted (and which had not yet been distributed to the members of the Commission).

The Commission reconsidered its policy, established at the June 1 and 2, 1956 meeting, that its research consultants should not be permitted to publish their work for the Commission as law review articles prior to publication of the reports by the Commission. After the matter was discussed, a motion was made by Senator Cobey, seconded by Mr. Babbage and unanimously adopted to adhere to the Commission's established policy.

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It was also agreed that since the study on rights of good faith improvers has not yet been published by the Commission, Professor Merryman's request to publish the study as a law review article should not be granted.

II. CURRENT STUDIES

A. Study No. 6 - Effective Date - Order on Motion for New Trial:

The Commission considered (1) Memorandum No. 4 dated 1/8/59 relating to comments made by the Committee on Administration of Justice on the Commission's recommendation on this subject and (2) the portion of the Commission's 1959 Report which deals with this study. (A copy of each of these items is attached hereto.) After the matter was discussed, it was agreed that the revisions proposed by the C.A.J. should not be made to Section 660 of the Code of Civil Procedure for the following reasons:

(1) The proposed revision of the first two sentences of the last paragraph of Section 660 of the Code of Civil Procedure should not be made because they are beyond the scope of the study authorized by the Legislature.

(2) The proposed revision of the last sentence of Section 660 of the Code of Civil Procedure, relating to the effective date of new trial order, should not be made by the Commission because it is a less desirable revision than that which the Commission has decided to propose. It was agreed, however, that the Commission should not object if the State Bar proposes its revision when the bill is before the Legislature.

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B. Study No. 11 - Sale of Corporate Assets: The Commission had before it Memorandum No. 13 dated 1/13/59 and a copy of the letter from the Executive Secretary to Mr. William Orrick, Chairman of the Committee on Corporations (dated 1/13/59). (A copy of each of these items is attached hereto.) It was agreed that no further action should be taken on the matter at this time.

C. Study No. 19 - Penal-Vehicle Code Overlap: The Commission considered a letter received by Mr. Kleps from Mr. Bernard Caldwell of the California Highway Patrol making the following comments on the Commission's proposed legislation of the Penal and Vehicle Code Sections relating to the taking of vehicles and drunk driving:

(1) The proposed revision to Section 499b of the Penal Code is not satisfactory, for this Section as revised makes it necessary for an arresting officer to determine whether the person taking a vehicle intended to temporarily or permanently deprive the owner of the vehicle in order to decide whether to charge the person with a misdemeanor or a felony.

(2) Whatever substantive rule is enacted on this subject should be enacted as a provision of the Vehicle Code rather than of the Penal Code for the convenience of enforcement officers.

After the matter was discussed it was agreed that Mr. Gustafson should discuss these matters with Mr. Caldwell. After talking to Mr. Caldwell, Mr. Gustafson reported that after he had reminded Mr. Caldwell (1) that a determination of intent must often be made by a police officer in determining what charge to file, (2) that it is presently necessary for police officers to do so in vehicle taking cases, choosing between three code sections, and (3) that the proposed revision eliminates the ambiguities that now exist between the various sections, Mr. Caldwell agreed to reconsider his objection on that matter.

Mr. Caldwell, however, still is of the opinion that substantive law relating to taking of vehicles should be in the Vehicle Code. After the matter was discussed, it was agreed that the Commission would make no

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change in its proposed legislation in this respect but that no objection would be raised if an amendment is proposed after introduction of the bill to place the substantive provision in the Vehicle Code.

D. Study No. 22 - Time Within Which Motion for New Trial May Be

Made: The Commission had before it (1) Memorandum No. 3 dated 1/8/59 relating to comments made by the Committee on Administration of Justice respecting the Commission's recommendation on this subject and (2) the Commission's recommendation and study on this subject. (A copy of each of these items is attached hereto.)

(1) The Commission first considered the C.A.J.'s recommendation to revise Sections 659 and 663a to "within thirty days after the entry of judgment or ten days after service upon him of written notice of the entry of judgment by any party, whichever is earlier." The underlined words are different from "receiving from any party" recommended by the Commission. After the matter was discussed, it was agreed that the C.A.J. proposal should not be approved.

(2) The Commission then considered the C.A.J.'s recommendation to revise the second sentence of Section 663a to read: "The time designated for the making of the motion must be not more than sixty days from the time of the filing of such notice of intention." After the matter was discussed, a motion was made by Senator Cobey and seconded by Mr. Babbage to introduce the bill, insofar as this matter is concerned, as it appears in the Commission's recommendation and study and then to amend the bill to conform to the C.A.J. suggestion. The motion carried:

Aye: Babbage, Cobey, Gustafson, Matthews, Stanton, Thurman.

No : None.

Not Present: Bradley.

