11/3/60

Memorandum No. 95 (1960)

Subject: Study No. 32 - Arbitration.

Attached to this memorandum is a revised recommendation and statute on arbitration. The recommendation is on yellow and the statute on blue. The Bar's proposed statute is on green, and the American Arbitration Association's comments are on white. The Commission has considered and approved the text of the draft statute as far as Chapter 4. Beginning with Chapter 4, revisions from the previously approved text are shown with strike out and underline.

The Legislative Counsel has made several suggestions relating to the drafting of the statute which the staff has incorporated in this draft. He has pointed out that the established practice is to identify principal subdivisions of sections by letter instead of by number and to identify subsidiary subdivisions by number. The staff has used numbers to identify its principal subdivisions of sections and letters for subsidiary subdivisions so that numbers will be used more extensively than letters. In long sections with several subdivisions, the location of a particular subdivision is more readily apparent if it is identified, for example, by a (9) rather than an (i), and the use of the letter (i) or (l) may be confusing; however, to conform to established practice, we have retabulated the statute so that letters are used first, then numbers.

The Legislative Counsel also points out that in many sections of the tentative arbitration statute the tabulations have the effect of numbering

each paragraph even though there is no apparent need for the separate identification. It has not been his practice to number separate paragraphs within a section in the absence of some compelling reason to do so, as for example, the probability that it will be separately referred to later as the basis for a criminal charge or a statutory cross-reference. If a separate identification of a paragraph is needed, he believes that it raises the strong possibility that a separate section is indicated. A list of items following a colon is, of course, separately identified. The staff has followed the policy of the Commissioners on Uniform State Laws by numbering all subdivisions of a section because we believed that such identification makes a section easier to read and to understand and aids attorneys and courts in locating and referring to particular provisions in a section; however, to conform to established practice, we have eliminated subdivision numbers wherever possible and in several cases have broken up a tabulated section into a number of separate sections. Because of the number of additional sections created, we have had to renumber the entire title and create several new chapters. Because of the limited number of section numbers available, we have used decimals. To allow room for the insertion of additional sections in future years, we have numbered the sections "1280, 1280.2, 1280.4," etc.

Since the text of the recommendation has been revised to conform to the revisions made in the revised draft statute, it is suggested that each Commissioner review the text of the recommendation prior to the meeting in order to save time at the meeting.

The draft statute has been revised in accordance with the general directions given to the staff at the October meeting. Comments on specific changes follow:

Section 1285. The addition of this section is suggested by the staff as a procedural device to require the presentation of all issues relating to confirming, vacating or modifying an award in one proceeding. The requirement of the filing of a "response" was suggested by the Bar Committee, for under existing law the parties are at a loss to know what kind of document to file in opposition to a petition.

Section 1285.2. This section carries out the action of the Commission at the October meeting.

Section 1285.4. These amendments are technical in nature, not substantive.

Section 1285.6. The Bar recommended the deletion of the reference to the successors of the original arbitrators. The Committee believed the reference created an ambiguity. The staff does not object to the revision and has, therefore, incorporated it in this draft.

Sections 1285.8 and 1286. These amendments are to carry out the decision of the Commission to require confirmation unless the award is vacated.

Section 1286.2. This section is based on a section added by the Bar as a part of its revision. It contains the limitations approved by the Commission at the October meeting. A petition to confirm may be filed within four years after service of the award; other petitions must be filed within 90 days.

The section provides that the parties by agreement may extend the time limits. This is existing law, and the staff approves the revision.

The provision prohibiting the filing of a petition for ten days after service of the award is to give the parties time to apply to the arbitrators

for modification or correction. The Bar Committee was concerned lest jurisdiction be asserted by both the arbitrators and the courts during this interval.

Section 1286.4. Subdivision (2) of this section was opposed by the Bar Committee, apparently because the Committee objected to the extension of arbitration to controversies involving domestic relations. The objection may have been because the Committee believes there should be no exceptions to the rule that confirmed awards are final.

This subdivision does not extend the scope of arbitration. The subdivision was adopted by the Commission to take care of situations which may arise because the scope of arbitration has been extended by Section 1280 to any question of law or fact. However, the staff does not object to the deletion of the section, for in domestic relations situations, or in child custody disputes, the courts will alter or modify the provisions of previous judgments if the welfare of the persons concerned so requires. Therefore, no great harm will be occasioned by the deletion of the subdivision.

Section 1286.6. The Bar objects to the provision permitting enforcement of unconfirmed awards as contracts. The staff believes that the elimination of this provision will generate unnecessary judicial proceedings, for if an award becomes void unless it is confirmed, all awards will have to be confirmed. A person may safely rely on an award without resorting to confirmation only if it is made clear that the award is valid unless an attack is made on it.

In the previous draft, this section had a provision permitting any ground for vacating an award to be raised as a defense in an action to enforce the award as a contract. This provision was eliminated to carry

out the Commission's decision that attacks on the award must be made, if at all, within 90 days after service of the award.

Chapter 5. The proposed changes in Chapter 5 are mostly technical. However, in Section 1287.6, upon recommendation of the Bar, the staff has added a standard 10-day notice requirement in order to give a respondent time to file a response. This revision is necessary in view of the revisions previously recommended. The third paragraph (unnumbered) of Section 1287 should also be noted.

Section 1288.6. The Bar Committee believed that the court should be required to make findings if it vacates, modifies or corrects an award. In view of the Commission's previous decision on findings, the staff did not believe that any exceptions should be made to the general rule stated in this section.

Section 1289. The Bar recommended that jurisdiction over enforcement proceedings be given to the court in the county where the agreement is to be performed or where the agreement was entered into. The staff believes this is a desirable change and has incorporated it in this revision.

Section 1289.4. A member of the Bar Committee suggested that jurisdiction over enforcement proceedings be given primarily to the court in which an action involving the controversy is pending. This would obviate the necessity of filing a new proceeding in a different court as a condition of obtaining a stay of the action. Thus, all matters would be settled in one action. There is a similar provision in the Uniform Act. The staff believes that this is a desirable revision.

Sections 1289.6 and 1289.8. The Bar recommended the addition of provisions indicating that subsequent petitions relating to preliminary

matters should be filed where the initial petition was filed and that subsequent petitions relating to post-award procedures should be filed where the initial post-award petition was filed. This is a desirable revision, and the substance has been incorporated in the staff's revision.

