7/19/60

Memorandum No. 59 (1960)

Subject: Study No. 32 - Arbitration

Attached is a proposed recommendation and the statute on arbitration as revised. Language in the statute that appears in strike out and underscore has not as yet been considered by the Commission.

In a previous draft, the rehearing provisions were omitted by inadvertance. They appear in this draft because the right of the court to order a rehearing was approved by the Commission as a policy matter.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

(32) July 18, 1960

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford, California

T E N T A T I V E

RECOMMENDATION AND PROPOSED LEGISLATION

relating to

A R B I T R A T I O N

NOTE: This is a tentative recommendation and proposed statute prepared by the California Law Revision Commission. It is not a final recommendation and the Commission should not be considered as having made a recommendation on a particular subject until the final recommendation of the Commission on that subject has been submitted to the Legislature. This material is being distributed at this time for the purpose of obtaining suggestions and comments from the recipients and is not to be used for any other purpose.

7/18/60

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

relating to

Arbitration

The present California arbitration statute is Title 9 (beginning with Section 1280) of Part 3 of the Code of Civil Procedure. The enactment of this statute in 1927 placed California among that small but growing group of states that have rejected the common law hostility to the enforcement of arbitration agreements and have provided a modern, expeditious system of enforcing such agreements. Nevertheless, experience under the California law has revealed certain defects in the statutory scheme. Because of these defects, the Legislature directed the Law Revision Commission to study the arbitration statute to determine whether it should be revised.

The Commission has concluded that the basic principles of the present California arbitration statute should be retained. However, the Commission believes that some revision of the present law is necessary in order to improve the organization of the statute, to clarify the law of arbitration, to eliminate certain anomalies and to improve arbitration procedure. These revisions cannot be readily accomplished within the framework of the existing title on arbitration. Therefore, the Commission recommends the enactment of a new title on arbitration that would retain the desirable principles of the existing law with the following principal modifications:

Matters Subject to Arbitration

1. The arbitration statute should be made applicable to agreements for appraisals and valuations. The distinction between "appraisal" and "arbitration" agreements was created by the courts at a time when the early statutory attempts to provide for enforcement of arbitration agreements imposed cumbersome procedural requirements upon the arbitration process. If it appeared from the nature of the agreement that the parties desired a determination of a particular fact -- such as the value of certain property -- and did not contemplate a formal proceeding in which evidence would be received, the courts held that the proceeding was an "appraisal" and not an "arbitration" in order to hold that the cumbersome statutory formalities were inapplicable. As the California arbitration statute does not require any particular formality in the conduct of an arbitration proceeding, there is no longer any reason to preserve the distinction between these types of proceedings.

2. The arbitration statute should be made clearly applicable to collective bargaining agreements and other agreements pertaining to labor. The present law states that its provisions are not applicable to "contracts pertaining to labor." It has been held, however, that this provision does not apply to agreements providing for the performance of mental rather than physical tasks. It has also been held that this provision is not applicable to collective bargaining agreements. The Commission believes that the arbitration statute should be clarified by omitting this provision and by specifically providing that collective bargaining agreements are subject to the statute.

3. The arbitration statute should be made applicable to oral or

implied agreements to extend the term of an expired written agreement. At the present time, arbitration agreements are required to be in writing. Sometimes a written agreement containing arbitration provisions will expire while the parties are in the process of negotiating a new agreement to replace the one that expired. During the negotiation process the parties continue to operate under the former agreement. The Commission believes that any doubt as to the validity of the arbitration agreement during this period should be removed.

Proceedings to Enforce Arbitration Agreements

1. The determinations to be made by the court upon a petition to compel arbitration should be clarified. Some recent cases have indicated that the court should not only determine whether the parties agreed to arbitrate the matter in dispute but should also determine whether there is any merit to the contentions of the parties. Such decisions permit the courts to resolve questions that the parties have agreed to submit to the decision of the arbitrators. The Commission recommends the addition of language to the arbitration statute indicating that the court is not to consider the merits of the parties' contentions upon proceedings to compel arbitration.

