

March 4, 1975

Time

March 13 - 7:00 p.m. - 10:00 p.m.  
March 14 - 9:00 a.m. - 5:00 p.m.  
March 15 - 9:00 a.m. - 1:00 p.m.

Place

March 13 and 15

State Bar Building  
601 McAllister St.  
San Francisco 94102

March 14

State Office Building  
350 McAllister St., Rm. 1157  
San Francisco 94102

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

March 13-15, 1975

March 13

1. Minutes of February 6-7, 1975, Meeting (sent 2/25/75)
2. Administrative Matters  
    Memorandum 75-22
3. 1975 Legislative Program
4. Study 63.60 - Evidence (Admissibility of Duplicates)  
    Memorandum 75-18 (sent 2/25/75)  
    Draft of Recommendation (attached to Memorandum)
5. Study 39.70 - Prejudgment Attachment  
    Memorandum 75-19 (sent 2/25/75)  
    Draft of Recommendation (attached to Memorandum)  
    First Supplement to Memorandum 75-19 (to be sent)  
    Creditors' Remedies--Selected Legislation (Law Revision  
    Commission Pamphlet)(you have a copy)

March 14 - NOTE CHANGE IN MEETING PLACE

6. Study 39.140 - Garagekeeper's Lien  
    Memorandum 75-9 (to be sent)  
    Draft of Recommendation (attached to Memorandum)
7. Study 39.32 - Wage Garnishment Procedure  
    Memorandum 75-20 (enclosed)  
    Working Draft (attached to Memorandum)

March 4, 1975

8. Study 39.120 - Enforcement of Judgments

Memorandum 75-7 (sent 1/3/75)

Draft of Statute (attached to Memorandum)

Note. We will start with Chapter 4 on page 19 of  
the draft statute

Memorandum 74-25 (attached to Memorandum 75-7)

First Supplement to Memorandum 75-7 (sent 1/22/75)

March 15

9. Study 36.300 - Eminent Domain (AB 11)

Joint Meeting With State Bar Committee

Memorandum 75-21 (enclosed) 1st Supp. 75-21

Memorandum 75-1 (sent 2/21/75)

First Supplement to Memorandum 75-1 (sent 2/28/75)

Printed Recommendation Proposing the Eminent Domain Law  
Eminent Domain Bills

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

MARCH 13, 14, AND 15, 1975

San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on March 13, 14, and 15, 1975.

Present: Marc Sandstrom, Chairman  
John N. McLaurin, Vice Chairman  
John J. Balluff  
John D. Miller  
Thomas E. Stanton, Jr.  
Howard R. Williams

Absent: Robert S. Stevens, Member of Senate  
Alister McAlister, Member of Assembly  
George H. Murphy, ex officio

Members of Staff Present:

John H. DeMouilly	Nathaniel Sterling
Stan G. Ulrich	Jo Anne Friedenthal

Consultants Present:

Thomas M. Dankert (condemnation), March 15  
Jerrold A. Fadem (condemnation), March 15  
Professor Gideon Kanner (condemnation), March 15  
Professor Stefan A. Riesenfeld (creditors' remedies),  
March 13 and 14

Sitting in with the Commission in their deliberations on the Eminent Domain Law on March 15 were the following members of the State Bar Committee on Condemnation Law and Procedure:

Thomas G. Baggot, Jr., Los Angeles  
Peter W. Davis, Oakland  
Thomas M. Dankert, Ventura  
Maury Engel, Hayward  
John P. Horgan, San Francisco  
Richard L. Huxtable, Los Angeles  
James E. Jefferis, Oakland  
Roscoe D. Keagy, San Diego  
E. Dean Price, Member, Board of Governors, Modesto  
Patricia C. Remmes, Berkeley  
Gary R. Rinehart, Oakland  
Roger M. Sullivan, Los Angeles

