#63.60 10/28/75

Memorandum 75-79

Subject: Study 63.60 - Admissibility of Duplicates

At the last meeting, the Commission approved the Recommendation Relating to the Admissibility of Duplicates in Evidence for printing and requested that the staff prepare a memorandum for the November meeting containing the staff suggestions for revisions to permit admission of a duplicate of a certified copy of a public record. After the Commission has determined the nature of the revisions that should be made, the approved recommendation is to be revised accordingly.

The question raised by Commissioner Miller concerning a duplicate of a certified copy of a public record has caused the staff to review the approved recommendation. There are two alternative methods of dealing with this problem:

(1) Amend Section 1530 of the Evidence Code to provide that a duplicate of an attested or certified copy is as admissible as the attested or certified copy itself unless (1) a genuine question is raised as to the authenticity of the attested or certified copy or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the attested or certified copy itself. The draft of the amendment to Section 1530 to make this addition is attached as Exhibit I. The staff does not recommend this alternative for the reason indicated below.

(2) Revise the approved recommendation to substitute language contained in the Federal Rule for the language contained in the approved recommendation.

The approved recommendation provides in part:

> A duplicate of a writing "is not made inadmissible by the best evidence rule" unless . . . .

The Federal Rule, on the other hand, provides:

> A duplicate [of a writing] "is admissible to the same extent as" [the writing itself] unless . . . .

Upon reviewing the matter, the staff has concluded that the federal language is better than the language used in the approved recommendation. The federal language avoids a possible objection based on a technical failure to satisfy some requirement such as producing an original attested or certified copy of an official record. We think that the standard "is admissible to the same extent as" makes the duplicate the equivalent to the writing itself. The proponent can use the duplicate if he can satisfy both (1) the requirements for admission of the duplicate instead of the writing itself and (2) the requirements for admission of the writing itself. Thus, if the duplicate meets the requirements for admission of the duplicate, it is admissible if the writing itself qualifies for admission under a hearsay exception or if the writing itself is admissible not as an exception to the hearsay rule but as evidence of an ultimate fact in the case (e.g., a will or a contract). Using the federal language would, for example, make admissible a duplicate of a marriage, baptismal, or similar certificate (see Section 1316) where there is no dispute as to the authenticity of the certificate itself.

The approach we suggest--to adopt the federal language--is consistent with that used in Section 1550 (set out on page 4 of the attached recommendation).

If the Commission selects the first alternative, we could add the section attached as Exhibit I to the proposed legislation set out in the recommendation and could note the recommended amendment to Section 1530 in a footnote in the preliminary portion of the recommendation. If the Commission selects the staff recommended second alternative, the attached revised staff draft of the recommendation is submitted for Commission approval for printing.

We propose to locate the new statute as a new Article 5 in Chapter 2 of Division 11. This division would then be organized as follows:

DIVISION 11. WRITINGS

Chapter 1. Authentication and Proof of Writings

Article 1. Requirement of Authentication

Article 2. Means of Authenticating and Proving Writings

Article 3. Presumptions Affecting Acknowledged Writings and Official Writings

Chapter 2. Secondary Evidence of Writings

Article 1. Best Evidence Rule

Article 2. Official Writings and Recorded Writings

Article 3. Photographic Copies of Writings

Article 4. Production of Business Records

Article 5. Duplicates [new]

Chapter 3. Official Writings Affecting Property

Attached as Exhibit II is a letter from The Honorable Mr. Justice Zelling, Chairman of the Law Reform Committee of South Australia. He makes two suggestions concerning the recommendation:

(1) He suggests that the word "equivalent" which appears before "technique" in the provision defining a "duplicate" be deleted. The reason is that "it seemed to us that provided any technique accurately reproduced the writing itself the fact it was not 'equivalent' was immaterial." Although this is a good point, the staff does not recommend the change because we do not want to unnecessarily depart from the language of the federal rule.

(2) He suggests that where one side sends a document to the other side saying it is a true duplicate then the document is admissible against the party who sent it. The staff does not see the necessity for adding such a provision. We believe that the duplicate would be admissible as an admission the party sending it even if it did not otherwise qualify under the rule relating to the admission of duplicates.

