

November 13, 1968

<u>Time</u>	<u>Place</u>
November 21 - 7:00 p.m. - 10:00 p.m.	Room 170, Earl Warren Legal Center
November 22 - 9:00 a.m. - 5:00 p.m.	Law Building
November 23 - 9:00 a.m. - 11:30 a.m.	University of California, Berkeley

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Berkeley

November 21, 22, and 23, 1968

NOVEMBER 21

1. Approval of Minutes of October 17-18 Meeting (sent 10/29/68)
2. Administrative Matters

Meeting Procedures

Memorandum 68-106 (sent 10/29/68)
Suggested Schedule for Future Meetings (1969)
(attached to Memorandum)

Uhler
Special order
of business
7:30 p.m.

3. Study 63 - Evidence Code

Psychotherapist-Patient Privilege

Memorandum 68-107 (sent 10/29/68)
Recommendation (attached to Memorandum)
First Supplement to Memorandum 68-107 (enclosed)
Second Supplement to Memorandum 68-107 (to be
handed out at meeting)

NOVEMBER 22

Stanton

4. Study 66 - Quasi-Community Property

Memorandum 68-109 (enclosed)

5. Study 52 - Sovereign Immunity

Arnebergh

The Collateral Source Rule

Memorandum 68-85 (sent 10/29/68)

Arnebergh

Prisoners and Mental Patients

Memorandum 68-88 (to be sent)
Tentative Recommendation (attached to Memorandum)

Arnebergh

Liability to Employees of Independent Contractors

Memorandum 68-101 (sent 11/4/68)

Arnebergh

Relative Liability of Two Insurance Carriers

Memorandum 68-111 (sent 11/4/68)

6. Study 36 - Condemnation Law and Procedure

Uhler

The Right to Enter and Survey

Memorandum 68-87 (sent 10/29/68)
Tentative Recommendation (attached to Memorandum)

Uhler

Condemnation for "Byroads"

Memorandum 68-89 (sent 10/29/68)
Tentative Recommendation (attached to Memorandum)

Stanton

7. Study 69 - Powers of Appointment

Memorandum 68-108 (sent 11/4/68)

NOVEMBER 23

Wolford

8. Study 44 - Fictitious Business Name Statute

Memorandum 68-110 (sent 11/4/68)
Tentative Recommendation (attached to Memorandum)

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
NOVEMBER 21 AND 22, 1968
Berkeley

A meeting of the California Law Revision Commission was held at the Law School, University of California, Berkeley on November 21 and 22, 1968. Although the meeting also was scheduled for November 23, the meeting for that day was cancelled because of lack of a quorum.

Present: Sho Sato, Chairman
Roger Arnebergh (November 22)
Lewis K. Uhler
Thomas E. Stanton, Jr.
Richard H. Wolford

Absent: Alfred H. Song, Member of Senate
F. James Bear, Member of Assembly
William A. Yale
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Executive Secretary, Clarence B. Taylor, Assistant Executive Secretary, Jack I. Horton, Junior Counsel, and John L. Cook, Student Legal Assistant, of the Commission's staff also were present.

The following observers also were present:

The Psychotherapist-Patient Privilege

Robert Dean, 2107 Van Ness Avenue, Suite 403, San Francisco (Nov. 21)

Quasi-Community Property

Professor Herma Hill Kay, Boalt Hall (Nov. 22)

The Collateral Source Rule

Professor John G. Fleming, Boalt Hall (Nov. 22)
(Also persons interested in Sovereign Immunity listed below)

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Sovereign Immunity, Inverse Condemnation, and Condemnation

Norval Fairman, Department of Public Works	{ Nov. 22 }
James T. Markle, Department of Water Resources	{ Nov. 22 }
Kenneth Nellis, Department of Public Works	{ Nov. 22 }
Willard A. Shank, Attorney General's Office	{ Nov. 22 }
Terry C. Smith, Los Angeles County Counsel	{ Nov. 22 }
Gerald J. Thompson, County Counsel, Santa Clara County	{ Nov. 22 }

ADMINISTRATIVE MATTERS

Minutes of October Meeting

The Minutes of the meeting held on October 17 and 18, 1968, were approved after the following corrections were made:

On page 12, line 1, the reference to "Memorandum 68-86" was changed to "Memorandum 68-98."

On page 12, line 2, the reference to the "First Supplement to Memorandum 68-86" was changed to "First Supplement to Memorandum 68-98."

Future Meetings

Future meetings were scheduled as follows:

December	No Meeting
January 9 (evening), 10, and 11	Los Angeles
February 7 and 8	San Francisco
March 6 (evening), 7, and 8	Los Angeles
April 10 (evening), 11, and 12	San Francisco
May 9 and 10	Los Angeles
June 6 and 7	San Francisco

The staff is to prepare a suggested schedule for meetings for all of 1969 for consideration at the next meeting.

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STUDY 36 - CONDEMNATION LAW AND PROCEDURE

The Right to Enter and Survey

The Commission considered Memorandum 68-87 and the tentative recommendation attached thereto relating to a potential condemnor's right to enter and survey property subject to condemnation. The Commission made several nonsubstantive drafting changes and with these changes approved the tentative recommendation for distribution for comment.

Byroads

The Commission considered Memorandum 68-89 and the tentative recommendation attached thereto relating to condemnation of byroads. The Commission directed the staff to indicate in the recommendation that it was merely the first in a series of recommendations which would culminate in presentation of comprehensive legislation dealing with the proper scope and extent of the power of eminent domain to all condemnors. With the inclusion of some minor, nonsubstantive changes, the tentative recommendation was approved for distribution for comment.

