

August 23, 1972

<u>Time</u>	<u>Place</u>
September 7 - 7:00 p.m. - 10:00 p.m.	Department of Airports
September 8 - 9:00 a.m. - 5:00 p.m.	Administration Bldg., Control Tower
September 9 - 9:00 a.m. - 1:00 p.m.	(Inquire at reception desk for location of meeting place) 1 World Way Los Angeles Airport

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

September 7-9, 1972

September 7 and 8

1. Minutes of July 13 and 14, 1972, Meeting (sent 7/25/72)
2. Administrative Matters

Proposed Budget of 1973-74 Fiscal Year

Memorandum 72-53 (enclosed)

Annual Report

Memorandum 72-54 (sent 7/27/72)

First Supplement to Memorandum 72-54 (sent 7/25/72)

Second Supplement to Memorandum 72-54 (sent 8/16/72)

Third Supplement to Memorandum 72-54 (sent 7/27/72)

3. Study 39 - Attachment, Garnishment, Execution

39.30 - Wage Garnishment and Related Matters

Memorandum 72-55 (to be sent)

Revised Statute (attached to Memorandum)

39.90 - Repossession

Memorandum 72-56 (sent 8/16/72)

Tentative Recommendation (attached to Memorandum)

Background Study (attached to Memorandum)

39.70 - Prejudgment Attachment

Questionnaire (draft sent 7/27/72)

Memorandum 72-57 (sent 8/2/72)

First Supplement to Memorandum 72-57 (enclosed)

Draft Statute (attached to First Supplement)

NOTE: If time permits on September 8, we will consider Memorandum 72-52 and the First Supplement thereto. (See agenda for September 9.)

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September 9

4. Study 36 - Condemnation Law and Procedure

Review of Comments of State Bar Committee

Memorandum 72-47 (sent 7/25/72)  
Comprehensive Eminent Domain Statute (blue covered binder only)  
(you have this)

Provisions Relating to Public Utilities

Memorandum 72-52 (sent 7/7/72; another copy sent 7/25/72)  
First Supplement to Memorandum 72-52 (sent 8/16/72)

SUGGESTED SCHEDULE FOR FUTURE MEETINGS

October

October 6 - 9:30 a.m. - 5:00 p.m.                      Vacation Village Hotel  
October 7 - 9:00 a.m. - 1:00 p.m.                      Mission Bay  
San Diego 92109

November

November 9 - 7:00 p.m. - 10:00 p.m.                      San Francisco  
November 10 - 9:00 a.m. - 5:00 p.m.  
November 11 - 9:00 a.m. - 1:00 p.m.

November-December

November 30 - 7:00 p.m. - 10:00 p.m.                      Los Angeles  
December 1 - 9:00 a.m. - 5:00 p.m.  
December 2 - 9:00 a.m. - 1:00 p.m.

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

SEPTEMBER 7, 8, AND 9, 1972

Los Angeles

A meeting of the California Law Revision Commission was held in Los Angeles on September 7, 8, and 9, 1972.

Present: John D. Miller, Chairman  
Marc W. Sandstrom, Vice Chairman  
John J. Balluff  
Noble K. Gregory  
John N. McLaurin  
Howard R. Williams

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

Messrs. John H. DeMouilly, Jack I. Horton, Nathaniel Sterling, Stan G. Ulrich, and Bruce Donald, members of the Commission's staff, also were present. Gideon Kanner and Paul E. Overton, Commission consultants on condemnation law and procedure, were present on Saturday.

The following persons were present as observers on the days indicated:

Thursday, September 7

E. E. Barlough, California Association of Collectors, Sacramento  
Emil A. Markovitz, Creditors Service, Los Angeles  
Richard D. Peters, Franchise Tax Board, Sacramento  
James T. Philbin, Franchise Tax Board, Sacramento

Friday, September 8

Richard Conway, Loyola of Los Angeles Law Review, Los Angeles  
Patricia Dennis, Loyola of Los Angeles Law Review, Los Angeles  
Toby Rothschild, Legal Aid Foundation of Long Beach, Long Beach  
Walter Story, Sears (Jones, McCue, Hall & Aires), Alhambra

Saturday, September 9

Norval Fairman, Division of Highways, San Francisco  
Charles Spencer, Department of Public Works, Los Angeles

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## ADMINISTRATIVE MATTERS

### Minutes

The Minutes of the July 13 and 14, 1972, meeting were approved as submitted.