Respectfully submitted,

John H. DeMoully
Executive Secretary

Memorandum 75-79

EXHIBIT I

Evidence Code § 1530 (amended). Copy of writing in official custody

SEC. 2. Section 1530 of the Evidence Code is amended to read:

1530. (a) A purported copy of a writing in the custody of a public entity, or of an entry in such a writing, is prima facie evidence of the existence and content of such writing or entry if:

(1) The copy purports to be published by the authority of the nation or state, or public entity therein in which the writing is kept;

(2) The office in which the writing is kept is within the United States or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, and the copy is attested or certified as a correct copy of the writing or entry by a public employee, or a deputy of a public employee, having the legal custody of the writing; or

(3) The office in which the writing is kept is not within the United States or any other place described in paragraph (2) and the copy is attested as a correct copy of the writing or entry by a person having authority to make attestation. The attestation must be accompanied by a final statement certifying the genuineness of the signature and the official position of (i) the person who attested the copy as a correct copy or (ii) any foreign official who has certified either the genuineness of the signature and official position of the person attesting the copy or the genuineness of the signature and official position of another foreign official who has executed a similar certificate in a chain of such certificates beginning with a certificate of the genuineness of the signature and official position of the person attesting the copy. Except as provided in the next sentence, the final statement may be made only by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. Prior to January 1, 1971, the final statement may also be made by a secretary of an embassy or legation, consul general, consul, vice consul, consular agent, or other officer in the foreign service of the United States stationed in the nation in which the writing is kept, authenticated by the seal of his office. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without the final statement or (ii) permit the writing or entry in foreign custody to be evidenced by an attested summary with or without a final statement.

(b) The presumptions established by this section are presumptions affecting the burden of producing evidence.

(c) For the purposes of this section, a duplicate (as defined in Section 1500.5) of an attested or certified copy is as admissible as the attested or certified copy itself unless (1) a genuine question is raised as to the authenticity of the attested or certified copy or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the attested or certified copy itself.

Comment. Subdivision (c) has been added to Section 1530 to provide a hearsay exception and an exception to the best evidence rule for cases where a duplicate of a certified or attested copy is offered in evidence and there is no dispute concerning the authenticity of the attested or certified copy itself. For a discussion of the requirements of subdivision (c), see the discussion of the general comparable provision in the Comment to Section 1500.5.

Memo 7(1975) EXHIBIT II

LAW REFORM COMMITTEE OF SOUTH AUSTRALIA

FROM THE CHAMBERS OF THE CHAIRMAN:
THE HON. MR. JUSTICE ZELLING, C.B.E.,
JUDGES' CHAMBERS,
SUPREME COURT,
ADELAIDE . . S.A. 5000
PHONE: 87 0451 EXT. 724

8th October, 1975.

The Secretary,
California Law Revision Commission,
School of Law,
Stanford University,
STANFORD.
CALIFORNIA. 94305. U.S.A.

Dear Sir,

Thank you for sending me the draft reports relating to admissibility of duplicates in evidence and revision of your attachment law. Unfortunately I cannot comment on them by the date requested in each case as they have only reached me today.

With regard to the report on admissibility of duplicates in evidence we are working in this field at the moment and our ultimate recommendation will be very much along the lines of your new 1500.5 but there are two suggestions which may or may not be of any use to you which come out of our experience.

Our first draft, equivalent to your subclause (a) leaving aside immaterial variations, was somewhat similar to yours. We ultimately struck out the word 'equivalent' before 'technique' because it seemed to us that provided any technique accurately reproduced the writing itself the fact it was not "equivalent" was immaterial. The reason which caused us to do this was that the old press copy technique of producing duplicate letters and opinions by press copies has been obsolete in South Australia for at least fifty years and possibly even longer in California, although there was a time when every law office had its press in order to obtain copies but press copies still turn up in suits to quiet title or in relation to estates which present questions on the ultimate winding up after the falling in of a lengthy life estate and in other similar cases and it seemed to us that provided the writing was accurately reproduced the word "equivalent" did not add anything to the general definition and accordingly we struck it out.

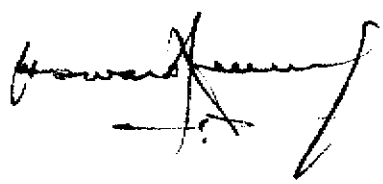
The other matter is that we have recommended that where one side sends a document to the other side saying that it is a true duplicate then the document is admissible against the party who sent it.