STUDY 52 - SOVEREIGN IMMUNITY

Liability to Employees of Independent Contractors

The Commission considered Memorandum 68-101 relating to public entity liability to employees of independent contractors for injuries caused by the negligence of their employers and decided to take no action affecting the existing law in this area.

Relative Liability of Two Insurance Carriers Providing Duplicate Coverage for Same Risk

The Commission considered Memorandum 68-111 relating to duplicate insurance coverage for the same risk of governmental liability and decided to take no action affecting the existing law in this area.

Prisoners and Mental Patients

The Commission considered Memorandum 68-88 and the tentative recommendation relating to prisoners and mental patients attached thereto. The staff was directed to invite the General Counsel for the Department of Mental Hygiene to meet with the Commission to discuss the problem of liability generally of public entities and employees for injuries caused by and to mental patients. Pending the receipt of this assistance, no action was taken concerning that portion of the recommendation relating to mental patients.

With regard to the portion of the recommendation relating to prisoners, the following actions were taken:

Section 844

After further consideration, the Commission rejected its earlier revisions and decided to make no change in Section 844 (defining "prisoner") as it presently appears in the Government Code.

Section 844.6

The staff was directed to revise this section to make a public entity liable for the willful misconduct or gross negligence of its employees acting within the scope of their employment and resulting in injury to prisoners. With this major exception, the section had been previously approved as drafted and no further change was made. The Commission did, however, consider but withheld action concerning the issues whether a public employee's liability should be limited to and coextensive with that of his employer and whether the prisoner and mental patient sections should be made substantively similar in this regard.

Sections 845.4 and 845.6

These sections had been previously approved and the Commission made no further change in these sections.

Section 846

Subdivision (b) of Section 846 and the portion of the Comment relating to this subdivision was deleted.

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STUDY 52 - SOVEREIGN IMMUNITY (THE COLLATERAL SOURCE RULE)

The Commission considered Memorandum 68-85 relating to the collateral source rule.

The Commission determined that it would undertake to find a consultant to prepare a study on the collateral source rule as applied to actions against public entities and public employees and related problems. The study should be a comprehensive one and should consider not only the compensation system used in jurisdictions where the collateral source rule does not apply but also the problems involved in merely specifying what items received from collateral sources should be offset if no substantial changes in the law relating to actions against public entities and public employees were made. The related problems might include consideration of the rule that precludes assignment of personal injury claims--a rule which creates problems because the person furnishing medical treatment cannot receive an assignment of the personal injury claim. The question of whether the judge or jury should make the offset of receipts from collateral sources would also require consideration in the study.

STUDY 63 - EVIDENCE CODE (PSYCHOTHERAPIST-PATIENT PRIVILEGE)

The Commission considered Memorandum 68-107 and the First and Second Supplements thereto. The Commission considered each suggestion made by persons commenting on the tentative recommendation. The following actions were taken:

(1) A motion to make the privilege applicable to a person serving as a psychotherapist who is not licensed but is serving under the supervision of a licensed psychotherapist did not receive a second.

(2) In the language added to Section 1012, the phrase "joint therapy" was substituted for "group therapy." The Comment to Section 1012 is to be revised to indicate that the term "joint therapy" covers marriage counseling and family counseling and other forms of group therapy.

(3) The Commission took special note of the letter from Dr. Arthur M. Bodin, Training and Education Director, Mental Research Institute, Palo Alto. The Commission determined that the law review article he is now engaged in writing should be brought to the Commission's attention when the article has been published.

(4) The Recommendation, as revised, was approved for printing as a part of the Recommendation to the 1969 Legislature relating to revision of the Privileges Article.

STUDY 66 - QUASI-COMMUNITY PROPERTY

The Commission considered Memorandum 68-109. The Commission determined not to submit legislation on quasi-community property to the 1969 legislative session.

The Commission determined that subdivision (b) of Section 140.5 and related sections should be revised to read:

(b) In exchange for real or personal property, wherever situated, acquired ~~either-than-by-gift,-devise,-bequest-or-descent~~ by either spouse ~~during-the-marriage~~ while domiciled elsewhere which would have been community property of the husband and wife had the spouse acquiring the property been domiciled in this state at the time of its acquisition .

The Commission determined that the Comments to the revised sections should include a statement that the words "wherever situated" include real property situated in another state if such a statement would contribute to the understanding of the operation of the sections.

The Commission considered a suggestion from Professor Kay that the words limiting the definition of quasi-community property to real property "situated in this state" should be deleted so that the definition would embrace real property wherever situated. This change should be made, if it is to be made, only in Section 140.5 and should be limited to division of property upon divorce or separate maintenance. The staff is to study this suggestion and to prepare a memorandum (and possibly a tentative recommendation) for the next meeting.

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STUDY 69 - POWERS OF APPOINTMENT

The Commission considered Memorandum 68-108 and the problems raised therein concerning the definition of "presently exercisable" powers.

The Commission revised the proposed Civil Code Section 1381.3 to read as follows:

1381.3. (a) A power of appointment is "testamentary" if it is exercisable only by a will.

(b) A power of appointment is "presently exercisable" at the time in question to the extent that an irrevocable appointment can be made.

The staff was directed to make conforming changes in the Comment to Section 1381.3 and where necessary in the remainder of Title 7.