

#36

6/24/65

Memorandum 65-38

Subject: Study No. 36(L) - Condemnation Law and Procedure

Attached to this memorandum is a summary analysis of some of the matters involved in the comprehensive study on condemnation law and procedure. We used the outline prepared by Mr. Stanley S. Burrill (now deceased, formerly of Hill, Farrer and Burrill, the firm that prepared the Commission's research studies), the research studies, and other materials in preparing this analysis.

An examination of the attached analysis will give you some indication of the scope of the study of condemnation law and procedure. As a result of this analysis, we recommend that the various aspects of condemnation law and procedure be taken up in the following order:

1. The Right to Condemn.
2. Just Compensation.
 - Market value concept
 - Date of valuation
 - Good will, loss of profits, loss from interruption of business
 - Compensation for delay in taking or payment
 - Compensation for consequential damages
 - Moving expenses
3. Special Benefits.
4. The "Larger Parcel."
5. Allocation of Award.
6. Procedural Problems.
 - Survey and route determination
 - Settlement negotiations
 - Pretrial and discovery
 - Taking possession and passage of title
 - Pleadings
 - Burden of proof and duty to go forward
 - Evidence
 - Recoverable costs

7. Inverse and Unofficial Condemnation.

8. Disposition of existing statutes relating to condemnation law and procedure.

Despite the recommended order of consideration, we suggest that two matters be first considered:

1. The Right to Immediate Possession.

(A constitutional amendment is required and we have prepared a tentative recommendation for the July meeting.)

2. Discovery in Eminent Domain Proceedings.

(We have a recommendation on this subject which was not enacted by the Legislature. We suggest in Memorandum 65-40 that we distribute the Recommendation and other materials previously prepared by the Commission to interested persons for comment.)

We have also prepared and will distribute to members of the Commission two volumes containing the research studies and other materials on condemnation law and procedure. Because of the volume of this material, we do not plan to ask you to bring it to each meeting; we will provide you with additional copies of the materials that pertain to a particular aspect of the study when we take up that portion of the study. We believe, however, that you will want to have a complete set of the studies available in your hands.

The staff also suggests that the Commission authorize the staff to attempt to secure publication of the larger research studies in a law review. Such publication would save us substantial printing costs and would save staff time in checking the materials for technical defects. We would not plan to make any such publication until we had prepared and distributed a tentative recommendation and had made any necessary revisions or additions in the study to be published. We plan to distribute tentative recommendations in mimeographed form. After reviewing the comments we receive as a result of such distribution, we plan to publish a tentative recommendation with the research study (which would,

in some cases, be taken from the law review). Finally, we will have a Recommendation Proposing a Comprehensive Eminent Domain Statute.

Attached are two letters that the staff would like to send to the Department of Public Works and the Judicial Council. We submit these letters for your approval prior to sending them.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

CALIFORNIA LAW REVISION COMMISSION

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Mr. Harry S. Fenton, Chief
Division of Contracts and Rights of Way
Department of Public Works
1120 N Street
Sacramento, California

Dear Mr. Fenton:

Senate Concurrent Resolution No. 80, adopted by the 1965 Legislature, directs the Law Revision Commission to make a study to determine whether the law and procedure relating to condemnation should be revised with a view to recommending a comprehensive statute that will safeguard the rights of all parties to such proceedings. In response to this direction, the Commission plans to draft a comprehensive eminent domain statute to be recommended for enactment by the 1969 legislative session and will be considering this subject on a fairly regular basis during the next three years.

The Commission appreciates the past cooperation we have received from your agency and we look forward to receiving your assistance and constructive criticism on our study of condemnation law and procedure. As in the past, we will welcome the presence of one or more representatives of your agency at our meetings when this subject or any other subject of interest to your agency is considered.

