

Time

June 9 - 7:00 p.m. - 10:00 p.m.
June 10 - 9:00 a.m. - 5:00 p.m.
June 11 - 9:00 a.m. - 4:00 p.m.

Place

State Bar Building
601 McAllister Street
San Francisco

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

June 9-11, 1966

June 9

1. Approval of Minutes of May 1966 (second meeting)(sent 6/2/66)

2. Administrative matters

Stanford Lease

Memorandum 66-30 (sent 6/2/66)

Publication of Tentative Recommendations

Memorandum 66-31 (enclosed)

3. Study 67 - Suit in Common Name

Memorandum 66-26 (sent 6/2/66)

Tentative Recommendation (attached to memorandum)

4. Study 50 - Rights and Duties Upon Termination of Lease

Memorandum 66-28 (to be sent)

Revised Tentative Recommendation (attached to memorandum)

June 10 and 11

5. Study 36(L) - Condemnation Law and Procedure

Possession Prior to Final Judgment

Memorandum 66-25 (sent 6/2/66)

Portion of Tentative Recommendation (attached to memorandum)

First Supplement to Memorandum 66-25 (to be sent)

Remainder of Tentative Recommendation (attached to supplement)

6. Continuation of work on item 4.

7. Study 26 - Escheat

Memorandum 66-20 (sent for May meeting; extra copy sent 5/30/66)
Tentative Recommendation (attached to Memorandum)

8. Study 63(L) - Evidence Code

No. 2 -- Revision of the Agricultural Code

Memorandum 66-29 (sent 5/30/66)

First Supplement to Memorandum 66-29 (enclosed)

MINUTES OF MEETING

of

JUNE 9, 10, AND 11, 1966

San Francisco

A meeting of the California Law Revision Commission was held at San Francisco on June 9, 10, and 11, 1966.

Present: Richard H. Keatinge, Chairman (June 9 and 10)
Honorable James A. Cobey (June 10 and 11)
Joseph A. Ball (June 9 and 10)
James R. Edwards
John R. McDonough (June 10 and 11)
Herman F. Selvin
Thomas E. Stanton (June 9 and 11)

Absent: Honorable Alfred H. Song
Sho Sato, Vice Chairman
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Joseph B. Harvey, John L. Reeve, and Elarence B. Taylor of the Commission's staff also were present.

Also present on June 10 were the following observers:

Richard Allen, Department of Water Resources
Robert F. Carlson, Department of Public Works
Thomas H. Clayton, Department of General Services and Finance
Norval Fairman, Department of Public Works
Jon D. Smock, Judicial Council
David B. Walker, Office of County Counsel, San Diego

Minutes
June 9, 10, and 11, 1966

ADMINISTRATIVE MATTERS

Minutes of May 27 and 28 meeting. The Minutes of the meeting held on May 27 and 28, 1966, were approved as submitted. The Subcommittee report attached as Exhibit I of the Minutes was adopted as the action of the Commission.

Future meetings. Future meetings are scheduled as follows:

July 21, 22, and 23 (three full days)	Long Beach
August 12 and 13 (two full days)	Los Angeles
September 16 (evening) and 17	San Francisco
October 20, 21, and 22 (three full days)	Los Angeles
November 17 (evening), 18, and 19 (morning)	Berkeley
December--not yet scheduled	

Stanford Lease. The Commission approved a lease for the office quarters in the old Graduate School of Business along the lines set out in Memorandum 66-30 and the Executive Secretary was authorized and directed to approve the lease on behalf of the Commission. The significant provisions of the lease under consideration are:

Term of lease--5 years, both parties having the right to terminate the lease upon 30 days' written notice.

Rent--\$10,000 for the first year; \$4,000 each year for remaining four years. If Stanford cancels prior to end of lease, \$6,000 of the rent for first year is to be prorated over five year period.

Period of lease to commence July 1, 1966, with a provision that Commission occupies present quarters until new quarters have been remodeled, such remodeling to be accomplished promptly after lease is approved by State.

Publication of Commission's Tentative Recommendations in Law Reviews.

