#34(L) 5/11/64

Memorandum 64-30

Subject: Study No. 34(L)--Uniform Rules of Evidence (New Evidence Code)

We are sending you with this memorandum a preliminary draft of the new Evidence Code. This draft contains the various Uniform Rules as revised by the Commission, together with various provisions of existing law which we plan to include in the Evidence Code. (We have made a few changes in the revised rules in order to insert them in the code.)

In some cases, the Commission has not considered provisions that are included in the Evidence Code. We will be preparing memoranda to indicate the problems that these provisions present. Some of these problems can be identified only after we have received additional portions of Professor Degnan's study.

In other cases, we have merely outlined the content of certain portions of the Evidence Code; we have not attempted to express the substance of the sections that will be included in the code. These portions of the Evidence Code will be drafted after we have considered Professor Degnan's research study and additional memoranda prepared by the staff.

The organization of the Evidence Code is tentative. We may find that further study of various provisions will require reorganization. For example, Professor Degnan suggests (Part IV of his study) that the material on weight of evidence be included

in the Division of the Evidence Code relating to Burden of Producing Evidence, Burden of Proof, and Presumptions, whereas we have tentatively included this material in the General Provisions Division of the Evidence Code.

We have checked with the Legislative Counsel concerning whether this material would properly constitute a new code. He had no objections, and noted that the Commercial Code was made a new code.

We also checked with the Legislative Counsel concerning the numbering system to be used in the new code. Although the staff would prefer a numbering system that allows room for expansion without resorting to ".1" or "a" following section numbers, the Legislative Counsel prefers a system that numbers sections in consecutive order. We have followed the preference of the Legislative Counsel on this matter with one exception: We have numbered the sections in the definitions division by five rather than one; and we find that this system was used for the definitions division of the Vehicle Code.

We also requested the Legislative Counsel to provide us with the expert assistance of his office on the organization of the new code. He has agreed, if time permits, to provide us with such assistance sometime after June 15. After this review by his office, we may find revisions in organization of the code are needed.

At the May meeting, we will request that the Commission tentatively approve the organization of the new code, subject

to revisions to be made later as further research indicates that such revisions are needed. Accordingly, we suggest that you read the new evidence code with care prior to the meeting.

Attached (gold sheets) is a revised schedule on this project.

Respectfully submitted,

John H. DeMoully
Executive Secretary

EVIDENCE CODE

DIVISION 1. PRELIMINARY PROVISIONS AND CONSTRUCTION

1. Short title.

1. This code shall be known as the Evidence Code.

2. Common law rule construing code abrogated.

2. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of this State respecting the subject to which it relates, and its provisions and all proceedings under it are to be liberally construed, with a view to effect its objects and to promote justice.

3. Continuation of existing law.

3. The provisions of this code, insofar as they are substantially the same as existing provisions relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

4. Pending proceedings and accrued rights.

4. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by the provisions of this code, but all procedures thereafter taken therein shall conform to the provisions of this code so far as possible.

5. Constitutionality.

5. If any provision of this code or its application to any person or circumstance is held unconstitutional, such decision shall not affect any other provision or application of this code which can be given effect without the unconstitutional provision or application, and to this end the provisions of this code are declared to be severable.

6. Construction of code.

6. Unless the provision or the context otherwise requires, these preliminary provisions and rules of construction shall govern the construction of this code.

7. Effect of headings.

7. Division, chapter, and article headings do not in any manner affect the scope, meaning, or intent of the provisions of this code.

8. References to statutes.

8. Whenever any reference is made to any portion of this code or of any other law, such reference shall apply to all amendments and additions heretofore or hereafter made.

9. "Chapter," "article," "section," "subdivision," and "paragraph."

9. (a) "Chapter" means a chapter of the division in which that term occurs unless otherwise expressly mentioned.

(b) "Article" means an article of the chapter in which that term occurs unless some other article is expressly mentioned.

(c) "Section" means a section of this code unless some other statute is expressly mentioned.

(d) "Subdivision" means a subdivision of the section in which that term occurs unless some other section is expressly mentioned.

(e) "Paragraph" means a paragraph of the subdivision in which that term occurs unless some other subdivision is expressly mentioned.

10. Construction of tenses.

10. The present tense includes the past and future tenses; and the future, the present.

11. Construction of genders.

11. The masculine gender includes the feminine and neuter.

12. Construction of singular and plural.

12. The singular number includes the plural; and the plural, the singular.

13. "Shall" and "may."

13. "Shall" is mandatory and "may" is permissive.

14. When code takes effect.

14. This code takes effect on July 1, 1966.

DIVISION 2. WORDS AND PHRASES DEFINED

100. Application of definitions.

100. Unless the provision or context otherwise requires, these definitions govern the construction of this code.

105. Action.

105. "Action" includes a civil action or proceeding and a criminal action or proceeding.

110. Burden of producing evidence.

110. "Burden of producing evidence" means the obligation of a party to introduce evidence sufficient to avoid a preemptory finding against him as to the existence or nonexistence of a disputed fact.

115. Burden of proof.

115. "Burden of proof" means the obligation of a party to meet the requirements of a rule of law that the fact be proved either by a preponderance of the evidence or by clear and convincing evidence or beyond a reasonable doubt, as the case may be. Burden of proof is synonymous with "burden of persuasion." Unless a rule of law specifically requires otherwise, the burden of proof requires proof by a preponderance of the evidence.

120. Civil action.

120 "Civil action" means a civil action or proceeding.

125. Conduct.

125. "Conduct" includes all active and passive behavior, both verbal and non-verbal.

130. County.

130. "County" includes "city and county."

135. Court.

135. "Court" means the Supreme Court, a district court of appeal, superior court, municipal court, or justice court, but does not include a grand jury.

140. Criminal action.

140. "Criminal action" means a criminal action or proceeding.

145. Declarant.

145. "Declarant" is a person who makes a statement.

150. Evidence.

150. "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact in judicial or fact finding tribunals.

155. Finding of fact, finding, finds.

155. "Finding of fact," "finding," or "finds" means the determination from evidence or judicial notice of the existence or nonexistence of a fact. A ruling on the admissibility of evidence implies whatever supporting finding of fact is prerequisite thereto; a separate or formal finding is unnecessary unless required by statute.

160. Governmental subdivision.

160. "Governmental subdivision" means . . . .

165. The hearing.

165. "The hearing" means the hearing at which the question concerning the admissibility of evidence under a statute section is raised, and not some earlier or later hearing.

170. Hearsay evidence.

170. "Hearsay evidence" is evidence of a statement made other than by a witness while testifying at the hearing that is offered to prove the truth of the matter stated.

175. Judge.

175. "Judge" includes a court commissioner, referee, or similar officer, authorized to conduct and conducting a court proceeding or court hearing.

180. Oath.

180. "Oath" includes affirmation.

185. Perceive.

185. "Perceive" means acquire knowledge through one's senses.

190. Person.

190. "Person" includes a corporation as well as a natural person.

195. Personal property.

195. "Personal property" includes money, goods, chattels, things in action, and evidences of debt.

200. Property.

200. "Property" includes both real and personal property.

205. Proof.

205. "Proof" is the establishment of a fact by evidence.

210. Public employee.

210. "Public employee" means an officer, agent, or employee of the United States or of a public entity.

215. Public entity.

215. "Public entity" includes a state, county, city, district, public authority, public agency, and any other political subdivision or political corporation.

220. Real property.

220. "Real property" is coextensive with lands, tenements, and hereditaments.

225. Relevant evidence.

225. "Relevant evidence" means evidence having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action, including the credibility of a witness or hearsay declarant.

230. Rule of law.

230. "Rule of law" includes constitutional, statutory, and decisional law.

235. State.

235. "State" means the State of California, unless applied to the different parts of the United States. In the latter case, it includes the District of Columbia and the territories.

240. Statement.

240. "Statement" means not only an oral or written expression but also non-verbal conduct of a person intended by him as a substitute for words in expressing the matter stated.

245. Statute.

245. "Statute" includes a constitutional provision.

250. Trier of fact.

250. "Trier of fact" means a judge when he is trying an issue of fact other than one relating to the admissibility of evidence and a jury.

255. Unavailable as a witness.

255. (a) Except as otherwise provided in subdivision (b), "unavailable as a witness" means that the declarant is:

(1) Exempted on the ground of privilege from testifying concerning the matter to which his statement is relevant.

(2) Disqualified from testifying to the matter.

(3) Dead or unable to attend or to testify at the hearing because of then existing physical or mental illness or infirmity.

(4) Absent beyond the jurisdiction of the court to compel his attendance by its process.

(5) Absent from the hearing and the proponent of his statement has exercised reasonable diligence but has been unable to procure his attendance by subpena.

(6) Absent from the hearing because of imprisonment and the court is unable to compel his attendance at the hearing by its process.

(b) A declarant is not unavailable as a witness:

(1) If the exemption, disqualification, death, inability, or absence of the declarant is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the declarant from attending or testifying; or

(2) If unavailability is claimed because the declarant is absent beyond the jurisdiction of the court to compel appearance by its process and the deposition of the declarant could have been taken by the proponent by the exercise of reasonable diligence and without undue hardship or expense.

260. Verbal.

260. "Verbal" includes both oral and written words.

265. Writing.

265. "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

DIVISION 3. GENERAL PROVISIONS

CHAPTER 1. APPLICABILITY OF CODE

300. Applicability of code.

300. Except as otherwise provided by statute, this code applies in every proceeding, both criminal and civil, conducted by a court in which evidence is introduced, including proceedings conducted by a court commissioner, referee, or similar officer.

CHAPTER 2. ORDER OF PROOF

310. Order of proof.

[Substance of CCP 2042 to be inserted here. Section will be drafted after Commission has considered research study. Section 2042 reads:

> 2042. The order of proof must be regulated by the sound discretion of the Court. Ordinarily, the party beginning the case must exhaust his evidence before the other party begins.]

[Section 2042 may duplicate Code of Civil Procedure Section 601. If so, the chapter on order of proof could be eliminated unless it is necessary for criminal cases.]

CHAPTER 3. QUESTIONS FOR JUDGE AND JURY

320. Questions of law for court.

[Substance of CCP 2102 to be inserted here. Section will be drafted after Commission has considered research study. Section 2102 reads:

2102. All questions of law, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the Court, and all discussions of law addressed to it. Whenever the knowledge of the Court is, by this Code, made evidence of a fact, the Court is to declare such knowledge to the jury, who are bound to accept it.]

321. Determination of foreign law.

321. Determination of the law of a foreign country or a governmental subdivision of a foreign country is a question of law to be determined by the court. If such law is applicable and if the judge is unable to determine it, he may, as the ends of justice require, either (a) apply the law of this State if he can do so consistently with the Constitution of this State and of the United States or (b) dismiss the action without prejudice.

330. Jury as trier of fact.

[Substance of CCP 2101 to be inserted here. Section will be drafted after Commission has considered research study. Section 2101 reads:

2101. All questions of fact, where the trial is by jury, other than those mentioned in the next section, are to be decided by the jury, and all evidence thereon is to be addressed to them, except when otherwise provided by this Code.]

CHAPTER 4. ADMITTING AND EXCLUDING EVIDENCE

Article 1. General Provisions

350. Only relevant evidence admissible.

350. No evidence is admissible except relevant evidence.

351. Admissibility of relevant evidence.

351. Except as otherwise provided by statute, all relevant evidence is admissible.

352. Discretion of judge to exclude evidence.

352. (a) The judge may in his discretion exclude evidence if he finds that its probative value is substantially outweighed by the fact that its admission will (1) necessitate undue consumption of time or (2) create substantial danger of undue prejudice or of confusing the issues or of misleading the jury.

(b) The judge may stop the production of further evidence upon any particular point when the evidence upon it is already so full as to preclude reasonable doubt.

353. Effect of erroneous admission of evidence.

353. A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous admission of evidence unless:

(a) There appears of record an objection to or a motion to strike the evidence timely made and so stated as to make clear the specific ground

of the objection or motion; and

(b) The court which passes upon the effect of the error or errors is of opinion that the admitted evidence should have been excluded on the ground stated and probably had a substantial influence in bringing about the verdict or finding.

354. Effect of erroneous exclusion of evidence.

354. A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous exclusion of evidence unless the court which passes upon the effect of the error or errors is of opinion that the excluded evidence would probably have had a substantial influence in bringing about a different verdict or finding and it appears of record that:

(a) The substance, purpose, and relevance of the expected evidence was made known to the judge by the questions asked, an offer of proof, or by any other means; or

(b) The rulings of the judge made compliance with subdivision (a) futile; or

(c) The evidence was sought by questions asked during cross-examination.

355. Limited admissibility.

355. When evidence is admissible as to one party or for one purpose and is inadmissible as to another party or for another purpose, the judge upon request shall restrict the evidence to its proper scope and instruct the jury accordingly.

390. Entire act, declaration, conversation or writing may be brought out to elucidate part offered.

[Substance of CCP 1854 will be inserted here. Section will be drafted

after research study is reviewed. Section 1854 reads:

1854. When part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other; when a letter is read, the answer may be given; and when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing, which is necessary to make it understood, may also be given in evidence.]