There are several other ways in which your agency could assist the Commission. First, it would be extremely helpful if your department would provide us with a summary analysis indicating whether each of the sections in the Code of Civil Procedure title on Eminent Domain should be retained in substance, revised, or omitted as obsolete or unnecessary when the comprehensive statute is prepared. Second, we would appreciate your providing us with a similar analysis of any other statute sections relating to eminent domain that you believe should be retained in substance, revised, or repealed when the comprehensive statute is prepared. Third, we would appreciate your opinion as to any defects in existing eminent domain law, whether based on statute or not, that might be remedied by legislation. We do not need at this time any detailed discussion of the defects in the existing law; we seek rather to identify the defects and the matters that will require further study and research. We recognize that

Mr. Fenton

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June 24, 1965

this is a substantial undertaking, but the results would be of great assistance to the Commission in making this study.

As the eminent domain study progresses, we also plan to seek your comments upon and criticism of each of the tentative recommendations that we prepare on this subject.

Yours truly,

John H. DeMouilly
Executive Secretary

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Mr. Ralph N. Kleps
Administrative Director of the Courts
4200 State Building
San Francisco 2, California

Dear Ralph:

In 1956, the Law Revision Commission was directed by the Legislature to make a study of condemnation law and procedure. The 1965 Legislature again directed the Commission to study this subject with a view to recommending a comprehensive statute that will safeguard the rights of all parties to such proceedings. In response to these legislative directives, the Commission plans to draft a comprehensive eminent domain statute to be recommended for enactment at the 1969 legislative session. In order to meet this schedule, the Commission will be working on this subject on a fairly regular basis during the next three years.

The Commission appreciates the cooperation and constructive criticism we received from the Judicial Council on the Evidence Code and wishes the Council to consider whether a similar procedure might be followed on the study of condemnation law and procedure. We believe that a subcommittee of the Judicial Council could make a significant contribution in the development of a fair and workable eminent domain statute.

Sincerely,

John H. DeMouly
Executive Secretary

SUMMARY ANALYSIS

of

SIGNIFICANT MATTERS IN STUDY OF CONDEMNATION LAW AND PROCEDURE

(This Analysis is based primarily on the research studies prepared by the Commission's research consultants and no attempt has been made to bring the studies up-to-date for the purpose of preparing this analysis.)

I. RIGHT TO CONDEMN

(See research study on "The Right to Take in Eminent Domain")

Condemnation Resolution Conclusive

Under certain circumstances the resolution of condemnation adopted by certain condemning bodies is conclusive evidence that the taking is necessary, that the improvement is located in a manner most compatible with the greatest public good and least private injury and of the public necessity of the proposed public improvement. This presumption is rebuttable only upon a showing of fraud, bad faith or abuse of discretion. Should the presumption be made conclusive as to additional public bodies, including quasi-public corporations? Should it be made rebuttable where one public body is acquiring property already devoted to a public use?

Should the presumption be rebuttable under circumstances other than fraud, bad faith or abuse of discretion?

Public Use

Various statutes at present outline the public uses for which property may be condemned. Should a condemnor be permitted to condemn for public use solely upon an allegation that the property is needed for public use without specifying such use?

Excess Property

Should the right of public bodies to acquire property in excess of their

needs, for the purpose of avoiding severance damage, be limited or extended?
Should the owner be given an option to retain property sought as excess, upon
a partial or complete waiver of severance damage? [This point is not discussed
in the study on "The Right to Take in Eminent Domain."]

II. ELEMENTS OF COMPENSATION

(There is no general study on this; various studies cover particular aspects of the subject)

Introduction

The Constitutions of the United States and the State of California as well as a great body of other statutory and case law insure "just compensation" to the owner whose property is taken or damaged for public use. In California "just compensation" has been defined as the "fair market value" of the property actually taken and, if the property sought to be condemned is only part of a larger parcel, such damages as may accrue to the portion of the property not sought to be condemned by reason of the severance of the part taken and the construction of the improvement in the manner proposed by the plaintiff. If the property remaining in the owner's hands is specially benefited by the construction of the improvement, the amount of special benefits may be offset against severance damage. (C.C.P. § 1248)

Does the foregoing definition result in payment of "just compensation" to the owner whose property is condemned?