2. The arbitration statute should provide that there are matters that may be raised in defense to a petition to compel arbitration in addition to the lack of an arbitration agreement. The present statute provides that the court, upon a petition to compel arbitration, must determine whether the agreement to arbitrate exists and whether it has been breached; and, if there is no agreement or if there has been no breach of the agreement,

the petition must be dismissed. Cases, however, have held that the courts may consider whether the party seeking arbitration has waived his right to arbitrate or whether any other grounds exist that render the contract unenforceable. These holdings should be codified. Moreover, the statute should not provide for the dismissal of the petition if the arbitration agreement has not been breached. If there is an enforceable agreement to arbitrate, an order to arbitrate should be made even though there has been no breach of the agreement so that the parties will not have to return to the court if a party refuses to comply with the agreement at a later time.

3. The court, upon a petition to compel arbitration, should not be required to order the arbitration to proceed immediately if there is litigation between the parties pending before a court involving issues not subject to arbitration and a decision upon such issues may make the arbitration unnecessary. At the present time, the statute requires the court to order arbitration when it makes the requisite findings; there is no provision permitting the court to delay the arbitration until other matters have been judicially determined.

4. A pending action should not be stayed in order to permit arbitration of the issues unless the party seeking the stay has taken action to compel arbitration and has asserted his right to a stay of the action promptly. Existing law provides for a stay of judicial proceedings to permit arbitration but does not specify the time within which a party must seek such relief. A pending action should be stayed only if the action is at the pleading stage and the party seeking the stay is actively seeking to have the issues involved submitted to arbitration.

5. A procedure should be set forth in the statutes to guide the courts

in the selection of an arbitrator when asked to do so. None is provided in the present law. A court should select an arbitrator either from nominees jointly proposed by the parties or from lists of experienced arbitrators maintained by such agencies as the American Arbitration Association, The Federal Mediation Service or the California Conciliation Service.

Conduct of the Arbitration Proceeding

1. The arbitration statute should require notice of an arbitration proceeding to be given to all parties unless the parties have otherwise agreed. Although there is no requirement of notice in the present statute, the courts have stated that reasonable notice is required. The requirement of notice should be codified; but the vague requirement of "reasonable notice" should be replaced with a specific requirement of at least five days notice unless the parties have otherwise agreed.

2. Recognition should be given to the fact that when there is more than one arbitrator, often only one arbitrator is, in fact, a neutral; each of the other members of the panel usuaully represents the viewpoint of the party who appointed him. The arbitrator appointed as a neutral should be given the duties and responsibilities of sending the required notices, administering oaths, issuing subpenas, ruling on evidence and procedure and presiding at the hearing.

3. The neutral arbitrator should not be permitted to obtain information other than at the hearing unless the parties consent or are given an opportunity to challenge the information obtained. Under the existing law, the arbitrators may consult independent experts outside the hearing without notifying the parties so long as the ultimate decision

is that of the arbitrators themselves. Unless the parties have consented to such procedure, they should be advised when any consultations of this sort take place. If the arbitration agreement contemplates an adversary proceeding, each party should have the opportunity to impeach or rebut any information obtained by the neutral arbitrator concerning the dispute.

4. The arbitrators should be authorized to proceed with the arbitration even though one of the parties has refused to appear and take part. The present California law does not state whether or not the arbitration may proceed under such circumstances. There should be no doubt as to the inability of a party to prevent arbitration merely by staying away from the hearing. However, unless the parties have specifically agreed that the arbitrators may proceed in the absence of a party, the person seeking to proceed with the arbitration should first be required to obtain an order compelling the other to arbitrate. The person refusing to appear may believe that he has no duty to arbitrate. A judicial determination of his duty to arbitrate should be made before an award may be taken against him in his absence.

5. Similarly, the neutral arbitrators should be able to make an award even though one or more of the arbitrators refuses to participate. At the present time, if an arbitrator refuses to continue to participate in a proceeding, the hearing may continue and a majority of the arbitrators may decide the matter. The power of the majority to conduct the hearing when an arbitrator refuses to attend at all is doubtful, for the present California statute requires all of the arbitrators to meet. The arbitration process should not be subject to the whims of a single arbitrator. The Commission believes that the arbitration hearing should

proceed even though an arbitrator refuses to participate; but the decision in such a situation should be made only by the neutral arbitrators so that the remaining arbitrators who are not neutral may not control the decision.

6. A waiver of the right to be represented by counsel at arbitration proceedings should not be binding. The arbitration rules of some trade associations provide that the parties may not be represented by counsel. If an arbitration agreement incorporates these rules by reference, the parties may unwittingly waive their right to counsel when they merely believe that they are incorporating an arbitration procedure. The Commission believes that persons should have the right to be represented by counsel at any stage of the arbitration proceedings, and the arbitration statute should guarantee that right.

