

Memorandum 68-4

Subject: Study 65 - Inverse Condemnation (Denial Destruction and Requisitioning of Private Property)

Part III of Professor Van Alstyne's research study relates to deliberately inflicted physical injury or destruction. The Stanford Law Review is considering the publication of this part of the research study.

This memorandum is concerned with the first two portions of Part III (pages 34-43, dealing with denial destruction and requisitioning of private property in emergency situations).

At this time, the Commission need only to determine the broad general policy that should apply to the types of situations discussed in this memorandum. At subsequent meetings, the staff will present drafts of statutes designed to carry out those general policy decisions and, at that time, various details of policy will be presented for Commission determination.

Denial Destruction (pages 34-40 of study)

In times of extreme emergency or disaster, public officials may order the selective destruction of private property to protect the community from widespread and calamitous loss. Typical examples of this so-called "denial destruction" are: destruction of private property to prevent it from falling into enemy hands in wartime or to deny its combustible elements to a raging fire or the release of artificially impounded waters by destruction of private property to reduce the damage from a serious flood.

Denial destruction is not a basis of personal tort liability for the public officer and the consultant believes that this rule is justified. Public entities apparently are immune from tort liability for denial destruction, but the extent of their liability under inverse condemnation law is unclear. The consultant believes that clarification by statute would be desirable.

The consultant recommends that public entities be liable for denial destruction but that the rule of damages limit the liability. He recommends that liability be limited to the value of the destroyed property as measured under the circumstances existing at the moment of destruction or, in the alternative, to the value of that portion of the destroyed property which, in the exercise of ordinary care, would have been preserved had its denial destruction not been ordered. The recommendations are designed to accord at least a minimum level of protection to private interests against the danger of a needless or premature demolition order by a zealous but overly apprehensive public official and yet to avoid substantial recovery for loss of property that was doomed in any event. See pages 34-40 of the research study for a discussion of the pertinent policy considerations.

Requisitioning of Private Property (pages 40-43 of study)

Under emergency circumstances, private property needed by government to carry out its responsibilities may sometimes be summarily seized, requisitioned, or commandeered. It is generally accepted that just compensation for property so taken must be paid.

The consultant recommends legislation based on the general policy of the California Disaster Act should be enacted. Specifically, he recommends that:

1. General guidelines defining the circumstances under which a commandeering of private property is authorized should be enacted and that such authorization should be much broader than the California Disaster Act.

2. General statutory provisions governing the responsibility for payment of just compensation when private property is summarily commandeered or requisitioned for use in meeting a public emergency should be enacted. The statute should specify the owner's right to reimbursement for the reasonable use of his property and for incidental damage (e.g., loss of earnings or profits, cost of rental of other property, personal inconvenience or annoyance) and should, for example, indicate the extent of liability when requisitioned property is ultimately returned to the owner either undamaged or damaged but still in salvageable condition.

Respectfully submitted,

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Executive Secretary