Cost of Removal and Relocation

(See Commission Recommendation on Moving Expenses)

Introduction. In almost every condemnation case the owner has some expense incident to moving from his former location to a new one, or relocating on his remaining property. To the average home owner these expenses usually constitute a substantial financial burden, and for large business establishments the expenses of moving can run into hundreds of thousands of dollars. Under present California law, the owner is not compensated for the expense of moving his personal property.

A related problem arises where a business has valuable machinery or fixtures attached to the realty. In many cases the owner would be willing to take all or a part of such machinery and equipment to his new location if he could be compensated for the cost of moving. Rarely does the condemnor desire to acquire such property. Since under present California law no provision is made for the cost of relocating such items, the financial necessities of the owner usually require that he leave them and the condemning body is required to pay for them as part of the realty.

At the 1961 legislative session, the Commission recommended legislation to provide for moving expenses to a homeowner or business which was forced to move as a result of an eminent domain proceeding or as a result of property being acquired by negotiated purchase. This legislation was not enacted as law, primarily because at that time the federal government did not allow federal funds to be used for the payment of moving expenses when they were paid by a state. [Legislation may be enacted in 1965 to provide some relief, and the problem may become whether such legislation should be made generally applicable.]

Compensation for Good Will, Loss of Profits, and Business Interruption

(See research study on "Incidental Business Losses")

Introduction. The law is well settled that when an owner's real property is taken by eminent domain, in whole or in part, any damages he may suffer by way of loss of good will, loss of profits, or business interruption are non-compensable. In theory, since the condemnor is acquiring only the owner's real property--his land and improvements--that is all it is required to pay for. The business conducted upon the premises is not affected, in contemplation of law. However, an owner may in fact suffer substantial damage by virtue of loss of good will, impairment of profits, or business interruption arising from the

taking. For example, an owner who has a portion of his business establishment condemned may be unable to operate as efficiently as he could before. While a portion of the damage may be reflected in a depreciation of the value of the realty, and hence is compensable, another portion of his damage, lost profits, is now a non-compensable item under the law. Should loss of business profits and damage arising through business interruption be treated as elements of "just compensation"?

Scope of Inquiry. A study of the problem should consider the following items, among others:

(a) Standard for Fixing Compensation. One of the most difficult problems in this area is the ascertainment of a standard for fixing compensation. The inquiry must necessarily extend to sales, costs, managerial abilities, prospects and many factors not now present in condemnation valuation procedures. However, mere difficulty of assessment should not alone prevent payment of such damages, if they do in fact constitute an element of just compensation; and such damages can be and have been ascertained as, for example, in payments made under business interruption insurance.

Should the owner's loss of profits be measured by what he would have received had the condemnation not taken place compared with what he receives following the condemnation? Is the first element to be determined by reference to the owner's actual profits or by reference to a theoretical norm? If the former, what period should be adopted for fixing the owner's actual profits? Similarly, should the determination of profits following condemnation be fixed with reference to the owner's actual operation or a theoretical norm or average operation?

Should loss of profits be limited to a fixed period, or measured in perpetuity, or otherwise limited to extent?

Should compensation be made for loss of good will?

(b) Under What Circumstances Allowable. Should the allowance for loss of profits be made in every situation or only in cases where the owner continues in business on the remaining property? (Where only a part of a property is taken, or the taking is temporary, the owner may continue in business at the same location, permitting his actual profits as affected by the condemnation to be determined. In the case of an entire taking the owner may cease business entirely, or may relocate at a place some distance removed, or at a time remote from the time of taking, making the actual profit experience of the owner relatively more difficult to assess.)

Should a distinction be made between situations in which the taking might have little effect on the business operation (as, for example, where the owner could relocate next door) and situations where the taking necessarily results in substantial impairment of the business operation (as, for example, where the owner of a private beach resort loses the only available stretch of beach land in the area)?