7. The arbitrators should be granted a limited power to correct the award for technical errors. At present, only the court has the power to do so. Extending the power to the arbitrators may make it unnecessary for the parties to apply to the courts for relief in cases where the arbitrators have merely made an error in calculation or in form.

8. If the arbitration agreement does not provide a time limit within which the arbitrators must determine the dispute, the court should be able to fix a time within which the matter must be decided. The absence of such a provision in the present California law permits an arbitration proceeding to be delayed unnecessarily. A party may be prevented from obtaining any relief at all in such cases, for a court proceeding would be stayed until the arbitration is completed.

9. Statutory provision should be made for the pro rata division of the costs of arbitration among the parties. There is no provision in the

existing law determining the responsibility of the parties for such costs. If there is no agreement between the parties on the matter, the costs should be borne equally by all the parties. This is the usual practice.

Enforcement of the Award

1. The present 90-day period within which an award may be confirmed by the court should be extended to one year. This time limit corresponds with that in the United States Arbitration Act and in the Uniform Arbitration Act. Parties usually do not resort to confirmation unless it appears that the opposing party is not going to comply with the award. The extended period for confirmation provides the parties time to ascertain whether performance is being made under the award. The present 90-day limit for attacking the award by a petition to vacate, modify or correct should be retained. The parties are entitled to know promptly whether or not the award is valid.

2. It should be made clear that an award becomes part of the contract between the parties and may be enforced as such even though it is not confirmed and a judgment is not entered in conformity with it. The present California statute does not indicate the legal status of an unconfirmed award. Although no California case has specifically so held, there have been indications in some cases that an unconfirmed award probably would be enforced as a contract between the parties. This rule should be stated in the arbitration statute to eliminate the uncertainty.

3. If a petition to modify, correct or vacate an award is made and the award is ultimately sustained, the court, on request of a party, should confirm the award even though no petition for confirmation has been filed.

Present law provides that confirmation may be ordered on motion, notice of which must be served five days before the hearing. This is a needless delay if the award has already been presented to the court by a petition attacking it. The status of the award should be settled at one time. However, confirmation of the award should only be ordered on request of a party. If a party is satisfied to rely upon his contractual remedies to enforce the award, there is no reason for the court to confirm the award and to enter a judgment in conformity with it.

4. If the court vacates an award, it should have the power to order a rehearing by the arbitrators. The present statute grants the court the power to order such a rehearing, but only if the time originally fixed in the arbitration agreement for the arbitrators' decision has not expired. This limitation precludes a rehearing in a great many cases. Rehearing can be more effectively utilized by the courts if the time within which the award is to be made under the arbitration agreement is computed from the date of the order for rehearing and not from the date of the original agreement.

5. If an arbitration award settles a custody matter or a marital dispute or some similar matter upon which a contract made by the parties would be subject to the approval of the court, a court asked to enforce such an award should give the award the same effect as it would a contract of the parties, even though the award may have been confirmed. There are cases which have indicated that it is against public policy to submit disputes of this character to arbitration. These cases reflect the common law hostility to the arbitration process. Just as a court will enforce the agreement of the parties upon such matters if it approves the terms of the

agreement, the court should have the right to enforce an award upon such matters if it finds that it can approve the terms of the award.

6. An award made pursuant to an oral arbitration agreement should be subject to confirmation or attack under the arbitration statute. At present, oral arbitration agreements are not specifically enforceable, but an award pursuant to such an agreement is enforceable as a contract. There is no provision for enforcing or attacking an award made pursuant to such an agreement under the arbitration statute. The Commission does not recommend a change in the policy of refusing specific enforcement of oral arbitration agreements. But there is no reason to deny the parties to such an agreement the right to utilize the summary procedures available under the arbitration statute after an award has been made.

Judicial Proceedings Generally

1. California courts should be given personal jurisdiction over parties who have entered into agreements in this State providing for arbitration in California whether or not such parties can be found within the State when judicial relief is sought. At the present time, an arbitration agreement entered into in California usually cannot be enforced here against an out-of-state party unless personal jurisdiction can be obtained. The Commission therefore recommends that the making of an agreement in this State which provides for arbitration in this State is a consent to California's jurisdiction for purposes of enforcement of the arbitration agreement. A similar provision is contained in the Uniform Arbitration Act and the laws of some other states.