Section 1291. The Bar recommended that the words "in arbitration" be added after "rehearing" to eliminate a possible ambiguity. As this clarifies the section and does not alter the meaning, the staff has incorporated this revision. Other revisions in this section have been made to correspond with the revisions made elsewhere in the statute.

ADDITIONAL SUGGESTIONS

Subdivision (10) on Green. The Bar recommended that arbitration petitions should take precedence on court calendars. The staff recommends against the proposal because it does not believe that arbitration proceedings are that much more important than other proceedings.

The A.A.A. proposed that some sort of joinder provision be drafted so that other parties might be brought into arbitration proceedings. The staff does not believe that a person, not a party to an arbitration agreement, should be brought into arbitration proceedings. Even if such a person were a party to a different arbitration agreement, the complexities involved in compelling him to arbitrate appear to be insurmountable. The staff does not approve of this recommendation.

The A.A.A. also believes that some sort of provisional remedies should be provided for arbitration proceedings. The staff believes that, if the parties wish to have judicial relief, they should go to court. The staff does not believe that it is desirable to provide arbitration

proceedings with all of the procedural devices available in civil litigation. Moreover, the staff believes that it would be dangerous to provide the provisional remedy of injunction in collective bargaining situations. The staff recommends rejection of this proposal.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

November 2, 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.

11/2/60

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 considered not only the California arbitration statute, but it has also considered the arbitration statutes of other states and the Uniform Arbitration Act drafted by the National Conference of Commissioners on Uniform State Laws. 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. Although there are certain desirable features of the Uniform Arbitration

Act which should be incorporated in the California arbitration statute, much of the revision that is necessary would not be accomplished by the enactment of the Uniform Act. As the necessary revision of California arbitration law cannot be readily accomplished within the framework of the existing title on arbitration, 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 neither the present California arbitration statute nor the statute recommended by the Commission requires the observance of any particular formality in the conduct of an arbitration proceeding, there is no longer any reason to preserve the judicially created distinction between these types of proceedings. Therefore, the distinction should be abolished.

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 exclusion does not apply to agreements providing for the performance of mental and artistic, rather than physical, tasks; thus, contracts providing for the performance of actors' or artists' services and contracts pertaining to professional services are not within the exclusion. It has also been held that this exclusion is not applicable to collective bargaining agreements. Thus, the exclusion has been so narrowly construed that there is no reported case in which it has been applied. The Commission believes that the arbitration statute should be clarified by omitting this exclusion and by providing specifically that agreements between employers and employees or their representatives are subject to the statute. This would codify the decisions interpreting the present arbitration statute. Of course such a provision would not require compulsory arbitration of labor disputes; it would merely provide a procedure for enforcing the agreements that parties voluntarily enter into. Many of the matters involved in labor disputes that are determined by arbitration cannot be determined judicially. Hence, if agreements to arbitrate such matters were unenforceable, there would be no means to resolve many of such matters except through industrial strife.

3. The arbitration statute should be made applicable to written agreements that have been extended or renewed by an oral or implied agreement of the parties. At the present time, arbitration agreements

are enforceable only if they are in writing. Sometimes a written agreement containing arbitration provisions will expire and the parties will agree, either orally or by conduct, to continue to operate under the former agreement. The Commission believes that any doubt as to the validity of the arbitration agreement under such circumstances 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 dispute sought to be arbitrated 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 also 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. Upon a petition to compel arbitration, the court 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 statutory 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. Existing law provides for a stay of judicial proceedings to permit arbitration but does not require the party seeking such relief to take any steps to compel arbitration. The existence of an agreement to arbitrate should not be used only as a dilatory plea; a pending action should be stayed only if the party seeking the stay is actively seeking to have the issues involved submitted to arbitration and a court of competent jurisdiction has determined that the issues should be arbitrated.

5. A procedure should be set forth in the statute 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 the arbitration hearing 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 uncertain requirement of "reasonable notice" should be replaced with a specific requirement of at least seven 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 usually 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 base his decision on information relating to the controversy other than that obtained at the hearing unless the parties consent or are given an

opportunity to meet such information. 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.

4. Unless the parties have otherwise agreed, 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. It should be made clear that a party may not 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 unless the parties have otherwise agreed. 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 four years. The confirmation procedure is merely a procedure for expeditious enforcement of arbitration awards; hence the time for seeking such enforcement action should be the same as the time within which relief must be sought for breach of a written contract. Parties usually do not resort to confirmation unless it appears that the opposing party is not going to comply with the award. Therefore, the extended period for confirmation will permit the parties to utilize the expeditious enforcement procedures provided even though the refusal to comply with the award occurs long after the award was made. 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 to be attacked, and the shorter time limit within which a party may attack the award will place the burden of taking action upon the person claiming the award is defective.

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. If unconfirmed awards became void upon expiration of the time for confirmation, the parties would be forced to initiate judicial proceedings to confirm every award made. Thus a great deal of unnecessary and undesired litigation would be generated. Therefore, any doubt concerning the validity of unconfirmed awards should be eliminated by specific language in the arbitration statute stating that unconfirmed awards are enforceable as contracts.

3. The arbitration statute should set forth the procedure to be followed when a petition to confirm, modify or vacate an award is opposed. The present law does not indicate what procedure is to be followed in such cases, and as a result the parties to these proceedings cannot determine whether an opposing pleading is necessary or permitted, and cannot determine what form of opposing pleading to use. A person opposing a petition to confirm, modify or vacate an award should be required to file a response setting forth his contentions and requesting any relief he believes that he is entitled to receive.

4. The arbitration statute should require the presentation of all issues relating to the validity of an award to the court at the same time in a proceeding that results in either the confirmation of the award (as made or as modified by the court) or the vacation of the award. Any time a petition to confirm, modify or vacate an award is contested, the court is called upon to determine the validity of the award. If it makes such a determination, it should finally settle the status of the award so that it will be unnecessary for the parties to return to the court at a later

time for another determination of the status of the award.

5. If the court vacates an award, it should have the power to order a rehearing by arbitrators; but unless the parties otherwise agree, the rehearing should be conducted by different arbitrators, for the original arbitrators may be unduly disposed to decide the matter in the same manner that it was decided at the first hearing. The present statute grants the court the power to order 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. The rehearing procedure can be more effectively utilized 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.

6. A written 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 be deemed 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 gathered together in one chapter of the title on arbitration. 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.