This comes up most frequently in the case of estate agents' contracts. Very frequently one party, usually the purchaser, does not get a copy of the contract at the time. A week or a fortnight later he wakes up to his mistake, writes to the estate agent and says 'please let me have a copy of the contract'. The estate agent takes out his pro forma for land sales contracts and types in all the missing parts including all the signatures so that technically it is not a duplicate. Nevertheless the estate agent as agent for the vendor sends to the purchaser a document with a letter saying: this is a correct duplicate of the original in my office. We see no reason why if one party or his agent warrants a document to be a correct duplicate even though it would not fall within your subsection (a) it should not be used against the man who has warranted it to be a correct duplicate.

I hope these comments may be of some use and will have arrived in time for their consideration by you.

I have read your revision of the attachment law paper with great interest. We of course have no due process requirements as you have and although we have been working in the sphere of attachment and execution the historical background as between your State and ours has varied over a long period of time and I doubt whether I can make any useful comments on this paper.

Yours sincerely,



(Chairman).

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

REVISED STAFF DRAFT

RECOMMENDATION

proposing

ADMISSIBILITY OF DUPLICATES IN EVIDENCE

November 1975

CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305

STATE OF CALIFORNIA
EDMUND G. BROWN JR., Governor

CALIFORNIA LAW REVISION COMMISSION
STANFORD LAW SCHOOL
STANFORD, CALIFORNIA 94305
(415) 497-1731

November 10, 1975

To: THE HONORABLE EDMUND G. BROWN JR.
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The Evidence Code was enacted in 1965 upon recommendation of the Law Revision Commission. Resolution Chapter 130 of the Statutes of 1965 directs the Commission to continue to study the law relating to evidence. Pursuant to this directive, the Commission has engaged in a continuing study of the Evidence Code to determine whether any substantive, technical, or clarifying changes are needed.

This recommendation is submitted as a result of this continuing review. It deals with the admissibility of duplicates in evidence.

Respectfully submitted,
MARC SANDSTROM
Chairman

#63 October 22, 1975

RECOMMENDATION

relating to

ADMISSIBILITY OF DUPLICATES IN EVIDENCE

The development of accurate methods of copying documents and writings and the commonplace use of methods of reproduction which produce copies identical to the original have resulted in a reexamination by the courts and evidence authorities of the need for the production of original writings as required by the "best evidence rule."[1] The newly adopted Federal Rules of Evidence,[2] while generally continuing the requirement of the production of the original,[3] contain a provision--Federal Rule of Evidence 1003--permitting admission into evidence of a "duplicate." This rule provides:

> A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstance it would be unfair to admit the duplicate in lieu of the original.

Federal Rule of Evidence 1001(4) defines a duplicate as:

> [A] counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

In a recent California case, Dugar v. Happy Tiger Records, Inc.,[4] the court was presented with the question whether photostatic or "xeroxed

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1. See C. McCormick, Evidence § 236 (2d ed. 1972); 4 J. Wigmore, Evidence § 1191 (Chadbourn rev. 1972); B. Witkin, California Evidence § 690 (2d ed. 1966). Indeed, one commentator has suggested that the best evidence rule be eliminated completely as having outlived its usefulness. Broun, Authentication and Contents of Writings, 1969 Law and the Social Order 611 (1969).

2. Pub. L. No. 93-595 (Jan. 2, 1975).

3. Pub. L. No. 93-595, Rule 1002 (Jan. 2, 1975).

4. 41 Cal. App.3d 811, 116 Cal. Rptr. 412 (1974).

copies of original invoices prepared specifically for the litigation could be used as evidence without either producing or accounting for the original. The court--while noting that commentators have urged the adoption of the broad federal "duplicate original" rule--stated that photostatic copies such as those offered in that case are secondary evidence which are made inadmissible by the best evidence rule, Evidence Code Section 1500, unless they fall within one of the statutory exceptions.[5]

Under Evidence Code Section 1500[6] the content of a writing normally must be proved by the original writing itself and not by a copy of the writing or testimony as to its content. The only circumstances under which secondary evidence may be used are specifically set out in the code.[7] Additionally, the prior case law, which required that a copy of the original writing be shown to be unavailable before testimonial evidence of its contents would be admitted, was codified in the Evidence Code.[8]

In California, carbon copies produced contemporaneously with the original writing have generally been accepted as duplicate originals and

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5. Id. at 816-817, 116 Cal. Rptr. at 415.

6. Section 1500 provides:

> Except as otherwise provided by statute, no evidence other than the writing itself is admissible to prove the content of a writing. This section shall be known and may be cited as the best evidence rule.