Should compensation for loss of profits be paid in case of a permanent taking of property, a temporary taking of property, or both?

Should compensation be paid for temporary loss of business (business interruption) as well as a permanent loss resulting from a taking?

(c) To Whom Allowable. Should a loss of profits award be made to tenants as well as owners? Should it be made applicable in the case of residential income properties as well as commercial and industrial properties?

(d) Manner of Raising Issue. Should loss of profits and the amount thereof be pleaded specially or as a part of a general allegation of damage?

(e) Procedure for Assessment and Payment. Should an award for loss of profits be included with the main award as part of the just compensation or assessed separately?

Compensation for Delay in Taking or Payment

(See pages 56-66 of study on "Problems Connected with the Date of Valuation in Eminent Domain Cases")

Introduction. The matter of compensating an owner for delay in payment usually arises in cases where possession of the property is taken prior to the payment of the award. This problem has been taken care of by legislation enacted in 1961 at the recommendation of the Law Revision Commission as I previously indicated.

However, the owner who does not have possession of his property taken from him nevertheless suffers certain burdens upon the mere filing of a complaint in condemnation and recording of the lis pendens. As a practical matter it becomes difficult if not impossible to sell or dispose of the property, and to borrow money using the property as security. If he has rented the property, in many cases the tenants will move and he will have difficulty in replacing them. Also, as a matter of statute law, he cannot recover for improvements placed upon the property after service of summons upon him (C.C.P. § 1249), and he therefore can do little to either develop his land or, perhaps, even substantially repair it. Even before proceedings to take the property are instituted, the mere fact that it becomes public knowledge that the property will be taken for a public improvement may cause the owner to suffer substantial damage.

In view of these factors should any study into the elements of just compensation include an inquiry into what damage an owner may suffer by the mere determination that his property is to be acquired for public use, or by the filing of a suit to condemn?

Scope of Inquiry. Such a study should consider the following matters, among others:

(a) Accrual of Damage. From what date is there such an interference with the owner's interest as to result in a compensable loss--from the date of first threat of condemnation, the date of official adoption of a resolution to condemn by the acquiring body, the date of the filing of the complaint, or some other time?

(b) Standard for Fixing Compensation. What is to be the standard of compensation--interest, damages fixed by appraisal, or some other standard?

Miscellaneous Elements of Compensation

(See research study on "Compensability of Certain Consequential Damages")

Any study of the elements of compensation should give consideration to certain items of damage which arise primarily in freeway and modern highway acquisitions. Because of the relatively recent development of freeways and expressways, there are few guide posts in the existing statutes to assist in determining the compensability of certain items, among which are the following:

(a) Noise, etc. Should damage caused by noise, smoke, dust, fumes and increased traffic on a freeway or heavily traveled highway in the vicinity be compensable?

(b) Loss of Access. Is the taking of a right of access to be valued as property taken under Code of Civil Procedure Section 1248(1) or as damage to the remaining property under Code of Civil Procedure Section 1248(2) and hence subject to being reduced by the amount of any special benefit (C.C.P. § 1248(3))?

(c) Circuity of Travel. Should the case law relating to the additional distance necessarily traveled to and from the property by virtue of the construction of the public improvement be formalized into a statute? Should the case law be modified? In this connection should an owner be entitled to damages for the construction of a dividing strip in the highway upon which his property abuts since this may require the owner and his customers to travel additional distances?

III. SPECIAL BENEFITS

(See research study on "Benefits in Eminent Domain Proceedings")

Definition

There are two types of benefits--general and special; only the latter may be offset against severance damages under the law.

There is not any statutory definition of the distinction between special and general benefits. Should a statutory definition of special benefits be made?

Offsetting Benefits

Under present law special benefits are offset against severance damage only, not against the award for the part taken. Under Federal procedures, benefits may be offset against the entire award. Should consideration be given to making special benefits the subject of offset against the entire award under California law?