Subdivision 3 of Civil Code Section 3390 states that an agreement to submit a dispute to arbitration is not specifically enforceable. As the arbitration statute provides a procedure for specifically enforcing such an agreement, this subdivision should be deleted from the section.

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

An act to repeal Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, to add Title 9 (commencing 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, relating to arbitration.

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

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

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

Title 9

ARBITRATION

Chapter 1

GENERAL PROVISIONS

1280. As used in this title:

(a) "Agreement" includes, but is not limited to, agreements providing for valuations, appraisals and similar proceedings and agreements between employers and employees or between their respective representatives.

(b) "Award" includes an award made pursuant to an agreement not in writing.

(c) "Controversy" includes any question arising between the parties

to an agreement whether such question is one of law or of fact or both.

(d) "Neutral arbitrator" means an arbitrator who is (1) selected jointly by the parties to an agreement to arbitrate or by their representatives or (2) appointed by the court when the parties or their representatives jointly fail to do so.

(e) "Written agreement" shall be deemed to include a written agreement which has been extended or renewed by an oral or implied agreement.

1280.2. 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.

Chapter 2

ENFORCEMENT OF ARBITRATION AGREEMENTS

1281. On petition of a party alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order arbitration of such controversy if it determines that an agreement to arbitrate such controversy 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.

If the court determines that an agreement to arbitrate a controversy exists, an order to arbitrate such controversy may not be refused on the ground that the matter in issue lacks substantive merit.

If the court determines that there are other issues, not subject to arbitration, that are the subject of a pending action or special proceeding between the parties and that a determination of such issues may make the

arbitration unnecessary, the court may order arbitration but stay its order until such determination or until such earlier time as the court specifies.

1281.2. If a court of competent jurisdiction, whether in this State or not, has ordered arbitration of a controversy which is an issue involved in an action or proceeding pending before a court of this State, the court of this State in which such action or proceeding is pending shall, upon motion of a party, stay such action or proceeding until an arbitration is had in accordance with the order for arbitration or until such earlier time as the court specifies.

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

If the issue which is the controversy subject to arbitration is severable, the stay may be with respect to that issue only.

1281.4. 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.

When a petition is made to the court 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 private disinterested association concerned with arbitration. The parties may within five days of receipt of such nominees from the court jointly select the arbitrator whether or not such arbitrator is among the nominees. If the parties fail to select an arbitrator within the five-day period, the court shall appoint the arbitrator from the nominees.

Chapter 3

CONDUCT OF ARBITRATION PROCEEDINGS

1282. Unless the parties otherwise agree:

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

(b) Except as otherwise provided in subdivision (e) of Section 1282.2, 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.

(c) If there is more than one neutral arbitrator, the powers and duties of a neutral arbitrator under Sections 1282.8, 1283, 1283.2 and 1283.8, subdivisions (a) and (b) of Section 1282.2 and subdivision (d) of Section 1284.2 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.

(d) If there is no neutral arbitrator, the powers and duties of a

neutral arbitrator may be exercised by a majority of the arbitrators.

1282.2. Unless the parties otherwise agree:

(a) The neutral arbitrator shall appoint a time and place for the hearing and cause notice 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. On request of a party 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.

(b) 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.

(c) 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. On request of any party, the testimony of witnesses shall be given under oath.

(d) If an order to arbitrate has been made pursuant to Section 1281, the arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear.

(e) If an arbitrator for any reason fails to act, the hearing shall continue but only the remaining neutral arbitrator or neutral arbitrators may make the award.

(f) If a neutral arbitrator intends to base an award upon information relating to the controversy other than that obtained at the hearing, he shall disclose such information to all parties to the arbitration and give the parties an opportunity to meet it.

1282.6. A party has the right to be represented by an attorney at any proceeding or hearing under this title and a waiver of this right may be revoked; but if a party revokes his waiver of his right to be represented by an attorney, the other party is entitled to a reasonable continuance for the purpose of procuring an attorney.

1282.8. 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 served and enforced in accordance with Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of this code.

1283. The neutral arbitrator may administer oaths.

1283.2. 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.

1283.4. Except for the parties and their agents, officers and

employees, all witnesses appearing pursuant to subpena are entitled to receive fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in the superior court. The fee and mileage of a witness subpenaed upon the application of a party shall be paid by the party at whose request the witness is subpenaed. The fee and mileage of a witness subpenaed solely upon the determination of the neutral arbitrator shall be paid for in the manner provided for the payment of the neutral arbitrator's expenses.

1283.6. 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.

1283.8. 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.

1284. 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.

1284.2. (a) The arbitrators, upon written application of a party, may modify or correct the award upon any of the grounds set forth in subdivisions (a) and (c) of Section 1285.8 not later than 30 days after service of a signed copy of the award on the applicant.

(b) Application for such modification or correction shall be made not later than 10 days after service of a signed copy of the award on the applicant. Upon or before making such application, the applicant shall deliver or mail a copy of the application to all of the other parties to the arbitration.

(c) 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. Upon or before making such objection, the objector shall deliver or mail a copy of the objection to the applicant and all the other parties to the arbitration.

(d) The arbitrators shall either deny the application or modify or correct the award. The denial of the application or the modification or correction of the award shall be in writing and signed by the arbitrators concurring therein, and the neutral arbitrator shall serve a signed copy of such denial or modification or correction on each party personally or by registered or certified mail or as provided in the agreement. If no modification or correction of the award is served within the 30-day period provided in subdivision (a) of this section, the application for modification or correction shall be deemed denied on the last day of the 30-day period.

1284.4. Unless otherwise agreed to by the parties, 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.

Chapter 4

ENFORCEMENT, MODIFICATION OR VACATION OF AWARD

1285. A proceeding under this chapter to confirm, to modify or correct or to vacate an award is commenced by serving and filing a petition requesting such relief. The respondent named in the petition shall serve and file a response to the petition if he requests any relief other than that prayed for in the petition.

1285.2. [~~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 and is pending.~~]

[~~(2) 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 allege the substance of or attach to the petition a copy of each of the following:~~]

[~~(a) The agreement to arbitrate.~~]

[~~(b) The names of the arbitrators.~~]

[~~(c) The award.~~]

When a petition seeking relief under this chapter is served and filed in accordance with this title, the court shall confirm the award unless it vacates or modifies or corrects the award as prescribed in Sections 1285.4 and 1285.8.