7. Evid. Code §§ 1501 (lost or destroyed writing), 1502 (unavailable writing), 1503 (writing under control of opponent), 1504 (collateral writing), 1505 (other secondary evidence if proponent does not have copy), 1506 (copy of public writing), 1507 (copy of recorded writing), 1508 (other secondary evidence of public or recorded writing), 1509 (voluminous writings), 1510 (copy of writing produced at hearing), 1530 (writing in official custody), 1532 (official record of a recorded writing), 1550 (photographic copies made as business records), 1551 (photographic copies where original destroyed or lost), 1562 (copy of business records).

8. See Evid. Code §§ 1505, 1508, and Comments thereto.

have been introduced without the necessity of showing that the original is unavailable.[9] The courts have relied on the fact that the carbon copy is in fact prepared at the same time as the original as, for example, a carbon of a sales receipt. Thus, the possibility of error arising from subsequent hand copying is eliminated. However, the rule regarding carbon copies was not, either in California or in other states, extended to cover modern photographic or electronic reproduction. In advocating the extension of the rule regarding carbons to copies produced by modern technological copying techniques, McCormick states:[10]

> The resulting state of authority, favorable to carbons but unfavorable to at least equally reliable photographic reproductions, appears inexplicable on any basis other than that the courts, having fixed upon simultaneous creation as the characteristic distinguishing of carbons from copies produced by earlier methods have on the whole been insufficiently flexible to modify that concept in the face of newer technological methods which fortuitously do not exhibit that characteristic. Insofar as the primary purpose of the original documents requirements is directed at securing accurate information from the contents of material writings, free of the infirmities of memory and the mistakes of handcopying, we may well conclude that each of these forms of mechanical copying is sufficient to fulfill the policy. Insistence upon the original, or accounting for it, places costs, burdens of planning and hazards of mistake upon the litigants. These may be worth imposing where the alternative is accepting memory or handcopies. They are probably not worth imposing when risks of inaccuracy are reduced to a minimum by the offer of a mechanically produced copy.

In 1951, California made a significant advance in the recognition of photographically reproduced copies of writing by enacting the Uniform Photographic Copies of Business and Public Records as Evidence Act.[11] As amended, this provision--which is presently Evidence Code Section 1550--provides:

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9. Edmunds v. Atchison, T. & S.F. Ry., 174 Cal. 246, 162 P. 1038 (1917); People v. Lockhart, 200 Cal. App.2d 862, 871, 19 Cal. Rptr. 719, 725 (1964). See Pratt v. Phelps, 23 Cal. App. 755, 757-758, 139 P. 906, 907 (1914). For a compilation of cases from other states, see Annot., 65 A.L.R.2d 342 (1959).

10. C. McCormick, Evidence § 236, at 569 (2d ed. 1972).

11. Cal. Stats. 1951, Ch. 346, § 1, as amended by Cal. Stats. 1953, Ch. 294, § 1; 9A Uniform Laws Ann. 584.

> A photostatic, microfilm, microcard, miniature photographic or other photographic copy or reproduction, or an enlargement thereof, of a writing is as admissible as the writing itself if such copy or reproduction was made and preserved as a part of the records of a business (as defined by Section 1270) in the regular course of such business. The introduction of such copy, reproduction, or enlargement does not preclude admission of the original writing if it is still in existence.

Similar legislation has been adopted in 38 states.[12] The present California provision, by requiring only that the copy be made and preserved in the ordinary course of business, is broader than the Uniform Act itself as it was first enacted in California. Former Code of Civil Procedure Section 1953i required that the original writing be a business record. Under Evidence Code Section 1550, the requirement that the photographic copy be made in the regular course of business is considered sufficient to assure the trustworthiness of the copy. If the original writing is either admissible under any exception to the hearsay rule or as evidence of an ultimate fact in the case (e.g., a will or a contract), a photographic copy made in the regular course of business is as admissible as the original.[13]

In the Dugar case,[14] the court specifically held that Evidence Code Section 1550 did not apply to copies made solely for purposes of litigation and indicated that photostatic copies remain only secondary evidence unless and until the Evidence Code is broadened along the lines of the new federal rule as urged by many prominent commentators.[15]

In People v. Marcus,[16] a California court indicated its predilection toward admissibility of reliable copies produced by sophisticated electronic techniques. The court admitted into evidence a rerecording of a taped conversation which made audible an original tape of insufficient quality to be understood. Although the court indicated its inclination to rule that the rerecording was the original made usable,

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12. 9A Uniform Laws Ann. 117 (1967 Supp.).

