

Revised February 28, 1970

<u>Time</u>	<u>Place</u>
March 6 - 9:30 a.m. - 3:00 p.m.	Committee of Bar Examiners Office
March 7 - 9:00 a.m. - 1:00 p.m.	540 Van Ness Avenue San Francisco

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

March 6-7, 1970

1. Minutes of February 6-7 Meeting (sent 2/19/70)
2. Administrative Matters
 Personnel Matters
3. Time Within Which Motion for New Trial Must Be Made
 Memorandum 70-15 (sent 2/19/70)
4. Study 65.40 - Inverse Condemnation (Aircraft Noise Damage)
 Presentation by Dr. Garbell
 Memorandum 70-19 (sent 2/19/70)
 First Supplement to Memorandum 70-19 (sent 2/26/70)
 Memorandum 69-133 (sent 11/26/69)
 Special order of business at 10:00 a.m. on March 6
5. Study 39 - Attachment, Garnishment, and Execution
 Discussion with Professor Riesenfeld
 Special order of business at 1:30 p.m. on March 6
6. Study 36.60 - Condemnation (Moving Expenses)
 Memorandum 70-17 (sent 2/24/70)
 Revised Tentative Recommendation (attached to Memorandum)
 First Supplement to Memorandum 70-17 (to be sent)
7. Study 65.25 - Inverse Condemnation (Water Damage; Land Stability)
 Memorandum 70-20 (sent 2/26/70)
 Memorandum 69-134 (sent 11/26/69)
8. Study 36.200 - Condemnation (Condemnation for Educational Purposes)
 Memorandum 70-12 (sent 2/19/70)
 Research Study (attached to Memorandum)
9. Study 36.201 - Condemnation (Condemnation for Utility Purposes)
 Memorandum 70-13 (sent 2/24/70)
 Research Study (attached to Memorandum)

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10. Study 36.80 - Condemnation (Procedural Aspects Generally)

Memorandum 70-24 (sent 2/26/70)

11. 1970 Legislative Program

Memorandum 70-23 (to be sent)

12. Function of Law Revision Commission

Memorandum 69-124 (sent 11/26/69)

Memorandum 69-65 (attached to Memorandum 69-124)

First Supplement to Memorandum 69-124 (sent 11/26/69)

Second Supplement to Memorandum 69-124 (sent 11/26/69)

Third Supplement to Memorandum 69-124 (sent 1/20/70)

Fourth Supplement to Memorandum 69-124 (sent 2/19/70)

Fifth Supplement to Memorandum 69-124 (sent 2/19/70)

Sixth Supplement to Memorandum 69-124 (sent 2/19/70)

Seventh Supplement to Memorandum 69-124 (sent 2/19/70)

13. Review of Handbook of Practices and Procedures

Memorandum 69-145 (sent 11/26/69)

Handbook (attached to Memorandum)

14. Status of Topics

Memorandum 70-22 (sent 2/26/70)

First Supplement to Memorandum 69-126 (sent 2/26/70)

Third Supplement to Memorandum 69-126 (sent 2/26/70)

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
MARCH 6 AND 7, 1970

San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on March 6 and 7, 1970.

Present: Thomas E. Stanton, Jr., Chairman
John D. Miller, Vice Chairman
G. Bruce Gourley
Joseph Sneed
Lewis K. Uhler (March 6)

Absent: Alfred H. Song, Member of the Senate
Carlos J. Moorhead, Member of the Assembly
George H. Murphy, ex officio

Messrs. John H. DeMouilly and Jack I. Horton, members of the Commission's staff, also were present.