Burden and Order of Proof

There appears to be no California decisions placing the burden of proof as to special benefits. Should this burden be placed by statute upon the condemnor since such benefits amount to an offset against damages? If so, should the owner be given an opportunity to put on his testimony as to special benefits following the condemnor's case, or should it be part of his main case at the initial stage of the trial?

IV. THE LARGER PARCEL
(See research study on "the 'Larger Parcel' in Eminent Domain")

The Test for the Larger Parcel

In a number of California cases a three part test has been applied to determine whether two areas of land in fact constitute a single parcel for the purpose of assessing severance damages. These cases hold that two areas are not a single parcel unless (1) they are physically contiguous, (2) there is a unity of title and (3) there is a unity of use. Dictum in several cases indicates a relaxation of the three part rule, to the extent that parcels physically separated might properly be deemed to be, under some circumstances, a single parcel by virtue of a unified use. Should a statutory definition of a test for a single parcel be adopted?

Similarly, where several contiguous parcels in different ownership have been brought into a unified use by a single lessee, should the unity of title test be disregarded?

Parcel Crossed by Street

Present cases seem to make a distinction between property crossed by a street where the underlying fee of the street is in the owner and where it is in a public body. In the first situation it has been held to be a single parcel, but in the latter there is some indication that the property would be separated into two parcels. Should the rule be made uniform to the effect that property crossed by a street is a single parcel, or two parcels, regardless of where the underlying fee rests?

V. DATE OF VALUE

(See research study on "Problems Connected with the Date of Valuation in Eminent Domain Cases")

The present statute provides that if trial shall not be had within one year from the filing of the complaint, through no fault of the defendant, the date fixed for valuing the property shall be deemed the date of trial. In a time of falling prices this rule may operate to the detriment of an owner without his fault. Should a different formula be adopted for fixing the date of value? Should it be the date of filing, the date possession is taken, the date of trial or some other date? Should there be an option and, if so, should it rest in the condemnor or condemnee? It should be noted that the existing law in view of People v. Murata, 55 Cal.2d 1 (1960) is very unfair to the property owner.

When should enhancement or decrease in property values as a result of a contemplated improvement be excluded from consideration in determining the value of the property taken?

VI. PROBLEMS ARISING FROM SURVEY AND ROUTE DETERMINATION
(See research study on "Date of Valuation")

Effect on Values

In many cases, particularly in the case of freeway or highway acquisitions, the project may be planned and laid out several years in advance of the actual acquisition of the land. Rumors of the location of the improvement may have an unsettling effect on property values, working to the detriment of both property owners and condemners, until the final location becomes definitely fixed. Can legislation be adopted which will serve to reduce the time lag between planning and final acquisition or otherwise aid in eliminating undesirable effects of a prospective condemnation?

Public Hearing

Should a condemning body be required to give notice and hold a hearing as to the location of a public improvement before the determination of such location?

VII. ALLOCATION OF AWARD

(See research study on "Apportionment and Allocation of the Award in Eminent Domain Proceedings")

Present Procedure

Under Code of Civil Procedure Section 1246.1 the condemnor is entitled to have the property therein first valued as a whole against all defendants claiming an interest. At a subsequent stage of the proceeding the award is apportioned among the various claimants--the owners, tenants, lienholders, etc. However, the condemnor may (it appears) elect to have the value of each interest separately determined.

Option v. Absolute Rule

Should the law be revised to require the condemnor in all cases to value the property as a whole, or in all cases to proceed against the owners of the various interests individually? If not, and the present option is retained, should the condemnor be required to make its election in its complaint?

Landlord--Tenant Situation

Many of the problems in connection with the allocation of awards arise between landlords and tenants. Illustrative of the problems are the following:

1. Valuation of Tenant's Interest. Simply stated, the value of the tenant's interest has been said to be the bonus value of his leasehold estate--that is, the difference between what he could sell the leasehold for on the open market and the rent reserved to the owner under the lease. The California Supreme Court established a different definition in a tax case. Should a statutory definition be adopted for condemnation cases? (Bills have been introduced at past sessions for this purpose.)