391. Object related to fact in issue.

[Substance of CCP 1954, if retained, will be inserted here. Section will be drafted after research study is reviewed. Section 1954 reads:

1954. Whenever an object, cognizable by the senses, has such a relation to the fact in dispute as to afford reasonable grounds of belief respecting it, or to make an item in the sum of the evidence, such object may be exhibited to the jury, or its existence, situation, and character may be proved by witnesses. The admission of such evidence must be regulated by the sound discretion of the Court.]

Article 2. Preliminary Determinations on Admissibility of Evidence

400. "Preliminary fact" defined.

400. As used in this article, "preliminary fact" means a fact upon the existence of which depends the admissibility or inadmissibility of evidence, the qualification or disqualification of a person to be a witness, or the existence or nonexistence of a privilege.

401. "Proffered evidence" defined.

401. As used in this article, "proffered evidence" means evidence, the admissibility or inadmissibility of which is dependent upon the existence or nonexistence of a preliminary fact.

402. Procedure for determining existence of preliminary fact.

402. (a) When the existence of a preliminary fact is disputed, its existence or nonexistence shall be determined as provided in this article.

(b) On the admissibility of a confession or admission of a defendant in a criminal action, the judge shall hear and determine the question out of the presence and hearing of the jury unless otherwise requested by the defendant. On the admissibility of other evidence, the judge may hear and determine the question out of the presence or hearing of the jury.

(c) In determining the existence of a preliminary fact under Section 404 or 405, exclusionary rules of evidence do not apply except for Section 352 and the rules of privilege.

403. Determination of preliminary fact where relevancy, personal knowledge, or authenticity is disputed.

403. (a) The proponent of the proffered evidence has the burden of producing evidence as to the existence of the preliminary fact, and the proffered evidence is inadmissible unless the judge finds that there is evidence sufficient to sustain a finding of the existence of the preliminary fact when:

(1) The relevance of the proffered evidence depends on the existence of the preliminary fact;

(2) The preliminary fact is the personal knowledge of the witness concerning the subject matter of his testimony;

(3) The preliminary fact is the authenticity of a writing; or

(4) The proffered evidence is of a statement or other conduct by a particular person and the disputed preliminary fact is whether that person made the statement or so conducted himself.

(b) The judge may admit conditionally the proffered evidence under this section, subject to the evidence of the preliminary fact being later supplied in the course of the trial.

(c) If the judge admits the proffered evidence under this section:

(1) He may, and on request shall, instruct the jury to determine the existence of the preliminary fact and to disregard the evidence unless the jury finds that the preliminary fact exists.

(2) He shall instruct the jury to disregard the proffered evidence if he subsequently determines that a jury could not reasonably find that the preliminary fact exists.

404. Determination of whether evidence is incriminatory.

404. Whenever the proffered evidence is claimed to be privileged under Article 2 (commencing with Section 940) of Chapter 4 of Division 8, the person claiming the privilege has the burden of showing, that the proffered evidence might incriminate him as provided in Section 940; and the proffered evidence is inadmissible unless it clearly appears to the judge that the proffered evidence cannot possibly have a tendency to incriminate the person claiming the privilege.

405. Determination of preliminary fact in other cases.

405. Except as otherwise provided in Sections 403 and 404:

(a) When the existence of a preliminary fact is disputed, the judge shall indicate which party has the burden of producing evidence and the burden of proof on the issue as implied by the rule of law under which the question arises. The judge shall determine the existence or nonexistence of the preliminary fact and shall admit or exclude the proffered evidence as required by the rule of law under which the question arises.

(b) If a fact in issue in the action is also a preliminary fact, the judge shall not inform the jury of his determination of the preliminary fact.

The jury shall make its determination of the fact without regard to the determination made by the judge. If the proffered evidence is admitted, the jury shall not be instructed to disregard the evidence if its determination of the fact differs from the judge's determination of the preliminary fact.

406. Evidence affecting weight or credibility.

406. This article does not limit the right of a party to introduce before the trier of fact evidence relevant to weight or credibility.

CHAPTER 5. WEIGHT OF EVIDENCE

Note: This chapter will be drafted after the research study covering the subject matter of this chapter has been considered by the Commission. The sections in this chapter will begin with Section 410.

CHAPTER 6. INSTRUCTING JURY ON EFFECT OF EVIDENCE

440. Certain instructions required on proper occasions.

441. Power of jury not arbitrary.

442. Not bound by number of witnesses.

443. Witness whose testimony is false in part.

444. Testimony of an accomplice.

445. Oral admissions.

446. Burden of proof.

447. Party having power to produce better evidence.

[Sections 440 to 447 will be based on CCP 2061. These sections will be drafted after the Commission has considered the research study.]

DIVISION 4. JUDICIAL NOTICE

450. Judicial notice may be taken only as authorized by statute.

450. Judicial notice may not be taken of any matter unless authorized or required by statute.

451. Matters which must be judicially noticed.

451. Judicial notice shall be taken of:

(a) The decisional, constitution, and public statutory law of the United States and of every state, territory, and possession of the United States.

(b) Any matter made a subject of judicial notice by Section 11383, 11384 or 18576 of the Government Code or by Section 307 of Title 44 of the United States Code.

(c) Rules of court of this State and of the United States.

(d) Facts and propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute.

452. Matters which may be judicially noticed.

452. Judicial notice may be taken of the following matters to the extent that they are not embraced with Section 451:

(a) Resolutions and private acts of the Congress of the United States and of the legislature of any state, territory, or possession of the United States.

(b) Legislative enactments and regulations of governmental subdivisions or agencies of (1) the United States and (2) any state, territory, or

possession of the United States.

(c) Official acts of the legislative, executive, and judicial departments of this State and of the United States.

(d) Records of any court of this State or of the United States.

(e) The law of foreign countries and governmental subdivisions of foreign countries.

(f) Specific facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

453. Compulsory judicial notice upon request.

453. (a) Except as provided in subdivision (b), judicial notice shall be taken of each matter specified in Section 452, if a party requests it and:

(1) Furnishes the judge sufficient information to enable him to take judicial notice of the matter; and

(2) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request.

(b) Judicial notice need not be taken under subdivision (a) if:

(1) An adverse party disputes the propriety of taking such notice or the tenor thereof; and

(2) The party requesting that judicial notice be taken fails to persuade the judge as to the propriety of taking such notice and as to the tenor thereof.

454. Information that may be used in taking judicial notice.

454. In determining the propriety of taking judicial notice of a matter or the tenor thereof:

(a) Any source of pertinent information, including the advice of persons learned in the subject matter, may be consulted or used, whether or not furnished by a party.

(b) No exclusionary rule except a valid claim of privilege shall apply.

455. Opportunity to present information to judge.

455. (a) Before judicial notice of any matter specified in Section 452 may be taken, the judge shall afford each party reasonable opportunity to present to him information relevant to (1) the propriety of taking judicial notice of the matter and (2) the tenor of the matter to be noticed.

(b) With respect to any matter specified in Section 452, if the judge resorts to any source of information not received in open court, including the advice of persons learned in the subject matter, such information and its source shall be made a part of the record in the action, and the judge shall afford each party reasonable opportunity to meet such information before judicial notice of the matter may be taken.

456. Noting for record matter judicially noticed.

456. If a matter judicially noticed is other than a matter specified in subdivision (a) of Section 451, the judge shall at the earliest practicable time indicate for the record the matter which is judicially noticed and the tenor thereof.

457. Instructing jury on matters noticed.

457. If a matter judicially noticed is a matter which would otherwise have been for determination by the jury, the judge may and upon request shall instruct the jury to accept as a fact the matter so noticed.

458. Judicial notice in proceedings subsequent to trial.

458. (a) The failure or refusal of the judge to take judicial notice of a matter, or to instruct the jury with respect to the matter, does not preclude the judge from taking judicial notice of the matter in subsequent proceedings in the action.

(b) The reviewing court shall judicially notice each matter specified in Sections 451 and 452 that the judge was required to notice under Section 451 or 453. The reviewing court may judicially notice any matter specified in Section 452 and has the same power as the judge under Section 321. The reviewing court may judicially notice a matter in a tenor different from that noticed by the judge.

(c) In determining the propriety of taking judicial notice of a matter or the tenor thereof, the reviewing court has the same power as the judge under Section 454.

(d) The judge or reviewing court taking judicial notice under this section of a matter specified in Section 452 shall comply with the provisions of Section 455 if the matter was not theretofore judicially noticed in the action.

(e) In determining the propriety of taking judicial notice of a matter specified in Section 452, or the tenor thereof, if the reviewing court resorts to any source of information not received in open court or

not included in the record of the action, including the advice of persons learned in the subject matter, such information and its source shall be made a part of the record in the action, and the reviewing court shall afford each party reasonable opportunity to meet such information before judicial notice of the matter may be taken.

DIVISION 5. BURDEN OF PRODUCING EVIDENCE, BURDEN OF PROOF, AND PRESUMPTIONS

[§§ 500-699]

[This division will be set out in statutory form in the Tentative Recommendation on Burden of Producing Evidence, Burden of Proof, and Presumptions.]

DIVISION 6. WITNESSES

CHAPTER 1. COMPETENCY

700. General rule as to competency.

700. Except as otherwise provided by statute, every person is qualified to be a witness and no person is disqualified to testify to any matter.

701. Disqualification of witness.

701. A person is disqualified to be a witness if he is:

(a) Incapable of expressing himself concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand him; or

(b) Incapable of understanding the duty of a witness to tell the truth.

702. Personal knowledge.

702. (a) Subject to Section 721, the testimony of a witness concerning a particular matter is inadmissible if no trier of fact could reasonably find that he has personal knowledge of the matter.

(b) Evidence of personal knowledge may be provided by the testimony of the witness himself.

(c) The judge may receive conditionally the testimony of a witness, subject to evidence of personal knowledge being later supplied in the course of the trial.

703. Judge as witness.

703. Against the objection of a party, the judge presiding at the trial of an action may not testify in that trial as a witness. If, after such objection, the judge finds that his testimony would be of importance, he shall order the trial to be postponed or suspended and to take place before another judge.

704. Juror as witness.

704. (a) A member of a jury, sworn and empanelled in the trial of an action, may not testify in that trial as a witness. If the judge finds that the juror's testimony would be of importance, he shall order the trial to be postponed or suspended and to take place before another jury.

(b) This section does not prohibit a juror from testifying as to matters covered by Section 1150 or as provided in Section 1120 of the Penal Code.

CHAPTER 2. OATH AND CONFRONTATION

710. Oath required.

710. Every witness before testifying shall take an oath or make an affirmation or declaration in the form provided by Chapter 3 (commencing with Section 2093) of Title 6 of Part 4 of the Code of Civil Procedure.

711. Confrontation.

[Section to be based on Section 1846 as revised by Commission. Section to be drafted after Commission has considered research study. Section 1846 as revised reads:

1846. A witness ~~can be heard only upon oath or affirmation,~~ and upon a trial he can be heard only in the presence and subject to examination of all the parties, if they choose to attend and examine.

CHAPTER 3. EXPERT WITNESSES

Article 1. Expert Witnesses Generally

720. Qualification as an expert witness.

720. (a) A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates.

(b) Evidence of special knowledge, skill, experience, training, or education may be provided by the testimony of the witness himself.

(c) In exceptional circumstances, the judge may receive conditionally the testimony of a witness, subject to the evidence of special knowledge, skill, experience, training, or education being later supplied in the course of the trial.

721. Testimony by expert witness.

721. A person who is qualified to testify as an expert may testify:

(a) To any matter of which he has personal knowledge to the same extent (including testimony in the form of opinion) as a person who is not an expert.

(b) To any matter of which he has personal knowledge if such matter is within the scope of his special knowledge, skill, experience, training, or education.

(c) Subject to Section 801, in the form of opinion upon a subject that is within the scope of his special knowledge, skill, experience, training, or education.

722. Cross-examination of expert witness.

722. (a) Subject to subdivision (b), a witness testifying as an expert may be cross-examined to the same extent as any other witness and, in addition, may be fully cross-examined as to his qualifications and as to the subject to which his expert testimony relates.

(b) A witness testifying as an expert may not be cross-examined in regard to the content or tenor of any publication unless he referred to, considered, or relied upon such publication in arriving at or forming his opinion.

723. Credibility of expert witness.

723. (a) The fact of the appointment of an expert witness by the judge may be revealed to the trier of fact as relevant to the credibility of such witness and the weight of his testimony.

(b) The compensation and expenses paid or to be paid to an expert witness not appointed by the judge is a proper subject of inquiry as relevant to his credibility and the weight of his testimony.

724. Limit on number of expert witnesses.

724. The judge may, at any time before the trial or during the trial, limit the number of expert witnesses to be called by any party.

Article 2. Appointment of Expert Witness by Court

730. Appointment of expert by court.

730. Whenever it shall be made to appear to any court or judge thereof, either before or during the trial of any action or proceeding, civil, criminal, or juvenile court, pending before such court, that expert evidence is, or will be required by the court or any party to such action or proceeding, such court or judge may, on motion of any party, or on motion of such court or judge, appoint one or more experts to investigate, render a report as may be ordered by the court, and testify at the trial of such action or proceeding relative to the matter or matters as to which such expert evidence is, or will be required, and such court or judge may fix the compensation of such expert or experts for such services, if any, as such expert or experts may have rendered, in addition to his or their services as a witness or witnesses, at such amount or amounts as to the court or judge may seem reasonable.