The following observers were present on March 6:

Lawrence Becker, Attorney at Law
William M. Bitting, Hill, Farrer & Burrill
Donald L. Clark, San Diego County Counsel's Office
Ralph Clark, Realtor-Appraiser, San Francisco
Paul F. Dauer, Department of Water Resources
Norval Fairman, Department of Public Works
Maurice A. Garbell, San Francisco
Gideon Kanner, Fadem & Kanner
John N. McLaurin, Hill, Farrer & Burrill
John M. Morrison, Attorney General's Office
Kenneth Nellis, Department of Public Works
Professor Stefan A. Riesenfeld, Boalt Hall
John D. Rogers, Rogers, Vizzard & Tallett
Willard A. Shank, Attorney General's Office
Terry C. Smith, Los Angeles County Counsel's Office
Charles E. Spencer, Department of Public Works
Harold H. Woodward, Department of Aeronautics

Mr. Fairman also was present on March 7.

ADMINISTRATIVE MATTERS

Approval of Minutes of February 6 and 7, 1970, Meeting. Page 1 of the minutes of the February 6 and 7, 1970, meeting was corrected to delete the reference to Commissioner Sneed--the February meeting was held prior to the effective date of his appointment. With this correction, the minutes of the February meeting were approved.

Personnel. The Executive Secretary reported the resignation of Clarence B. Taylor, the Assistant Executive Secretary. The Commission authorized the Executive Secretary to attempt to fill the fourth attorney position at the Junior Counsel level.

1970 Legislative Program. The Commission considered Memorandum 70-23 and the oral report of the Executive Secretary. The amendments made in the Commission's bills to date were determined to be acceptable.

With respect to Senate Bills 92 and 94, the Executive Secretary was authorized to make amendments to these bills (if necessary to secure passage) providing that, in all cases involving the plan or design immunity, liability would be conditioned upon a preliminary determination by the court that the entity acted unreasonably in permitting the dangerous condition to remain.

With respect to Assembly Bill 124, the Executive Secretary was authorized to add a new Section 4800.1 to the Civil Code, providing substantially as follows:

4800.1. (a) Except as provided in subdivision (b), if the property subject to division under Section 4800 includes real property situated in another state, the court shall, if possible, divide the community and quasi-community property in accordance with

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Section 4800 in such a manner that it is not necessary to change the nature of the interests held in the real property in the other state.

(b) If awarding the property in the manner provided in subdivision (a) would not meet the requirements of Section 4800 or if economic circumstances warrant, the court may do either of the following:

(1) Require the parties to execute such conveyances or take such other actions with respect to the real property situated in another state as are necessary to effect a division of the property in accordance with Section 4800; or

(2) Award to the party who would have been benefited by such conveyances or other actions the money value of the interests in such property that he would have received if the conveyances had been executed or other actions taken.

Function of Law Revision Commission. The Commission considered and discussed Memoranda 69-65 and 69-124 and the First through Seventh Supplements to Memorandum 69-124. No action was required or taken.

Review of Handbook of Practices and Procedures. The Commission considered Memorandum 69-145, reviewed the current handbook, and made the following changes: (1) At the top of page 7, eliminated all reference to the scheduling of legislative proposals; (2) Directed the Executive Secretary to revise the material dealing with his function in contacting individual members of the Legislature (bottom of page 7 through top of page 8) and to distribute these revisions to the Commissioners; (3) Page 14, line 3, should be revised to read ". . . in a law review or otherwise distributed, it should be"

Status of Topics. The Commission considered Memorandum 70-22 and the First and Third Supplements to Memorandum 69-126. The Multi-Year Schedule of Projects (Exhibit II to Memorandum 70-22) was approved with minor modifications and is set out as Exhibit I to these Minutes.

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New Topic - Time Within Which Motion for New Trial Must Be Made. The Commission considered Memorandum 70-15 and determined that no action by the Commission appeared to be required with respect to this topic.

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STUDY 36.60 - CONDEMNATION (MOVING EXPENSES)

The Commission considered Memorandum 70-17, the attached tentative recommendation, and a letter and attached materials to the Executive Secretary from Mr. Robert F. Carlson, Department of Public Works, dated March 2, 1970. The Commission directed the staff to distribute the tentative recommendation with a covering letter emphasizing the tentative nature of this recommendation and indicating the intention of the Commission to review and conform this recommendation to the pending federal legislation but requesting comment on the idea of a uniform statute applicable to all acquirers and the requirement of mandatory payment of actual and reasonable moving expenses.