Another problem arises where the tenant has placed improvements upon the property. These may add to the value of the leasehold interest, but may or may not add to the value of the property for its highest and best use. If

they do not add value for the highest and best use, although of value to the leasehold estate, presumably such value would not be included in the award paid by the condemnor. Thus a tenant may claim from an owner compensation for the value of improvements which is not reflected in the compensation received from the condemnor. In other words, the sum of the parts may be greater than the value of the whole. Is legislation required either to assess the total value of the parts against the condemnor by separate valuation of the separate estates in the property, or to limit the tenant's recovery as against the owner?

Also, a recent case has indicated that the evidentiary standards for the apportionment of an award may not be the same as those for the fixing of value in the main case. (A tenant was permitted to show on direct examination his business income, an element usually excluded in the main case--People v. Frahm, 114 Cal. App.2d 61.) Should legislation be adopted applying the same standards of evidence both to the main case and to the apportionment?

2. Partial Taking or Entire Taking. The case of City of Pasadena v. Porter, 201 Cal. 381, lays down the rule that where a portion only of leased property is taken, the tenant is under a duty to continue payment of the full rent reserved. In order to compensate the tenant for the rent he must pay on the part taken, he is awarded, in addition to other compensable loss, a sum equivalent to the present value of the reserved rent applicable to the part taken. This procedure leaves the owner without security for the payment of his full rent although the tenant may have received a substantial sum for that purpose. Is legislation desirable to provide for a pro-rata reduction in rent in case of a partial taking, rather than payment of a lump sum to a tenant?

A further question arises where the purpose of a lease may be frustrated by the partial taking. If the tenant is unable to carry on the purpose for which the premises were leased, should the lease be terminated by the condemnation proceeding and, if so, under what circumstances?

3. Time of Interference with Lease. Whenever leased property is condemned the problem arises, both with respect to apportionment of the award and in other respects, as to when the landlord and tenant relationship is so interfered with so that the rights and duties thereunder cease. In a situation where immediate possession is sought by the condemnor, is the landlord-tenant relationship terminated at the filing of the complaint, at the time of the issuance of an order for immediate possession, at the time of the service of the order, at the time actual physical possession is taken, at the date of trial, at the date of entry of interlocutory judgment, or at the time of final order of condemnation, or some other time? Where immediate possession is not taken what date applies?

4. Effect of Temporary Taking. Does a temporary taking relieve the lessor and lessee of their leasehold obligations, either temporarily or permanently, and to what extent? What items should be included in the award to the tenant for a temporary taking--moving costs, loss of business, loss of good will, etc.?

Lienor--Lienholder Situation

Allocation in Entire Taking. When an award is allocated between a lienor and lienholder in the case of an entire taking, generally the lienholder is entitled to a complete discharge of his obligation. Where the trust deed or other lien instrument calls for a fee to be paid upon prepayment, should such fee be payable in the event of condemnation?

Should the lienholder be entitled to attorneys' fees for appearing in the condemnation litigation? Should he in cases where there is no contest as to the amount of his claim?

To what date is the lienholder entitled to interest--to date of immediate possession, to date of judgment, to date of payment of the award into court, to date of receipt by the lienholder of payment, or to some other date?

Allocation in Partial Taking. Frequently a trust deed will provide or a beneficiary will demand that the entire award in a partial taking case be applied against the debt. Should such a beneficiary be entitled to apply the entire award against the unpaid balance or to receive only an amount which will compensate him for depreciation in the value of his security? If the latter, by what standards is such depreciation measured?