731. Payment of expert appointed by court.

731. In all criminal and juvenile court actions and proceedings the compensation fixed under Section 730 shall be a charge against the county in which such action or proceeding is pending and shall be paid out of the treasury of such county on order of the court or judge. In any county in which the procedure prescribed in this article has been authorized by the board of supervisors, on order by the court or judge in any civil action or proceeding, the compensation so fixed of any medical expert or experts shall also be a charge against and paid out of the treasury of such county. Except as otherwise provided in this section, in all civil actions and proceedings such compensation shall, in the first instance, be apportioned and charged to the several parties in such proportion as the court or judge may determine and may thereafter be taxed and allowed in like manner as other costs.

732. Calling and examining court appointed expert.

732. Any expert appointed by the court under Section 730 may be called and examined as a witness by any party to such action or proceeding or by the court itself; but, when called, shall be subject to examination and objection as to his competency and qualifications as an expert witness and as to his bias. Such expert though called and examined by the court, may be cross-examined by the several parties to an action or proceeding in such order as the court may direct. When such witness is called and examined by the court, the several parties shall have the same right to object to the questions asked and the evidence adduced as though such witness were called and examined by an adverse party.

733. Right to produce other evidence.

733. Nothing contained in this article shall be deemed or construed so as to prevent any party to any action or proceeding from producing other expert evidence as to such matter or matters, but where other expert witnesses are called by a party to an action or proceeding they shall be entitled to the ordinary witness fees only and such witness fees shall be taxed and allowed in like manner as other witness fees.

CHAPTER 4. INTERPRETERS

750. Rules relating to witnesses apply to interpreters.

750. An interpreter is subject to all the provisions of law relating to witnesses.

751. Interpreters for foreign witnesses.

751. (a) When a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him.

(b) Any person, resident of the proper county, may be summoned by any court or judge to appear before such court or judge to act as an interpreter in any action. The summons must be served and returned in like manner as a subpena. Any person so summoned who fails to appear at the time and place named in the summons is guilty of a contempt.

752. Interpreters for deaf in criminal and commitment cases.

752. (a) As used in this section, "deaf person" means a person with a hearing loss so great as to prevent his understanding normal spoken language with or without a hearing aid.

(b) In all criminal prosecutions, where the accused is a deaf person, he shall have all of the proceedings of the trial interpreted to him in a language that he can understand by a qualified interpreter appointed by the court.

(c) In all cases where the mental condition of a person who is a deaf person is being considered and where such person may be committed to a mental institution, all of the court proceedings, pertaining to him, shall be interpreted to him in a language that he understands by a qualified interpreter appointed by the court.

(d) An interpreter appointed under this section shall take an oath that he will make a true interpretation to the person accused or being examined of all the proceedings of his case in a language that he understands and that he will repeat such person's answers to questions to counsel, court, or jury, in the English language, with his best skill and judgment.

(e) Interpreters appointed under this section shall be paid for their services a reasonable sum to be determined by the court, which shall be a charge against the county.

CHAPTER 5. METHOD AND SCOPE OF EXAMINATION

760. Definitions. [CCP 2045 and 2046 (part)]

761. Control by court of mode of interrogation. [CCP 2044 (part) and 2066 (part)]

762. Exclusion of witnesses. [CCP 2043]

763. Compelling answers. [CCP 2991 and 2065]

764. Power of court to call witnesses. [new]

765. Order of examination. [CCP 2045 (last sentence)]

766. Leading questions. [CCP 2046 (part)]

767. Refreshing memory from writing. [CCP 2047]

768. Examination by opposing party of writings shown to witness. [CCP 2054]

769. Cross-examination. [CCP 2048]

770. Re-examination. [CCP 2050 (first sentence)]

771. Recall of witness previously examined. [CCP 2050 (last two sentences)]

772. Cross-examination of adverse party or witness. [CCP 2055]

773. Motion to strike nonresponsive answer. [CCP 2056]

[Sections 760 - 773 will be drafted after the research study relating to the pertinent CCP sections has been considered by the Commission.]

CHAPTER 6. TESTING CREDIBILITY

780. "Attacking credibility" and "impairing credibility" defined. [new]

781. Who may attack or impair credibility. [RURE 20(1)]

782. General rule as to admissibility of evidence relating to credibility. [new]

783. Demeanor. [CCP 1847 (part)]

784. Contradiction as to facts. [CCP 1847 (part)]

785. Organic incapacity. [new]

786. Opportunity to perceive. [new]

787. Bias and the like. [CCP 1847 (part)]

788. Corrupt attitude toward case. [new]

789. Occupation and the like. [new]

790. Prior inconsistent statement. [RURE 22(1), (2)]

791. Character evidence. [RURE 22(3), (4)]

792. Conviction for a crime. [RURE 21(1), (2), (3)]

793. Religious belief or lack thereof. [RURE 22(5)]

794. Evidence to support credibility. [RURE 20(2)]

795. Evidence of good character of witness. [RURE 20(3)]

[Sections 780 - 795 will be drafted after the research study relating to CCP 1847 has been considered by the Commission.]

DIVISION 7. OPINION TESTIMONY AND SCIENTIFIC EVIDENCE

CHAPTER 1. EXPERT AND OTHER OPINION TESTIMONY

Article 1. Expert and Other Opinion Testimony Generally

800. Opinion testimony by lay witness.

800. If the witness is not testifying as an expert, his opinions are limited to such opinions as are:

(a) Rationally based on the perception of the witness; and

(b) Helpful to a clear understanding of his testimony or to the determination of the fact in issue.

801. Opinion testimony by expert.

801. If the witness is testifying as an expert, his opinions are limited to such opinions as are:

(a) Related to a subject that is beyond the competence of persons of common experience, training, and education; and

(b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type commonly relied upon by experts in forming an opinion upon the subject to which his testimony relates, unless under the decisional or statutory law of this State such matter may not be used by an expert as a basis for his opinion.

802. Statement of basis of opinion.

802. (a) A witness testifying in the form of opinion may state on direct examination the reasons for his opinion and the matter upon which it is based.

(b) Before testifying in the form of opinion, the witness shall first be examined concerning the matter upon which the opinion is based unless the judge in his discretion dispenses with this requirement.

803. Opinion based on improper matter.

803. The opinion of a witness may be held inadmissible or may be stricken if it is based in whole or in significant part on matter that is not a proper basis for such an opinion. In such case, the witness may then give his opinion after excluding from consideration the matter determined to be improper.

804. Opinion based on opinion or statement of another.

804. (a) If a witness testifying as an expert testifies that his opinion is based in whole or in part upon the opinion or statement of another person, such other person may be called as a witness by the adverse party and examined as if under cross-examination concerning the subject matter of his opinion or statement.

(b) Nothing in this section makes admissible an expert opinion that is inadmissible because it is based in whole or in part on the opinion or statement of another person.

(c) An expert opinion otherwise admissible is not inadmissible because it is based on the opinion or statement of a person who is unavailable as a witness.

805. Opinion on ultimate issue.

805. Testimony in the form of opinion otherwise admissible under this article is not objectionable because it embraces the ultimate issue to be decided by the trier of fact.

Article 2. Opinion Testimony in Eminent Domain Cases

830. Opinion testimony in eminent domain cases.

830. In an eminent domain proceeding, a witness otherwise qualified may testify with respect to the value of the real property, including the improvements situated thereon or the value of any interest in real property to be taken, and may testify on direct examination as to his knowledge of the amount paid for comparable property or property interests. In rendering his opinion as to the highest and best use and market value of the property sought to be condemned, the witness shall be permitted to consider and give evidence as to the nature and value of the improvements and the character of the existing uses being made of the properties in the general vicinity of the property sought to be condemned.

Note: The recommendation on opinion testimony in eminent domain and inverse condemnation proceedings would add a number of sections to this article in lieu of Section 830.

Article 3. Opinion Testimony on Particular Matters

870. Opinion as to identity or handwriting.

[Section 890 will be based on CCP 1870(9)(part). Section 890 will be drafted after research study has been considered by Commission. Section 1870(9) provides in part:

1870. In conformity with the preceding provisions, evidence may be given upon a trial of the following facts:

* * * * *

9. The opinion of a witness respecting the identity or handwriting of a person, when he has knowledge of the person or handwriting;]

871. Opinion as to sanity.

[Section 891 will be based on CCP 1870(10). Section 891 will be drafted after research study has been considered by Commission. Section 1870(10) provides in part:

1870. In conformity with the preceding provisions, evidence may be given upon a trial of the following facts:

* * * * *

10. The opinion of a subscribing witness to a writing, the validity of which is in dispute, respecting the mental sanity of the signer; and the opinion of an intimate acquaintance respecting the mental sanity of a person, the reason for his opinion being given;]

CHAPTER 2. BLOOD TESTS TO DETERMINE PATERNITY

890. Short title.

890. This chapter may be cited as the Uniform Act on Blood Tests to Determine Paternity.

891. Interpretation.

891. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

892. Order for blood tests in civil actions involving paternity.

892. In a civil action, in which paternity is a relevant fact, the court, upon its own initiative or upon suggestion made by or on behalf of

any person whose blood is involved may, or upon motion of any party to the action made at a time so as not to delay the proceedings unduly, shall order the mother, child, and alleged father to submit to blood tests. If any party refuses to submit to such tests, the court may resolve the question of paternity against such party or enforce its order if the rights of others and the interests of justice so require.

893. Tests made by experts.

893. The tests shall be made by experts qualified as examiners of blood types who shall be appointed by the court. The experts shall be called by the court as witnesses to testify to their findings and shall be subject to cross-examination by the parties. Any party or person at whose suggestion the tests have been ordered may demand that other experts, qualified as examiners of blood types, perform independent tests under order of the court, the results of which may be offered in evidence. The number and qualifications of such experts shall be determined by the court.

894. Compensation of experts.

894. The compensation of each expert witness appointed by the court shall be fixed at a reasonable amount. It shall be paid as the court shall order. The court may order that it be paid by the parties in such proportions and at such times as it shall prescribe, or that the proportion of any party be paid by the county, and that, after payment by the parties or the county or both, all or part or none of it be taxed as costs in the action. The fee of an expert witness called by a party but not appointed by the court shall be paid by the party calling him but shall not be taxed as costs in the action.

895. Determination of paternity.

895. If the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the tests, are that the alleged father is not the father of the child, the question of paternity shall be resolved accordingly. If the experts disagree in their findings or conclusions, the question shall be submitted upon all the evidence.

896. Limitation on application in criminal matters.

896. This chapter applies to criminal cases subject to the following limitations and provisions:

(a) An order for the tests shall be made only upon application of a party or on the court's initiative.

(b) The compensation of the experts shall be paid by the county under order of court.

(c) The court may direct a verdict of acquittal upon the conclusions of all the experts under the provisions of Section 895; otherwise, the case shall be submitted for determination upon all the evidence.

DIVISION 8. PRIVILEGES

CHAPTER 1. DEFINITIONS

900. Application of definitions.

900. Unless the provision or context otherwise specifically requires, the definitions in this chapter govern the construction of this division.

901. Civil proceeding.

901. "Civil proceeding" means any proceeding except a criminal proceeding.

902. Criminal proceeding.

902. "Criminal proceeding" means an action or proceeding brought in a court by the people of the State of California, and initiated by complaint, indictment, information, or accusation, either to determine whether a person has committed a crime and should be punished therefor or to determine whether a civil officer should be removed from office for wilfull or corrupt misconduct, and includes any court proceeding ancillary thereto.

903. Disciplinary proceeding.

903. "Disciplinary proceeding" means a proceeding brought by a public entity to determine whether a right, authority, license, or privilege (including the right or privilege to be employed by the public entity) should be revoked, suspended, terminated, limited, or conditioned, but does not include a criminal proceeding.

904. Presiding officer.

904. "Presiding officer" means the person authorized to rule on a claim of privilege in the proceeding in which the claim is made.

905. Proceeding.

905. "Proceeding" means any action, hearing, investigation, inquest, or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law to do so) in which, pursuant to law, testimony can be compelled to be given.

CHAPTER 2. APPLICABILITY OF DIVISION

910. Applicability of division.

910. Except as otherwise provided by statute, the provisions of this division apply in all proceedings.

CHAPTER 3. GENERAL PROVISIONS RELATING TO PRIVILEGES

911. General rule as to privileges.

911. Except as otherwise provided by statute:

(a) No person has a privilege to refuse to be a witness.

(b) No person has a privilege to refuse to disclose any matter or to refuse to produce any object or writing.

(c) No person has a privilege that another shall not be a witness or shall not disclose any matter or shall not produce any object or writing.

912. Waiver of privilege.

912. (a) Except as otherwise provided in this section, the right of any person to claim a privilege provided by Section 954 (lawyer-client privilege), 980 (marital privilege for confidential communications), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), or 1033 (privilege of penitent) is waived with respect to a communication protected by such privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to such disclosure made by anyone. Consent to disclosure is manifested by a failure to claim the privilege in any proceeding in which a holder of the privilege has the legal standing and opportunity to claim the privilege or by any other words or conduct of a holder of the privilege indicating his consent to the disclosure.