1285.4. [~~1293. (1) Upon petition of an aggrieved party to the arbitration~~] When a petition or response requesting that an award be

vacated is served and filed in accordance with this title, the court shall vacate [~~an~~] the award if the court finds that:

(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~~] party requesting that the award be vacated were substantially prejudiced by misconduct of a neutral arbitrator;

(d) The arbitrators exceeded their powers; or

(e) The rights of the [~~petitioner~~] party requesting that the award be vacated were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of 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.~~]

1285.6. [~~(3)~~] If the award is vacated on any of the grounds stated in [~~subdivision-(1)-of-this~~] Section 1285.4, the court may order a rehearing before new arbitrators chosen as provided in Section 1281.4. [~~1284~~]. If the award is vacated on the grounds set forth in subdivision (d) or [~~(1)~~] (e) of [~~this~~] Section 1285.4, the court [~~may,~~] with the consent of the parties [,] may order a rehearing before the original arbitrators [~~or-their-successors-appointed-in-accordance-with-Section 1284~~]. The period of 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.]

1285.8. [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] When a petition or response requesting that an award be modified or corrected is served and filed in accordance with this title, the court shall modify or correct the award if the court finds that:

(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] controversy submitted; or

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

1286. [(2)] If the [petition-is-granted,-the] court [shall-modify or-correct] modifies or corrects the award [so-as-to-effect-its-intent-and, if-requested-by-a-party], the court shall confirm the award as so modified or corrected.

[(3)--If-the-court-denies-a-petition-to-modify-or-correct-an-award, the-court-shall,-on-request-of-a-party,-confirm-the-award.]

1286.2. (a) Except as otherwise provided in this section, a petition requesting that an award be confirmed under Section 1285.2 shall be served and filed not later than four years after the date of service of a signed copy of the award on the petitioner.

(b) Except as otherwise provided in this section, a petition or

response requesting that an award be vacated under Section 1285.4 or modified or corrected under Section 1285.8 shall be served and filed not later than 90 days after the date of service of a signed copy of the award upon the person requesting relief.

(c) Subject to the limitation set forth in subdivision (b) of this section, a response shall be served and filed within 10 days from the date of service of the petition unless such time is extended by the court.

(d) No petition may be filed under this chapter until at least 10 days after service of the signed copy of the award on the petitioner. If an application to the arbitrators for modification or correction of the award is made under Section 1284.2 during such 10-day period, a petition may not be filed under this chapter until the final determination of the application for modification or correction under Section 1284.2. If an application is made to the arbitrators for modification or correction of the award under Section 1284.2, the date of the service of the award for the purpose of subdivisions (a) and (b) of this section shall be deemed to be the date of the service upon the petitioner of a signed copy of the modification or correction of the award or of the denial of the application or the date that such application is deemed to be denied under subdivision (d) of Section 1284.2.

(e) The time limits provided in subdivisions (a), (b) and (c) of this section may be extended by an agreement in writing between the parties.

1286.4. ~~[1295.--(1)]~~ 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 [~~, except as provided in subdivision (2) of this section,~~] it may be enforced as if it had been rendered in an action in the court in which it is entered.

[~~(2) If a controversy is determined by an award that, if it were a contract between the parties, would be required to be approved by a court, the award shall be deemed to be such a contract and shall be subject to such approval.~~]

1286.6. [~~1295.5.~~] Unless an award is vacated as provided in this [~~title~~] chapter, the award may be enforced in the same manner and to the same extent as a contract between the parties to the award, whether the award is confirmed or not.

Chapter 5

GENERAL PROVISIONS RELATING TO PETITIONS AND RESPONSES

1287. A petition under Chapter 2 (commencing with Section 1281) of this title shall be filed by a party to the alleged agreement to arbitrate. A petition under Chapter 4 (commencing with Section 1285) of this title shall be filed by a party to the arbitration proceeding or award.

A petition under this title shall name as respondents the other parties to the arbitration agreement or award, if any. Any person included within and bound by the arbitration agreement or award may be named as a respondent.

If the court finds that a person named as a respondent was neither a party to the arbitration agreement or award, if any, nor a person included within and bound by the arbitration agreement or award, the petition shall be dismissed as to that person.

1287.2. Unless a copy thereof has previously been filed in the proceeding, a person seeking relief under Section 1285.2 or 1285.8 shall:

(a) Allege the substance of or attach to his petition or response a copy of the agreement to arbitrate.

(b) Set forth in his petition or response the names of the arbitrators.

(c) Incorporate in or attach to his petition or response a copy of the award and the written opinion of the arbitrators, if any.

1287.4. Unless a copy thereof has previously been filed in the proceeding, a petitioner seeking relief under Section 1285.4 shall:

(a) Allege the substance of or attach to his petition a copy of the agreement to arbitrate unless the existence or validity of such an alleged agreement is denied.

(b) Set forth in his petition the names of the arbitrators.

(c) Incorporate in or attach to his petition a copy of the award and the written opinion of the arbitrators, if any.

1287.6. [~~(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 except that not less than 10 days initial notice of the date set for the hearing on a petition shall be given.

1287.8. [~~(2)~~] (a) A copy of the petition and a written notice of the time and place of the hearing thereof and any other papers required by Section 1010 shall be served in the manner provided in the arbitration agreement for the service of such petition and notice.

[~~(3)~~] (b) If the arbitration agreement does not provide the manner in which a copy of [~~the~~] such petition and notice shall be served, the copy of the petition and [~~the~~] notice [~~thereof~~] and any other papers required by Section 1010 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 1288 unless:

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

(2) 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 1288.

1288. [~~(4) Subject to subdivision (2) of this~~] Except as otherwise provided in subdivision (a) of Section 1287.8, service of the copy of the

petition and the notice and any other papers required by Section 1010 [~~may~~] shall be made upon a person outside this State by mailing the copy of the petition and the notice and other papers 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.

1288.2. [~~(5) Subject to subdivision (2) of this~~] Except as otherwise provided in subdivision (a) of Section 1287.8, 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)~~] (b) of Section 1287.8 or [~~(4) of this~~] Section 1288, the copy of the petition and notice and any other papers required by Section 1010 shall be served as provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of this code.

1288.4. A response shall be served as provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of this code.

1288.6.[~~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.