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

March 13

Carl M. Olsen, State Sheriffs' Association, San Francisco

March 14

Roy Chiesa, California Municipal Court Clerks Association, Walnut Creek  
Richard Chappel, California Tow Truck Association, Beverly Hills  
Charles Iversen, Marshal's Association, Richmond  
John MacIntyre, Marshal's Association, Ventura  
Christopher N. May, Professor of Law, Loyola Law School, Los Angeles  
Carl M. Olsen, State Sheriffs' Association, San Francisco  
Alex Saldamando, California Rural Legal Assistance, Sacramento  
Terrence Terauchi, Western Center on Law and Poverty, Sacramento  
Richard E. Viertel, Official Police Garages, Los Angeles

March 15

S. Robert Ambrose, Deputy County Counsel, Los Angeles  
William R. Burke, California Interment Association, Sacramento  
Norval Fairman, Department of Transportation, San Francisco  
William C. George, County Counsel, San Diego  
Milton B. Kane, Department of Transportation, Sacramento  
Lee McNitt, California Interment Association, Sacramento  
John M. Morrison, Deputy Attorney General, Sacramento  
Marialee Neighbours, Assembly Judiciary Committee Consultant, Sacramento  
James Wernecke, Office of Attorney General, Sacramento

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## ADMINISTRATIVE MATTERS

### Minutes

The Minutes of the February 6 and 7, 1975, meeting of the Law Revision Commission were approved as submitted.

### Change in Meeting Schedule

The Commission rescheduled its April meeting to April 4th and 5th.

### Consultant on Prejudgment Interest in Civil Actions

The Commission considered Memorandum 75-22 and the attached letter from Professor Ronan E. Degnan, Professor of Law, Boalt Hall, University of California, Berkeley, indicating his interest in preparing a background study on the topic of prejudgment interest. The Commission authorized the Executive Secretary to write a letter to Professor Degnan indicating the Commission's continuing interest in this topic but stating that, due to large printing expenses and lack of funds, the Commission is unable to contract for a study at this time. Moreover, the Commission is unwilling at this time to make an agreement that a contract will be made in the future because of the uncertainty as to availability of funds and in view of the possibility of changes in the state regulations governing the standards for contracts for research consultants. The letter is to advise Professor Degnan that the subject of commissioning a study on this topic will again be raised in early 1976.

### Legislative Program

The Executive Secretary reported on the progress of the 1975 legislative program as follows:

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ENACTED

AB 74 (Ch. 7, Statutes 1975) - Modification of Contracts--Commercial Code  
Revision

ACR 17 (Res. Ch. 15, Statutes 1975) - Continues authority to study previously  
authorized topics, authorizes dropping one topic, and authorizes  
study of five new topics.

SENT TO FLOOR IN SECOND HOUSE

AB 192 - Escheat--Travelers Checks and Money Orders

PASSED FIRST HOUSE

AB 73 - Good Cause Exception to Physician-Patient Privilege

Set for hearing Senate Judiciary Committee on March 18

SENT TO FLOOR IN FIRST HOUSE

AB 90 - Wage Garnishment Exemptions

SB 294 - Out-of-Court Views by Judge or Jury

SET FOR HEARING IN FIRST HOUSE

Eminent Domain Bills

AB 11 - General Eminent Domain Statute	]	
AB 266 - State Agency Condemnation	]	Set for hearing on
AB 278 - General Conforming Changes	]	April 17, 1975
AB 124-131 - Special District Acts	]	

AB 919 - Prejudgment Attachment--Court Commissioners

Set for hearing on April 24, 1975

INTRODUCED BUT NOT YET SET FOR HEARING

AB 974 - Admissibility of Copies of Business Records in Evidence

NOT YET INTRODUCED

Payment of Judgments Against Local Public Entities

Partition of Real and Personal Property

Liquidated Damages

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ADDITIONAL BILLS BEING DRAFTED BY COMMISSION

Prejudgment Attachment (to be considered at March meeting)  
Admissibility of Duplicates in Evidence (to be considered at March meeting)  
Wage Garnishment Procedure (to be considered at March meeting)  
Garageman's Lien (to be considered at March meeting)  
Inverse Condemnation--Claims Presentation Requirement (Kanner is working  
on this)