(b) Where two or more persons are the holders of a privilege provided by Section 954 (lawyer-client privilege), 980 (marital privilege for confidential communications), 994 (physician-patient privilege), or 1014 (psychotherapist-patient privilege), the privilege with respect to a communication is not waived by a particular holder of the privilege unless he or a person with his consent waives the privilege in a manner provided in subdivision (a), even though another holder of the privilege or another person with the consent of such other holder has waived the right to claim the privilege with respect to such communication.

(c) A disclosure that is itself privileged under this division is not a waiver of any privilege.

(d) A disclosure in confidence of a communication that is protected by a privilege provided by Section 954 (lawyer-client privilege), 994 (physician-patient privilege), or 1014 (psychotherapist-patient privilege), when such disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer, physician, or psychotherapist was consulted, is not a waiver of the privilege.

913. Reference to exercise of privilege.

913. (a) Subject to subdivisions (b) and (c):

(1) If a privilege is exercised not to testify with respect to any matter, or to refuse to disclose or to prevent another from disclosing any matter, the presiding officer and counsel may not comment thereon, no presumption shall arise with respect to the exercise of the privilege, and the trier of fact may not draw any inference therefrom as to the credibility of the witness or as to any matter at issue in the proceeding.

(2) The judge, at the request of a party who may be adversely affected because an unfavorable inference may be drawn by the jury because a privilege has been exercised, shall instruct the jury that no presumption arises with respect to the exercise of the privilege and that the jury may not draw any inference therefrom as to the credibility of the witness or as to any matter at issue in the proceeding.

(b) In a criminal proceeding, whether the defendant testifies or not, his failure to explain or to deny by his testimony any evidence or facts in the case against him may be commented upon by the court and by counsel and may be considered by the court or the jury.

(c) In a civil proceeding, the failure of a person to explain or to deny by his testimony any evidence or facts in the case against him may be commented upon by the presiding officer and by counsel and may be considered by the trier of fact.

914. Determination of claim of privilege.

914. (a) Whether or not a privilege exists shall be determined in accordance with Section 915 and Article 2 (commencing with Section 400) of Chapter 4 of Division 3.

(b) No person may be held in contempt for failure to disclose information claimed to be privileged unless a court previously has determined that the information sought to be disclosed is not privileged. This subdivision does not apply to any governmental agency that has constitutional contempt power, nor does it impliedly repeal Chapter 4 (commencing with Section 9400) of Part 1 of Division 2 of Title 2 of the Government Code.

915. Disclosure of privileged information in ruling on claim of privilege.

915. (a) Subject to subdivision (b), the presiding officer may not require disclosure of information claimed to be privileged under this division in order to rule on the claim of privilege.

(b) When a court is ruling on a claim of privilege under Article 9 (commencing with Section 1040) of Chapter 4 relating to official information and identity of informer or under Section 1060 relating to trade secrets and is unable to rule on the claim without requiring disclosure of the information claimed to be privileged, the judge may require the person from whom disclosure is sought or the person entitled to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing

of all persons except the person entitled to claim the privilege and such other persons as the person entitled to claim the privilege is willing to have present. If the judge determines that the information is privileged, neither he nor any other person may ever disclose, without the consent of the person entitled to claim the privilege, what was disclosed in the course of the proceedings in chambers.

916. Exclusion of privileged information by presiding officer on his own motion.

916. (a) The presiding officer shall exclude, on his own motion, information that is subject to a claim of privilege under this division if:

(1) The person from whom the information is sought is not a person authorized to claim the privilege; and

(2) There is no party to the proceeding who is a person authorized to claim the privilege.

(b) The presiding officer may not exclude information under this section if:

(1) There is no person entitled to claim the privilege in existence; or

(2) He is otherwise instructed by a person authorized to permit disclosure.

917. Confidential communications: burden of proof.

917. Whenever a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the lawyer-client, physician-patient, psychotherapist-patient, or husband-wife relationship, the communication is presumed to have been made in

confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential.

918. Effect of error in overruling claim of privilege.

918. A party may predicate error on a ruling disallowing a claim of privilege only if he is the holder of the privilege, except that a party may predicate error on a ruling disallowing a claim of privilege by his spouse under Section 970 or 971.

919. Admissibility where disclosure wrongfully compelled.

919. Evidence of a statement or other disclosure is inadmissible against a holder of the privilege if:

(1) A person entitled to claim the privilege claimed it but nevertheless disclosure wrongfully was required to be made; or

(2) The presiding officer failed to comply with Section 916.

920. Other statutes not impliedly repealed.

920. Nothing in this division shall be construed to repeal by implication any other statute relating to privileges.

CHAPTER 4. PARTICULAR PRIVILEGES

Article 1. Privilege of Defendant in Criminal Proceeding

930. Privilege not to be called as a witness and not to testify.

930. (a) A defendant in a criminal proceeding has a privilege not to be called as a witness and not to testify.

(b) A defendant in a criminal proceeding has no privilege to refuse, when ordered by the judge, to submit his body to examination or to do any act in the presence of the judge or the trier of fact, except to refuse to testify.

Article 2. Privilege Against Self-Incrimination

940. Definition of incrimination.

940. (a) A matter will incriminate a person within the meaning of this article if it:

(1) Constitutes an element of a crime under the law of this State or the United States; or

(2) Is a circumstance which with other circumstances would be a basis for a reasonable inference of the commission of such a crime; or

(3) Is a clue to the discovery of a matter that is within paragraph (1) or (2).

(b) Notwithstanding subdivision (a), a matter will not incriminate a person if he has become permanently immune from conviction for the crime.

(c) In determining whether a matter is incriminating, other matters in evidence or disclosed in argument, the implications of the question, the setting in which it is asked, the applicable statute of limitations, and all other relevant factors shall be taken into consideration.

941. Privilege against self-incrimination.

941. Except as provided in this article, every natural person has a privilege to refuse to disclose any matter that will incriminate him if he claims the privilege.

942. Exception: Submitting to examination.

942. No person has a privilege under this article to refuse to submit to examination for the purpose of discovering or recording his corporal features and other identifying characteristics or his physical or mental condition.

943. Exception: Demonstrating identifying characteristics.

943. No person has a privilege under this article to refuse to demonstrate his identifying characteristics, such as, for example, his handwriting, the sound of his voice and manner of speaking, or his manner of walking or running.

944. Exception: Samples of body fluids or substances.

944. No person has a privilege under this article to refuse to furnish or permit the taking of samples of body fluids or substances for analysis.

945. Exception: Production of thing to which another has superior right.

945. No person has a privilege under this article to refuse to produce for use as evidence or otherwise a document, chattel, or other thing under his control constituting, containing, or disclosing matter incriminating him if some other person, corporation, association, or other organization (including the United States or a public entity) owns

or has a superior right to the possession of the thing to be produced.

946. Exception: Required records.

946. No person has a privilege under this article to refuse to produce for use as evidence or otherwise any record required by law to be kept and to be open to inspection for the purpose of aiding or facilitating the supervision or regulation by a public entity of an office, occupation, profession, or calling when such production is required in the aid of such supervision or regulation.

947. Exception: Cross-examination of criminal defendant.

947. Subject to the limitations of Chapter 6 (commencing with Section 780) of Division 6, a defendant in a criminal proceeding who testifies in that proceeding upon the merits before the trier of fact may be cross-examined as to all matters about which he was examined in chief.

948. Exception: Waiver by person other than criminal defendant.

948. Except for the defendant in a criminal proceeding, a person who, without having claimed the privilege under this article, testifies in a proceeding before the trier of fact with respect to a matter does not have a privilege under this article to refuse to disclose in such proceeding anything relevant to that matter.

Article 3. Lawyer-Client Privilege

950. "Client" defined.

950. As used in this article, "client" means a person, corporation,

association, or other organization (including a public entity) that, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity, and includes an incompetent (a) who himself so consults the lawyer or (b) whose guardian or conservator so consults the lawyer in behalf of the incompetent.

951. "Confidential communication between client and lawyer" defined.

951. As used in this article, "confidential communication between client and lawyer" means information transmitted between a client and his lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted, and includes advice given by the lawyer in the course of that relationship.

952. "Holder of the privilege" defined.

952. As used in this article, "holder of the privilege" means:

(a) The client when he is competent.

(b) A guardian or conservator of the client when the client is incompetent.

(c) The personal representative of the client if the client is dead.

(d) A successor, assign, trustee in dissolution, or any similar representative of a corporation, partnership, association, or other organization (including a public entity) that is no longer in existence.

953. "Lawyer" defined.

953. As used in this article, "lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

954. Lawyer-client privilege.

954. Subject to Section 912 and except as otherwise provided in this article, the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by:

(a) The holder of the privilege;

(b) A person who is authorized to claim the privilege by the holder of the privilege; or

(c) The person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

955. When lawyer required to claim privilege.

955. The lawyer who received or made a communication subject to the privilege under this article shall claim the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 854.

956. Exception: Crime or fraud.

956. There is no privilege under this article if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan

to commit a crime or to perpetrate or plan to perpetrate a fraud.

957. Exception: Parties claiming through deceased client.

957. There is no privilege under this article as to a communication relevant to an issue between parties all of whom claim through a deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.

958. Exception: Breach of duty arising out of lawyer-client relationship.

958. There is no privilege under this article as to a communication relevant to an issue of breach, by the lawyer or by the client, of a duty arising out of the lawyer-client relationship.

959. Exception: Lawyer as attesting witness.

959. There is no privilege under this article as to a communication relevant to an issue concerning the intention or competence of a client executing an attested document, or concerning the execution or attestation of such a document, of which the lawyer is an attesting witness.

960. Exception: Intention of deceased client concerning writing affecting property interest.

960. There is no privilege under this article as to a communication relevant to an issue concerning the intention of a deceased client with respect to a deed of conveyance, will, or other writing, executed by the client, purporting to affect an interest in property.

961. Exception: Validity of writing affecting interest in property.

961. There is no privilege under this article as to a communication

relevant to an issue concerning the validity of a deed of conveyance, will, or other writing, executed by a now deceased client, purporting to affect an interest in property.

962. Exception: Communication of physician.

962. There is no privilege under this article as to a communication between a physician and a client who consults the physician or submits to an examination by the physician for the purpose of securing a diagnosis or preventive, palliative, or curative treatment of his physician or mental condition if the communication, including information obtained by an examination of the client, is not privileged under Article 6 (commencing with Section 990).

963. Exception: Communication to psychotherapist.

963. There is no privilege under this article as to a communication between a psychotherapist and a client who consults the psychotherapist or submits to an examination by the psychotherapist for the purpose of securing a diagnosis or preventive, palliative, or curative treatment of his mental or emotional condition if the communication, including information obtained by an examination of the client, is not privileged under Article 7 (commencing with Section 1010).

964. Exception: Joint clients.

964. Where two or more clients have retained or consulted a lawyer upon a matter of common interest, none of them may claim a privilege under this article as to a communication made in the course of that relationship when such communication is offered in a civil proceeding between such clients.

Article 4. Privilege Not to Testify Against Spouse

970. Privilege not to testify against spouse.

970. Except as provided in Sections 972 and 973, a married person has a privilege not to testify against his spouse in any proceeding.

971. Privilege not to be called as a witness against spouse.

971. Except as provided in Sections 972 and 973, a married person whose spouse is a party to a proceeding has a privilege not to be called as a witness by an adverse party to that proceeding without the prior express consent of the spouse having the privilege under this section.

972. When privilege not applicable.

972. A married person does not have a privilege under this article in:

(a) A proceeding to commit or otherwise place his spouse or his property, or both, under the control of another because of his alleged mental or physical condition.

(b) A proceeding brought by or on behalf of a spouse to establish his competence.

(c) A proceeding under the Juvenile Court Law, Chapter 2 (commencing with Section 500) of Part 1 of Division 2 of the Welfare and Institutions Code.

(d) A criminal proceeding in which one spouse is charged with:

(1) A crime against the person or property of the other spouse or of a child of either, whether committed before or during marriage.

(2) A crime against the person or property of a third person committed in the course of committing a crime against the person or property of the

other spouse, whether committed before or during marriage.

(3) Bigamy or adultery.

(4) A crime defined by Section 270 or 270a of the Penal Code.

973. Waiver of privilege.

973. (a) Unless wrongfully compelled to do so, a married person who testifies in a proceeding to which his spouse is a party, or who testifies against his spouse in any proceeding, does not have a privilege under this article in the proceeding in which such testimony is given.

(b) There is no privilege under this article in a civil proceeding brought or defended by a married person for the immediate benefit of his spouse or of himself and his spouse.

Article 5. Privilege for Confidential Marital Communications

980. Privilege for confidential marital communications.

980. Subject to Section 912 and except as otherwise provided in this article, a spouse (or his guardian or conservator when he is incompetent), whether or not a party, has a privilege during the marital relationship and afterwards to refuse to disclose, and to prevent another from disclosing, a communication if he claims the privilege and the communication was made in confidence between him and the other spouse while they were husband and wife.