Vendor--Purchaser Situation

There is some indication in case law to the effect that an option to purchase real property is not such an interest in land as to require payment of compensation. Yet the condemnation of a parcel of land or a part thereof subject to an option as a practical matter may result in a substantial loss to the optionee. Should a definition be made of the rights and liabilities of the parties to an option when the optioned land is condemned?

VIII. PROCEDURAL PROBLEMS

Settlement Negotiations

(See research study on Settlement Negotiations)

Should a condemnor be required to make a bona fide offer before filing suit? Should a condemnor be required to offer the highest of several appraisals? If the offer is not accepted by the owner, should the appraisals be reviewed by an independent appraisal board? What should be the composition of such board and what powers and authorities should it be given? What should be the effect, if any, upon costs and attorney's fees, etc., if the award is more or less than the offer?

Pretrial and Discovery

(See Commission Recommendation on this subject)

In 1963, the Commission submitted a recommendation on this subject. The proposed legislation passed the Senate but was not approved by the Assembly Judiciary Committee, primarily because two attorneys representing property owners appeared and objected at the hearing and because a number of letters from property owners' attorneys were sent to the members of the committee.

Taking Possession and Passage of Title

(See Commission Recommendation on this subject)

In 1961, upon recommendation of the Commission, two bills were enacted relating to this subject. These bills take care of many of the problems that formerly existed. However, the question of whether immediate possession should be extended to additional agencies and for additional purposes is an important one and one that involves amendment of the California Constitution.

Pleadings

(No research study on this subject)

In addition to the usual answer, Federal procedure provides for the filing of a much simplified notice of appearance. In it an owner need set forth

only that he claims an interest in the property sought to be condemned. The notice of appearance may be filed by an owner in any case where he does not contest the necessity for the taking, and it entitles him to notice of further proceedings in the action. Should simplified pleading procedure for California condemnation matters be considered?

Burden of Proof and Duty to Go Forward

(See research study on "Procedural Problems")

Under present law the property owner must allege and carry the burden of proving the value of the property taken and the damages to the remainder.

Should consideration be given to placing the burden of proof on the condemnor?

Regardless of whether the burden of proof is changed, should the order of proof be changed? Present procedure requires the defendant to put on his case first. Should the condemnor be required to proceed first?

Evidence

(See Recommendation on this subject)

It appears likely that a special statute will be enacted at the 1965 session to provide detailed evidence rules for eminent domain proceedings. This statute would add a series of sections to the Evidence Code. The statute may be satisfactory in its present form, but it will have to be made consistent with any rules on damages and benefits that are developed.

Recoverable Costs

(See research study on "Court Costs and Other Expenses in Eminent Domain Actions")

Under present California law the property owner's costs in eminent domain proceedings, other than under an abandonment, are limited to those recoverable

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in other civil actions. The owner is usually an involuntary party to condemnation litigation. Does the definition of "just compensation" require that the definition of costs be extended to include attorneys' fees, appraisers' fees, necessary expenses such as maps, photographs, surveys, etc.?

If the foregoing costs are allowable, should they be limited to a percentage of the total compensation paid, should they be fixed by the court, or by some other standard? Should they be allowable in all cases, or, for example, only when the award exceeds the offer?

IX. INVERSE CONDEMNATION AND UNOFFICIAL CONDEMNATION

(See research study on "Inverse and Unofficial Condemnation in Eminent Domain")

Inverse Condemnation

An owner who finds his property taken or damaged for public use without formal condemnation proceedings is subject to some hardship in recovering just compensation. He may be required to comply with technical claims statutes, to post bond and to assume liabilities for costs and possibly attorneys' fees in the event he does not prevail. A review of the law of inverse condemnation may be in order.

Unofficial Condemnation

Property may be taken from an owner under an asserted exercise of the police power, as for example where a planning commission requires the dedication of land for a highway, flood control channel, or other public improvement, as a condition of approval of the subdivision map. Similar dedications may be required as a condition of zone changes or variances. Are such requirements an exercise of the power of eminent domain, entitling the owner to compensation, or are they true exercises of the police power?