The Commission considered Memorandum 66-31. After considerable discussion, the Commission took the following actions:

1. Any tentative recommendation that is published in a law review is to be accompanied by a "warning note" similar to that published as a part of the U.C.L.A. Law Review publication of the two tentative recommendations therein published. A reasonable effort should be made to distribute various articles to the various California law reviews in a fair manner.

2. The Tentative Recommendation on Lessor-Lessee (revised to reflect actions taken at the June meeting) was approved for publication in the California Law Review with the research study on this subject, but the tentative recommendation as revised is to be distributed to the members of the Commission and, if objection to the tentative recommendation as revised is received prior to the July meeting, the tentative recommendation is to be added to the agenda so that any necessary changes can be considered and made before it is published in the law review.

3. The Tentative Recommendation on Additur was approved for publication in a law review if the research study (now being prepared by the staff) is accepted for publication in a law review. However, if any significant comments are received on the tentative recommendation prior to July 1, it is not to be published in a law review prior to review by the Commission at the July meeting.

4. The Tentative Recommendation on the Fictitious Name Statute was approved for publication in a law review if the research study (now being revised by the staff) is accepted for publication in a law review.

5. The Commission will consider whether to approve publication of the Tentative Recommendation on Possession Prior to Final Judgment in the Stanford Law Review (which is going to publish the research study) after the tentative recommendation has been approved for distribution for comments at the July meeting.

Minutes
June 9, 10, and 11, 1966

STUDY 26 - ESCHEAT OF PERSONAL PROPERTY

The Commission considered Memorandum 66-20 and the First Supplement thereto. The following actions were taken:

Commissioners on Uniform State Laws

The staff was directed to communicate with the Commissioners on Uniform State Laws to inform them that the Uniform Disposition of Unclaimed Property Act is being studied by the Law Revision Commission. The purpose is to learn whether the Uniform Laws Commissioners are working on a revision of the law and whether the Law Revision Commission's activities can be coordinated with theirs.

Legislative authorization

Although the Legislature's authorization to the Commission is to determine whether the law relating to the escheat of personal property should be revised, the Commission's request for such authorization indicates that merely the escheat of decedents' estates was considered. To clarify the Commission's authority to study the escheat of abandoned personal property, the Commission requested Senator Cobey to introduce a resolution that would authorize the Commission to study whether the law relating to the escheat of property or the disposition of abandoned or unclaimed property should be revised.

Section 1300

Section 1300 was approved as proposed to be revised in the tentative recommendation.

Section 1500

Section 1500 was approved. The staff was directed to reexamine the second sentence to determine its purpose and meaning.

Section 1501

Subdivision (b) was revised as follows:

(b) "Business association" means any private corporation (other than a public corporation or utility), joint stock company, business trust, partnership, or any association for business purposes ; whether or not for profit, of two or more individuals , including, but not by way of limitation, a banking organization, financial organization, and life insurance corporation .

The staff was directed to reconsider the reference to "government or political subdivision" in subdivision (g) for the purpose of determining whether the language is sufficiently comprehensive and meaningful both within and without the state. The reference to "estate" and "trust" should be deleted from subdivision (g) and language should be added to indicate that the persons listed in the subdivision are within the defined term "person" whether acting in their own right or in a fiduciary capacity.

Subdivision (h) was deleted as unnecessary in the light of Section 1582.

The section was then approved.

Section 1510

A subdivision is to be added to the section cross-referring to the compact so that it is clear that property covered by the compact is subject to escheat under California's general escheat laws.

A subdivision is to be added to the section to provide for the escheat of intangible property where the owner's last domicile was in this state. The subdivision should also create a presumption that the owner's last domicile corresponds with his last known address.

STUDY 36(L) - CONDEMNATION LAW AND PROCEDURE

The Commission considered Memorandum 66-25 (Possession Prior to Judgment) and approved the drafts of a constitutional amendment and proposed legislation with the following changes.