13. See Comment--Law Revision Commission to Evid. Code § 1550 (West 1966).

14. 41 Cal. App.3d 811, 116 Cal. Rptr. 412 (1974).

15. Id. at 816-817, 116 Cal. Rptr. at 415.

16. 31 Cal. App.3d 367, 107 Cal. Rptr. 264 (1973).

the original tape itself was also placed in evidence, and the court was able to hold the duplicate admissible under Evidence Code Section 1510. The court was thus not required to make a direct holding on the duplicate question.

There are a number of reasons supporting the adoption of a rule similar to new Federal Rule 1003 to permit admission of "duplicates" in California. First, there are many cases in which the ability to introduce a duplicate would save considerable time and expense. For example, if the original writing is in the hands of a third person who is reluctant to part with it, the party seeking its admission must, under current law, seek to obtain the original by process[17] and have it available for inspection. The third party would rarely be as reluctant merely to permit a duplicate to be made. Second, the best evidence rule often operates as a trap for the unwary attorney who, having obtained a duplicate which is obviously recognized as reliable by all of the parties, nevertheless finds that it is objected to and excluded at trial under the best evidence rule. Third, as previously noted, a copy which meets the standards of the federal "duplicate" rule is highly reliable. It is conceivable that the party in possession of the original document may attempt to perpetrate a deliberate fraud by use of a false photocopy.[18] However, Federal Rule 1003 contains safeguards in that the production of the original is required where there is a genuine question as to its authenticity or when the court has reason to believe that the use of a duplicate would be unfair. Furthermore, it should be obvious that a party bent on deliberate fraud is able, under current rules, to introduce a false copy under one of the exceptions to the rule, for example, merely by destroying or secreting the original and testifying that it cannot be found.[19]

The Commission recommends that the substance of Rule 1003 of the Federal Rules of Evidence be added to the Evidence Code to provide that a duplicate of a writing is admissible to the same extent as the writing itself unless a genuine question is raised as to the authenticity of the

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17. Evid. Code § 1502.

18. See C. McCormick, Evidence § 236, at 569 (2d ed. 1972).

19. See Cleary & Strong, The Best Evidence Rule: An Evaluation in Context, 51 Iowa L. Rev. 825, 847 (1965-1966).

writing itself or, in the circumstances, it would be unfair to admit the duplicate in lieu of the writing itself. "Duplicate" should be defined by adopting the substance of the definition provided in Rule 1001(4) of the Federal Rules of Evidence which requires that the duplicate be a copy produced by a technique which accurately reproduces the writing itself.

The Commission's recommendation would be effecuated by enactment of the following measure:

An act to add Article 5 (commencing with Section 1580) to Chapter 2 of Division 11 of the Evidence Code, relating to the admissibility of duplicates in evidence.

The people of the State of California do enact as follows:

SECTION. 1. Article 5 (commencing with Section 1580) is added to Chapter 2 of Division 11 of the Evidence Code, to read:

Article 5. Duplicates

§ 1580. Duplicate defined

1580. For the purposes of this article, a "duplicate" is a counterpart produced by the same impression as the writing itself, or from the same matrix, or by means of photography, including enlargements or miniatures, or by mechanical or electronic rerecording, or by chemical reproduction, or by other equivalent technique which accurately reproduces the writing itself.

Comment. Section 1580 defines a "duplicate" in the same terms as does Federal Rule of Evidence 1001(4). As defined by Section 1580, a "duplicate" must be produced by a technique which accurately reproduces the writing itself. A counterpart produced by an electrostatic method of reproducing the writing would qualify as a duplicate since it is produced by an "equivalent technique which accurately reproduces the

writing itself." On the other hand, a subsequently prepared handwritten or typed copy of a document cannot qualify as a "duplicate." If the original is in color (such as a multi-colored document, colored photograph, or color movie), the duplicate must be in the same colors as the original when the coloring of the original is relevant in view of the purpose for which the duplicate is to be received in evidence.