Chapter 6

VENUE, JURISDICTION AND COSTS

1289. [~~1296.--(1)--Subject-to-subdivision-(2)-and-(4)-of-this-section~~] Except as otherwise provided in Section 1289.4 or 1289.6, [A] any 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~~] made prior to the commencement of arbitration proceedings shall be filed in the superior court in:

(a) The county where the agreement is to be performed or was entered into.

(b) If the agreement does not specify a county where the agreement is to be performed and the agreement was not entered into in any county in this State, 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,~~]

(c) In any case not covered by subdivision (a) or (b) of this Section, in any county in this State.

[~~(2)--A-motion-for-a-stay-of-an-action-made-pursuant-to-Section-1283-shall-be-filed-in-the-court-where-the-action-is-pending.~~]

1289.2. [~~(3)~~] Except as otherwise provided in Sections 1289.4, 1289.6 and 1289.8, any petition made after the commencement or completion of arbitration proceedings shall be filed in the superior court in the county where the arbitration is being or has been held, or, if not held exclusively in any one county of this State, then such petition shall be filed as provided in [~~subdivision-(1)-of-this~~] Section 1289.

1289.4. If a controversy referrable to arbitration under an alleged agreement is involved in an action or proceeding pending in a superior court, a petition for an order to arbitrate shall be filed in such action or proceeding.

1289.6. After a petition has been filed under Section 1281, 1281.4 or 1284, any subsequent petition under those sections involving the same agreement to arbitrate and the same controversy and the same parties shall be filed in the same court and heard in and as a part of the earlier proceeding.

1289.8. After a petition has been filed under Chapter 4 (commencing with Section 1285) of this title, any subsequent petition under such chapter involving the same award and the same parties shall be filed in the same court and heard as a part of the earlier proceedings.

1290. A motion for a stay of an action made pursuant to Section 1281.2 shall be made in the court where the action is pending.

1290.2. [~~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.

1290.4. [~~1298.5.~~] The court shall award costs upon any judicial proceeding under this title as provided in Chapter 6 (commencing with Section 1021) of Title 14 of Part 2 of this code.

Chapter 7

APPEALS

1291. [~~1298.--(1)~~] An appeal may be taken from:

(a) An order dismissing or denying a petition to compel arbitration under [~~subdivision (1) of~~] Section [~~1282~~] 1281.

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

[~~(c)~~] (b) An order [~~granting or~~] dismissing or denying a petition [~~to vacate an award~~] under Chapter 4 (commencing with Section 1285) of this title unless a rehearing in arbitration is ordered.

(d) An order confirming an award.

(e) An order modifying or correcting an award.

(f) An order vacating an award unless a rehearing in arbitration is ordered.

[~~(d)~~] (g) A judgment entered pursuant to this title.

1291.2. [~~(2)~~] The appeal shall be taken in the same manner as an appeal from an order or judgment in a civil action.

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

1053. When there are three referees [~~, or three arbitrators,~~] 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 (commencing 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. (1) Except as otherwise provided in subdivision (2) of this section, this act applies to all contracts whether executed before or after the effective date of this act.

(2) Section [~~1299~~] 1290.2 of the Code of Civil Procedure, as added by this act, does not apply to any contract executed before the effective date of this act; but such section 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 on or after the effective date of this act.

(32)

EXHIBIT B

SUGGESTED REVISIONS BY STATE BAR COMMITTEE ON
ARBITRATION OF TENTATIVE RECOMMENDATIONS OF
CALIFORNIA LAW REVISION COMMISSION

September 8, 1960

Revised October 15, 1960

(Proposed additional language is written in all capital letters and language proposed to be deleted is stricken through.)

An act to repeal Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, to add Title 9 (commencing 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 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure is hereby repealed.

SEC. 2. Title 9 (commencing 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) "Agreement" IS NOT LIMITED TO BUT includes agreements providing for valuations, appraisals and similar proceedings and agreements between employers and employees or between their respective representatives.

(2) "Award" includes an award made pursuant to an agreement not in writing.

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

(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.

~~(5) "Written agreement" shall be deemed to include a written agreement which has been extended or renewed by an oral or implied agreement.~~

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. COMMON LAW ARBITRATION IS ABOLISHED. ARBITRATION MAY BE COMPELLED AND ENFORCED ONLY AS PROVIDED IN THIS TITLE.

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 SUCH CONTROVERSY, the court shall order arbitration OF SUCH

CONTROVERSY if it determines that AN agreement TO ARBITRATE SUCH CONTROVERSY exists, unless it determines that:

(A) THE CONDITIONS PRECEDENT TO ARBITRATION SET FORTH IN THE AGREEMENT HAVE NOT BEEN FULFILLED BY THE PETITIONER, UNLESS SUCH FULFILLMENT HAS BEEN PREVENTED, OR SUCH CONDITIONS HAVE BEEN WAIVED, BY THE OTHER PARTY; OR

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

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

(2) IF THE COURT DETERMINES THAT ANY AGREEMENT TO ARBITRATE A CONTROVERSY EXISTS an order to arbitrate SUCH CONTROVERSY 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 a pending action or special proceeding between the parties and that a determination of such issues may make the arbitration unnecessary, the court may order arbitration but stay its order until such determination or until such earlier time as the court specifies.

(4) THE COURT MAY ENJOIN AN ARBITRATION PROCEEDING COMMENCED OR THREATENED IF IT DETERMINES THAT THERE IS NO AGREEMENT TO ARBITRATE THE CONTROVERSY.

1283. (1) If a court of competent jurisdiction, whether in this State or not, has ordered arbitration of ~~an issue~~ CONTROVERSY involved in an action or proceeding pending before a court of this State, the court OF THIS STATE in which such action or proceeding is pending shall, upon motion of a party, stay such action or proceeding until an arbitration is had in accordance with the order for arbitration or until such earlier time as the court specifies.

(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 CONTROVERSY involved in an action or proceeding pending before a court of this State and such application is undetermined, the court OF THIS STATE in which such action or proceeding is pending shall, upon motion of a party, stay such action or proceeding until the application for an order compelling arbitration is determined and, if arbitration of such issue CONTROVERSY is ordered, until an arbitration is had in accordance with the order for arbitration or until such earlier time as the court specifies.

(3) If the issue CONTROVERSY subject to arbitration is severable, the stay may be with respect to that issue CONTROVERSY 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 IN ACCORDANCE WITH THE AGREED METHOD TO THE FULLEST EXTENT POSSIBLE.