### Schedule of Future Meetings

The schedule set out below was adopted for future meetings.

#### October

October 6 - 9:30 a.m. - 5:00 p.m.	Vacation Village Hotel
October 7 - 9:00 a.m. - 1:00 p.m.	Mission Bay
	San Diego 92109

#### November

November 9 - 7:00 p.m. - 10:00 p.m.	San Francisco
November 10 - 9:00 a.m. - 5:00 p.m.	
November 11 - 9:00 a.m. - 1:00 p.m.	

#### November-December

November 30 - 7:00 p.m. - 10:00 p.m.	Los Angeles
December 1 - 9:00 a.m. - 5:00 p.m.	
December 2 - 9:00 a.m. - 1:00 p.m.	

### Schedule for Projects

The Commission requested that the staff provide, for discussion at the October meeting, a schedule for the various projects that will be considered within the next year or so. In preparing the schedule, the following suggestions are to be taken into account. One or two chapters of the prejudgment attachment statute should be considered in detail at each future meeting, with a view to tentatively approving the provisions of those chapters. The staff memorandum prepared for the particular meeting should identify the chapter or chapters to be considered in detail at that meeting. In selecting the chapters to be considered, the staff should give priority to those which the staff believes need to be discussed so that further staff work can be accomplished

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on the overall statute. Provision should be made for distributing a tentative prejudgment attachment recommendation for comment within the next few months even though the Commission may wish to continue to work on perfecting the tentatively approved statute while the statute is being reviewed by others. The schedule should also give priority to the condemnation study. Provision should be made for considering the topic of liquidated damages at a Commission meeting during the next few months.

In preparing the schedule, top priority should be given to the creditors' remedies and condemnation studies. Liquidated damages is to be given priority next. If the right of nonresident aliens appears easy to resolve (when the study has been delivered), that topic may be worked into the schedule. The study on remedies with respect to property when a lease is terminated or abandoned is to be worked into the schedule as soon as the study is delivered by the consultant. Oral modification of a written contract, which appears to be a difficult topic, is to be considered only when work on other topics has reached the point where sufficient time appears to be available for consideration of the oral modification topic. When the inverse condemnation (procedural aspects) study is delivered by Professor Van Alstyne, this study should be worked into the meeting schedule as soon as time permits.

#### Annual Report

The Commission considered Memorandum 72-54 and the three supplements to that memorandum. The draft of the Annual Report attached to Memorandum 72-54 is to be revised as indicated below and as so revised was approved for printing:

(1) Unconstitutional statutes. The Second Supplement to Memorandum 72-54 was considered. The following revisions were made in the draft of the portion

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of the Annual Report attached to the supplement: The discussion of Love v. Keayes is to be contained in a footnote (to be added) to the sentence reading "Eight decisions of the Supreme Court of California holding statutes of this state unconstitutional have been found." Less detail of the holding in the Hayes case and Villa case is to be included, the detailed discussion in the staff draft not being informative to persons who are generally unfamiliar with the statutory scheme of the statute held in part to be unconstitutional. The discussion in Villa v. Hall should be a part of the footnote to be added to the sentence quoted above. The last sentence of footnote 11 was revised to read: "Numerous other statutory provisions referring to capital punishment may be affected by this decision." Footnote 14 was deleted.

(2) New topics. The First Supplement to Memorandum 72-54 was considered. The Commission determined that it will not request that any additional topics be added to its agenda. The Executive Secretary is to write to the persons who suggested the new topics to advise those persons of the action taken by the Commission.

(3) Schedule of work on topics. The Commission considered the Third Supplement to Memorandum 72-54. The Commission determined that substantially all of its time and resources during 1973 should be devoted to creditors' remedies and condemnation.

