

Time

April 11 - 7:00 p.m. - 9:30 p.m.,
April 12 - 9:00 a.m. - 4:00 p.m.,
April 13 - 9:00 a.m. - 12:00 noon

Place

California Alumni Center
Lake Tahoe

TENTATIVE

AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Lake Tahoe

April 11-13, 1965

Sunday evening (April 11)

1. Approval of Minutes for March 1965 Meeting (to be sent)
2. Administrative matters, if any
3. Agenda items for future meetings
Memorandum 65-11 (sent 3/11/65)

(It is essential that we make any needed research contracts as soon as possible since we may have some money available in our budget for 1964-65 that will revert to the General Fund.)

4. Quasi-community Property
Pamphlets containing Commission Recommendations (two) (sent 2/12/65)
Memorandum 65-7 (sent 2/12/65)

Monday (April 12)

5. Study No. 62 - Vehicle Code Section 17150
Research Study (sent 1/25/65)
Memorandum 65-5 (sent 2/12/65)
6. Study No. 53(L) - Personal Injury Damages as Separate Property
Research Study (sent 1/25/65)
Memorandum 65-6 (sent 2/12/65)
7. Study No. 50 - Rights of Lessor
Research study (to be sent)
Memorandum 65-13 (to be sent)

Tuesday (April 13)

8. Study No. 42 - Trespassing Improvers
Research Study (to be sent)
Memorandum 65-14 (to be sent)

MINUTES OF MEETING

of

APRIL 11, 12, AND 13, 1965

Lake Tahoe

A regular meeting of the California Law Revision Commission was held at the California Alumni Center at Lake Tahoe on April 11, 12, and 13, 1965.

Present: John R. McDonough, Jr., Chairman
Richard H. Keatinge, Vice Chairman
Sho Sato
Thomas E. Stanton, Jr.

Absent: Hon. James A. Cobey
Hon. Alfred H. Song
Joseph A. Ball
James R. Edwards
Herman F. Selvin
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Joseph B. Harvey, and Jon D. Smock of the Commission's staff were also present.

Also present was Willard A. Shank, Office of the Attorney General (April 11 only).

ADMINISTRATIVE MATTERS

Minutes of March 1965 Meeting. The minutes of the March 1965 meeting were approved with one change. On page three, the reference to "Memorandum 65-10 and five supplements thereto" was changed to "Memorandum 65-10 and three supplements thereto."

Future Meetings. Future meetings are scheduled as follows:

May 14 and 15	San Francisco
June 11 and 12	Los Angeles
July 16 and 17	San Francisco
August	No Meeting

PROJECTS TO BE UNDERTAKEN FOR 1967 LEGISLATIVE SESSION

The Commission considered Memorandum 65-11 containing the staff recommendations concerning the various topics on the current agenda of the Commission. The following actions were taken:

1. Evidence Code. The staff suggestion that a research consultant be retained to review the code as enacted and to make suggestions for any needed revisions was not adopted. The Commission decided not to consider revisions of the Evidence Code unless such revisions are called to the Commission's attention by interested persons. Whether the topic should be continued on the Commission's agenda will be determined when the 1966 Annual Report is prepared.
2. Personal injury damages as separate property. The Commission determined to consider this topic during the 1965-67 period.
3. Imputed contributory negligence under Vehicle Code Section 17150. The Commission determined to consider this topic during the 1965-67 period.
4. Additur. The Commission determined to consider this topic during the 1965-67 period.
5. Taking instructions to jury room in civil cases. The Commission directed the staff to contact the Judicial Council to determine whether the practical problems involved in making a copy of the court's instructions available to the jury in the jury room could best be solved by court rules covering the matter. When the response of the Judicial Council is obtained, this matter should again be brought to the Commission's attention.
6. Escheat of personal property. A research study is to be

prepared on this topic by the staff when time permits. The topic will be considered during the 1965-67 period if time permits.