981. Exception: Crime or fraud.

981. There is no privilege under this article if the communication was made, in whole or in part, to enable or aid anyone to commit or plan to commit a crime or to perpetrate or plan to perpetrate a fraud.

982. Exception: Commitment or similar proceeding.

982. There is no privilege under this article in a proceeding to commit either spouse or otherwise place him or his property, or both, under the control of another because of his alleged mental or physical condition.

983. Exception: Proceedings to establish competence.

983. There is no privilege under this article in a proceeding brought by or on behalf of either spouse in which the spouse seeks to establish his competence.

984. Exception: Proceeding between spouses.

984. There is no privilege under this article in:

(a) A proceeding by one spouse against the other spouse.

(b) A proceeding by a person claiming by testate or intestate succession or by inter vivos transaction from a deceased spouse against the other spouse.

985. Exception: Certain criminal proceedings.

985. There is no privilege under this article in a criminal proceeding in which one spouse is charged with:

(a) A crime against the person or property of the other spouse or of a child of either.

(b) A crime against the person or property of a third person committed in the course of committing a crime against the person or property of the other spouse.

(c) Bigamy or adultery.

(d) A crime defined by Section 270 or 270a of the Penal Code.

986. Exception: Juvenile court proceedings.

986. There is no privilege under this article in a proceeding under the Juvenile Court Law, Chapter 2 (commencing with Section 500) of Part 1 of Division 2 of the Welfare and Institutions Code.

987. Communication offered by spouse who is criminal defendant.

987. There is no privilege under this article in a criminal proceeding in which the communication is offered in evidence by a defendant who is one of the spouses between whom the communication was made.

Article 6. Physician-Patient Privilege

990. "Confidential communication between patient and physican" defined.

990. As used in this article, "confidential communication between patient and physician" means information, including information obtained by an examination of the patient, transmitted between a patient and his physician in the course of that relationship and in confidence by a means which, so far as the patient is aware, discloses the information to no third persons other than those who are present to further the interest of the patient in the consultation or those reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the physician is consulted, and includes advice given by the physician in the course of that relationship.

991. "Holder of the privilege" defined.

991. As used in this article, "holder of the privilege" means:

(a) The patient when he is competent.

(b) A guardian or conservator of the patient when the patient is incompetent.

(c) The personal representative of the patient if the patient is dead.

992. "Patient" defined.

992. As used in this article, "patient" means a person who consults a physician or submits to an examination by a physician for the purpose of securing a diagnosis or preventive, palliative, or curative treatment of his physical or mental condition.

993. "Physician" defined.

993. As used in this article, "physician" means a person authorized, or reasonably believed by the patient to be authorized, to practice medicine in any state or nation.

994. Physician-patient privilege.

994. Subject to Section 912 and except as otherwise provided in this article, the patient, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and physician if the privilege is claimed by:

(a) The holder of the privilege;

(b) A person who is authorized to claim the privilege by the holder of the privilege; or

(c) The person who was the physician at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

995. When physician required to claim privilege.

995. The physician who received or made a communication subject to the privilege under this article shall claim the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 994.

996. Exception: Patient-litigant exception.

996. There is no privilege under this article in a proceeding, including an action brought under Section 376 or 377 of the Code of Civil Procedure, in which an issue concerning the condition of the patient has been tendered by:

(a) The patient;

(b) Any party claiming through or under the patient;

(c) Any party claiming as a beneficiary of the patient through a contract to which the patient is or was a party.

997. Exception: Crime or tort.

997. There is no privilege under this article if the services of the physician were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a tort or to escape detection or apprehension after the commission of a crime or a tort.

998. Exception: Criminal or disciplinary proceeding.

998. There is no privilege under this article in a criminal proceeding or in a disciplinary proceeding.

999. Exception: Proceeding to recover damages for criminal conduct.

999. There is no privilege under this article in a proceeding to recover damages on account of conduct of the patient which constitutes a crime.

1000. Exception: Parties claiming through deceased patient.

1000. There is no privilege under this article as to a communication relevant to an issue between parties all of whom claim through a deceased patient, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.

1001. Exception: Breach of duty arising out of physician-patient relationship.

1001. There is no privilege under this article as to a communication relevant to an issue of breach, by the physician or by the patient, of a duty arising out of the physician-patient relationship.

1002. Exception: Intention of deceased client concerning writing affecting property interest.

1002. There is no privilege under this article as to a communication relevant to an issue concerning the intention of a deceased patient with respect to a deed of conveyance, will, or other writing, executed by the patient, purporting to affect an interest in property.

1003. Exception: Validity of writing affecting interest in property.

1003. There is no privilege under this arttiele as to a communication relevant to an issue concerning the validity of a deed of conveyance, will, or other writing, executed by a now deceased patient, purporting to affect an interest in property.

1004. Exception: Commitment or similar proceeding.

1004. There is no privilege under this article in a proceeding to commit the patient or otherwise place him or his property, or both, under the control of another because of his alleged mental or physical condition.

1005. Exception: Proceeding to establish competence.

1005. There is no privilege under this article in a proceeding brought by or on behalf of the patient in which the patient seeks to establish his competence.

1006. Exception: Required report.

1006. There is no privilege under this article as to information which the physician or the patient is required to report to a public employee, or as to information required to be recorded in a public office, unless the statute, charter, ordinance, administrative regulation, or other provision requiring the report or record specifically provides that the information shall not be disclosed.

Article 7. Psychotherapist-Patient Privilege

1010. "Confidential communication between patient and psychotherapist" defined.

1010. As used in this article, "confidential communication between patient and psychotherapist" means information, including information obtained by an examination of the patient, transmitted between a patient and his psychotherapist in the course of that relationship and in confidence by a means which, so far as the patient is aware, discloses the information to no third persons other than those who are present to further the interest of the patient in the consultation or those reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the psychotherapist is consulted, and includes advice given by the psychotherapist in the course of that relationship.

1011. "Holder of the privilege" defined.

1011. As used in this article, "holder of the privilege" means:

(a) The patient when he is competent.

(b) A guardian or conservator of the patient when the patient is incompetent.

(c) The personal representative of the patient if the patient is dead.

1012. "Patient" defined.

1012. As used in this article, "patient" means a person who consults a psychotherapist or submits to an examination by a psychotherapist for the purpose of securing a diagnosis or preventive, palliative, or curative treatment of his mental or emotional condition.

1013. "Psychotherapist" defined.

1013. As used in this article, "psychotherapist" means:

(a) A person authorized, or reasonably believed by the patient to be authorized, to practice medicine in any state or nation; or

(b) A person certified as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

1014. Psychotherapist-patient privilege.

1014. Subject to Section 912 and except as otherwise provided in this article, the patient, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and psychotherapist if the privilege is claimed by:

(a) The holder of the privilege;

(b) A person who is authorized to claim the privilege by the holder of the privilege; or

(c) The person who was the psychotherapist at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.

1015. When psychotherapist required to claim privilege.

1015. The psychotherapist who received or made a communication subject to the privilege under this article shall claim the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 1014.

1016. Exception: Patient-litigant exception.

1016. There is no privilege under this rule in a proceeding, including an action brought under Section 376 or 377 of the Code of Civil Procedure, in which an issue concerning the mental or emotional condition of the patient has been tendered by:

(a) The patient;

(b) Any party claiming through or under the patient; or

(c) Any party claiming as a beneficiary of the patient through a contract to which the patient is or was a party.

1017. Exception: Court appointed psychotherapist.

1017. There is no privilege under this article if the psychotherapist is appointed by order of a court to examine the patient.

1018. Exception: Crime or tort.

1018. There is no privilege under this article if the services of the psychotherapist were sought or obtained to enable or aid anyone to commit

or plan to commit a crime or a tort or to escape detection or apprehension after the commission of a crime or a tort.

1019. Exception: Parties claiming through deceased patient.

1019. There is no privilege under this article as to a communication relevant to an issue between parties who claim through a deceased patient, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.

1020. Exception: Breach of duty arising out of psychotherapist-patient relationship.

1020. There is no privilege under this article as to a communication relevant to an issue of breach, by the psychotherapist or by the patient, of a duty arising out of the psychotherapist-patient relationship.

1021. Exception: Intention of deceased client concerning writing affecting property interest.

1021. There is no privilege under this article as to a communication relevant to an issue concerning the intention of a deceased patient with respect to a deed of conveyance, will, or other writing, executed by the patient, purporting to affect an interest in property.

1022. Exception: Validity of writing affecting interest in property.

1022. There is no privilege under this article as to a communication relevant to an issue concerning the validity of a deed of conveyance, will, or other writing, executed by a now deceased patient, purporting to affect an interest in property.

1023. Exception: Proceeding to establish competence.

1023. There is no privilege under this article in a proceeding brought by or on behalf of the patient in which the patient seeks to establish his competence.

1024. Exception: Required reports.

1024. There is no privilege under this article as to information which the psychotherapist or the patient is required to report to a public official or as to information required to be recorded in a public office, unless the statute, charter, ordinance, administrative regulation, or other provision requiring the report or record specifically provides that the information shall not be disclosed.

Article 8. Priest-Penitent Privileges

1030. "Penitent" defined.

1030. As used in this article, "penitent" means a person who has made a penitential communication to a priest.

1031. "Penitential communication" defined.

1031. As used in this article, "penitential communication" means a communication made in confidence in the presence of no third person to a priest who, in the course of the discipline or practice of his church, denomination, or organization, is authorized or accustomed to hear such communications and has a duty to keep them secret.

1032. "Priest" defined.

1032. As used in this article, "priest" means a priest, clergyman, minister of the gospel, or other officer of a church or of a religious denomination or religious organization.

1033. Privilege of penitent.

1033. Subject to Section 912, a penitent, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a penitential communication if he claims the privilege.

1034. Privilege of priest.

1034. Subject to Section 912, a priest, whether or not a party, has a privilege to refuse to disclose a penitential communication if he claims the privilege.

Article 9. Official Information and Identity of Informer

1040. Privilege for official information.

1040. (a) As used in this section, "official information" means information not open, or theretofore officially disclosed, to the public acquired by a public employee, including an officer, agent, or employee of the United States, in the course of his duty.

(b) A public entity (including the United States) has a privilege to refuse to disclose official information, and to prevent such disclosure by anyone who has acquired such information in a manner authorized by the public entity, if the privilege is claimed by a person authorized by the public entity to do so and:

(1) Disclosure is forbidden by an Act of the Congress of the United States or a statute of this State; or

(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.

1041. Privilege for identity of informer.

1041. (a) A public entity (including the United States) has a privilege to refuse to disclose the identity of a person who has furnished information as provided in subdivision (b) purporting to disclose a violation of a law of this State or of the United States, and to prevent such disclosure by anyone who has acquired such information in a manner authorized by the public entity, if the privilege is claimed by a person authorized by the public entity to do so and:

(1) Disclosure is forbidden by an Act of the Congress of the United States or a statute of this State; or

(2) Disclosure of the identity of the informer is against the public interest because there is a necessity for preserving the confidentiality of his identity that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the identity of the informer

be disclosed in the proceeding. In determining whether disclosure of the identity of the informer is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.

(b) This section applies only if the information is furnished by the informer directly to a law enforcement officer or to a representative of an administrative agency charged with the administration or enforcement of the law alleged to be violated or is furnished by the informer to another for the purpose of transmittal to such officer or representative.

(c) There is no privilege under this section if the identity of the informer is known, or has been officially revealed, to the public.

1042. Adverse order or finding in certain cases.

1042. (a) Except where disclosure is forbidden by an Act of the Congress of the United States, if a claim of privilege under this article by the State or a public entity in this State is sustained in a criminal proceeding or in a disciplinary proceeding, the presiding officer shall make such order or finding of fact adverse to the public entity bringing the proceeding as is appropriate upon any issue in the proceeding to which the privileged information is material.

(b) Notwithstanding subdivision (a), where a search is made pursuant to a warrant valid on its face, the public entity bringing a criminal proceeding or a disciplinary proceeding is not required to reveal official information or the identity of the informer to the defendant in order to establish the legality of the search and the admissibility of the evidence obtained as a result of it.

Article 10. Political Vote

1050. Privilege to protect secrecy of vote.

1050. If he claims the privilege, a person has a privilege to refuse to disclose the tenor of his vote at a public election where the voting is by secret ballot unless he voted illegally or he previously made an unprivileged disclosure of the tenor of his vote.

Article 11. Trade Secret

1060. Privilege to protect trade secret.

1060. The owner of a trade secret has a privilege, which may be claimed by him or by his agent or employee, to refuse to disclose the secret and to prevent another from disclosing it if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.

DIVISION 9. EVIDENCE AFFECTED OR EXCLUDED BY EXTRINSIC POLICIES

CHAPTER 1. EVIDENCE OF CHARACTER, HABIT, CUSTOM, OR USAGE

1100. Character itself in issue: Manner of proof.

1100. When a person's character or a trait of his character is itself an issue, any otherwise admissible evidence (including testimony in the form of opinion, evidence of reputation, and evidence of specific instances of such person's conduct) is admissible when offered to prove only such person's character or trait of his character.