(4) Technical revisions. On page 16a, the last sentence of footnote 4 was revised to read: "This comment does not necessarily represent the views of the Commission; the Commission's action will be reflected in its own recommendation." The last two sentences of footnotes 5 and 6 on page 16a should conform to the sentence in revised footnote 4, and a comparable sentence

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should be added to the second paragraph of footnote 1 on page 17. Where a consultant has been retained on a particular topic, the fact that he has been retained as a consultant should be noted in a footnote to the topic. The portions of the Annual Report dealing with the recommendations that will be made to the 1973 Legislature are to be revised, if necessary, to reflect the decisions made by the Commission as to which recommendations will be submitted to the 1973 Legislature.

#### Proposed Budget for the 1973-74 Fiscal Year

The Commission considered Memorandum 72-53 and the First Supplement to Memorandum 72-53. The proposed budget attached to the First Supplement was approved subject to any revisions required if further instructions or directions are received from the Department of Finance.

The Commission discussed the "performance budget" portion of the budget (attached to Memorandum 72-53). Considerable dissatisfaction was expressed concerning the measurement of Commission production using only number of pages of material published and number of sections recommended and enacted. Various other methods of measuring production were discussed. The Executive Secretary was directed to suggest to the Department of Finance that the number of tentatively approved sections also be included in the measurement of production since the major portion of the Commission's time and resources during the past year and during the next few years has been and will be devoted to major studies (condemnation and creditor remedies) but recommendations on these major studies will not be submitted to the Legislature until after the 1973-74 fiscal year.

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STUDY 36.22 - CONDEMNATION (RIGHT TO TAKE--PUBLIC NECESSITY)

The Commission considered Memorandum 72-47 containing comments of the State Bar Committee on Governmental Liability and Condemnation concerning the comprehensive eminent domain statute. The Commission retained without change the previously approved draft of Section 1240.150 (effect of resolution of necessity). The Commission, while expressing its opposition to bribery in the conduct of public affairs, believed that the effect of bribery upon the action of a public entity should be dealt with by a general statute rather than one limited to eminent domain. Chairman Miller asked to be recorded as favoring the removal of the conclusive effect of a resolution of necessity if its adoption were obtained by fraud, corruption, bad faith, or gross abuse of discretion.



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STUDY 36.24 - CONDEMNATION (MORE NECESSARY PUBLIC USE)

The Commission considered Memorandum 72-47 containing comments of the State Bar Committee on Governmental Liability and Condemnation concerning the comprehensive eminent domain statute. The Commission retained Section 1240.660 (property appropriated to public use by certain local entities) in the comprehensive statute pending further comment from the public agencies involved.

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STUDY 36.30 - CONDEMNATION (SUBSTITUTE CONDEMNATION)

The Commission considered Memorandum 72-47 containing comments of the State Bar Committee on Governmental Liability and Condemnation concerning the comprehensive eminent domain statute. The Commission expanded Section 1240.350 (substitute condemnation for access) to authorize substitute condemnation for the purpose of providing utility service to property cut off from such service by a condemnor's project.

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STUDY 36.35 - CONDEMNATION (IMMEDIATE POSSESSION)

The Commission considered Memorandum 72-47 containing comments of the State Bar Committee on Governmental Liability and Condemnation concerning the comprehensive eminent domain statute. The Commission took the following actions in response to the Bar Committee comments:

Section 1255.020 (service of notice of deposit) was amended to provide that, if a statement of valuation data does not accompany a notice of deposit of probable just compensation, the defendant may inspect and copy the statement at the place designated or may request in writing that the plaintiff mail a copy to him, which request must be complied with within 10 days after its receipt.

Section 1255.030 (increase or decrease in amount of deposit) was amended to provide that, where the plaintiff is in possession of property and the court determines that the amount of compensation exceeds the deposit, if the plaintiff fails to increase the amount of deposit within 30 days, the defendant may serve a notice of election to treat such failure as an abandonment. If the plaintiff does not cure within 10 days, the court shall upon motion of the defendant dismiss the proceeding and order the payment of costs, fees, and damages on abandonment.