DEAD BILLS

AB 75 - Oral Modification of Contracts--General Provisions

ADDITIONAL BILL OF INTEREST TO COMMISSION

ACR 39 (McAlister)(Introduced on February 27, 1975) - Authorizes study of Marketability of Title Act--"whether the law relating to covenants and servitudes relating to land, and the law relating to nominal, remote, and absolute covenants, conditions, and restrictions on land use, should be revised."

STUDY 36.300 - EMINENT DOMAIN LAW

The Commission held a joint meeting with the State Bar Committee, considering Memorandum 75-1 and the First and Second Supplements thereto and Memorandum 75-1 and the First Supplement thereto, relating to AB 11 (Eminent Domain Law). The Commission did not consider the comments of the City of Los Angeles (Exhibit II of the Second Supplement to Memorandum 75-1) and did not complete its consideration of the comments of the Department of Transportation (Exhibit I of Memorandum 75-1) and of Southern California Edison Company (Exhibit II of the First Supplement to Memorandum 75-21).

The Commission took the following actions:

§ 1240.120. Right to acquire property to make effective the principal use

The Commission discussed the State Bar Committee's proposal to delete this section but declined to make any change in its recommendation.

§ 1240.220. Acquisitions for future use

The Commission determined to amend this section to provide a 10-year future use period for acquisitions under the Federal Aid Highway Act of 1973.

§ 1240.340. Substitute condemnation where owner of necessary property lacks power to condemn property

The Commission discussed the State Bar Committee's proposal to delete this section but declined to make any change in its recommendation.

§ 1240.410. Condemnation of remnants

The Commission discussed the Department of Transportation's proposal to delete subdivision (c), which permits the property owner to defeat the excess taking upon a showing that the condemnor has a reasonable means of mitigation, but declined to make any change in its recommendation.

§ 1240.420. Burden of proof on excess taking

The Commission declined to adopt the recommendation of the Department of Transportation that the resolution of necessity be given a presumption affecting the burden of proof on the issue of excess condemnation.

§ 1240.510. Condemnation for compatible use

The Commission declined to adopt the recommendation of the Department of Transportation that the compatible use scheme be made inapplicable to the Department of Transportation in light of its statutory encroachment permit scheme in the Streets and Highways Code.

§ 1245.250. Effect of resolution of necessity

The Commission determined to remove the conclusive effect of a resolution of necessity where the resolution was the result of criminal conduct such as bribery. The staff is to draft narrowly a definition of the type of conduct sufficient to remove the conclusive effect of the resolution and should consider whether a conflict of interest as presently defined in the law of California should be sufficient to accomplish this.

§ 1250.150. Lis pendens

The Commission determined to revise this section to provide that the plaintiff "shall" file a lis pendens with a note in the Comment that a failure to file is not a jurisdictional defect.

§ 1255.030. Increase or decrease in amount of prejudgment deposit

The Commission discussed the Department of Transportation's proposal to limit the number of times, and the time within which, the property owner may challenge the sufficiency of a prejudgment deposit but declined to make any change in its recommendation.

The Commission also declined to adopt the recommendation of the Department of Transportation that the court be permitted to redetermine the amount of probable compensation below an amount previously withdrawn by the property owner.

§ 1255.040. Deposit on notice of homeowner

The Commission declined to adopt the recommendation of the Department of Transportation that this section be deleted.

§ 1255.050. Deposit on notice of owner of rental property

The Commission declined to adopt the recommendation of the Department of Transportation that this section be deleted.

§ 1255.230. Objections to withdrawal

The Commission discussed the Department of Transportation's proposal to preclude withdrawal of a deposit where a person having an interest in the deposit cannot be personally served with notice of the withdrawal but declined to make any change in its recommendation.