7. Rights of good faith improver of property belonging to another.

The Commission determined to consider this topic during the 1965-67 period.

8. Civil Code Section 1698. When the study of the Harvard Student Legislative Research Bureau is received, this topic will be included in the matters covered by recommendations to the 1967 legislature if time permits.

9. Rights of a lessor of property when it is abandoned by the lessee. The Commission determined to consider this topic during the 1965-67 period.

10. Section 1974 of the Code of Civil Procedure. When the study of the Harvard Student Legislative Research Bureau is received, this topic will be included in the matters covered by recommendations to the 1967 legislature if time permits.

11. Condemnation law and procedure. The Executive Secretary was directed to consult with the members of the legislature to determine whether they believe that the Commission should give this topic a priority with a view to recommending a comprehensive statute for enactment at the 1969 legislative session or whether they believe that the study of this topic should be discontinued.

It was suggested that the staff provide materials indicating some of the areas that need study in this topic.

The decision on what should be done with this topic will be made after the opinion of the members of the legislature has been determined.

12. Support after an ex parte divorce. The staff is to prepare a

research study on this topic when time permits. When the study has been prepared, the Commission can determine whether it will be possible to submit a recommendation on this topic to the 1967 legislative session.

13. Specific problems in governmental liability. No attempt will be made to prepare a research study on this topic during 1965-67 and no recommendations will be drafted for the 1967 legislative session on this topic.

14. Putative spouse. No attempt will be made to prepare a research study on this topic during 1965-67 and no recommendation will be drafted for the 1967 legislative session on this topic.

15. Custody of children. The staff, when time permits, should prepare an analysis of this topic with a view to determining whether a research study can be prepared by the staff or whether a research consultant is needed. The topic should be given a low priority.

16. Attachment, garnishment, and property exempt from execution. A research study on a portion of this topic should be obtained during 1965-67. The staff is to determine whether Professor Riesenfeld would be willing to prepare such a study within the time available for its preparation and to report back to the Commission.

17. Small claims court law. It was suggested that this topic be tendered to the Judicial Council. If the Judicial Council is not inclined to undertake to resolve the problems presented by the topic, the Commission should be so advised so that further consideration can be given as to what disposition should be made of the topic.

18. Mutuality of remedy in suits for specific performance.

Before any further action is taken on this topic, the staff should consult with law professors who are experts in the field to determine whether a problem still exists. If a problem still exists, a consultant should be obtained.

19. Suit in common name and use of fictitious names. Only a low priority should be given to this topic, but the topic should be considered when time permits.

20. Partition procedures and confirmation of partition sales and sales of real property of estates of deceased persons. A research consultant should be obtained on this topic if possible. The staff should check to determine who contacted the Commission on this topic to determine whether that person might be a possible consultant on the topic.

21. Service of process by publication. The staff should check to determine whether the State Bar or some other person or organization is working on this topic.

22. Unlicensed contractor. This topic should be presented at a future meeting with a view to determining whether it is a topic suitable for Commission consideration.

23. Election of remedies where relief is sought against different defendants. A staff recommendation whether to drop this topic should be considered when time permits the staff to prepare a report containing the staff's recommendation.

Research consultants. The Chairman was authorized to determine who should be a research consultant on each of the topics on which a research consultant is to be obtained and to determine the compensation to be paid such consultant.

STUDY NO. 34(L) - NEW EVIDENCE CODE

The Commission considered various communications regarding the proposed Evidence Code. As a result of this consideration, in response to a suggestion of Professor Hagman, Section 962 of the Evidence Code was revised to read in substance as follows:

962. Where two or more clients have retained or consulted a lawyer upon a matter of common interest, none of them, nor the successor in interest of any 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 one of such clients (or his successor in interest) and another of such clients (or his successor in interest) .

The following are some of the additional suggestions that were considered, but no change was made in the proposed code:

Section 912--The Comment to Section 912 was revised to indicate that the presentation by the patient of a physician's prescription to a registered pharmacist would not constitute a waiver of the physician-patient privilege.