This article, by use of the term "duplicate," in no way alters existing practice which recognizes that more than one document can be admissible as the writing itself--such as the case in which the parties to a contract or lease execute sufficient copies in order that each may have one for his files or when carbon copies are involved. See C. McCormick, Evidence § 235 (2d ed. 1972); 4 J. Wigmore, Evidence §§ 1233, 1234 (Chadbourn rev. 1972); B. Witkin, California Evidence § 690 (2d ed. 1966). This article goes beyond existing practice to permit admission of "duplicates" where there is no danger that they might be inaccurate and subject to the limitations of Section 1581. Because a "duplicate is a product of a method which insures accuracy, many authorities have urged the adoption of this rule. See, e.g., C. McCormick, Evidence § 236 (2d ed. 1972); 4 J. Wigmore, Evidence § 1234 (Chadbourn rev. 1972); B. Witkin, California Evidence § 690 (2d ed. 1966). See discussion in Dugar v. Happy Tiger Records, Inc., 41 Cal. App.3d 811, 816-817, 116 Cal. Rptr. 412, ___ (1974).

§ 1581. Admissibility of duplicates

1581. A duplicate of a writing is admissible to the same extent as the writing itself unless (1) a genuine question is raised as to the authenticity of the writing itself or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the writing itself.

Comment. Section 1581 adopts the substance of Rule 1003 of the Federal Rules of Evidence. The wording has been slightly revised to conform to the terminology used in the California Evidence Code. "Duplicate" is defined in Section 1580. The fact that the duplicate was prepared for litigation does not prevent its admission under this article. Compare Dugar v. Happy Tiger Records, Inc., 41 Cal. App. 3d 811, 816-817, 116 Cal. Rptr. 412, ___ - ___ (1974).

A duplicate is not admissible in evidence under Section 1581 if either a genuine question is raised as to the authenticity of the writing itself or in the circumstances admission of the duplicate would be unfair. The courts should be liberal in finding that a "genuine question is raised as to the authenticity of the writing itself." See the statement to this effect in the Comment to Federal Rule of Evidence 1003 in House of Representatives Report No. 93-650, accompanying H.R. 5463, 93d Cong., 1st Sess., (1973). For example, if a party opposing admission of a duplicate makes a good faith claim that the writing from which the duplicate has been made is not authentic and it would be impractical or more difficult to determine the authenticity of the writing itself from the duplicate, the court should require that the writing itself be produced for examination (see Section 1510) before permitting the duplicate to be introduced in evidence. Additionally, if the unique size, shape, or certain physical characteristics of the original make it necessary for the orignial to be presented in court in order for a party properly to examine or cross-examine witnesses, it may be unfair in the circumstances to admit the duplicate in lieu of the original writing itself.

If a party opposes introduction of the duplicate on the ground of unfairness, the court should consider the conduct of the parties in determining whether it would be unfair "in the circumstances" to admit the duplicate including, for example, whether or not the parties have relied on the duplicate either during their dealings prior to litigation or during the preliminary stages of the litigation or whether or not the party opposing the introduction reasonably could have been expected to demand production of the original (see Code. Civ. Proc. § 2031) or to use other discovery procedures to obtain the original.

As in all cases involving introduction of a writing, when offering a duplicate, the proponent of the evidence must authenticate it. See Evid. Code §§ 1400-1421. In the vast majority of cases, such authenticating evidence will also be sufficient to meet any claim that the duplicate should not be admitted under this article. If the proponent of the duplicate is concerned that a challenge to admission cannot be overcome by the evidence on authentication, the proponent may, for example, be able to obtain a stipulation as to admissibility or to use the procedure set out in Code of Civil Procedure Section 2033 to obtain an admission of the genuineness of the original.

If the duplicate is a duplicate of a copy of the writing itself, the person offering the duplicate in evidence must make a sufficient preliminary showing of the authenticity of the duplicate, the copy of which it is a counterpart, and the original writing itself. See Section 1401 and Comment thereto. For example, Section 1530(a)(2),(3) permits the admission of an attested or certified copy of a copy of a writing in the custody of a public entity or of an entry in such a writing; Section 1581 permits the admission a duplicate of the attested or certified copy if the duplicate qualifies for admission under Section 1581. The proponent of the evidence can thus avoid the inconvenience and expense of obtaining multiple copies of an official document the authenticity of which is not in dispute.

Nothing in this article relieves the person offering the duplicate in evidence from the burden (see Section 1402) of explaining and justifying any post-occurrence entries, corrections, changes, alterations, or modifications in the writing itself or in the copy of the writing itself from which the duplicate was made.

If the duplicate contains only a portion of the writing itself or is in some respect incomplete, and the opposing party indicates that the entire writing is, or may be, needed for effective cross-examination or fully to explain the portion offered, the court may require that the proponent produce at his option either the entire original or an adequate duplicate of the entire writing. See Evid. Code § 356. Cf. United States v. Alexander, 326 F.2d 726 (4th Cir. 1964).