§ 1255.280. Repayment of amount of excess withdrawal

The Commission declined to adopt the recommendations of the Department of Transportation that interest be allowed on amounts previously withdrawn that are to be repaid to the plaintiff and that the property owner not be given a stay of execution for repayment of such amounts.

§ 1255.410. Order for possession prior to judgment

The Commission directed the staff to prepare a definition of the term "unoccupied" as it is used in subdivision (c) of this section.

§ 1255.420. Stay of order of possession for hardship

The Commission discussed the Department of Transportation's proposal to delete this section but declined to make any change in its recommendation.

§ 1263.120. Date of valuation

The Commission declined to adopt the recommendation of the State Bar Committee that the date of valuation be the date of trial.

§ 1263.205. Improvements pertaining to the realty

The Commission discussed the State Bar Committee's proposal to compensate for loss to any personal property located on the premises but declined to make any change in its recommendation.

§ 1263.240. Improvements made after service of summons

The Commission determined to delete the second sentence of subdivision (c), which precluded the court from permitting an improvement to be made after a prejudgment deposit was made. The staff should investigate whether the third sentence should be deleted in conformance with this change; perhaps the substance of the third sentence could be incorporated in the Comment. The staff should also consider adding authority in the court to determine the extent to which a court-ordered improvement will be compensated.

§§ 1263.310-1263.320. Fair market value

The Commission considered the State Bar Committee's recommendation that the word "just" be inserted before "compensation," that the word "highest" be inserted before "price," and that the word "normally" be inserted between "compensation" and "fair market value." The Commission deferred decision on these matters pending receipt of additional information and alternative drafts from the staff.

§ 1263.510. Compensation for loss of goodwill

The State Bar Committee informed the Commission that it no longer objects to the section as drafted.

§ 1263.620. Partially completed or installed improvements; performance of work to protect public from injury

The State Bar Committee informed the Commission that it no longer objects to the section as drafted.

§ 1268.140. Withdrawal of deposit

The State Bar Committee informed the Commission that it no longer objects to the section as drafted.

§ 1268.310. Date interest commences to accrue

The Commission discussed the State Bar Committee's proposal to delete the word "legal" from the phrase "legal interest" but declined to make any change in its recommendation.

§ 1268.320. Date interest ceases to accrue

The Commission discussed the State Bar Committee's proposal to allow interest to accrue on the award notwithstanding a deposit of the award pending an appeal by the property owner on the right to take but declined to make any change in its recommendation.

Civil Code § 1001

The Commission determined to preserve existing Civil Code Section 1001 insofar as it pertains to condemnation by private persons for the purposes of byroads and utilities (including sewers). The Commission directed the staff to prepare a draft of provisions enabling such condemnation with appropriate procedures and safeguards for the property owner.

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Health & Safety Code § 8501

The Commission determined to add a new Health and Safety Code Section 8501 granting private nonprofit cemeteries the right to condemn for expansion of an existing cemetery. The section should be the same as that set out in Exhibit I of the First Supplement to Memorandum 75-1 with language added to make clear that corporations sole are included in the authorization.

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STUDY 39.32 - WAGE GARNISHMENT PROCEDURE

The Commission considered Memorandum 75-20 and the attached working draft of a comprehensive wage garnishment statute. The following actions were taken:

Place where service to be made. The Commission discussed the provisions of subdivision (c) of Section 723.022 and subdivision (b) of Section 723.023 which make service complete on the date the paper served is "actually first received at either the branch or office where the employee works or the office from which he is paid." It should be made clear that the service (whether by personal deliver or mail) may be made by the levying officer only at a place within his own county. The statute also should provide that service is to be made upon any person upon whom a summons may be served and, in addition, may be made upon the managing agent or person in charge of the branch or office where the employee works or the office from which he is paid. The determination as to which persons could be served would be as of the time service is made.