Section 971--Professor Hagman, University of California at Los Angeles, suggested that Section 971 was verbose, ambiguous, and difficult. The Commission concluded that no change was necessary in the section for it states exactly what the Commission intends and the change suggested was not considered essential.

Sections 991 and 1011--Professor Hagman pointed out that the Comment to Section 991 does not indicate that Sections 991 and 1011 make a change in existing law; the sections provide a privilege even when treatment is not sought from the physician or psychotherapist. The Commission determined that the Comment to Section 991 should be revised to indicate that a change is being made in existing law and

to justify such change. No change was made in the statute.

Section 1102--A communication, suggesting that opinion evidence should not be used to prove character of the defendant in a criminal action to show conduct in conformity with such character, was considered. No change was made in the statute.

Section 1290(d)--Professor Kenneth W. Graham, Jr., Assistant Professor, University of California at Los Angeles, suggested that former testimony should be admissible only if presented in the form of a transcript of the former testimony. The Commission imposed this requirement with respect to arbitration proceedings because of the informality of such proceedings. In the case of judicial and administrative proceedings, the Commission concluded that the more formal nature of such proceedings and the lack of a transcript in many cases (such as municipal court proceedings) justified dispensing with the requirement of a transcript. Moreover, in view of the fact that the bill is now ready for final consideration in the Senate, it was considered undesirable to make any nonessential changes in the bill.

Letters to Assemblyman Charles Warren of Los Angeles. A number of letters to Assemblyman Charles Warren concerning the Evidence Code were provided to the Commission by Hazen L. Matthews, State Bar Legislative Representative. Each of the letters was considered by the Commission, but no changes were made in the bill. The letters suggested revisions in the existing law that were not embraced within the scope of the Evidence Code or suggested changes in the Evidence Code that were based on a lack of understanding of the Evidence Code.

Section 788--The Commission determined that the legislative members should have discretion as to what action should be taken on the bill if the Senate committee inserts the language suggested by the district attorneys. The Commission took the view that it would be better to have the code enacted than to have its enactment delayed by a conference committee.

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Comments relating to foreign law. The Commission considered several letters from Dr. Stern suggesting various revisions of the Comments. After consideration of the suggestions, the Commission determined that it would not be desirable to bring any additional revisions to the attention of the various legislative committees since the bill is well on its way to passage and such revisions might delay and perhaps jeopardize the passage of the bill.

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STUDY NO. 42 - GOOD FAITH IMPROVER

The Commission considered Memorandum 65-14, the First Supplement thereto, and Professor Merryman's research study relating to the rights of a trespassing improver of property belonging to another. The Commission agreed to consider this topic anew and not to be bound by prior Commission action at the time this subject previously was considered.

The Commission tentatively agreed to limit the scope of its inquiry to trespassing improvers only, with particular consideration directed to determining what additional relief, if any, ought to be provided for a good faith improver of property belonging to another. However, the Commission directed the staff to provide a synopsis of the applicable law in other areas that impinge upon the narrow scope of this particular topic. This is to be presented in a form suitable for comparison purposes so that tentative conclusions relating to the good faith improver problem can be compared with remedies presently available in related areas of the law.

After a general discussion of the present law applicable to the trespassing improver situation, the Commission directed the staff to present examples of typical betterment statutes or occupying claimant's acts in other states so that, together with the synopsis of available remedies in related areas of the law, the Commission might be in a better position to formulate tentative rules governing what additional rights ought to be provided in the good faith improver situation. At the suggestion of Commissioner McDonough, it was also agreed that the Commission should be provided examples of alternative draft statutes that were previously considered by the Commission to illustrate the difficulty and complexity of detailed legislation in regard to this problem.