1101. Character evidence to prove conduct.

1101. (a) Except as provided in this section, evidence of a person's character or a trait of his character (whether in the form of opinion, evidence of reputation, or evidence of specific instances of his conduct) is inadmissible when offered to prove his conduct on a specified occassion.

(b) In a criminal action or proceeding, evidence of the defendant's character or a trait of his character in the form of opinion or evidence of his reputation is not inadmissible under this section:

(1) When offered by the defendant to prove his innocence.

(2) When offered by the prosecution to prove the defendant's guilt if the deferdant has previously introduced evidence of his character to prove his innocence.

(c) In a criminal action or proceeding, evidence of the character or a trait of character (in the form of opinion, evidence of reputation, or

evidence of specific instances of conduct) of the victim of the crime for which the defendant is being prosecuted is not inadmissible under this section:

(1) When offered by the defendant to prove conduct of the victim in conformity with such character or trait of character.

(2) When offered by the prosecution to meet evidence previously offered by the defendant under paragraph (1).

(d) Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident) other than his disposition to commit such acts.

(e) Nothing in this section affects the admissibility of evidence offered to support or attack the credibility of a witness.

1102. Character trait for care or skill.

1102. Evidence of a trait of a person's character with respect to care or skill is inadmissible as tending to prove the quality of his conduct on a specified occasion.

1103. Habit or custom to prove specific behavior.

1103. Any otherwise admissible evidence of habit or custom is admissible to prove conduct on a specified occasion in conformity with the habit or custom.

1104. Usage to explain act or writing.

[Section 1104 to be based on CCP 1870(12). Section 1104 will be drafted after the research study on CCP 1870(12) has been considered by the Commission. CCP 1870(12) provides:

1870. In conformity with the preceeding provisions, evidence may be given upon a trial of the following facts:

* * * * *

12. Usage, to explain the true character of an act, contract, or instrument where such true character is not otherwise plain; but usage is never admissible, except as an instrument of interpretation;]

CHAPTER 2. OTHER EVIDENCE AFFECTED OR EXCLUDED BY EXTRINSIC POLICIES

1150. Evidence to test a verdict.

1150. Upon an inquiry as to the validity of a verdict, evidence otherwise admissible may be received as to statements made, or conduct, conditions, or events occurring, either within or without the jury room, of such a character as is likely to have improperly influenced the verdict. No evidence is admissible to show the effect of such statement, conduct, condition, or event upon a juror either in influencing him to assent to or dissent from the verdict or concerning the mental processes by which it was determined.

1151. Subsequent remedial conduct.

1151. When, after the occurrence of an event, remedial or precautionary measures are taken, which, if taken previously, would have tended to make the event less likely to occur, evidence of such subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event.

1152. Offer to compromise and the like.

1152. (a) Evidence that a person has, in compromise or from humanitarian motives, furnished or offered or promised to furnish money or any

other thing, act, or service to another who has sustained or claims to have sustained loss or damage, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove his liability for the loss or damage or any part of it.

(b) This section does not affect the admissibility of evidence of:

(1) Partial satisfaction of an asserted claim on demand without questioning its validity, as tending to prove the validity of the claim; or

(2) A debtor's payment or promise to pay all or a part of his pre-existing debt as tending to prove the creation of a new duty on his part or a revival of his pre-existing duty.

1153. Offer to plead guilty to crime.

1153. Evidence that the defendant in a criminal action has offered to plead guilty to the alleged crime or to a lessor crime, as well as any conduct or statements made in negotiation thereof, is inadmissible in any action.

1154. Offer to discount a claim.

1154. Evidence that a person has accepted or offered or promised to accept a sum of money or any other thing, act, or service in satisfaction of a claim, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove the invalidity of the claim or any part of it.

1155. Liability insurance.

1155. Evidence that a person was, at the time a harm was suffered by another, insured wholly or partially against loss arising from liability for that harm is inadmissible as tending to prove negligence or other wrongdoing.

DIVISION 10. HEARSAY EVIDENCE

CHAPTER 1. GENERAL PROVISIONS

1200. General rule excluding hearsay evidence.

1200. Hearsay evidence is inadmissible except as provided in Chapter 2 (commencing with Section 1250).

1201. Multiple hearsay.

1201. A statement within the scope of an exception to Section 1200 is not inadmissible on the ground that the evidence of such statement is hearsay evidence if the hearsay evidence of such statement consists of one or more statements each of which meets the requirements of an exception to Section 1200.

1202. Credibility of declarant.

1202. Evidence of a statement or other conduct by a declarant inconsistent with a statement of such declarant received in evidence under an exception to Section 1200 is not inadmissible for the purpose of discrediting the declarant, though he is given and has had no opportunity to deny or explain such inconsistent statement or other conduct. Any other evidence tending to impair or support the credibility of the declarant is admissible if it would have been admissible had the declarant been a witness.

1203. Discretion of judge under certain exceptions to exclude evidence.

Note: Rule 64 of the Uniform Rules of Evidence provides that certain writings admissible under hearsay exceptions may be received in evidence only if the party offering such writing has delivered a copy of it to each adverse party a reasonable time before trial unless the judge finds that such adverse party has not been unfairly surprised by the failure to deliver such copy. The Commission originally determined not to recommend the adoption of a provision similar to Rule 64. In light of the comments received on the tentative recommendation on hearsay evidence, the Commission has determined to reconsider its previous decision as to whether a provision similar to Rule 64 is needed.

1204. No implied repeal.

1204. Nothing in this division shall be construed to repeal by implication any other statute relating to hearsay evidence.

CHAPTER 2. EXCEPTIONS TO THE HEARSAY RULE

1250. Prior inconsistent statement; prior consistent statement.

1250. A statement made by a person who is a witness at the hearing, but not made at the hearing, is not made inadmissible by Section 1200 if the statement would have been admissible if made by him while testifying and the statement is:

(a) Inconsistent with his testimony at the hearing and is offered in compliance with Section [Rule 22];

(b) Offered after evidence of a prior inconsistent statement by the witness has been received, or after an express or implied charge has been made that his testimony at the hearing was recently fabricated, and the statement is one made before the alleged inconsistent statement or

fabrication and is consistent with his testimony at the hearing; or

(c) Offered after an express or implied charge has been made that his testimony at the hearing is influenced by bias or other improper motive and the statement is one made before the bias or motive is alleged to have arisen and is consistent with his testimony at the hearing.

1251. Past recollection recorded.

1251. A statement made by a person who is a witness at the hearing, but not made at the hearing, is not made inadmissible by Section 1200 if the statement would have been admissible if made by him while testifying and the statement concerns a matter as to which the witness has no present recollection and is contained in a writing which:

(a) Was made at a time when the fact recorded in the writing actually occurred or was fresh in the witness' memory;

(b) Was made by the witness himself or under his direction or by some other person for the purpose of recording the witness' statement at the time it was made;

(c) Is offered after the witness testifies that the statement he made was a true statement of such fact; and

(d) Is offered after the writing is authenticated as an accurate record of the statement.

1252. Former testimony offered against a party to the former proceeding.

1252. (a) As used in this section, "former testimony" means:

(1) Testimony given under oath or affirmation as a witness in a former hearing or trial of the same action;

(2) Testimony given under oath or affirmation as a witness in

another action or in a proceeding conducted by or under the supervision of an official agency having the power to determine controversies; and

(3) Testimony in a deposition taken in compliance with law in another action.

(b) Former testimony is not made inadmissible by Section 1200 if the declarant is unavailable as a witness and:

(1) The former testimony is offered against a person who offered it in evidence in his own behalf on the former occasion or against the successor in interest of such person; or

(2) The party against whom the former testimony is offered was a party to the action or proceeding in which the testimony was given and had the right and opportunity to cross-examine with an interest and motive similar to that which he has at the hearing, except that testimony in a deposition taken in another action and testimony given in a preliminary examination in another criminal action is not made admissible by this subdivision against the defendant in a criminal action unless it was received in evidence at the trial of such other action.

(c) Except for objections to the form of the question which were not made at the time the former testimony was given and objections based on competency or privilege which did not exist at that time, the admissibility of former testimony under this section is subject to the same limitations and objections as though the declarant were testifying in person.

1253. Former testimony offered against a person not a party to the former proceeding.

1253. (a) As used in this section, "former testimony" has the

meaning given it by subdivision (a) of Section 1252.

(b) Former testimony is not made inadmissible by Section 1200 if:

(1) The declarant is unavailable as a witness;

(2) The former testimony is offered in a civil action or against the people in a criminal action; and

(3) The issue is such that the party to the action or proceeding in which the former testimony was given had the right and opportunity to cross-examine with an interest and motive similar to that which the party against whom the testimony is offered has at the hearing.

(c) Except for objections based on competency or privilege which did not exist at the time the former testimony was given, the admissibility of former testimony under this section is subject to the same limitations and objections as though the declarant were testifying in person.

1254. Spontaneous or contemporaneous statement.

1254. (a) A statement is not made inadmissible by Section 1200 if it (1) purports to state what the declarant perceived relating to an act, condition, or event which the statement narrates, describes, or explains, and (2) was made spontaneously while the declarant was under the stress of excitement caused by such perception.

(b) A statement is not made inadmissible by Section 1200 if it was made while the declarant was perceiving the act, condition, or event which the statement narrates, describes, or explains.

1255. Dying declaration.

1255. A statement made by a person since deceased is not made inadmissible by Section 1200 if it would be admissible if made by the

declarant at the hearing and was made under a sense of impending death, voluntarily and in good faith, and in the belief that there was no hope of his recovery.

1256. Confession or admission of criminal defendant.

1256. A previous statement by the defendant is not made inadmissible by Section 1200 when offered against him in a criminal action if the statement was made freely and voluntarily and was not made:

(a) Under circumstances likely to cause the defendant to make a false statement; or

(b) Under such circumstances that it is inadmissible under the Constitution of the United States or the Constitution of this State.

1257. Admission by a party.

1257. A statement made by a person who is a party to a civil action is not made inadmissible by Section 1200 when it is offered against him in either his individual or representative capacity, regardless of whether the statement was made in his individual or representative capacity.

1258. Adoptive admission.

1258. A statement offered against a party is not made inadmissible by Section 1200 if the statement is one of which the party, with knowledge of the content thereof, has by words or other conduct manifested his adoption or his belief in its truth.

1259. Authorized admissions.

1259. A statement offered against a party is not made inadmissible by Section 1200 if the statement was made by a person authorized by the

party to make a statement or statements for him concerning the subject matter of the statement.

1260. Admission of co-conspirator.

1260. A statement offered against a party is not made inadmissible by Section 1200 if:

(a) The statement is that of a co-conspirator of the party;

(b) The statement was made during the existence of the conspiracy and in furtherance of the common object thereof;

(c) The statement would be admissible if made by the declarant at the hearing; and

(d) The statement is offered after, or in the judge's discretion as to the order of proof subject to, proof of the existence of the conspiracy and that the declarant and the party were both parties to the conspiracy at the time the statement was made.

1261. Admission of agent, partner, or employee.

1261. A statement offered against a party is not made inadmissible by Section 1200 if:

(a) The statement is that of an agent, partner, or employee of the party;

(b) The statement concerned a matter within the scope of the agency, partnership, or employment and was made during that relationship;

(c) The statement would be admissible if made by the declarant at the hearing; and

(d) The statement is offered after, or in the judge's discretion as to the order of proof subject to, proof of the existence of the relationship between the declarant and the party.

1262. Admission of declarant where liability of declarant is in issue.

1262. A statement offered against a party in a civil action is not made inadmissible by Section 1200 if:

(a) The liability, obligation, or duty of the declarant is in issue between the party and the proponent of the evidence of the statement;

(b) The statement tends to establish that liability, obligation, or duty; and

(c) The statement would be admissible if made by the declarant at the hearing.

1263. Declaration against interest.

1263. (a) As used in this section, "declaration against interest" means a statement that, when made, was so far contrary to the declarant's pecuniary or proprietary interest, or so far subjected him to the risk of civil or criminal liability, or so far tended to render invalid a claim by him against another, or created such a risk of making him an object of hatred, ridicule, or social disgrace in the community, that a reasonable man in his position would not have made the statement unless he believed it to be true.

(b) Subject to subdivision (c), a declaration against interest is not made inadmissible by Section 1200 if:

(1) The declarant is not a party to the action in which the statement is offered;

(2) The declarant had sufficient knowledge of the subject; and

(3) The declarant is unavailable as a witness.

(c) A statement made while the declarant was in the custody of a public employee of the United States or any state is not made admissible

by this section against the defendant in a criminal action unless the statement would be admissible under Section 1256 against the declarant if he were the defendant in a criminal action.

1264. Statement of declarant's then existing physical or mental condition.

1264. (a) Unless it was made in bad faith, a statement of the declarant's then existing state of mind, emotion, or physical sensation (including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health) is not made inadmissible by Section 1200 when:

(1) Such mental or physical condition is in issue and the statement is offered on that issue; or

(2) The statement is offered to prove or explain acts or conduct of the declarant.

(b) This section does not make admissible a statement of memory or belief to prove the fact remembered or believed.