CONSTITUTIONAL AMENDMENT

The Commission approved the proposed constitutional amendment as drafted. On Mr. Carlson's (Dept. of Public Works) suggestion, the staff is to review the Comment to the section proposing the amendment to make sure the Comment indicates the phrase "Subject to the provisions of Section 23a of Article XII in subdivision (a)" makes no change in existing law applicable to determination by the Public Utilities Commission of "just compensation" for property already devoted to a public use (public utility property) in keeping with Section 23a of Article XII and provisions of the Public Utilities Code. The Comment also is to indicate that the phrase pertains only to jury determination of compensation, and has nothing to do with "immediate possession."

PROPOSED LEGISLATION

Section 1268.01 (New)

The Commission approved this section, except that it (and related sections) are to be changed to refer simply to "compensation" rather than to "compensation for the property and any damage incident to its being taken." The Comment to the section is to indicate that, as used, the term "compensation" includes severance or other damages as well as the value of the property, and that the term includes all elements of compensation for which a deposit is required by Section 14 of Article I of the California Constitution.

Section 1268.02 (New)

The last sentence of the section should be clarified.

The Comment to the section is to refer to decisions setting forth the duty of the plaintiff and the power of the court to maintain the deposit in adequate amount. Reference is also to be made to the section (1268.08) providing for the recovery of any excessive withdrawal after final determination of the amounts in the eminent domain proceeding.

Section 1268.03 (New)

This section, which requires service of notice of the making of a deposit, was approved after addition of a sentence providing that:

Service of an order for possession that recites the amount deposited pursuant to this chapter shall be sufficient compliance with the requirement of this section.

The Comment is to be rewritten accordingly.

Section 1268.04 (New)

This section was approved after the first sentence was changed, in the interest of clarity, to read:

At any time after the plaintiff has deposited the amount determined by order of the court, any defendant who has an interest in the property for which the deposit was made may apply to the court for the withdrawal of all or any portion of the amount deposited.

Section 1268.04-1268.08 (All New)

These sections were approved with minor grammatical changes.

Section 1268.09 (New)

This section was approved after being changed to refer to "the issue of compensation," rather than to "the issues of compensation or damages."

Similar changes in usage were made in related sections.

Section 1268.10 (New)

This section was approved as drafted.

Section 1268.11 (New)

This section was renumbered as Section 1296.06, and changed to read as follows:

1269.06. Right of plaintiff to possession after defendants' vacation
of property

1269.06. If the plaintiff has deposited probable just compensation pursuant to Chapter 1 (commencing with Section 1268.01), the plaintiff may take possession and use of the property at any time after all of the defendants entitled to possession notify the plaintiff in writing of the vacation of the property.

The Comment to the section is to be rewritten accordingly.

Section 1269.01 (New)

This section was approved with minor grammatical changes.

Section 1269.02 (New)

Subdivision (d) was changed to permit the motion to modify the order for possession to be made within 20, rather than 10 days, after service of the order. The subdivision was also changed to limit the court's extension of the effective date of the order to 90 days from the date specified in the original order. Grammatical changes were also made in the section.

Sections 1269.03 and 1269.04 (New)

These sections were approved with minor grammatical changes made in their text and in the Comments.

Section 1269.05 (New)

This section was approved after being changed to refer to dwellings having not more than two, rather than four, residential units.

Section 1269.06 (New)

This section was renumbered as Section 1269.07, and approved.

Sections 1270.01-1270.08 (New)

These sections were approved after removal of the provision for the deposit of a "further sum" from Section 1270.01 to Section 1270.04. The effect of this change is to require the defendant to move for an additional deposit if he deems an amount in addition to the judgment to be necessary to secure payment of compensation, costs, and interest as ultimately determined in the proceeding. Grammatical changes were made in these sections and in the Comments.

Sections 1249, 1249a, and 1249.1 (Amended)

These sections were approved with changes made in the interest of clarity. The Comments are to be expanded and clarified. In Section 1249a (g), the plaintiff is to be allowed 30, rather than 20, days after entry of judgment within which to make the deposit required to retain the original date of valuation.

Section 1253 (Amended)

This section was approved as drafted.

Section 1255a (Amended)

This section was approved after addition of a provision that reasonable attorney and appraisal fees actually incurred may be recovered "whether such

fees were incurred for services rendered before or after the proceeding was commenced."

Sections 1255b and 1257 (Amended)

These sections were approved as drafted.