(2) When a petition is made to the court to appoint a neutral arbitrator AND THE METHOD UNDER SUBDIVISION (1) ABOVE CANNOT BE FOLLOWED, THEN the court shall nominate five persons from lists of persons supplied jointly by the parties or obtained from a governmental agency or a private disinterested association concerned with arbitration. The parties may within five days of receipt of such nominees from the court jointly select

the arbitrator ~~by agreement or lot from the nominees.~~ 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) EXCEPT UNDER THE CIRCUMSTANCES COVERED BY ~~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,~~ THE AWARD ~~may~~ SHALL be RENDERED ~~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.

(4) If there is no neutral arbitrator, the powers and duties of a neutral arbitrator may be exercised by a majority of the arbitrators.

1286. Unless the parties otherwise agree:

(1) The neutral arbitrator shall appoint a time and place for the hearing and cause notice to the parties and to 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.

On request of a party 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. IF ANY PARTY SO REQUESTS, WITNESSES SHALL BE SWORN.

(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 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 WITH PROPER NOTICE OF ALL PROCEEDINGS for any reason fails to act, the hearing shall continue but only the remaining neutral arbitrator or neutral arbitrators may ~~determine the questions submitted.~~ RENDER THE AWARD.

(6) THE ~~If~~ a neutral arbitrator SHALL CONSIDER AND ACT SOLELY ON THE RECORD MADE BEFORE HIM; PROVIDED, HOWEVER, THAT HE MAY TAKE NOTICE OF THOSE FACTS OF WHICH COURTS MAY TAKE JUDICIAL NOTICE UNDER SECTION 1875 OF THIS CODE ~~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~~ ANY waiver of this right is REVOCABLE ~~binding~~; PROVIDED, HOWEVER, THAT IF ANY PARTY RETRACTS HIS WAIVER OF HIS RIGHT TO BE REPRESENTED BY AN ATTORNEY THE OTHER PARTY SHALL BE ENTITLED TO A REASONABLE CONTINUANCE FOR THE PURPOSE OF PROCURING AN ATTORNEY.

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 (commencing 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 BE ENTITLED TO receive ~~fees~~ and mileage in the same amount and under the same circumstances as

prescribed by law for witnesses in civil actions in THE superior court. The fees and mileage expenses OF A WITNESS SUBPENAED UPON THE APPLICATION OF A PARTY shall be paid by the party at whose request the witness is subpenaed. The fees- and mileage expenses of a witness subpenaed SOLELY 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.

(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 IN WRITING 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 30 25 days after service of a signed copy of the award on the applicant.

(2) Application for such modification or correction shall be made not later than 10 days after service of a signed copy of the award on the applicant. UPON OR before making such application, the applicant shall deliver or mail 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. UPON OR before making such objection the objector shall deliver or mail a copy of the objection to the applicant and all the other parties to the arbitration.

(4) UNLESS THE ARBITRATORS DENY IN WRITING SAID APPLICATION, THEY SHALL ISSUE A CORRECTED AWARD OR AMENDMENT TO THE AWARD IN ACCORDANCE WITH SUBDIVISIONS (1) AND (2) OF SECTION 1289. IN THE EVENT THAT NO CORRECTED AWARD OR AMENDMENT TO THE AWARD IS ISSUED WITHIN THE 30-DAY PERIOD, THE APPLICATION SHALL BE DEEMED DENIED AS OF THE END OF THE 30-DAY PERIOD. FOR THE PURPOSE OF SUBDIVISIONS (1) AND (2) OF SECTION 1294.5, THE DATE OF THE SERVICE OF THE AWARD SHALL BE DEEMED TO BE THE DATE OF THE DENIAL OF THE APPLICATION OR THE DATE OF THE SERVICE OF THE CORRECTED AWARD OR AMENDMENT TO THE AWARD.

1291. Unless otherwise ~~provided in~~ AGREED TO BY the PARTIES, ~~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-and-is-pending.~~

ANY PARTY TO AN ARBITRATION PROCEEDING MAY FILE A PETITION TO CONFIRM THE AWARD. IF THE COURT SHALL FIND THAT:

(A) THE RESPONDENT NAMED IN THE PETITION WAS INCLUDED WITHIN AND BOUND BY THE AGREEMENT TO ARBITRATE THE CONTROVERSY SET FORTH IN THE PETITION, AND

(B) THE AWARD WAS RENDERED DETERMINING SAID CONTROVERSY

THE COURT SHALL CONFIRM THE AWARD UNLESS THE COURT, UPON TIMELY APPLICATION OF THE RESPONDENT, SHALL VACATE SAID AWARD ON ONE OR MORE OF THE GROUNDS SET FORTH IN SECTION 1293.

~~(2)--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-allege-the-substance-of-or-attach-to-the-petition-a copy-of-each-of-the-following:~~

~~(a)--The-agreement-to-arbitrate.~~

~~(b)--The-names-of-the-arbitrators.~~ [See § 1297(2)]

~~(c)--The-award.~~

1293. (1) Upon petition of ~~an-aggrieved~~ party to the arbitration, OR UPON TIMELY APPLICATION OF A RESPONDENT TO A PETITION TO CONFIRM, the court shall vacate an award if THE COURT FINDS THAT:

(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 to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of 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.~~ [See §1294.5]

(2) 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~~ MAY, with the consent of the parties, order a rehearing before the original arbitrators ~~or-their-successors-appointed-in-accordance-with Section-1284~~. The period of 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)~~ (3) If the court denies the petition to vacate the award, the court ~~shall,-on-request-of-a-party,~~ confirm the award. [See § 1295.5(1)]

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 THE COURT FINDS THAT:

(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 CONTROVERSY 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 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.

(3) If the court denies a petition to modify or correct an award, the court ~~shall, on request of a party,~~ confirm the award UNLESS THE AWARD IS VACATED UNDER SECTION 1293.

1294.5. (1) A PETITION TO CONFIRM UNDER SECTION 1292 MUST BE FILED AND SERVED NOT LATER THAN FOUR YEARS AFTER SERVICE OF A SIGNED COPY OF THE AWARD ON THE PETITIONER.

(2) A PETITION TO MODIFY OR CORRECT OR TO VACATE AN AWARD UNDER SECTIONS 1293 OR 1294 MUST BE FILED AND SERVED NOT LATER THAN 90 DAYS AFTER SERVICE OF A SIGNED COPY OF THE AWARD ON THE PETITIONER.