1265. Statement of declarant's previously existing physical or mental condition.

1265. Unless it was made in bad faith, a statement by the declarant as to his state of mind, emotion, or physical sensation (including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health) at a time prior to the statement is not made inadmissible by Section 1200 if:

(a) The declarant is unavailable as a witness; and

(b) His statement is offered to prove such prior state of mind, emotion, or physical sensation when it is itself an issue in the action and the statement is not offered to prove any fact other than such state

of mind, emotion, or physical sensation.

1266. Statement of previous symptoms.

1266. When relevant to an issue of the declarant's bodily condition, a statement of his previous symptoms, pain, or physical sensation, made to a physician consulted for treatment or for diagnosis with a view to treatment, is not made inadmissible by Section 1200 unless the statement was made in bad faith.

1267. Statement concerning declarant's will.

1267. A statement of a declarant who is unavailable as a witness that he has or has not made a will, or has or has not revoked his will, or that identifies his will, is not made inadmissible by Section 1200 unless the statement was made in bad faith.

1268. Statement of decedent offered in action against his estate.

1268. A statement offered in an action brought against an executor or administrator upon a claim or demand against the estate of the declarant is not made inadmissible by Section 1200 if the statement was made upon the personal knowledge of the declarant.

1269. Business record.

1269. (a) As used in this section, "a business" includes every kind of business, governmental activity, profession, occupation, calling, or operation of institutions, whether carried on for profit or not.

(b) A writing offered as a record of an act, condition, or event is not made inadmissible by Section 1200 if:

(1) The custodian or other qualified witness testifies to its identity and the mode of its preparation;

(2) It was made in the regular course of a business, at or near the time of the act, condition, or event; and

(3) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

1270. Absence of entry in business records.

1270. (a) As used in this section, the term "a business" has the meaning given it by Section 1269.

(b) Evidence of the absence from the records of a business or a record of an asserted act, condition, or event is not made inadmissible by Section 1200 when offered to prove the non-occurrence of the act or event, or the non-existence of the condition, if:

(1) It was the regular course of that business to make records of all such acts, conditions, or events, at or near the time of the act, condition, or event, and to preserve them; and

(2) The sources of information and method and time of preparation of the records of that business are such as to indicate that the absence of a record of an act, condition, or event warrants an inference that the act or event did not occur or the condition did not exist.

1271. Report of public employee.

1271. (a) A writing offered as a record or report of an act, condition, or event is not made inadmissible by Section 1200 if:

(1) The writing was made by and within the scope of duty of a public employee of the United States or a public entity of any state;

(2) The writing was made at or near the time of the act, condition, or event; and

(3) The sources of information and method of preparation are such as to indicate its trustworthiness.

(b) If a party offers a writing made admissible by this section and the writing is received in evidence, the public employee who made the writing may be called as a witness by the adverse party and examined as if under cross-examination concerning the writing and the subject matter of the writing.

1272. Report of vital statistic.

1272. A writing made as a record or report of a birth, fetal death, death, or marriage is not made inadmissible by Section 1200 if the maker was required by statute to file the writing in a designated public office and the writing was made and filed as required by the statute.

1273. Content of writing in custody of public employee.

1273. A writing that is a copy of a writing in the custody of a public employee is not made inadmissible by Section 1200 when offered to prove the content of the writing in the custody of the public employee.

1274. Proof of absence of public record.

1274. A writing made by the public employee who is the official custodian of the records in a public office, reciting diligent search and failure to find a record, is not made inadmissible by Section 1200 when offered to prove the absence of a record in that office.

1275. Certificate of marriage.

1275. A certificate that the maker thereof performed a marriage ceremony is not made inadmissible by Section 1200 when offered to prove the fact, time, or place of the marriage if:

(a) The maker of the certificate was, at the time and place certified as the time and place of the marriage, authorized by law to perform marriage ceremonies; and

(b) The certificate was issued at that time or within a reasonable time thereafter.

1280. Official record of document affecting an interest in property.

1280. The official record of a document purporting to establish or affect an interest in property is not made inadmissible by Section 1200 when offered to prove the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed if:

(a) The record is in fact a record of an office of a state or nation or of any governmental subdivision thereof; and

(b) A statute authorized such a document to be recorded in that office.

1281. Judgment of previous conviction.

1281. Evidence of a final judgment adjudging a person guilty of a felony is not made inadmissible by Section 1200 when offered in a civil action to prove any fact essential to the judgment unless the judgment was based on a plea of nolo contendere.

1282. Judgment against person entitled to indemnity.

1282. Evidence of a final judgment is not made inadmissible by Section 1200 when offered by the judgment debtor to prove any fact which was essential to the judgment in an action in which he seeks to:

(a) Recover partial or total indemnity or exoneration for money paid or liability incurred because of the judgment.

(b) Enforce a warranty to protect the judgment debtor against the liability determined by the judgment.

(c) Recover damages for breach of warranty substantially the same as a warranty determined by the judgment to have been breached.

1283. Judgment determining liability of third person.

1283. When the liability, obligation, or duty of a third person is in issue in a civil action, evidence of a final judgment against that person is not made inadmissible by Section 1200 when offered to prove such liability, obligation, or duty.

1284. Statement concerning declarant's own family history.

1284. (a) Subject to subdivision (b), a statement of a matter concerning a declarant's own birth, marriage, divorce, legitimacy, relationship by blood or marriage, race-ancestry, or other similar fact of his family history is not made inadmissible by Section 1200, even though the declarant had no means of acquiring personal knowledge of the matter declared, if the declarant is unavailable as a witness.

(b) This section does not make a statement admissible if the statement was made under such circumstances that the declarant in making such statement had motive or reason to deviate from the truth.

1285. Statement concerning family history of another.

1285. (a) Subject to subdivision (b), a statement concerning the birth, marriage, divorce, death, legitimacy, race-ancestry, relationship by blood or marriage, or other similar fact of the family history of a person other than the declarant is not made inadmissible by Section 1200 if the declarant is unavailable as a witness and:

(1) The declarant was related to the other by blood or marriage; or

(2) The declarant was otherwise so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared and made the statement (i) upon information received from

the other or from a person related by blood or marriage to the other or (ii) upon repute in the other's family.

(b) This section does not make a statement admissible if the statement was made under circumstances that the declarant in making such statement had motive or reason to deviate from the truth.

1286. Reputation in family concerning family history.

1286. Evidence of reputation among members of a family is not made inadmissible by Section 1200 if the reputation concerns the birth, marriage, divorce, death, legitimacy, race-ancestry, or other similar fact of the family history of a member of the family by blood or marriage and the evidence is offered to prove the truth of the matter reputed.

1287. Entries concerning family history.

1287. Entries in family bibles or other family books or charts, engravings on rings, family portraits, engravings on urns, crypts, or tombstones, and the like, are not made inadmissible by Section 1200 when offered to prove the birth, marriage, divorce, death, legitimacy, race-ancestry, or other similar fact of the family history of a member of the family by blood or marriage.

1288. Community reputation concerning public interest in property, boundaries, general history, or family history.

1288. Evidence of reputation in a community is not made inadmissible by Section 1200 when offered to prove the truth of the matter reputed if the reputation concerns:

(a) The interest of the public in property in the community and the reputation, if any, arose before controversy.

(b) Boundaries of, or customs affecting, land in the community and the reputation, if any, arose before controversy.

(c) An event of general history of the community or of the state or nation of which the community is a part and the event was of importance to the community.

(d) The date or fact of birth, marriage, divorce, or death of a person resident in the community at the time of the reputation.

1289. Statement concerning boundary.

1289. A statement concerning the boundary of land is not made inadmissible by Section 1200 if the declarant is unavailable as a witness and had sufficient knowledge of the subject, but a statement is not admissible under this section if the statement was made under such circumstances that the declarant in making such statement had motive or reason to deviate from the truth.

1290. Reputation as to character.

1290. Evidence of a person's general reputation with reference to his character or a trait of his character at a relevant time in the community in which he then resided or in a group with which he then habitually associated is not made inadmissible by Section 1200 when offered to prove the truth of the matter reputed.

1291. Recitals in documents affecting property.

1291. A statement contained in a deed of conveyance or a will or other writing purporting to affect an interest in real or personal property is not made inadmissible by Section 1200 if:

(a) The matter stated was relevant to the purpose of the writing;

(b) The matter stated would be relevant to an issue as to an interest in the property; and

(c) The dealings with the property since the statement was made have not been inconsistent with the truth of the statement.

1292. Recitals in ancient documents.

1292. A statement is not made inadmissible by Section 1200 if the statement is contained in a writing more than 30 years old and the statement has been since generally acted upon as true by persons having an interest in the matter.

1293. Commercial lists and the like.

1293. A statement, other than an opinion, contained in a tabulation, list, directory, register, or other published compilation is not made inadmissible by Section 1200 if the compilation is generally used and relied upon by persons engaged in an occupation as accurate.

1294. Publications concerning facts of general notoriety and interest.

1294. Historical works, books of science or art, and published maps or charts, made by persons indifferent between the parties, are not made inadmissible by Section 1200 when offered to prove facts of general notoriety and interest.

1295. Evidence admissible under other statutes.

1295. Hearsay evidence declared to be admissible by statute is not made inadmissible by Section 1295.

DIVISION 11. WRITINGS

CHAPTER 1. AUTHENTICATION

1400. Authentication required.

1400. Authentication of a writing is required before it may be received in evidence. Authentication of a writing is required before secondary evidence of its content may be received in evidence. Authentication may be by evidence sufficient to sustain a finding of its authenticity or by any other means provided by law.

1401. Private writing.

1401. A private writing, other than a will, is sufficiently authenticated to be received in evidence if it is acknowledged or proved and certified in the manner provided for the acknowledgement or proof of conveyances of real property.

1402. Writing affecting real property.

1402. A writing conveying or affecting real property, acknowledged or proved and certified as provided in the Civil Code, is sufficiently authenticated to be received in evidence.

1403. Copy of writing in custody of public employee.

1403. A purported copy of a writing in the custody of a public employee, or of an entry therein, meets the requirement of authentication as a copy of such writing or entry if:

(a) The copy purports to be published by authority of the nation or state, or governmental subdivision thereof, in which the writing is kept;

(b) Evidence has been introduced sufficient to warrant a finding that the copy is a correct copy of the writing or entry;

(c) The office in which the writing is kept is within the United States or any state, territory, or possession thereof and the copy is attested or certified as a correct copy of the writing or entry by a person purporting to be an officer, or a deputy of an officer, having the legal custody of the writing; or

(d) The office in which the writing is kept is not within the United States or any state, territory, or possession thereof and the copy is attested or certified as required in subdivision (c) and is accompanied by a statement declaring that the person who attested or certified the copy as a correct copy is the officer, or a deputy of the officer, who has the custody of the writing. The statement may be made only by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent or by an officer in the foreign service of the United States stationed in the nation in which the writing is kept, authenticated by the seal of his office.

1404. Writing stating absence of record in public office.

1404. A writing reciting diligent search and failure to find a record in a specified office, made by the employee who is the official custodian of the records in that office, is authenticated in the same manner as is provided in subdivision (c) or (d) of Section 1403.

1405. Ancient writings.

1405. A writing is sufficiently authenticated to be received in evidence if the judge finds that it:

(a) Is at least 30 years old at the time it is offered;

(b) Is in such condition as to create no suspicion concerning its authenticity; and

(c) Was, at the time of its discovery, in a place in which such writing, if authentic, would be likely to be found.

1415. Official seals and signatures.

1415. (a) A seal is presumed to be genuine and authorized if it purports to be the seal of:

(1) The United States or of a department, agency, or officer of the United States.

(2) A public entity, or a department, agency, or officer of a public entity, in any state, territory, or possession of the United States.

(3) A nation or sovereign, or a department, agency, or officer of a nation or sovereign, recognized by the executive power of the United States.

(4) A governmental subdivision of a nation recognized by the executive power of the United States.

(5) A court of admiralty or maritime jurisdiction.

(6) A notary public.

(b) A signature is presumed to be genuine and authorized if it purports to be the signature, affixed in his official capacity, of:

(1) A public officer or employee of the United States.

(2) A public officer or employee of any public entity in any state, territory, or possession of the United States.

(3) A notary public.

(c) A signature is presumed to be genuine and authorized if it purports to be the signature, affixed in his official capacity, of the sovereign or a principal officer of a nation, or a principal officer of a governmental subdivision of a nation, recognized by the executive power of the United States and the writing to which the signature is affixed is accompanied by a statement declaring that the person who affixed his signature thereto is such sovereign or principal officer. The statement may be made only by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the nation, authenticated by the seal of his office.

(d) The presumptions established by this section require the trier of fact to find the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumptions established by this section.

1416. Certificate to copy.

1416. Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state in substance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

CHAPTER 2. BEST EVIDENCE RULE

1420. When secondary evidence of content of writing admissible.

1420. As tending to prove the content of a writing, no evidence other than the writing itself is admissible, except as otherwise provided by statute, unless the judge finds that:

(a) The writing is lost or has been destroyed without fraudulent intent on the part of the proponent;

(b) The writing was not reasonably procurable by the proponent by use of the court's process or by other available means;

(c) At a time when the writing was under the control of the opponent, the opponent was expressly or impliedly notified, by the pleadings or otherwise, that the writing would be needed at the hearing, and on request at the hearing the opponent has failed to produce such writing; but in a criminal action, the request at the hearing for the defendant to produce the writing may not be made in the presence of the jury;

(d) The writing is not closely related to the controlling issues and it would be inexpedient to require its production;

(e) The writing is a record or other writing in the custody of a public officer or employee;

(f) The writing has been recorded in the public records and the record or an attested or a certified copy thereof is made evidence of the writing by statute; or

(g) The writing consists of numerous accounts or other writings that cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole; but the judge, in his discretion, may require that such accounts or other writings be produced for inspection by the adverse party.