Government Code Sections 16425-16427 (New)

These sections were approved with minor grammatical changes.

Government Code Sections 38090 and 38091 (Amended)

These sections were approved as drafted. It was pointed out that, in connection with comprehensive revision of the law of eminent domain, it may be necessary to delete, rather than merely amend, various aberrant provisions dealing with condemnation found in other codes and especially in the Streets and Highways Code and the Government Code.

Streets and Highways Code Sections 4203 and 4204 (Amended)

These sections were approved as drafted.

Minutes
June 9, 10, 11, 1966

STUDY 50(L) - RIGHTS UPON TERMINATION OF LEASE

The Commission considered Memorandum 66-28, a letter from Professor Verrall dated June 6, 1966, and the tentative recommendation as revised on June 4, 1966. The following actions were taken:

Subcommittee report

The subcommittee report, attached to the Minutes of the meeting of May 27-28, 1966, was approved as the action of the Commission.

Section 1951

The section was revised to read substantially as follows:

1951. A lease of real property is repudiated when, without justification:

(a) One party communicates to the other party by word or act that he will not or cannot perform his remaining obligations under the lease;

(b) Either party does any voluntary act or engages in any voluntary course of conduct which renders substantial performance of his obligations under the lease impossible or apparently impossible; or

(c) The lessor actually evicts the lessee from the leased property.

As revised, the section was approved.

Section 1951.5

Subdivision (c) was revised to read substantially as follows:

(c) The lease is repudiated by either party thereto and the aggrieved party is not entitled to or does not seek specific performance of the lease as provided in subdivision (c) of Section 1952.5.

As revised, Section 1951.5 was approved.

The staff was directed to expand the comment on subdivision (a) to point out that it covers both the case of eviction for breach and the case

Minutes
June 9, 10, 11, 1966

of eviction upon occurrence of a condition. Only in the case of breach, however, is the lessor entitled to damages.

Section 1952

The revision of Section 1951.5 made subdivision (b) of Section 1952 unnecessary and, hence, the subdivision was deleted.

As revised, the section was approved.

Section 1952.5

The preliminary language of the section was revised to read as follows:

1952.5. When a party repudiates a lease of real property, the other party may do any one of the following:

As revised, the section was approved.

Section 1953

The preliminary language was revised to read as follows:

1953. When a party breaches a lease of real property in a material respect without repudiating the lease, the other party may do any one of the following:

The staff was directed to revise the comment to indicate that an action for damages under subdivision (c) does not preclude a subsequent action for damages for a later breach.

Section 1953 was then approved.

Section 1953.5 was previously approved.

Section 1954

The Commission disapproved Section 1954. The problem involves disposition of trade fixtures, rights of lienholders, and similar complex

Minutes
June 9, 10, 11, 1966

matters that are not germane to the study on the right to damages upon the termination of a lease.

Sections 3320-3322 were previously approved.

Section 3323

Section 3323 was disapproved. This will place the parties in the same position as the parties to analogous contracts where there is no statute giving presumptive effect to the terms of contracts made for the purpose of mitigating damages.

Section 3324 was approved.

Section 3325

The staff was directed to redraft the section. Subdivision (a) should contain the substance of subdivision (a)(1) as it appeared in the draft considered by the Commission. This would provide for the recovery of attorney's fees if the lease provides for such recovery. Subdivision (b) would then provide for the recovery of attorney's fees by one party if the lease provided for the recovery of attorney's fees by the other. Subdivision (b) would also provide that the reciprocal right to attorney's fees under subdivision (b) could not be waived in advance.

Section 3326 was approved.

Section 3327 was approved.

Section 3308

The repeal of Section 3308 was approved.

Section 3387.5 was approved.

Code of Civil Procedure Section 1174

The revision of Section 1174 was approved.

Small claims jurisdiction

The Commission declined to extend the small claims jurisdiction of justice courts to include unlawful detainer actions.

Effective date

The Commission directed the staff to make the statute retroactive to the extent that it can be constitutionally applied retroactively.