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STUDY 36.80 - CONDEMNATION (PROCEDURAL ASPECTS GENERALLY)

The Commission considered Memorandum 70-24 and approved the staff's suggestion that the letters attached to that memorandum dealing with the procedural aspects of eminent domain be forwarded on to the consultant.

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STUDY 36.200 - CONDEMNATION (CONDEMNATION FOR EDUCATIONAL PURPOSES)

The Commission considered Memorandum 70-12 and the Exhibits and the Research Study attached thereto. The words "or interest therein" in proposed Education Code Section 30051 contained in Exhibit IV were deleted. With this change, all of the sections contained in Exhibits I through IV were approved for inclusion in a working draft of a comprehensive statute dealing with the right to take.

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STUDY 36.201 - CONDEMNATION (CONDEMNATION FOR UTILITY PURPOSES)

The Commission considered Memorandum 70-13 and the Research Study attached thereto. Proposed Sections 611 through 623, 627, and 2729 of the Public Utilities Code were approved for inclusion in a working draft of a comprehensive statute dealing with the right to take. Consideration of Sections 610, 625, and 626 was deferred. Section 624 was deleted.

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STUDY 39 - ATTACHMENT, GARNISHMENT, AND EXECUTION

The Commission met with Professor Stefan A. Riesenfeld, Boalt Hall, and discussed the future course of action the Commission should take with respect to this topic. The Executive Secretary was directed to negotiate a research contract with Professors Riesenfeld and William D. Warren, U.C.L.A., to prepare a comprehensive study covering all aspects of this area of the law.

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STUDY 65.25 - INVERSE CONDEMNATION (WATER DAMAGE; LAND STABILITY)

The Commission considered Memoranda 70-20 and 69-134 and the tentative recommendation attached thereto. The staff was directed to distribute this recommendation to a selected list of persons with a covering letter asking the substance of the following questions: (1) Do you believe legislation is needed to provide rules governing the liability for water damage of either or both public entities and private persons? (2) Are the suggestions of the tentative recommendation with regard to the liability of public entities sound? If not, what changes do you recommend? (3) Should the rules suggested in the recommendation be made equally applicable to private persons? If not, what differences do you recommend? (4) What procedural provisions (such as provisions relating to the computation of interest, filing of claims, statute of limitations, and the like) do you recommend, if any?

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STUDY 65.40 - INVERSE CONDEMNATION (AIRCRAFT NOISE DAMAGE)

The Commission heard and considered a letter and presentation by Mr. John D. Rogers, San Francisco attorney; a working paper and presentation by Dr. Maurice A. Garbell, aeronautical engineering consultant; and a presentation by Mr. Harold H. Woodward, Department of Aeronautics. Mr. Rogers and Dr. Garbell indicated that they would be able to present further material at the April meeting. The Commission expressed its appreciation to Dr. Garbell, Mr. Rogers, and Mr. Woodward for their substantial assistance and indicated that it looked forward to receiving any additional help that they wished to offer. No further action was taken.

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EXHIBIT I

CALIFORNIA LAW REVISION COMMISSION

MULTI-YEAR SCHEDULE OF PROJECTS

(Number of sections is estimated unless otherwise indicated.)