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It also was agreed that the last clause of Section 663a, "and a bill of exceptions to be used on such appeal may be prepared as provided in ~~section-six-hundred-and-forty-nine~~ Section 649," should be deleted prior to introducing the bill.

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E. Study No. 31 - Doctrine of Worthier Title: The Commission considered Memorandum No. 2 dated 1/8/59 and letters written by Messrs. McDonough (dated 12/31/58), Marsh (dated 3/5/58) and Verrall (dated 1/13/59) relating to the need for the enactment of proposed Section 109 of the Probate Code which expressly abolishes the doctrine of worthier title in wills cases. (A copy of each of these items is attached hereto.) After the matter was discussed, a motion was made by Mr. Babbage, seconded by Mr. Matthews and unanimously adopted to retain proposed Section 109 of the Probate Code.

It was also agreed that the suggestion made by Mr. Marsh to revise the wording of Section 1073 of the Civil Code to provide that: "The law of this State includes neither (1) . . . nor (2) . . .", and to insert the word "otherwise" before the word "applicable" should be rejected.

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F. Study No. 32 - Arbitration: The Commission had before it (1) Memorandum No. 5 dated 1/8/59; (2) letters written by Messrs. Stanton (dated 12/22/58) and McDonough (dated 12/18/58) relating to this study; (3) the revised research study prepared by Mr. Sam Kagel; (4) "Kagel Draft with Suggested Revisions" prepared by the Executive Secretary; (5) proposed section of Minutes for the November 1958 meeting, also prepared by the Executive Secretary. The Commission again discussed generally how it should proceed to obtain an adequate research study on this subject. During the discussion the Executive Secretary proposed that this be done by asking Mr. Stephens, drawing on the material found in and referred to in the material submitted by Mr. Kagel and other source materials, to prepare a study on this subject generally along the lines suggested in the proposed minutes for the November meeting. After the matter was discussed, the following was agreed upon:

(1) The Executive Secretary is directed to have Mr. Stephens prepare a study on Arbitration.

(2) The study should include, inter alia, an analysis of the present California Arbitration Statute and the Uniform Arbitration Act and where appropriate an analysis of the law of other States.

G. Study No. 33 - Survival of Tort Actions: The Commission had before it Memorandum No. 4 dated 10/6/58, an excerpt of the March 20-21, 1958 meeting minutes relating to the Commission's action on survival of tort actions and the revised research study dated 10/6/58 prepared by Mr. Leo Killion. (A copy of each of these items is attached hereto.)

The Commission first considered the revised study. After the matter was discussed it was agreed that the Executive Secretary should discuss with Mr. Killion the desirability of making the following changes in the study:

- (a) Page 3. Clarify the meaning of "material damages."
- (b) Page 6. The first paragraph either should be supported by authorities or rephrased.
- (c) Page 6. The discussion of punitive and exemplary damages should be expanded.
- (d) A more detailed analysis of the law of other states should be included.
- (e) Other minor changes should be made throughout the study.

The Commission then considered its former action at the March 20-21, 1958 meeting. After the matter was discussed the following was agreed upon:

(1) The Commission's decision to recommend that all causes of action survive the death of both the plaintiff and defendant was intended to be limited to tort causes of action.

(2) A motion was made by Mr. Babbage, seconded and unanimously

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approved that the Commission's March 1958 action which limited the recovery by the plaintiff's estate for pain, suffering, etc. to "those damages incurred from the date of injury until the date of death" should be expunged from the minutes and new action taken on this matter.

Upon reconsideration of the problem of limitations on recovery for pain, suffering, etc., a motion was made by Mr. Thurman and seconded by Senator Cobey to recommend that legislation be enacted providing that where the injured party dies his estate may recover all such damages incurred by him to the date of his death. The motion did not carry:

Aye: Cobey, Gustafson, Matthews, Thurman.

No : Babbage, Stanton.

Not Present: Bradley.

(c) A motion was made by Mr. Thurman and seconded by Mr. Babbage to (1) reconsider and change the March 1958 action, that the Commission recommend that the plaintiff or his estate be able to recover punitive damages against the defendant or his estate, and (2) decide that the Commission should recommend legislation permitting the plaintiff or his estate to recover punitive damages against the defendant but not against the estate. The motion carried:

Aye: Babbage, Cobey, Gustafson, Matthews, Stanton, Thurman.

No : None.

Not Present: Bradley.

The Commission then considered the other recommendations made by Mr. Killion in his study. After the matter was discussed the following

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action was taken:

A motion was made by Senator Cobey and seconded by Mr. Matthews to amend Section 574 of the Probate Code to make it inapplicable to the survival of tort actions. The motion carried:

Aye: Babbage, Cobey, Gustafson, Matthews, Stanton, Thurman.

No : None.

Not Present: Bradley.