2. The venue provisions of the present arbitration statute should be

clarified and placed in a single section. The venue provisions of the present arbitration statute are scattered throughout the title on arbitration. They are incomplete in that they do not permit California courts to confirm an award if portions of the arbitration proceeding were conducted in several counties or outside the State. The benefits of the arbitration statute should not be denied to the parties to an arbitration agreement merely because circumstances require that evidence be received in more than one locality or that the controversy be submitted to persons not all of whom are within the State.

3. The appeal provisions of the arbitration statute should also be clarified. The present statute does not provide for an appeal from an order made prior to the arbitration hearing. But the cases hold that an order dismissing a petition to compel arbitration is appealable and an order granting a petition to compel arbitration is not appealable. These decisions should be codified so that the appeal provisions of the arbitration statute completely cover the matter of appeals in arbitration proceedings.

Elimination of Obsolete Provisions

There are certain provisions in the codes that are inconsistent with the provisions of the title on arbitration as proposed. Section 1053 of the Code of Civil Procedure provides in part that when there are three arbitrators all must meet but two of them may perform any act that all of them might perform. As the proposed title on arbitration contains provisions determining the circumstances under which arbitration may proceed in the absence of some of the arbitrators, the reference in Section 1053 to arbitrators should be deleted.

Civil Code Section 1730 (Section 10 of the Uniform Sales Act) states that a contract to sell at a valuation is avoided if the valuation fails without fault of either party. As there is no reason for such an agreement to fail if the parties can proceed under the title on arbitration, this section should be amended to indicate that it is inapplicable to those cases covered by the arbitration statute.

The Commission's recommenation would be effectuated by the enactment of the following measure:

(32)

An act to repeal Title 9 (beginning with Section 1280) of Part 3 of the Code of Civil Procedure, to add Title 9 (beginning with Section 1280) to Part 3 of the Code of Civil Procedure, to amend Section 1053 of the Code of Civil Procedure and to amend Sections 1730 and 3390 of the Civil Code, all relating to arbitration.

The people of the State of California do enact as follows:

SECTION 1. Title 9 (beginning with Section 1280) of Part 3 of the Code of Civil Procedure is hereby repealed.

SEC. 2. Title 9 (beginning with Section 1280) is added to Part 3 of the Code of Civil Procedure, to read:

TITLE 9. ARBITRATION

1280. As used in this title:

(1) "Controversy" includes any question arising between the parties to an agreement whether such question is one of law or of fact.

(2) "Agreement" includes agreements providing for valuations, appraisals and similar proceedings and agreements between employers and employees or between their respective representatives.

(3) "Written agreement" shall be deemed to include an oral or implied agreement to extend the term of an expired written agreement.

(4) "Neutral arbitrator" means an arbitrator who is (a) selected jointly by the parties to an agreement to arbitrate or by their

representatives or (b) appointed by the court when the parties or their representatives jointly fail to do so.

1281. A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract.

1282. (1) On petition of a party alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate, the court shall order arbitration if it determines that such [as] agreement exists, unless it determines that:

(a) The right to arbitrate has been waived by the petitioner; or

(b) Grounds exist for the revocation of the agreement.

(2) An order to arbitrate may not be refused on the ground that the matter in issue lacks substantive merit.

(3) If the court determines that there are other issues, not subject to arbitration, that are the subject of another pending action or special proceeding between the parties and that a determination of such issues may make the arbitration unnecessary, the court may order that the arbitration be stayed until such determination or until such earlier time as the court specifies.

1283. (1) If a court of competent jurisdiction, whether in this State or not, has ordered arbitration of an issue involved in an action or proceeding pending before a court of this State, the court in which such action or proceeding is pending shall, upon motion of a party made

within the time provided to demur to the pleading in which the issue is raised, stay such action or proceeding until an arbitration is had in accordance with the order for arbitration.

(2) If an application has been made to a court of competent jurisdiction, whether in this State or not, for an order compelling arbitration of an issue involved in an action or proceeding pending before a court of this State and such application is undetermined, the the court in which such action or proceeding is pending shall, upon motion of a party made within the time provided to demur to the pleading in which the issue is raised, stay such action or proceeding until the application for an order compelling arbitration is determined and, if arbitration of such issue is ordered, until an arbitration is had in accordance with the order for arbitration.

(3) If the issue subject to arbitration is severable, the stay may be with respect to that issue only.

1284. (1) If the arbitration agreement provides or the parties otherwise agree upon a method of appointing an arbitrator, such method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails to act and his successor has not been appointed, the court, on petition of a party, shall appoint one or more arbitrators.

(2) When a petition is made to the court [~~is requested~~] to appoint a neutral arbitrator, the court shall nominate five persons from lists of persons supplied jointly by the parties or obtained from a governmental agency or from private disinterested associations concerned with

arbitration. The parties may within five days of receipt of such nominees from the court jointly select the arbitrator [~~a single person~~] by agreement or lot from the nominees. [~~such list, who shall serve as a neutral arbitrator.~~] If the parties fail to select an arbitrator within the five-day period, the court shall appoint the arbitrator from the nominees.

1285. Unless the parties otherwise agree:

(1) The arbitration shall be by a single neutral arbitrator.

(2) Subject to subdivision (5) of Section 1286, if there is more than one arbitrator, the powers and duties of the arbitrators, other than the powers and duties of a neutral arbitrator, may be exercised by a majority of them if reasonable notice of all proceedings has been given to all arbitrators.

(3) If there is more than one neutral arbitrator, the powers and duties of a neutral arbitrator under Section 1288, subdivisions (1) and (2) of Section 1286 and subdivision (2) of Section 1289 may be exercised by a majority of the neutral arbitrators or, by unanimous agreement of the neutral arbitrators, such powers and duties may be delegated to one of their number.

1286. Unless the parties otherwise agree:

(1) The neutral arbitrator shall appoint a time and place for the hearing and cause notification to the parties and to the other arbitrators to be served personally or by registered or certified mail not less than seven days before the hearing. Appearance at the hearing

waives notice. The neutral arbitrator may adjourn the hearing from time to time as necessary. [~~and,~~] On request of a party [~~and~~] for good cause, or upon his own determination, the neutral arbitrator may postpone the hearing to a time not later than the date fixed by the agreement for making the award or to a later date if the parties consent thereto.

(2) The neutral arbitrator shall preside at the hearing, shall rule on the admission and exclusion of evidence and on questions of hearing procedure and shall exercise all powers relating to the conduct of the hearing.

(3) The parties are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing, but rules of evidence and rules of judicial procedure need not be observed.

(4) If an order [~~directing arbitration~~] to arbitrate has been made pursuant to Section 1282, the arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear.

(5) If an arbitrator for any reason fails to act, the hearing shall continue but only the remaining neutral arbitrator or neutral arbitrators may determine the questions submitted.

(6) If a neutral arbitrator obtains information relating to the issues other than at the hearing, he shall disclose such information to all parties to the arbitration and give the parties an opportunity to meet it.

1287. A party has the right to be represented by an attorney at any proceeding or hearing under this title and no waiver of this right is binding.

1288. (1) Upon application of a party or upon his own determination the neutral arbitrator may issue subpenas for the attendance of witnesses and subpenas duces tecum for the production of books, records, documents and other evidence. Subpenas shall be issued, served and enforced in accordance with Chapter 2 (beginning with Section 1985) of Title 3 of Part 4 of this code.

(2) The neutral arbitrator may administer oaths.

(3) On application of a party and for use as evidence and not for discovery, the neutral arbitrator may order the deposition of a witness who cannot be subpenaed or is unable to attend the hearing to be taken in the manner prescribed by law for the taking of depositions in civil actions. If the neutral arbitrator orders the taking of the deposition of a witness who resides outside the State, the party who applied for the taking of the deposition shall obtain a commission therefor from the superior court in accordance with Sections 2024 to 2028, inclusive, of this code.

(4) Except for the parties and their agents, officers and employees, all witnesses appearing pursuant to subpena shall receive fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in superior court. The fees and mileage expenses shall be paid by the party at whose request the witness is subpenaed. The fees and milage expenses of a witness subpenaed upon the determination of the neutral arbitrator shall be paid for in the manner provided for the payment of the neutral arbitrator's expenses.

1289. (1) The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators the decision of which is necessary to the award made.

(2) The neutral arbitrator shall serve a signed copy of the award on each party personally or by registered or certified mail or as provided in the agreement.

[~~(2)~~] (3) The award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on petition of a party. The parties may extend the time either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he gives the arbitrators written notice of his objection prior to the service of a signed copy of the award on him.