Section 1255.090 (repayment of amount of excess withdrawal) was amended to provide that interest does not accrue on excess withdrawals except to the extent that the excess was obtained on motion of the defendant; however, excess withdrawals required to be redistributed between parties defendant should draw interest. Section 1255.090 was also amended to provide for a stay of execution up to one year on the excess at the discretion of the court; however,

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the one-year stay should not apply between parties defendant. The Comment should make clear that interest on the excess does accrue during the stay.

Consideration of lengthening the time limits of Sections 1255.320 and 1255.330 (order of possession after judgment) was deferred pending the staff's preparation of a memorandum that will present various aspects of the time of passage of title in eminent domain, e.g., tax liability, risk of loss, and the status of a former owner who remains in possession.

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STUDY 36.41 - CONDEMNATION (PROTECTIVE CONDEMNATION)

The Commission considered Memorandum 72-47 containing comments of the State Bar Committee on Governmental Liability and Condemnation concerning the comprehensive eminent domain statute. The Commission retained without change the previously approved draft of Section 1240.050. Chairman Miller asked to be recorded as being in favor of denying conclusive effect to the resolution of necessity where property is acquired pursuant to Section 1240.050 (protective condemnation).

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STUDY 36.42 - CONDEMNATION (FUTURE USE)

The Commission considered Memorandum 72-47 containing comments of the State Bar Committee on Governmental Liability and Condemnation concerning the comprehensive eminent domain statute. The Commission retained without change the previously approved draft of Section 1240.220 (future use). The problem in partial takes of discounting benefits to be conferred by future construction of public projects was deferred until the Commission studies compensation in eminent domain.

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STUDY 36.65 - CONDEMNATION (DISPOSITION OF EXISTING STATUTES  
RELATING TO PUBLIC UTILITIES)

The Commission considered Memorandum 72-52, the First Supplement thereto, and the attached research study related to disposition of existing eminent domain statutes involving public utilities. After lengthy discussion concerning the advisability of placing jurisdiction over eminent domain problems involving relocation of public utilities with the Public Utilities Commission (PUC), the sense of the Commission was generally not to extend PUC jurisdiction beyond its present scope. There was also the general feeling expressed that problems involving railroad crossings and relocation of railroad lines are distinct from problems involving other utility facilities and that such railroad matters might appropriately be within the jurisdiction of the PUC. The Commission requested further research on this matter from the staff before it attempts to recodify laws relating to jurisdiction of the PUC over utility relocation.

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STUDY 36.100 - CONDEMNATION (RIGHTS OF FORMER OWNER WHEN CONDEMNED  
PROPERTY BECOMES SURPLUS)

The Commission considered Memorandum 72-47 containing comments of the State Bar Committee on Governmental Liability and Condemnation concerning the comprehensive eminent domain statute. The Commission reaffirmed its previous decision not to incorporate a right of the former owner to re-purchase surplus property and determined that this decision should be noted in the recommendation along with a reference to the similar decision of the Law Reform Commission of British Columbia.



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STUDY 36.400 - CONDEMNATION (COMPREHENSIVE STATUTE)

The Commission considered Memorandum 72-47 containing comments of the State Bar Committee on Governmental Liability and Condemnation concerning the comprehensive eminent domain statute. The Commission directed the staff to ascertain whether the Legislative Counsel would oppose removing the Eminent Domain Law from Title 7 (commencing with Section 1237) of Part 3 of the Code of Civil Procedure and relocating it at the end of the code as Part 5 (commencing with Section 3000).

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STUDY 39.30 - ATTACHMENT, GARNISHMENT, EXECUTION  
(WAGE GARNISHMENT AND RELATED MATTERS)

The Commission considered Memorandum 72-55 and the attached revised statute and the First Supplement to Memorandum 72-55.

The Commission considered the letter from Ben P. Robertson, Deputy Administrator, Wage and Compensation Programs, dated August 2, 1972, concerning the latest amended version of Senate Bill 88.

General Decisions

After considerable discussion, the Commission made the following decisions:

(1) The withholding table system with the formula providing for the results shown in the table attached to Memorandum 72-55 was approved.

(2) An earnings withholding order for support is to be given priority over any other withholding order and, in conformity with federal requirements, amounts withheld pursuant to a withholding order for support use up the amount that can be withheld.