Tentative recommendation generally

The staff was directed to revise the tentative recommendation to conform to the decisions made by the Commission. An effort to shorten the preliminary discussion will be undertaken so that material in the study will not be unnecessarily duplicated. The revised recommendation will be distributed to each Commissioner, and if no objections to the revised text are received before the next meeting, the revised recommendation will be delivered to the California Law Review for publication together with the study.

Subject to the consideration to be given to the revised text by the individual Commissioners, the tentative recommendation, as revised, was approved for publication and distribution.

The staff was asked to solicit comments on the tentative recommendation from various real property and contract professors in the law schools of this state.

Preprinting of bill

The staff was authorized to have the proposed legislation preprinted after it has been revised to reflect the decisions indicated above.

Minutes
June 9, 10, and 11, 1966

STUDY 63(L) - EVIDENCE CODE
REVISION OF THE AGRICULTURAL CODE

The Commission considered Memorandum 66-29 and the First Supplement thereto. The following actions were taken with respect to the proposed legislation which was attached as Exhibit I to Memorandum 66-29:

General policy decision on effect of official certificates

The Commission determined that the rebuttable presumption established by various sections of the Agricultural Code with respect to official inspection certificates should be a presumption affecting the burden of proof and that such presumption should not apply in a criminal action.

The various sections in the proposed legislation are to be revised in accordance with this decision. The pertinent sections are Sections 751, 768, 772, 892.5, 893, 920, 1040, 1272, and 1300.5.

Section 18

This section was revised to read in substance:

18. In all matters arising under this code, proof of the fact of possession by any person engaged in the sale of a commodity is-prima-facie-evidence establishes a rebuttable presumption that such commodity is for the purpose of sale. This presumption is a presumption affecting the burden of producing evidence.

Mr. Keating, who took the view that the presumption should be one affecting the burden of proof, requested that his "no" vote on the motion be recorded in the Minutes.

Section 108

The staff recommendation that no change be made in this section was adopted by the Commission.

Minutes
June 9, 10, and 11, 1966

Sections 115, 124, and 152

The staff revision of these sections was approved.

Section 160.97

The paragraph of this section which requires amendment is to be amended to read substantially as follows:

Proof of failure to file the report herein required shall ~~create a rebuttable presumption~~ is evidence that no such loss or damage occurred.

The changes shown are changes from the section as it now exists. The revision set out above is intended to preserve the effect the section had before the enactment of the Evidence Code. The only effect the section then had was to make proof of failure to file the report evidence that no such loss or damage occurred since the party relying on the presumption already had the burden of proof. However, under prior law, the presumption was evidence upon which a finding could be made. The revision preserves this effect and makes it clear that evidence of failure to file the report is admissible and the defendant can request an instruction that such evidence should be considered in determining whether such loss or damage occurred.

Section 332.3

It was noted that one paragraph of this section was omitted in the draft prepared by the staff. This paragraph should be included in the bill drafted by the Commission.

This section was approved as drafted.

Section 340.4

This section was revised to read in substance:

340.4. Proof of possession or ownership of cattle with an unrecorded, forfeited, or canceled brand is ~~prima-facie-evidene~~ establishes a rebuttable presumption that the person in possession or the owner of the cattle has branded them with such brand. This presumption is a presumption affecting the burden of proof.

Section 423

The staff recommendation that no change be made in this section was adopted by the Commission.

Section 438

The staff is to check with the Department of Agriculture to determine whether the second sentence of Section 438 is needed at all in view of the fact that Government Code Section 11513 deals with the admissibility of hearsay evidence in administrative adjudications under the Administrative Procedure Act (which is made applicable to the Department of Agriculture by Government Code Section 11501).

If the Department of Agriculture is of the view that the second sentence of Section 438 is retained in substance, the section might be revised to read:

Copies of records, audits and reports of audits, inspection certificates, certified reports, findings and all papers on file in the office of the director ~~shall be prima-facie-evidene of the matters therein contained, and may be admitted into evidene~~ are admissible, to the extent provided in Section 11513 of the Government Code, in any hearing pursuant to said article of the Government Code as evidence of the truth of the matters which are stated in them .