Return by levying officer. The draft should be revised so that it is clear that the earnings withholding order must be served during the 60-day life of the writ, but the writ may be held until the return is made on the moneys obtained under the wage garnishment. However, the levying officer may make a return on the writ at the end of the 60 days if he so chooses and make a supplemental return on the earnings withholding order when the wage garnishment is completed. The early return might be made so that the judgment creditor could obtain another writ of execution after the 60-day period in order that he may levy on property other than earnings.

Time for payment by employer; time for payment by levying officer to creditor. The employer is to pay to the levying officer once each month. The levying officer is to pay over to the judgment creditor within 15 days after receipt of a payment from the employer. The election formerly provided to the employer whether to pay after each pay period or monthly was eliminated.

Exemptions. The exemptions as set out in the draft were approved. The Commission approved the complete elimination of the "common necessities" exception to the hardship exemption as proposed in the draft.

The 10-day delay in obtaining second earnings withholding order. The Commission determined that there should be only a 10-day delay in obtaining a second earnings withholding order. The concept of giving the judgment debtor a "breathing spell" was not adopted.

Priority for earnings withholding orders for judgment for delinquent support. The draft should be revised to provide a clear priority for a wage garnishment to enforce a judgment for a delinquent amount payable for support.

Forms. The Commission suggested that the Executive Secretary see that the levying officers are involved with the Judicial Council in the development of the forms under the proposed legislation relating to wage garnishment procedure.

The Commission then proceeded to go through the working draft section by section. The following actions were taken:

Section 723.022. The introductory portion of subdivision (a) of Section 723.022 was revised to read in substance:

(a) Except as otherwise provided by statute, an employer shall withhold the amounts required by an earnings withholding order from all earnings of the employee payable for any pay period ending during the withholding period. The withholding period is the period which commences on the tenth day after service of the order upon the employer and ends on the date of termination of the order. [No change in remainder of section.]

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The Commission considered a suggestion that a claim of exemption for hardship should delay the earnings withholding order from going into effect; in other words, it was suggested that no levy take place during the pendency of the claim for the hardship exemption. It was noted that this suggestion has been considered and fully discussed on a number of occasions in the past. It was noted also that the Commission had decided to increase the amount automatically exempt and not to delay the order from going into effect rather than to delay the order going into effect pending a ruling on the claim for the hardship exemption.

Section 723.011. The phrase "and includes his representative" in subdivision (d) should be reviewed by the staff.

Section 723.101. Subdivision (b) was revised to insert "within 15 days" for "within a reasonable time."

Section 723.105. On page 43, subdivision (f) should be revised to include "claim of exemption, financial statement, and" before "notice of opposition."

Section 723.105 also should make clear that an appeal from an order allowing the hardship exemption does not stay the order. The order is to be given effect until it is reversed or modified.

On page 44, subdivision (i) should be revised to insert "promptly" in the last sentence before "shall pay."

Section 723.122. Subdivision (d) was revised to substitute "levying officer" for "clerk of court."

Section 723.126. On page 50, subdivision (b)(4) was revised to require further identifying information concerning the order made pursuant to Section 4701 of the Civil Code. The Executive Secretary should discuss the form for

the wage assignment order with a representative of the Judicial Council to determine that that form will have the identifying information required by subdivision (b)(4).

Section 723.127. The last sentence of Section 723.127 was deleted.

Section 723.155. Concern was expressed that the employer might be subject to liability implied because of the narrow limits of the scope of immunity provided by Section 723.155. The staff is to review Section 723.155 to determine whether the section should contain a listing of all sections for which there is no civil liability. The staff should review this matter. Perhaps the civil immunity from liability should be included in the two sections which require the employer to provide the employee with the notice.

Severability clause. The Commission directed that the proposed legislation include a severability clause.