(3) The provision for withholding on the basis of earnings from more than one source was deleted.

(4) The proposal to write into the statute the federal restriction on garnishment was rejected.

Revisions of Revised Statute

The revised statute was approved for submission to the Legislature after the following actions were taken on the revised statute attached to Memorandum 72-55.

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Civil Code Section 4701. The staff revision of this section as set out in the revised statute was approved.

Code of Civil Procedure Section 682. The staff revision of this section as set out in the revised statute was approved.

Code of Civil Procedure Section 690.5-1/2. Except for the substance of subdivision (f), this section is to be deleted from the statute.

Code of Civil Procedure Section 690.6. This section is to be amended so that what remains will read as follows:

690.6. All of the earnings of the debtor received for his personal services shall be exempt from levy of attachment without filing a claim for exemption as provided in Section 690.50.

The staff proposal to add the substance of the federal restrictions on garnishment was disapproved.

Code of Civil Procedure Section 690.7. This section of existing law is to be retained; in other words, it is not to be repealed in the proposed statute.

Code of Civil Procedure Sections 690.7, 690.7-1/4, and 690.7-1/2 (new). These new sections, which had been proposed for enactment, were deleted from the proposed statute.

Code of Civil Procedure Section 690.18-1/2. Subdivision (b) was deleted; subdivision (c) is to be redesignated as subdivision (b).

Code of Civil Procedure Section 690.19. This section was deleted.

Code of Civil Procedure Section 690.50. Technical revisions are to be made to conform to the deletion of certain sections which were contained in the staff draft.

Code of Civil Procedure Section 723.024. The staff revision of this section was disapproved; the printed section is to be retained as is.

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Code of Civil Procedure Section 723.028. Staff revision approved.

Code of Civil Procedure Section 723.030. Staff revision approved except that the sentence in paragraph (1) of subdivision (b) referring to Section 723.051 is to be retained.

Code of Civil Procedure Sections 723.050 and 723.051. The printed version of these sections is to be retained; the staff substitutes were disapproved. Technical revisions in the printed version (such as deletion of the reference to Section 723.106) are to be made as necessary.

Article 4 (commencing with Section 723.070). These provisions are to be retained as printed; the staff suggested revisions were disapproved except that the staff revision of Section 723.077 was approved.

Code of Civil Procedure Section 723.103. Staff revision disapproved.

Code of Civil Procedure Section 723.105. Staff revision approved.

Code of Civil Procedure Section 723.106. This section was deleted.

Necessary conforming changes are to be made in statute.

Code of Civil Procedure Sections 723.107 and 723.108. Renumbering of these sections was approved.

Article 6 (commencing with Section 723.120). Staff revisions disapproved.

Code of Civil Procedure Section 723.150. Staff revision disapproved.

Section 17 (amending Section 15406 of the Financial Code). This section is to be deleted from the proposed statute; Section 15406 is to be retained and not repealed. Remaining sections are to be renumbered.

Section 24. Staff revision not approved.

Green pages (amendment of Section 2929 of Labor Code). Approved as printed.

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Green v. Franchise Tax Board. This case (27 Cal. App.3d 38) is to be cited where appropriate in the recommendation (when the case becomes final).

Administratively issued earnings withholding order for support of children. It was suggested that this matter might be considered if the recommended legislation is enacted.

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STUDY 39.70 - ATTACHMENT, GARNISHMENT, EXECUTION (PREJUDGMENT  
ATTACHMENT PROCEDURE)

Questionnaire

The Commission considered the "Creditors' Remedies Questionnaire" distributed prior to the meeting. The staff was directed to make whatever revisions are necessary to make the questions answerable by both creditors and debtors and their respective representatives. A question should be added to obtain reactions to the provisions enacted by SB 1048 (Cal. Stats. 1972, Ch. 550). Subject to further staff editorial revisions, the questionnaire should be distributed as soon as possible, together with the tentative recommendation relating to claim and delivery.

