

10/27/64

First Supplement to Memorandum 64-98

Subject: Study No. 34(L) - Uniform Rules of Evidence (Evidence Code Recommendation - Form of Comments)

The Commission has discussed from time to time the form and content of the sectional Comments to the Evidence Code. In the interest of providing a brief but comprehensive treatment of several additional matters that should be included in the Comments, the staff plans to include sectional Cross References to pick up (1) significant substantive sections that supplement the particular section, (2) definitions that aid in interpreting and understanding the section, (3) the appropriate Uniform Rule, where applicable, and (4) similar sections, if any (for example, comparable definitions and exceptions in Division 8 (Privileges), such as the definition of "holder of the privilege" and the exception for crime or tort).

Some cross references are appropriate for entire divisions to avoid unnecessary duplication in individual sections. For example, each divisional Cross Reference would include a reference to the appropriate pamphlet containing the research study relating to that division. For convenience of presenting these divisional Cross References in suitable form, as well as presenting a bird's-eye view of the content of each division, we have added a short divisional Comment to each division.

We have reproduced in abbreviated form as Exhibit I (yellow) a sample of the publication as it would appear in the form suggested. Most of the work has been done to produce the entire publication in this form, but we did not have time to prepare the cross references for the October meeting. The sample will give you an idea of the way in which we plan to publish this material if there is no serious Commission objection.

Respectfully submitted,

Jon D. Smock
Associate Counsel

DIVISION 9. EVIDENCE AFFECTED OR EXCLUDED BY INTRINSIC POLICIES

Comment. This division contains several sections that reflect policy determinations affecting the admissibility of evidence. Generally speaking, the sections contained in this division limit or exclude for extrinsic policy reasons evidence that is otherwise competent and relevant. In some cases, however, sections are included in this division that specifically state rules of admissibility only. E.g., EVIDENCE CODE § 1100. In these cases, the sections are included in this division to forestall any argument that Section 351 does not in fact remove all judicially created restrictions on the forms of evidence that may be used to prove a fact in issue.

Cross References

Admissibility of relevant evidence generally, see § 351

Discretion of court to exclude evidence, see § 352

Preliminary determinations on admissibility of evidence, see §§ 400-406

Research study, see Tentative Recommendation and a Study Relating to the Uniform Rules of Evidence (Article VI. Extrinsic Policies Affecting Admissibility), 6 CAL. LAW REV. COMM'N, REP., REC. & STUDIES 601-700 (1964)

§ 1100. Manner of proof of character

1100. Except as otherwise provided by statute, any otherwise admissible evidence (including testimony in the form of an opinion, evidence of reputation, and evidence of specific instances of such person's conduct) is admissible to prove a person's character or a trait of his character.

Comment. Section 1100 provides that reputation evidence, qualified opinion testimony, and evidence of specific instances of conduct

[Remainder of Comment the same as on pages 900-902 of Commission Comments.]

Cross References

Admissibility of evidence generally, see § 351

Character evidence as affecting credibility of witnesses, see §§ 786, 787, 790

Character evidence to prove conduct, see § 1101

Definitions:

Conduct, see § 125

Evidence, see § 140

Statute, see § 230

Limitations on admissibility of character evidence, see §§ 786-790, 1101

Limitations on means of proving character, see §§ 787, 1101

Opinion Testimony, admissibility of, see §§ 800, 801

Uniform Rules of Evidence, see Rule 46