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STUDY NO. 50(L) - LESSOR'S RIGHTS UPON ABANDONMENT BY LESSEE

The Commission considered the study prepared by Professor Verrall and Memorandum 65-13. The following actions were taken:

In the absence of a quorum, Commissioners McDonough, Sato, and Stanton functioned as a committee. Various solutions to the problems of lessors' and lessees' rights were discussed and considered. Generally, a statute spelling out the rights of lessors and lessees was favored. The measure of damages specified in Civil Code Section 3308 was believed to be the proper one. It was also believed that a lessor should have a duty to mitigate damages; he should not have a right to let property remain idle and collect all the rentals accruing under the lease. The suggestion was made that any statute should deal with the lessor's rights upon any termination of a lease because of a material breach on the part of the lessee.

The staff was asked to prepare a suggested statute for the next meeting together with comments indicating why some remedies are specified and others are not.

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STUDY NO. 53(1) - PERSONAL INJURY DAMAGES AS SEPARATE PROPERTY

The Commission considered Memorandum No. 65-6. The following actions were taken:

The staff was directed to prepare a draft statute making personal injury damages of a married person community property. A defendant charged with negligent injury of a spouse should have the right to join as a codefendant the other spouse for the purpose of obtaining contribution if the other spouse's negligence was a contributing cause of the injury. There was some discussion of making the damages recovered subject to the injured spouse's control, but no decision was made. The staff was directed to include a provision subjecting the recovery to the injured spouse's control, such provision, however, is to be subject to Commission approval before it is included in the final statute. A spouse's separate property should be resorted to before the community may be utilized to satisfy his liability for a tort to the other spouse. Similarly, a spouse's separate property should be resorted to before the community may be utilized to satisfy the spouse's duty to make contribution for a tortious injury to the other spouse.

STUDY NO. 62 - IMPUTED CONTRIBUTORY NEGLIGENCE UNDER VEHICLE CODE § 17150

The Commission considered Memorandum 65-5 and the study prepared by Professor Friedenthal. The following actions were taken:

The staff was directed to prepare a draft of a statute to effectuate the following principles:

The provision for imputed contributory negligence should be deleted from Vehicle Code Section 17150. If an owner of a vehicle brings an action against another for negligently caused injury, the defendant should be permitted to bring in the owner's permittee and prove that the permittee's negligence was in part the cause of the accident. The defendant would be entitled upon this showing to obtain contribution from the negligent permittee. Any guest statute defense the permittee might have against the owner would be inapplicable insofar as the defendant's contribution right is concerned. Section 17150 should also be broadened to impose liability on an owner for the wilful misconduct of his permittee as well as for the negligence of the permittee.

The existing law, in effect, forces the owner of a vehicle to obtain relief for negligent injury from his permittee instead of the third party in a case in which both his permittee and a third party caused the injury by their concurring negligence. The amendment of the guest statute in 1961 to prevent an owner-guest from recovering from his own permittee, however, now prevents the owner-guest from recovering from anyone. The Commission decided that to permit an apportionment of the damages through contribution would be fairer than either requiring the negligent third party to bear the total responsibility for the injury or requiring the negligent permittee to bear the total responsibility for the injury.

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The guest statute should not be a bar to the third party's right of contribution because that statute is designed to prevent fictitious suits to defraud insurers. The possibility of fraud is not present if the owner is required to prove a third party negligent in order to obtain any recovery and the third party is required to prove the permittee's negligence in order to obtain contribution.

Section 17150 should refer to wilful misconduct as well as negligence because the courts have considered these terms as mutually exclusive; yet, in order to avoid application of the guest statute (which contains a wilful misconduct exception) the courts have held conduct amounting to no more than carelessness to be wilful misconduct.

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QUASI-COMMUNITY PROPERTY

The Commission considered Memorandum 65-7 which indicated some problems that have been called to the attention of the Commission with respect to the legislation relating to quasi-community property.

The Commission determined not to make any recommendations with respect to this subject. The staff was directed to contact Justice Regan and determine whether the decision of the court in the case involving the problem he noted has been rendered. When such decision is rendered, the staff is to bring the matter to the attention of the Commission for further consideration.