(3) THE TIME LIMITS PROVIDED IN SUBDIVISIONS (1) AND (2) MAY BE EXTENDED BY AN AGREEMENT IN WRITING BETWEEN THE PARTIES.

(4) ANY PERSON SERVED WITH A COPY OF ANY PETITION FILED UNDER SECTIONS 1292, 1293 OR 1294 WHO DESIRES TO OPPOSE SAID PETITION OR TO OBTAIN RELIEF OTHER THAN PRAYED FOR IN SAID PETITION, MAY, NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS 1, 2 AND 3 HEREOF, FILE A RESPONSE WITHIN TEN DAYS OF SERVICE OF SUCH PETITION UNLESS SUCH TIME IS EXTENDED BY THE COURT.

(5) NO PETITION MAY BE FILED UNDER SECTIONS 1292, 1293 OR 1294 UNTIL AT LEAST 10 DAYS AFTER SERVICE OF THE AWARD, AND IF, DURING SUCH 10-DAY

PERIOD, AN APPLICATION FOR MODIFICATION OR CORRECTION OF THE AWARD IS MADE UNDER SECTION 1290, THEN A PETITION MAY NOT BE FILED UNDER SECTIONS 1292, 1293 OR 1294 UNTIL THE FINAL DETERMINATION OF SUCH APPLICATION FOR MODIFICATION OR CORRECTION UNDER SECTION 1290.

1295. (1) 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, ~~except as provided in subdivision (2) of this section,~~ it may be enforced as if it had been rendered in an action in the court in which it is entered.

~~(2) If a controversy is determined by an award that, if it were a contract between the parties, would be required to be approved by a court, the award shall be deemed to be such a contract and shall be subject to such approval.~~

1295.5. ARBITRATION AWARDS MAY BE CONFIRMED, MODIFIED OR CORRECTED BY THE COURT, OR VACATED ONLY AS PROVIDED IN THIS TITLE. ~~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 was to be performed or WAS ENTERED INTO, OR IF ~~if no party has a residence or place of business in this State and~~ the place of performance is not specified in the agreement OR IT WAS NOT ENTERED INTO IN THIS STATE, IN THE COUNTY

WHERE ANY PARTY RESIDES OR HAS A PLACE OF BUSINESS ~~in any county in this State~~.

(2) A motion for a stay of an action made pursuant to Section 1283 shall be made in the court where the action is pending.

(3) Any petition made after the commencement OR COMPLETION of arbitration proceedings shall be filed in the county where the arbitration is being or has been held, or, if not held exclusively in any one county of this State, then such petition shall be filed as provided in subdivision (1) of this section.

(4) AFTER ANY PETITION HAS BEEN FILED UNDER SECTIONS 1282 or 1284, ANY SUBSEQUENT PETITION UNDER EITHER OF SAID SECTIONS INVOLVING THE SAME AGREEMENT TO ARBITRATE AND THE SAME CONTROVERSY AND PARTIES SHALL BE FILED IN THE SAME COURT AND HEARD IN AND AS A PART OF THE EARLIER PROCEEDING.

(5) AFTER ANY PETITION HAS BEEN FILED UNDER SECTIONS 1292, 1293, OR 1294, ANY SUBSEQUENT PETITIONS OR APPLICATIONS FOR RELIEF UNDER ANY OF SAID SECTIONS INVOLVING THE SAME AWARD SHALL BE FILED IN THE SAME COURT AND HEARD IN AND AS A PART OF THE EARLIER PROCEEDING.

1297. (1) A PETITION UNDER THIS TITLE SHALL SET FORTH IN THE CAPTION THE NAMES OF THE PETITIONER AND AS RESPONDENTS THE OTHER PARTIES TO THE ARBITRATION AGREEMENT OR AWARD, IF ANY.

(2) A PETITION UNDER SECTIONS 1292 OR 1294 SHALL, UNLESS A COPY THEREOF HAS PREVIOUSLY BEEN FILED IN THE PROCEEDING:

(A) ALLEGE THE SUBSTANCE OF OR ATTACH TO THE PETITION A COPY OF THE AGREEMENT TO ARBITRATE.

(B) SET FORTH THE NAMES OF THE ARBITRATORS.

(C) INCORPORATE OR ATTACH A COPY OF THE AWARD AND THE

WRITTEN OPINION OF THE ARBITRATORS, IF ANY.

(3) A PETITION UNDER SECTION 1293 SHALL, UNLESS A COPY THEREOF HAS PREVIOUSLY BEEN FILED IN THE PROCEEDING:

(A) ALLEGE THE SUBSTANCE OF OR ATTACH TO THE PETITION A COPY OF THE AGREEMENT TO ARBITRATE UNLESS THE EXISTENCE OR VALIDITY OF SUCH AN ALLEGED AGREEMENT IS DENIED.

(B) SET FORTH THE NAMES OF THE ARBITRATORS.

(C) INCORPORATE OR ATTACH A COPY OF THE AWARD AND THE WRITTEN OPINION OF THE ARBITRATORS, IF ANY.

(41) Except as otherwise provided in this SECTION ~~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, PROVIDED, HOWEVER, THAT NOT LESS THAN 10 DAYS INITIAL NOTICE OF THE DATE SET FOR THE HEARING SHALL BE GIVEN.

(52) A copy of the petition AND THE OTHER PAPERS REQUIRED BY SECTION 1010 OF THIS CODE and a written notice OF THE TIME AND PLACE OF HEARING thereof shall be served in the manner provided in the arbitration agreement FOR THE SERVICE OF SUCH PETITION AND NOTICE.

(63) If the arbitration agreement does not provide the manner in which a copy of SUCH ~~the~~ petition and notice shall be served, the copy of the petition and ~~the~~ notice ~~thereof~~ AND ANY OTHER PAPERS REQUIRED BY SECTION 1010 OF THIS CODE shall be served in the manner provided by law for the service of summons in an action or in the manner provided in subdivision (74) 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 (74) of this section.

(74) Subject to subdivision (52) 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.

(85) Subject to subdivision (52) 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 (63) or (74) of this section, the copy of the petition and notice shall be served as provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of this code.

(9) AFTER THE FIRST FILING OF ANY PETITION UNDER SECTIONS 1292, 1293, OR 1294, THE RESPONDING PARTY MAY SEEK RELIEF UNDER ANY OF SUCH SECTIONS BY WAY OF RESPONSE TO SUCH PETITION AND NEED NOT FILE A CROSS PETITION AS SUCH. ALL PETITIONS AND RESPONSES UNDER SUCH SECTIONS SHALL BE HEARD AT THE SAME TIME.