STUDY 39.70 - PREJUDGMENT ATTACHMENT

The Commission considered Memorandum 75-19, the First Supplement thereto, and the attached staff draft of the "Recommendation Relating to Amendments to the Attachment Law," and made the following decisions:

§§ 481.160, 488.370, 488.400. Manner of levy on "nonnegotiable instruments." The staff was directed to consider whether a negotiable instrument whose terms do not preclude transfer and which is otherwise negotiable within Division 3 of the Commercial Code but which is not payable to order or to bearer should be levied upon in the manner provided for negotiable instruments (Section 488.400) or for choses in action (Section 488.370), or whether such nonnegotiable instruments should be treated in some other manner.

§ 482.060. Court commissioners. The Executive Secretary was directed to ask Assemblyman McAlister to request an opinion from the Legislative Counsel on the judicial duties which may be performed by court commissioners.

§ 483.010. Cases in which an attachment may be issued. The Commission reaffirmed its tentative decision of the February meeting to add "when the claim arose" after "engaged" in the first sentence of subdivision (a) of Section 483.010. The second sentence of the Comment should be changed to read substantially as follows: "The amended section makes clear that an individual is subject to attachment despite the fact that, after the claim arose, he retired or ceased to engage in a trade, business, or profession."

§ 486.050. Effect of temporary protective order. In subdivision (a), the word "reasonably" should be deleted. The Comment should state that descriptions of property subject to the temporary protective order which contain references to definitional sections satisfy the standard of Section 486.050

only if the form for the temporary protective order contains the text of the sections referred to.

§ 486.060. Effect of temporary protective order on deposit accounts.

This section should be reworded so that the defendant cannot first write checks under subdivision (b) for the amount in excess of the plaintiff's claim and then write checks for the purposes described in subdivisions (a), and (c) through (f).

§ 487.010. Property subject to attachment. The introductory clause should be amended to read: "The following property of the defendant is subject to attachment . . . ." This makes clear that, under subdivision (d) of Section 487.020, an exemption may be claimed for property which does not belong to the defendant.

§ 488.080. Third person's inventory. Subdivision (b) should be amended to make clear whether the third person must give the memorandum if he claims that he does not owe any debt to the defendant or that he does not have in his possession any of the defendant's property.

§ 488.310. Method of levy on real property. In subdivision (c), the staff should consider whether it would not be preferable to have the copy of the writ and notice of attachment mailed to the defendant at his address in the action rather than his address as shown on the records of the **tax assessor**. Subdivision (d) should not be amended to attempt to spell out the manner of service of notice on occupants of real property. Subdivision (d) as enacted continues language of former law so that former practice will presumably continue.

§ 488.350. Method of levy on motor vehicles and vessels. Subdivision (c) should be amended to provide that the legal owner be served with a copy of the writ and notice of attachment by certified mail, return receipt requested.

§ 488.360. Method of levy on farm products and inventory. In subdivision (a), the provision permitting the keeper to sell by credit card should be deleted since the levying officers report that they have had difficulty collecting the amounts charged from the issuers of credit cards. The Commission determined that this problem should be the subject of a separate study since it is a problem occurring in execution sales and under the Commercial Code.

§ 488.530. Sale of perishable property. Subdivision (a) should be amended to provide that sale should be after notice by certified mail, return receipt requested, to parties at their last known addresses, rather than after "reasonable notice." It should also be provided in this section that the levying officer may sell perishable property without court order if there is not time to obtain the order before the property would greatly deteriorate or depreciate in value.

§ 488.560. Release of attachment. Subdivision (b) should be amended to provide that the levying officer shall give notice by certified mail, return receipt requested, sent to the person's last known address, rather than "reasonable notice."