1290. (1) The arbitrators, upon written application of a party, may modify or correct the award upon any of the grounds set forth in subdivisions (1)(a) and (1)(c) of Section 1294 not later than 25 days after service of a signed copy of the award on the applicant.

(2) Such application shall be made not later than 10 days after service of a signed copy of the award on the applicant and after the applicant has delivered or mailed a copy of the application to all of the other parties to the arbitration.

(3) Any party to the arbitration may make written objection to such application. The objection shall be made not later than 10 days after the application is delivered or mailed to the objector and after the objector has delivered or mailed a copy of the objection to the applicant and all other parties to the arbitration.

1291. Unless otherwise provided in the agreement to arbitrate, each party shall pay his pro rata share of the expenses and fees of the neutral arbitrator, together with other expenses incurred in the conduct of the arbitration, not including counsel fees or witness fees or other expenses incurred by the parties.

1292. (1) Upon petition of a party filed within one year after service of a signed copy of the award upon him, the court shall confirm an award unless a timely petition to vacate, modify or correct the award has been filed as provided in Sections 1293 and 1294.

(2) An award made pursuant to an agreement not in writing may be confirmed, modified, corrected or vacated under this title in the same manner and to the same extent as an award made pursuant to a written agreement.

(3) Unless a copy thereof has previously been filed in the proceeding, the party petitioning for an order confirming, vacating, modifying or correcting an award shall set forth in or attach to the petition a copy of each of the following:

(a) The agreement to arbitrate if in writing or a statement of the substance of the agreement to arbitrate if the agreement is not in writing.

(b) The names of the arbitrators.

(c) The award.

1293. (1) Upon petition of an aggrieved party to the arbitration, the court shall vacate an award if:

(a) The award was procured by corruption, fraud or other undue means;

(b) There was corruption in any of the arbitrators;

(c) The rights of the petitioner were substantially prejudiced by misconduct of a neutral arbitrator;

(d) The arbitrators exceeded their powers; or

(e) The rights of the petitioner were substantially prejudiced by the refusal of the arbitrators [~~refused~~] to postpone the hearing upon sufficient cause being shown therefor or [~~refused~~] by the refusal of the arbitrators to hear evidence material to the controversy or [~~otherwise so conducted the hearing,~~] by other conduct of the arbitrators contrary to the provisions of [~~Section 1287, as to substantially prejudice the rights of a party~~] this title.

(2) A petition under this section shall be filed within 90 days after service of a signed copy of the award on the petitioner.

(3) If the award is vacated on any of the grounds stated in subdivision (1) of this section, the court may order a rehearing before new arbitrators chosen as provided in Section 1284. If the award is vacated on the grounds set forth in subdivision (1)(d) or (1)(e) of this section, the court may, with the consent of the parties, order a rehearing before the arbitrators who made the award or their successors appointed in accordance with Section 1284. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order for rehearing.

(4) If the court denies the petition to vacate the award, the court shall, on request of a party, confirm the award. [~~order the clerk to enter the award as a judgment.~~]

1294. (1) Upon petition of any party to the arbitration made within 90 days after the service of a signed copy of the award on the petitioner, the court shall modify or correct the award if:

(a) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

(b) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(c) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(2) If the petition is granted, the court shall modify [~~and~~] or correct the award so as to effect its intent and, if requested by a party, shall confirm the award as so modified or corrected. [~~order the clerk to enter the award as so modified and corrected as a judgment of the court.~~]

(3) If the court denies a petition to modify or correct an award, the court shall, on request of a party, confirm the award. [~~order the clerk to enter the award as a judgment.~~]

1295. Upon the granting of an order confirming an award, judgment shall be entered in conformity therewith. The judgment when rendered by the court shall be docketed as if it were rendered in an action. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action; and it may be enforced as if it had been rendered in an action in the court in which it is entered. If the award determines a controversy that could be determined by a contract between the parties which would be subject to the approval of a court, including but not limited to a controversy concerning a child custody matter or a marital property settlement matter,

the award shall be given effect by such court in the same manner and to the same extent as a contract between the parties determining the matter.

1295.5 Unless an award is vacated as provided in this title, the award may be enforced in the same manner and to the same extent as a contract between the parties, whether the award is confirmed or not.

1296. (1) A petition for an order to arbitrate made pursuant to Section 1282 or a petition for the appointment of an arbitrator made pursuant to Section 1284 shall be filed in the county where any party resides or has a place of business or where the agreement is to be performed or, if no party has a residence or place of business in this State and the place of performance is not specified in the agreement, in any county in this State.