A motion was made by Senator Cobey and seconded by Mr. Babbage to approve in principle Mr. Killion's suggestion that legislation be enacted directed to the problem of providing for the survival of a cause of action against a wrongdoer's personal representative in cases where the plaintiff's injury occurs before or simultaneously with the death of the wrongdoer and to direct the Executive Secretary to draft appropriate legislation to effectuate this principle for the Commission's consideration. The motion carried:

Aye: Babbage, Cobey, Gustafson, Matthews, Stanton, Thurman.

No : None.

Not Present: Bradley.

It was agreed that the Executive Secretary should be authorized to pay Mr. Killion.

H. Study No. 36(L) - Condemnation: The Commission had before it Memorandum No. 8 dated 1/8/59, a letter from Mr. Robert Nibley of Hill, Farrer & Burrill dated 12/10/58, and the revised research study relating to moving expenses dated 12/3/58. (A copy of each of these items is attached hereto.) Mr. Nibley was present during the Commission's discussion of this subject.

It was agreed that every effort should be made to complete this study in time to report to the 1961 Session of the Legislature.

The Commission first considered Senator Cobey's suggestion that the scope of the study should be extended to include a study of economic as well as legal data and materials, with a particular view to making it possible to introduce in evidence in a condemnation proceeding those facts and factors which a person buying or selling the property would take into account -- e.g., the income record of the property. After the matter was discussed it was agreed that the study should be so extended.

The Commission then discussed with Mr. Nibley what it would be necessary to do to enable Hill, Farrer & Burrill to complete the research study which the Commission must have if it is to be able to make sound recommendations on this subject. After the matter was discussed it was agreed that a contract or contracts in the amount of \$18,000 would have to be executed. The Commission then decided, subject to the approval of the Department of Finance, to make one contract in the amount of \$8000 using funds available in the 1958-59 budget and to request that the 1959-60 budget

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be augmented by \$10,000 to provide funds for a second contract in that amount. During the discussion Mr. Nibley stated that, subject to confirmation of the other members of the firm, the firm of Hill, Farrer & Burrill would be interested in continuing as research consultant under the arrangement proposed.

The Commission then considered whether a special appropriation bill covering the additional sum of \$10,000 should be introduced or whether the funds should be sought by a request that the Commission's 1959-60 budget be augmented after the budget bill has been introduced. After the matter was discussed it was agreed that, subject to Mr. Bradley's approval, the latter course of action should be followed.

A motion was made by Senator Cobey and seconded by Mr. Matthews to: (1) direct the chairman to advise the Department of Finance of the problem and request it to approve the first (\$8000) contract and to support the Commission's proposal to augment its 1959-60 budget; (2) enter into the first (\$8000) contract if it is approved and if the 1959-60 budget is augmented. The motion carried:

Aye: Babbage, Cobey, Gustafson, Matthews, Stanton,
Thurman.

No: None.

Not Present: Bradley.

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I. Study No. 37(L) - Claims Statutes: The Commission had before it (1) Memorandum No. 1 dated 1/8/59; (2) correspondence of Messrs. Stanton (dated 12/18/58 and 12/22/58), Kleps (dated 12/19/58), Van Alstyne (dated 12/23/58), and McDonough (dated 12/17/58), relating to the intended meaning of the words "pursuant to law" at the end of the first sentence of proposed Section 730 of the Government Code; and (3) Preprint Bills Nos. 16, 17, 18, 19 and 21 relating to the claims statutes. (A copy of each of these items is attached hereto.)

The Commission first decided not to disapprove the deletion of the words "pursuant to law" from Section 730 in Preprint Bill No. 16.

The Commission then considered the question raised by Messrs. Stanton in his letter dated 12/22/58 and Van Alstyne in his letter dated 12/26/58, with respect to the fact that proposed Section 701 of the Government Code contains a reference to "cities and counties" in the first clause whereas there is not a reference to "city and county" in the second clause. After the matter was discussed, a motion was made by Mr. Babbage, seconded by Senator Cobey and unanimously adopted to insert the words "city and county" in the second clause of Section 701 of the Government Code.

The Commission then considered the question raised by Professor Van Alstyne concerning the failure to include Section 2003 in Chapter 3 of Division 3.5 of the Government Code. After the matter was discussed, a motion was made by Mr. Babbage and seconded by Mr.

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Matthews to approve the language of present Section 2003 as Section 803 of Chapter 3 of Division 3.5 in Preprint Bill No. 17. The motion carried:

Aye: Babbage, Cobey, Matthews, Shaw, Thurman.

No. None.

Not Present: Bradley, Gustafson.

The Commission then considered when claims statutes study bills should be moved in the Legislature. After the matter was discussed, it was agreed that every opportunity should be given to those persons interested in the bill to comment on it and that the Commission should wait at least 30 days after distribution of the study and recommendation before the bills are moved. It was also agreed that an attempt should be made to give the study and bills relating to claims as wide a circulation as possible, especially to persons interested in special districts.

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J. Study No. 58(L) - Codification of Grand Jury Law: The Commission considered Memorandum No. 4-A dated 1/8/59 and letters written by Messrs. Kleps (dated 12/31/58), McDonough (dated 1/5/59), Sorenson dated (11/20/58) and Coakley (dated 12/15/58) relating to this study. (A copy of each of these items is attached hereto.) After the matter was discussed, a motion was made by Mr. Babbage, seconded by Mr. Matthews and unanimously adopted not to make the changes in new Section 901 of the Penal Code proposed by Mr. Sorenson and in new Section 895 proposed by Mr. Coakley, for the reasons stated by Mr. Kleps in his letter relating to these suggested changes.

Respectfully submitted

John R. McDonough, Jr.
Executive Secretary

1/6/59

Assembly Concurrent Resolution No.

-- Relative to

approving continuation of studies by the California Law Revision

Commission

WHEREAS, Section 10335 of the Government Code provides that 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

WHEREAS, the Commission has submitted to the Governor and the Legislature its 1959 report, containing a list of studies in progress; and

WHEREAS, Section 10335 of the Government Code provides that 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; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, that the Legislature approves for continued study by the California Law Revision Commission the topics on which studies are in progress as listed in the Commission's 1959 report.

Minutes

UNIVERSITY OF CALIFORNIA

School of Law
Los Angeles 24, California

16 December 1958

Mr. John R. McDonough
Executive Secretary
California Law Revision Commission
Stanford Law School

Dear John:

The UCLA Law Review has requested permission to publish the results of my study of California Claims Statutes, which I made for the Law Revision Commission, in their second issue, which will be forthcoming early in 1959 (probably in late January or early February).

I propose to revise the study as presented to the Commission, in order to reduce it in length and somewhat in organization, so that it will be more suitable for law review publication. The revision, however, will not substantially alter the essence of the views stated nor of the conclusions reached.

I therefore wish to formally request that the Commission grant permission to publish the study, in somewhat revised form, as a Law Review article. In connection with its publication, I propose to append to the title of the article a footnote, prominently identified, reading as follows:

"This article is based upon a study made under the auspices of the California Law Revision Commission. The opinions, conclusions and recommendations, however, are entirely those of the author, and do not necessarily represent or reflect those of the California Law Revision Commission, or any of the membership thereof."

Inasmuch as the final deadline for publication of the UCLA Law Review issue in which the article will appear is January 20, I would greatly appreciate hearing at once whether the Commission's permission has been granted, following the meeting scheduled for January 16 and 17. In the meantime, I am proceeding with the revision of the study so that it will be in shape for immediate publication as soon as permission is granted.

Cordially yours,

/s/ Arvo

Arvo Van Alstyne

D. Study No. 33 - Survival of Tort Actions: The Commission considered Memorandum No. 5 and the research study prepared by Mr. Leo Killion (copies of which are attached to these minutes).

After the Executive Secretary's preliminary statement outlining the analysis made in the research study, the Commission members generally criticized various conclusions and statements contained in the study. It was suggested that the study should contain some analysis of the inter-relationship of the survival of tort actions and the wrongful death statute. It was also suggested that a more elaborate analysis of statutes of other jurisdictions be included. The Executive Secretary was requested to transmit these views to the consultant, Mr. Killion.

A motion was made by Mr. Thurman and seconded by Mr. Shaw that all causes of action survive the death of the defendant. The motion carried.

Aye: Gustafson, Matthews, Shaw, Stanton, Thurman.
No: Levit.
Not present: Babbage, Cobey, Bradley.

A motion made by Mr. Thurman and seconded by Mr. Matthews that all causes of action should survive the death of the plaintiff was unanimously approved.

A motion was made by Mr. Thurman and seconded by Mr. Levit that in cases where the injured party dies recovery by his estate for pain, suffering, etc., should be limited to those damages incurred from the date of injury until the date of death. The motion carried.

Aye: Gustafson, Levit, Matthews, Shaw, Thurman.
No: Babbage, Stanton.
Not present: Cobey, Bradley.

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A motion was made by Mr. Thurman and seconded by Mr. Stanton that in cases where the injured party dies recovery by his estate for loss of earnings and expenses incurred should be limited to those incurred from the date of injury until the date of death. There were six votes for the motion.

A motion was made by Mr. Shaw and seconded by Mr. Levit to allow the plaintiff or his estate to recover punitive damages against the defendant or his estate. The motion carried.

Aye: Levit, Matthews, Shaw, Stanton, Thurman.

No: Babbage, Gustafson.

Not present: Bradley, Cobey.