Draft Statute

The Commission considered Memorandum 72-57, the First Supplement to Memorandum 72-57, and portions of the Draft Statute attached to the First Supplement. The staff was directed to continue working on a comprehensive revision of an attachment statute which provides relief only in commercial cases. Starting at the November meeting (by which time the staff should have completed a draft of the entire recommendation--both the statute and the preliminary portion), the Commission plans to examine in detail selected portions of that draft. This examination should be completed at the January meeting, and the recommendation should be tentatively approved and distributed for comment at that time.

The staff was directed to treat the problem of jurisdictional attachment separately from commercial attachment and, if possible, to secure a separate study and consultant on this matter.

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The following action was taken with respect to certain sections of the draft statute:

Section 481.040. No change. The suggestion that affidavits by a person in a representative capacity be permitted to be made upon information and belief was rejected.

Section 482.010. The substance of this section was tentatively approved. Subdivision (a) was revised to add the following: ". . . arising out of the conduct by the defendant of a trade, business, or profession." Subdivision (b) should provide: "An attachment may be issued pursuant to subdivision (a) whether or not other forms of relief are demanded."

Section 483.010. The last sentence of the Comment was revised to read: ". . . ; after final judgment, the plaintiff may, if necessary, proceed by way of execution."

Section 483.060. The statute should make clear that, if the defendant fails to file a notice of opposition under this procedure, he will be barred from opposing the application at the hearing.

Section 483.100. The Comment should make clear that the court has inherent power to issue multiple writs where necessary to levy upon property in different counties.

Section 483.110. No change. This section should provide for collateral estoppel against the plaintiff but not the defendant.

Section 483.310. The Comment to this section should make clear that the clerk can issue duplicate writs where required. If necessary, this matter can be governed by a rule of court.

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Section 484.030. The first portion of the second sentence of subdivision (b) was revised to read: "It shall not be grounds to set aside an order that the plaintiff . . . ." It was determined that it was unnecessary to provide an ex parte procedure for releasing an attachment.

The Comment to this section should make clear that the court has power to permit a plaintiff to amend his application or supplement his showing in support of his attachment at or prior to the hearing.

Section 484.220. The suggestion was rejected that the plaintiff not be allowed attorney's fees where his ex parte application for an attachment is denied.

Section 485.110. The material in brackets in subdivision (b) was deleted. The Comment should make clear that a levy perfects only the lien that the preliminary protective order could initially create; hence, a levy does not affect the rights of bona fide purchasers or buyers in the ordinary course of business who are not bound by the preliminary protective order.

Section 486.010. The first portion of this section was revised substantially as follows:

486.010. The following property shall be subject to attachment:

- (a) Where the defendant is a corporation, all corporate property.
- (b) Where the defendant is a partnership, all partnership property.
- (c) Where the defendant is an individual engaged in a trade, business, or profession, all of the following:

\* \* \* \* \*

The Comment (and preliminary portion of the recommendation) should attempt to justify the different treatment of corporations and partnerships and the failure to comply with the apparent requirement of the Supreme Court that



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necessities be automatically exempt from levy. The Comment should make clear that, notwithstanding this section, "earnings" are exempt under both state and federal law.

Section 486.020. This section was revised as follows:

486.020. Notwithstanding Section 486.010, the following property is exempt from levy of attachment:

(a) Property exempt from execution.

(b) Property which is necessary for the support of an individual defendant and members of his household when a proper claim for the same is made by the defendant.

Section 487.410. The staff was directed to delete the material in brackets in subdivision (a), delete the brackets in subdivision (b), and delete subdivision (c). The staff was directed to reexamine the problem of handling dividends, voting rights, and stock splits for attached securities.

Section 489.240. The introductory clause should be revised to provide: "489.240. (a) In addition to any other provision of law, . . . ."

Section 490.010. The staff was directed to conform the substance of subdivision (c) to the standards of the existing case law regarding liability for unnecessarily attaching an excessive amount of property (i.e., abuse of process).

Subdivision (d) was limited to levy of a writ issued ex parte. Liability may be imposed even where the property is exempt only upon a showing of necessity; this threat of liability should encourage the issuance of writs only after a noticed hearing.

Section 490.050. The staff was directed to reexamine the procedure provided in this section.