The staff is to discuss this matter with the Department of Agriculture to determine whether the second sentence should be deleted entirely or, if it is to be retained, how it should be worded.

Section 651

This section is to be amended to read as follows:

651. As used in this division, "imitation milk product" means any substance, mixture or compound, other than milk or milk products, intended for human food, made in imitation of milk or any milk product. Proof that any fat or oil other than milk fat has been combined with any milk product and that the resulting substance, mixture, or compound has the outward appearance and semblance in taste and otherwise of a milk product and is sold for use without further processing ~~shall-be-prima-facie-proof~~ establishes a rebuttable presumption that such substance, mixture, or compound is an "imitation milk product." This presumption is a presumption affecting the burden of producing evidence. This section shall not apply to any substance, mixture, or compound in which the presence of oil or fat other than milk fat is expressly permitted and provided for in this division.

Senator Cobey voted to classify the presumption as a presumption affecting the burden of proof.

Section 695

A question was raised whether this section is necessary at all in view of the substantive sections that deal with the unlawful use of or traffic in containers, cabinets, or other dairy equipment.

Section 695 is to be revised to make the presumption established by the section a presumption affecting the burden of producing evidence.

Section 746.4

This section was approved as drafted.

Remaining sections

The remaining sections were not considered by the Commission.

Obtaining views of the Department of Agriculture

It was suggested that the Department of Agriculture be invited to send one or more representatives to the July meeting so that background information on the purposes and needs of the various presumptions could be obtained and so that the views of the department on the proper classi-

Minutes
June 9, 10, and 11, 1966

fication of the various presumptions could be made known to the Commission. It was suggested that one of the representatives of the department should be a person who is engaged in enforcement activities in the courts.

It was also suggested that the Executive Secretary discuss the various provisions with representatives of the department prior to the July meeting.

Meeting
June 9, 10, and 11, 1966

STUDY 67 - SUIT BY AND AGAINST UNINCORPORATED ASSOCIATIONS

The Commission considered Memorandum 66-26 and the attached tentative recommendation. The following actions were taken:

Repeal of Section 388

The repeal of this section was previously approved.

Proposed Section 388

Subdivisions (c) and (d) of this section were deleted. Subdivision (c) was considered unnecessary since Section 388 will be repealed. The remainder of the section was previously approved.

Proposed Section 395.2

This section was approved after the substance of the following was added before the period at the end of the section: "and, for the purpose of determining such county, the principal place of business of the unincorporated association shall be deemed to be the principal office or place of business listed in the certificate."

Amendment of Section 410

This amendment was previously approved.

Amendment of Section 411

The staff advised the Commission the Commissioner McDonough suggested the the phrase "or other person bearing a similar relationship to the association" be added following "general partner." The section was approved as drafted.

Proposed Section 24000

This section was approved as drafted.

Proposed Section 24001

After considerable discussion, this section was approved as drafted.

Minutes
June 9, 10, and 11, 1966

Proposed new section

A new section should be added to the statute to read substantially as follows:

Execution issued upon a judgment against an unincorporated association shall be levied only upon the property of the unincorporated association.

The Comment to the new section should state that by repealing existing Section 388 we eliminate the possibility of obtaining a judgment in an action against an unincorporated association that is binding on a member of the association who was not a party to the action against the association. Nothing in the new section will, however, prevent execution against the individual assets of a member of the association who was made a party to the action against the association and against whom a personal judgment was obtained.

Proposed Section 24002

This section was approved after subdivision (1) of paragraph (a) was revised to read in substance:

(1) A statement designating any individual residing in this state, or any corporation which has complied with Section 3301.5 or Section 6403.5 whose capacity to act as such agent has not terminated, as the agent of the association for the service of process and setting forth such agent's complete business or residence address.

[The language concerning corporate agents for service of process is taken from Corporations Code Section 3301.]

Proposed Section 24003

This section was deleted.

Approval for distribution for comments

The tentative recommendation, after it has been revised in accordance with the decisions listed above, is to be distributed to interested persons

Minutes
June 9, 10, and 11, 1966

for comment.

Approval of bill for preprinting

The bill, after it is revised in accordance with the decisions listed above, may be preprinted.