(2) A motion for a stay of an action made pursuant to Section 1284 shall be made in the court where the action is pending.

(3) Any petition made after the commencement of arbitration proceedings shall be filed in the county where the arbitration is being or has been held, or, if not held in any county, then such petition may be filed in any county in this State.

1297. (1) Except as otherwise provided in this title, a petition under this title shall be heard in the manner and upon the notice provided by law for the making and hearing of motions. [~~Unless the parties have otherwise agreed,~~]

(2) A copy of the petition and a written notice thereof [~~an initial petition~~] shall be served in the manner provided in the arbitration agreement.

(3) If the arbitration agreement does not provide the manner in which a copy of the petition and notice shall be served, the copy of the petition and the notice thereof shall be served in the manner provided by law for the service of summons in an action or in the manner provided in subdivision (4) of this section unless:

(a) The person on whom service is to be made has previously appeared in the proceeding; or

(b) The person on whom service is to be made has previously been served with any petition in the proceeding in the manner provided by law for the service of summons in an action or in the manner provided in subdivision (4) of this section.

(4) Subject to subdivision (2) of this section, service of the copy of the petition and the notice may be made upon a person outside this State by mailing the copy of the petition and the notice to such person by registered or certified mail. Personal service outside the State is the equivalent of such service by mail. Proof of service by mail shall be made by affidavit showing such mailing together with the return receipt of the United States Post Office bearing the signature of the person on whom service is to be made. Notwithstanding any other provision of this title, if service is made in the manner provided in this subdivision, the petition may not be heard until at least 30 days after the date of such service.

(5) Subject to subdivision (2) of this section, if the person on whom service is to be made has previously appeared in the proceeding or has previously been served in the manner specified in subdivision (3) or (4) of this section, the copy of the petition and notice shall be served

as provided in Chapter 5 (beginning with Section 1010) of Title 14 of Part 2 of this code.

1297.5. Findings of fact and conclusions of law need not be made by the court upon the determination of a petition or motion under this title.

1298. (1) An appeal may be taken from:

(a) An order denying a petition to compel arbitration under subdivision (1) of Section 1282.

(b) An order granting or denying a petition to modify, correct or confirm an award.

(c) An order granting or denying a petition to vacate an award unless a rehearing is ordered.

(d) A judgment entered pursuant to this title.

(2) The appeal shall be taken in the same manner [~~, and the scope of review on the appeal shall be the same~~] as [~~an~~] an appeal[s] from an order[s] or judgment[s] in a civil action.

1298.5. The court shall award costs upon any judicial proceeding under this title as provided in Chapter 6 (beginning with Section 1021) of Title 14 of Part 2 of this code.

1299. The making of an agreement in this State providing for arbitration to be had within this State shall be deemed a consent of the parties thereto to the jurisdiction of the courts of this State to enforce such agreement by the making of any orders provided for in this title and by entering of judgment on an award under the agreement. An agreement made in this State which does not specify a place for the

arbitration to be held shall be considered to provide for arbitration within this State.

~~[Notices shall be served on an out-of-state party by personal service on such party, by registered or certified mail sent to the last known address of such party or in the manner provided in the agreement.]~~

SEC. 3. Section 1053 of the Code of Civil Procedure is amended to read:

1053. When there are three referees [~~, or three arbitraters,~~] all must meet, but two of them may do any act which might be done by all.

SEC. 4. Section 1730 of the Civil Code is amended to read:

1730. SALE AT A VALUATION. Except as otherwise provided in Title 9 (beginning with Section 1280) of Part 3 of the Code of Civil Procedure:

(1) Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person, without fault of the seller or the buyer, cannot or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third person is prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed by chapters 4 and 5 of this act.

SEC. 5. Section 3390 of the Civil Code is amended to read:

3390. The following obligations cannot be specifically enforced:

1. An obligation to render personal service;

2. An obligation to employ another in personal service;

3. ~~[An agreement to submit a controversy to arbitration;]~~

[4.] An Agreement to perform an act which the party has not power lawfully to perform when required to do so;

[5.] 4. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or

[6.] 5. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

SEC. 6. This act does not apply to any contract executed before the effective date of this act; but this act does apply to any renewal or extension of an existing contract on or after the effective date of this act and to any new contract executed after the effective date of this act.