(10) ON THE DAY NOTICED FOR ANY HEARING UNDER THIS TITLE, SUCH HEARING SHALL TAKE PRECEDENCE OF ALL OTHER MATTERS ON THE CALENDAR OF

SAID DAY, EXCEPT OLDER MATTERS OF THE SAME CHARACTER AND MATTERS TO WHICH SPECIAL PRECEDENCE MAY BE GIVEN BY LAW. [FROM CCP 527]

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, EXCEPT WHERE THE COURT ORDERS AN AWARD VACATED OR MODIFIED OR CORRECTED.

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 IN ARBITRATION is ordered.

(d) AN ORDER MODIFYING OR CORRECTING AND CONFIRMING AN AWARD, AN ORDER DENYING A PETITION TO MODIFY OR CORRECT AND VACATING AN AWARD, OR AN ORDER DENYING A PETITION TO MODIFY OR CORRECT AND CONFIRMING AN AWARD.

(~~d~~) A judgment entered pursuant to this title.

(2) The appeal shall be taken in the same manner as an appeal from an order or judgment in a civil action.

1298.5. The court shall award costs upon any judicial proceeding under this title as provided in Chapter 6 (commencing 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.

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 (commencing 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. (1) Except as otherwise provided in subdivision (2) of this section, this act applies to all contracts whether executed before or after the effective date of this act.

(2) Section 1299 of the Code of Civil Procedure, as added by this act, does not apply to any contract executed before the effective date of this act; but such section 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 on or after the effective date of this act.

EXHIBIT C

Comments of the

American Arbitration Association

on the

Tentative Recommendations and Proposed Legislation

relating to

ARBITRATION

in California

The present arbitration statute of the State of California, Title 9 of Part 3 of the Code of Civil Procedure, of 1927, afforded one of the first modern laws in the United States whereby arbitration agreements could be enforced. More than thirty years experience with this statute has shown its versatility and adaptability to changing needs and times in both commercial and labor arbitration. Nevertheless, there are always minor defects or omissions which appear in any type of legislation. These often require slight revisions under changed circumstances, especially in the light of a great number of court decisions interpreting the application of sections 1280 following of the Code of Civil Procedure.

Thus, a revision of the California arbitration statute was considered necessary to clarify some ambiguous provisions. The general tenor of the changes in the California arbitration statute, as embodied in the proposed draft of a new Title 9 (p. 14 foll. of Doc. 32 of the California Law Revision Commission, of July 28, 1960) is exemplary. The proposed changes constitute a great improvement over the existing statutory California law on arbitration.

There were obviously painstaking efforts taken to provide for a truly modern arbitration law in California. Some comments are nevertheless called for with regard to certain proposed revisions as well as several omissions which might deserve further consideration.

1) Sect. 1280(2) permitting awards made pursuant to agreements not in writing appears to be too vague and also impractical, e.g. if there is no agreement in writing, how may an agency administering arbitration get

jurisdiction to commence an arbitration proceeding? Agreements not signed are valid but query whether oral agreements would not cause unnecessary confusion and frustration of the arbitral process.

2) On the other hand, if the suggestion for a statutory amendment that only arbitration agreements "in writing" be enforceable, then oral agreements which extend or renew previous written agreements should be enforceable. Often a written agreement calling for arbitration of disputes will expire while the parties are in the process of negotiating a new agreement to replace the one that expired. The parties continue to operate under the former agreement. It would be better if all doubt as to the validity of arbitration during this period could be removed.

3) Sect. 1280(5) is ample enough for any possible extensions.

4) Sections 1286(1), 1289(2) and 1297(4) provide for service by certified or registered mail. Service by ordinary mail has been proven sufficient in the practice of both commercial and labor arbitration, as provided e.g. in sect. 39 of the Commercial Arbitration Rules, and sect. 36 of the Voluntary Labor Arbitration Rules of the American Arbitration Association.

5) Sect. 1286(4) would preclude the use of ex parte arbitration without a court order. This would seriously hamper many interstate arbitration agreements.

6) Sect. 1288(3) specifically excludes discovery procedures. The reasons do not appear evident.

7) Sect. 1295(5), allowing for enforcement of an award which is not reduced to judgment should make some provision for the res judicata effect of such an unconfirmed award.

Among important omissions from the proposed text there may be mentioned:

a) Some type of joinder of parties should be permitted. Especially in the construction field, where there are contractors and sub-contractors involved, it is manifestly unfair to have the contractor go through a full arbitration proceeding and have to comply with certain requirements as to specific performance of work to be done, and then oblige him to sue the sub-contractor or go through another arbitration with the sub-contractor merely because the sub-contractor was not a party to the agreement with the owner.

b) Serious consideration might be given to whether a court proceeding should be stayed pending arbitration, where the party seeking the stay has taken no affirmative steps to compel arbitration. It is dangerous to allow the arbitration agreement to act as a dilatory plea in and of itself. Either the petitioner should be required to cross move to compel arbitration or the court should be specifically empowered to order the parties to proceed to arbitration on its own motion.

c) Provisional remedies might also be provided for an arbitration proceeding, just as they are authorized in court actions. Often the very subject of the dispute may become moot if the claimant cannot secure some injunctive relief or attachment-type remedy. At present the arbitrator may not grant such relief unless it is in the form of a final award, because his authority is limited to granting only one and, for that matter, final award. Once he grants preliminary relief it would be considered as final; he could thus be "functus officio", so that no further relief, on the basic issues, could be forthcoming in the same arbitration.

There may further be mentioned:

Sect. 3390 of the Civil Code, in its proposed amendment expressly provides for non-enforcement of contracts for personal service. It may be noted that a decision to the contrary of the N.Y. Court of Appeals was rendered in Staklinski v. Pyramid Electric Co., 6 N.Y.2d 159, which has widely been discussed. Reference is made to recent notes in 7 University of California Los Angeles Law Review 507, and 45 Cornell Law Quarterly 580 (1960).

Indeed, the question presents an issue which should be left to the discretion of the arbitrator if the parties wish to give such authority. In this respect, the more recent decision of the N.Y. Court of Appeals, in Grayson-Robinson Stores v. Iris Construction Corp., 8 N.Y.2d 133, may also be mentioned.