JANUARY 1970 - JANUARY 1971

Legislative Consideration of Recommendations to 1970 Legislature (107 sections--actual count)

("*" indicates revised version of recommendation to prior session)

- Fictitious Business Names -- 40 sections
- Sovereign Immunity (Revisions of Governmental Liability Act) -- 23 sections
- *Sovereign Immunity (Statute of Limitations) -- 12 sections
- Quasi-Community Property -- 4 sections
- Condemnation Law and Procedure (Arbitration of Just Compensation) -- 7 sections
- *Real Property Leases -- 14 sections
- *Evidence Code (Revisions of Evidence Code) -- 5 sections
- "Vesting" of Interests Under Rule Against Perpetuities -- 1 section
- Representations as to Credit of Third Persons -- 1 section

Topics to be added to Agenda:

- Nonprofit Corporation Law
- Minor Problems in Civil Practice and Procedure

Topics to be dropped from Agenda:

- Small Claims Court Law
- Service of Process by Publication

Work on Recommendations to 1971 Legislature

("#" indicates topics that can be considered only if study is received on time)

- Condemnation Law and Procedure (Relocation Assistance)(PRIORITY)
- Taking Instructions to Jury Room (assuming that Commission will drop topic)
- Trial Preference Statutes

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Work on Other Topics

Inverse Condemnation (Aircraft Noise Damage)(TOP PRIORITY)
Inverse Condemnation)(Water Damage; Land Stability)(TOP PRIORITY)
Condemnation Law and Procedure (The Right to Take)(TOP PRIORITY)
#Right of Nonresident Aliens to Inherit
#Sovereign Immunity (The Collateral Source Rule)
#Revision of Arbitration Statute
Consideration of Recommendations to 1970 Legislature That Are Not
Enacted

JANUARY 1971 - JANUARY 1972

Legislative Consideration of Recommendations to 1971 Legislature (20 sections)

Condemnation Law and Procedure (Relocation Assistance) -- 20 sections

Topics to be dropped from Agenda (Likely ultimate disposition by
Commission):

Taking Instructions to Jury Room
Trial Preference Statutes

Work on Recommendations to 1972 Legislature

Inverse Condemnation (Aircraft Noise Damage)(TOP PRIORITY)
Inverse Condemnation (Water Damage; Land Stability)(TOP PRIORITY)
Condemnation Law and Procedure (The Right to Take)(TOP PRIORITY)
Right of Nonresident Aliens to Inherit
Sovereign Immunity (The Collateral Source Rule)
Revision of the Arbitration Statute
Liquidated Damages
Cross-Complaints and Counterclaims
Joinder of Causes of Action

Work on Other Topics

Condemnation Law and Procedure (Various Aspects)(TOP PRIORITY)
Oral Modification of Written Contract
Jurisdiction in Custody Matters
Consideration of Recommendations to 1971 Legislature That Are Not
Enacted

JANUARY 1972 - JANUARY 1973

Legislative Consideration of Recommendations to 1972 Legislature (389 sections)

Inverse Condemnation (Aircraft Noise Damage) -- 25 sections
Inverse Condemnation (Water Damage; Land Stability) -- 15 sections
Condemnation Law and Procedure (The Right to Take) -- 300 sections

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Liquidated Damages -- 2 sections
Cross-Complaints and Counterclaims -- 25 sections
Joinder of Causes of Action -- 10 sections
Right of Nonresident Aliens to Inherit -- 5 sections
Sovereign Immunity (The Collateral Source Rule) -- 1 section
Revision of Arbitration Statute -- 6 sections

Work on Recommendations to 1973 Legislature

Comprehensive Eminent Domain Statute (TOP PRIORITY)
Consideration of Recommendations to 1972 Legislature That Are Not Enacted
Oral Modification of Written Contract -- 2 sections
Jurisdiction in Custody Matters -- 4 sections

JANUARY 1973 - JANUARY 1974

Legislative Consideration of Recommendations to 1973 Legislature (116 sections)

Comprehensive Eminent Domain Statute -- 110 sections
Oral Modification of Written Contract -- 2 sections
Jurisdiction in Custody Matters -- 4 sections

Work on Recommendations to 1974 Legislature

Nonprofit Corporations Law
Additional Topics (to be determined on basis of priorities and assignments given by legislative committees)