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STUDY 39.90 - ATTACHMENT, GARNISHMENT, EXECUTION  
(CLAIM AND DELIVERY)

The Commission considered Memorandum 72-56 and the Tentative Recommendation and Background Study (dated 7/31/72) attached thereto. It was determined that the tentative recommendation should be revised as indicated below and then distributed with the "Creditors' Remedies Questionnaire" as soon as possible (see Minutes, Study 39.70). The letter of transmittal should require that comments be received in time so that they may be considered at the November meeting. The Commission will attempt to print and submit a final recommendation on this topic to the 1973 Legislature. The staff was directed to ask Professor Warren if he would review, edit, and submit his background study in a form suitable for publication together with the Commission's recommendation relating to this topic.

The following action was taken with respect to the provisions of the tentative recommendation:

Title. The title to this recommendation should be: "Recommendation Relating to the Claim and Delivery Statute."

Preliminary portion. The staff was directed to make clear either here or in the Comments to the statute that this recommendation does not attempt to state either (1) the circumstances in which a security interest in personal property may be created or (2) the circumstances, if any, in which self-help repossession may be properly utilized.

Section 511.010. The staff was directed to add the substance of the following definition to this chapter.

\_\_\_\_\_. "Levying officer" means the sheriff, constable, or marshal who is directed to execute a writ of possession issued under this title.

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Section 511.050. The bracketed material in this section was deleted. The reason for this change from the Commercial Code provision should be explained in the Comment.

Section 512.010. This section was deleted. As noted above, the recommendation should make clear that it does not attempt to state the circumstances, if any, in which self-help repossession may properly be used.

Sections 512.020-512.040. The staff was directed to consider relocating these sections at the end of this title.

Sections 513.010. The last sentence of the first paragraph of the Comment was revised to read: "After judgment, the plaintiff may, if necessary, enforce his judgment by writ of execution."

Section 513.020. The adjective "actual" was deleted from the second clause of subdivision (c).

Section 513.030. The staff was directed to change the basic procedure here to a noticed motion procedure with the usual requirement of ten days' notice subject to a shortened period upon a showing of good cause. There should be no provision for an initial review of the application by a judicial officer prior to the time set for hearing. The substance of the bracketed material in subdivision (c) was retained; however, the 24-hour time limit should be replaced by an authorization to the Judicial Council to specify by rule the applicable period.

This section must be integrated with the provisions for a temporary restraining order so that the defendant may obtain relief from the TRO without delay and, if necessary, on an ex parte showing of his own.

Section 513.040. This section was deleted.

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Section 513.050. An introductory clause should be added to this section comparable to that provided in subdivision (e) of present Section 510 (existing law). The findings based on subdivisions (a), (b), and (d) of Section 513.020 should be substituted for the findings set forth in subdivisions (a) and (b) of Section 513.050.

This section should authorize the court to issue an order directing the defendant to transfer possession of the property in question; such order is not to be in lieu of a writ but is intended to avoid the implication that a writ must be issued and executed even where a defendant will comply with a turnover order and thus avoid the costs of a formal levy.

The statute should also authorize issuance of an order (where not otherwise provided by contract) directing an appropriate disposition of the property where necessary to preserve its value (e.g., sale of perishables). This may include an order directing the immediate turnover to the plaintiff for sale to avoid the sheriff having to sell the property.

Section 514.010. The last clause of subdivision (d) was revised to provide substantially as follows: "otherwise, the court may grant a preliminary injunction to remain in effect until the property claimed is seized pursuant to the writ of possession." The Comment to this section should make clear that, although this title does not provide generally for injunctive relief, the remedy provided is not an exclusive one. The plaintiff may apply for injunctive relief under other provisions of the Code of Civil Procedure and the denial of a writ of possession should not prejudice such application where the denial was due to a close factual case on liability.

Section 514.020. All the material following the semicolon in subdivision (a)

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was **deleted**, and the staff was directed to ask Professor Warren to reexamine the need and desirability for that provision.

Section 516.030. The words "or clerk" in subdivision (d) were deleted.

APPROVED

\_\_\_\_\_ Date

\_\_\_\_\_ Chairman

\_\_\_\_\_ Executive Secretary