1421. Types of secondary evidence admissible.

1421. (a) Subject to subdivisions (b) and (c), if the judge makes one of the findings specified in Section 1420, oral or written secondary evidence of the content of the writing is admissible.

(b) If the writing is one described in subdivision (a), (b), (c), or (d) of Section 1420, oral testimony of the content of the writing is inadmissible unless the judge finds either (1) that the proponent does not have in his possession or under his control a copy of the writing or (2) that the writing is also one described by subdivision (g) of Section 1420.

(c) If the writing is one described in subdivision (e) or (f) of Section 1420, oral testimony of the content of the writing is inadmissible unless the judge finds either (1) that the proponent does not have in his possession a copy of the writing and could not in the exercise of reasonable diligence have obtained a copy or (2) that the writing is also one described by subdivision (g) of Section 1420.

1422. Effect of production and inspection.

1422. Though a writing called for by one party is produced by the other, and is thereupon inspected by the party calling for it, he is not obliged to produce it as evidence in the action.

CHAPTER 3. BUSINESS RECORDS

Article 1. Business Records Generally

1450. "A business" defined.

1450. As used in this article, "a business" includes every kind of business, governmental activity, profession, occupation, calling, or operation of institutions, whether carried on for profit or not.

1451. Business records.

1451. A writing offered as a record of an act, condition, or event is admissible as evidence if:

(a) The custodian or other qualified witness testifies to its identity and the mode of its preparation;

(b) It was made in the regular course of a business, at or near the time of the act, condition, or event; and

(c) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

[Note: This article duplicates Section 1269, but the staff suggests that this article be included in the Evidence Code and Section 1269 be deleted. A memorandum will be prepared to discuss this problem.]

Article 2. Church Records

[Note: This article will be drafted to effectuate the determination of the Commission as set out in the Minutes of its May 1964 Meeting, pages 6-7.]

Article 3. Use of Copies of Hospital Records

1490. Compliance with subpena duces tecum of hospital records.

1490. (a) Except as provided in Section 1494, when a subpena duces tecum is served upon the custodian of records or other qualified witness from a licensed or county hospital, state hospital or hospital in an institution under the jurisdiction of the Department of Corrections in an action in which the hospital is neither a party nor the place where any cause of action is alleged to have arisen and such subpena requires the production of all or any part of the records of the hospital relating to the care or treatment of a patient in such hospital, it shall be sufficient compliance therewith if the custodian or other officer of the hospital shall, within five days after the receipt of such subpena, deliver by mail or otherwise a true and correct copy (which may be a photographic or micro-photographic reproduction) of all the records described in such subpena

to the clerk of court or to the court if there be no clerk or to such other person as described in subdivision (a) of Section 2018 of the Code of Civil Procedure, together with the affidavit described in Section 1491.

(b) The copy of the records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of witness and date of subpena clearly inscribed thereon; the sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed, directed as follows:

If the subpena directs attendance in court, to the clerk of such court, or to the judge thereof, if there be no clerk; if the subpena directs attendance at a deposition or other hearing, to the officer before whom the deposition is to be taken, at the place designated in the subpena for the taking of the deposition or at his place of business; in other cases, to the officer, body, or tribunal conducting the hearing, at a like address.

(c) Unless the parties to the action or proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, officer, body, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at such trial, deposition, or hearing. Records which are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom received.

1491. Affidavit accompanying records.

1491. (a) The records shall be accompanied by the affidavit of the custodian or other qualified witness, stating in substance each of the following:

(1) That the affiant is the duly authorized custodian of the records and has authority to certify the records.

(2) That the copy is a true copy of all the records described in the subpena.

(3) That the records were prepared by the personnel of the hospital, staff physicians, or persons acting under the control of either, in the ordinary course of hospital business at or near the time of the act, condition or event.

(b) If the hospital has none of the records described, or only part thereof, the custodian shall so state in the affidavit, and deliver the affidavit and such records as are available in the manner provided in Section 1490.

1492. Copy of records and affidavit admissible in evidence.

1492. The copy of the records is admissible in evidence to the same extent as though the original thereof were offered and the custodian had been present and testified to the matters stated in the affidavit. The affidavit is admissible in evidence and the matters stated therein are presumed true in the absence of a preponderance of evidence to the contrary. When more than one person has knowledge of the facts, more than one affidavit may be made.

1493. Single witness or mileage fee.

1493. This article shall not be interpreted to require tender or payment of more than one witness and mileage fee or other charge unless there is an agreement to the contrary.

1494. Personal attendance of custodian and production of original records.

1494. The personal attendance of the custodian or other qualified witness and the production of the original records is required if the subpena duces tecum contains a clause which reads:

"The procedure authorized pursuant to subdivision (a) of Section 1490, and Sections 1491 and 1492, of the Evidence Code will not be deemed sufficient compliance with this subpena."

1495. Service of more than one subpena duces tecum.

1495. If more than one subpena duces tecum is served upon the custodian of records or other qualified witness from a licensed or county hospital or hospital in an institution under the jurisdiction of the Department of Corrections and the personal attendance of the custodian or other qualified witness is required pursuant to Section 1494, the witness shall be deemed to be the witness of the party serving the first such subpena duces tecum.

1496. Application of article.

1496. This article applies in any proceeding in which testimony can be compelled.

CHAPTER 4. PROOF OF CONTENT OR EXECUTION

Article 1. General Provisions

1500. Witnessed writings.

1500. (a) Except where the testimony of a subscribing witness is required by statute, the execution of any writing may be proved by:

(1) Anyone who saw the writing executed; or

(2) Evidence of the genuineness of the handwriting of the maker; or

(3) A subscribing witness.

(b) Notwithstanding subdivision (a), if the subscribing witness denies or does not recollect the execution of the writing, its execution may be proved by other evidence.

(c) Notwithstanding subdivision (a), where evidence is given that the party against whom the writing is offered has at any time admitted its execution no other evidence of the execution need be given if:

(1) The writing is one produced from the custody of the adverse party, and has been acted upon by him as genuine; or

(2) The writing is more than 30 years old and has been generally respected and acted upon as genuine by persons having an interest in knowing the fact.

1501. Proof of handwriting.

1501. (a) The handwriting of a person may be proved by anyone who believes it to be his, or who has seen him write, or has seen writings purporting to be his, upon which he has acted or been charged, and who has thus acquired a knowledge of his handwriting.

(b) Evidence respecting the handwriting may also be given by a comparison, made by the witness or the trier of fact, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

(c) Where a writing is more than 30 years old, the comparisons may be made with writings purporting to be genuine, and generally respected and acted upon as such, by persons having an interest in knowing the fact.

Article 2. Photographic Copies of Writings

1550. Photographic copies of business records.

1550. A photostatic, microfilm, microcard, miniature photographic or other photographic copy or reproduction, or an enlargement thereof, of a writing is as admissible as the writing itself if such copy or reproduction was made and preserved as a part of the records of "a business" (as defined by Section 1450) in the regular course of such business. The introduction of such copy, reproduction or enlargement does not preclude admission of the original writing if it is still in existence.

1551. Photographic copies where original destroyed or lost.

1551. A print, whether enlarged or not, from a photographic film (including a photographic plate, microphotographic film, photostatic negative, or similar reproduction) of an original writing destroyed or lost after such film was taken is as admissible as the original writing itself if, at the time of the taking of such film, the person under whose direction and control it was taken attached thereto, or to the sealed container in which it was placed and has been kept, or incorporated in the film, a certification complying with the provisions of Section 1416 and stating the date on which, and the fact that, it was so taken under his direction and control.

Article 3. Reports of Presumed Death, Missing in Action, and the Like

1600. Finding of presumed death by authorized federal employee.

1600. A written finding of presumed death made by an employee of the United States authorized to make such finding pursuant to the Federal Missing Persons Act (50 U.S.C. App. Supp. 1001-1016), as enacted or as heretofore or

hereafter amended, or a certified copy of such finding, shall be received in any court, office or other place in this State as evidence of the death of the person therein found to be dead and of the date, circumstances, and place of his disappearance.

1601. Report by federal employee that person is missing, captured, or the like.

1601. An official written report or record, or certified copy thereof, that a person is missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, or besieged by a hostile force, or is dead, or is alive, made by an employee of the United States authorized by any law of the United States to make such report or record shall be received in any court, office, or other place in this State as evidence that such person is missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, or besieged by a hostile force, or is dead, or is alive, as the case may be.

1602. Presumption of execution and authority.

1602. (a) For the purposes of this article, any finding, report, or record, or certified copy thereof, purporting to have been signed by a public employee of the United States described in this article is presumed to have been signed and issued by such employee pursuant to law, and the person signing such finding, report, or record is presumed to have acted within the scope of his authority.

(b) If a writing purports to be a copy of such finding, report, or record and purports to have been certified by a person authorized by law to certify it, the signature of the person certifying the copy and his authority so to certify the copy is presumed.

(c) The presumptions established by this section require the trier of fact to find the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence, in which case the trier of fact shall determine the existence of nonexistence of the presumed fact from the evidence and without regard to the presumptions established by this section.

Article 3. Particular Writings

1650. Authenticated Spanish title records.

1650. Duplicate copies and authenticated translations of original Spanish title papers relating to land claims in this State, derived from the Spanish or Mexican Governments, prepared under the supervision of the Keeper of Archives, authenticated by the Surveyor-General or his successor and by the Keeper of Archives, and filed with a county recorder, in accordance with Chapter 281 of the Statutes of 1865-6, are receivable as prima facie evidence with like force and effect as the originals and without proving the execution of such originals.

1651. Patent for mineral lands.

1651. If a patent for mineral lands within this State, issued or granted by the United States of America, contains a statement of the date of the location of a claim or claims upon which the granting or issuance of such patent is based, such statement is prima facie evidence of the date of such location.

1652. Deed by officer in pursuance of court process.

1652. A deed of conveyance of real property, purporting to have been executed by a proper officer in pursuance of legal process of any of the courts of record of this State, acknowledged and recorded in the office of the recorder of the county wherein the real property therein described is situated, or the record of such deed, or a certified copy of such record is prima facie evidence that the property or interest therein described was thereby conveyed to the grantee named in such deed.

1653. Certificate of purchase or location of lands.

1653. A certificate of purchase, or of location, of any lands in this State, issued or made in pursuance of any law of the United States or of this State, is prima facie evidence that the holder or assignee of such certificate is the owner of the land described therein; but this evidence may be overcome by proof that, at the time of the location, or time of filing, a pre-emption claim on which the certificate may have been issued, the land was in the adverse possession of the adverse party, or those under whom he claims, or that the adverse party is holding the land for mining purposes.

1654. Proof of content of lost public record or document.

1654. (a) Subject to subdivisions (b) and (c), when, in any action, it is desired to prove the contents of any public record or document lost or destroyed by conflagration or other public calamity, after proof of such loss or destruction, the following may, without further proof, be admitted in evidence to prove the contents of such record or document:

(1) Any abstract of title made and issued and certified as correct prior to such loss or destruction, and purporting to have been prepared and

made in the ordinary course of business by any person, firm or corporation engaged in the business of preparing and making abstracts of title prior to such loss or destruction; or

(2) Any abstract of title, or of any instrument affecting title, made, issued and certified as correct by any person, firm or corporation engaged in the business of insuring titles or issuing abstracts of title to real estate, whether the same was made, issued or certified before or after such loss or destruction and whether the same was made from the original records or from abstract and notes, or either, taken from such records in the preparation and upkeeping of its, or his, plant in the ordinary course of its business.

(b) No proof of the loss of the original document or instrument is required other than the fact that the original is not known to the party desiring to prove its contents to be in existence.

(c) Any party desiring to use evidence admissible under this section shall give reasonable notice in writing to all other parties to the action who have appeared therein, of his intention to use such evidence at the trial of the action, and shall give all such other parties a reasonable opportunity to inspect the evidence, and also the abstracts, memoranda, or notes from which it was compiled, and to take copies thereof.

CHAPTER 5. RECORDS OF MEDICAL STUDIES

1950. Records of medical study of in-hospital staff committee.

1950. (a) In-hospital medical staff committees of a licensed hospital may engage in research and medical study for the purpose of reducing morbidity and mortality, and may make findings and recommendations relating to such purpose. The written records of interviews, reports, statements, or memoranda of such in-hospital medical staff committees relating to such medical studies are subject to Sections 2016 and 2036 of the Code of Civil Procedure (relating to discovery proceedings) but, subject to subdivisions (b) and (c), shall not be admitted as evidence in any action or before any administrative body, agency, or person.

(b) This section does not affect the admissibility in evidence of the original medical records of any patient.

(c) This section does not exclude evidence which is relevant evidence in a criminal action.