§§ 490.025, 484.050, 484.070, 484.340, 484.350, 490.020, 490.050. Liability of defendant for wrongful attachment of third person's property in defendant's possession. The Commission decided that the third person should receive notice of the plaintiff's proposed attachment of his property in the defendant's possession. The view was expressed that it might be a violation of due process to require the defendant to claim an exemption for the third person's property in his possession and determine ownership for the purpose

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of shifting liability without giving notice to the third person and affording him an opportunity to be heard. It was also suggested that the staff attempt to make any prelevy third-party claims procedure consistent with the postlevy third-party claims procedure provided by Section 689. The Commission deferred consideration of the liability shifting procedure as set out in the First Supplement to Memorandum 75-19 until these problems are dealt with.

§§ 690.235, 690.50. New postlevy homestead exemption procedure. The staff was directed to see if the new postlevy homestead exemption procedure provided by Chapter 1251 of the Statutes of 1974 created any problems under the Attachment Law.

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STUDY 39.120 - ENFORCEMENT OF JUDGMENTS

The Commission continued its consideration of the draft statute on enforcement of judgments (attached to Memorandum 75-7) and considered the oral comments and a memorandum (attached to the First Supplement to Memorandum 75-7) of Professor Stefan A. Riesenfeld, the Commission's consultant on creditors' remedies. The Commission made the following decisions:

§ 704.010. Order of levy; levy where property in private place. In subdivision (a), the language requiring the judgment creditor to designate the order of levy should be deleted. The Comment should state that the judgment creditor may designate the order of levy in his instructions to the levying officer. The Comment should also contain a reference to Code of Civil Procedure Section 262 (sheriff may not be liable for executing a writing signed by attorney of a party or the party, if he has no attorney). The staff was directed to further research the problem of levy on property in a private place and to redraft subdivision (b) to make clear that the creditor must have probable cause to believe that the property is located in a private place.

§ 704.020. Order applying attached property to judgment or for release. The fourth sentence of the Comment should be deleted because of the change made in Section 704.010.

§ 704.050. Manner of levy of writ of execution. In this section or somewhere else in Chapter 3 or Chapter 4, it should be made clear that a writ of execution issued under Chapter 4 is not the proper means to enforce a money judgment where a special method of enforcement is provided by Chapter 8.

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STUDY 39.140 - GARAGEKEEPER'S LIEN

The Commission postponed consideration of the revision of the garagekeeper's lien law until the subject of possessory liens in general is considered in the future. (Memorandum 75-9 and the attached staff draft of a recommendation relating to garagekeeper's liens was distributed for the meeting, but not considered.) The Commission's decision was based on the assurance that representatives of the California Tow Truck Association, the Western Center on Law and Poverty, and the Department of Motor Vehicles had reached agreement on a bill to be introduced to deal with defects in the procedure enacted by Cal. Stats. 1974, Ch. 1262.

STUDY 63.60 - DUPLICATE ORIGINALS

The Commission considered Memorandum 75-18 and the attached Tentative Recommendation Relating to Admissibility of "Duplicates" in Evidence. The recommendation was approved for printing subject to the following changes.

The Commission decided that the Comment to subdivision (b) should be amended, if possible, to provide a better example of a situation in which, in the circumstances, it would be unfair to admit the duplicate in lieu of the writing itself. The Commission determined that the example of a duplicate which contained only a portion of the writing itself (which is the example given in the Comment to new Federal Rule 1003) did not adequately explain subdivision (b). It was suggested that the situation in which there is a "partial duplicate" is dealt with in Evidence Code Section 356. The Commission was of the opinion that the Comment should make clear that, if a duplicate of only a portion of a writing is offered, and the entire writing is necessary either the entire original or a complete duplicate would be acceptable.

The staff was additionally directed to consider the question of whether the statute or the Comment could be amended to provide that the party intending to object to the use of the duplicate be required to give some prior notice of his objection. It was suggested the Comment could indicate that the failure of the party who is objecting to the use of the duplicate to give some kind of pretrial notice of his objection might be taken into consideration by the court in ruling on the question of "unfairness." This would avoid the inequity which might result from a surprise objection to a duplicate at the trial.

APPROVED

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairman