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June 28, 1977

<u>Time</u>	<u>Place</u>
July 7 - 7:00 p.m. - 10:00 p.m.	State Bar Building
July 8 - 9:00 a.m. - 5:00 p.m.	601 McAllister Street
July 9 - 9:00 a.m. - 4:00 p.m.	San Francisco 94102

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

July 7-9, 1977

1. Minutes of June 9-10, 1977, Meeting (sent 6/20/77)
2. Administrative Matters
 - Report on 1977 Legislative Program Generally
Memorandum 77-34 (to be handed out at meeting)
 - Nonprofit Corporation Study
Memorandum 77-46 (sent 6/22/77)
 - Amendment of Statute Governing Commission
Memorandum 77-45 (sent 6/22/77)
 - Background Study on Retroactive Application of Exemptions
Memorandum 77-47 (sent 6/24/77)
3. Study 63.90 - Evidence (Sales to Condemning Agencies)
 - Memorandum 77-33 (sent 6/20/77)
 - Draft of Questionnaire (attached to Memorandum)
4. Study 36.800 - Review of Resolution of Necessity by Writ of Mandate
 - Memorandum 77-41 (sent 6/22/77)
 - Tentative Recommendation (attached to Memorandum)
5. Study 79 - Parol Evidence Rule
 - Memorandum 77-42 (sent 6/28/77)
 - Tentative Recommendation (attached to Memorandum)
 - Memorandum 77-39 (sent 6/1/77; another copy sent 6/20/77)

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION

JULY 7 AND 8, 1977

San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on July 7 and 8, 1977.

Present: Howard R. Williams, Vice Chairman
Beatrice P. Lawson, July 8
Jean C. Love
Thomas E. Stanton, Jr.
Laurence N. Walker

Absent: John N. McLaurin, Chairman
George Deukmejian, Member of Senate
Alister McAlister, Member of Assembly
John D. Miller
Bion M. Gregory, Ex Officio

Members of Staff Present:

John H. DeMouilly Nathaniel Sterling
Stan G. Ulrich Robert J. Murphy III
Christopher J. Walt

Consultant Present:

Garrett H. Elmore, Child Custody, July 8

Present as observer on July 7:

Norval Fairman, CALTRANS, Legal Division, San Francisco

Minutes
July 7 and 8, 1977

ADMINISTRATIVE MATTERS

Minutes of June Meeting Approved

The Minutes of the June 9 and 10, 1977, meeting were approved as submitted by the staff.

Report of 1977 Legislative Program

The Commission received the following report on the 1977 legislative program from the Executive Secretary:

Adopted or Enacted

- Res. Ch. 17, Statutes of 1977 - Continues authority to study previously authorized topics; authorizes Commission to drop two topics.
- Ch. 49, Statutes of 1977 (AB 13) - Damages in Unlawful Detainer Actions
- Ch. 155, Statutes of 1977 (AB 1007) - Use of Keepers on Writs of Execution
- Ch. 198, Statutes of 1977 (AB 570) - Liquidated Damages
- Ch. 232, Statutes of 1977 (AB 85) - Enforcement of Sister State Money Judgments

On Third Reading (Awaiting Floor Vote) in Second House

- AB 393 - (Wage Garnishment) (This bill was amended by the Senate Judiciary Committee to reinstate the federal standard for determining the amount to be withheld and to restore the "common necessities" exception to the hardship exception. Bill approved by Committee as amended by 5-2 vote. The bill was opposed by the California Association of Collectors and the California Bankers Association. Assemblyman McAlister intends to request that the Assembly not accept the Senate amendments and that a conference committee be appointed.)
- SB 221 - (Effect on Attachment of Bankruptcy or General Assignment for Benefit of Creditors) (This bill has been amended to insert the legislation recommended by the Law Revision Commission with a couple of technical changes.)

No Action to Be Taken in 1977

- SB 623 - Nonprofit Corporations (conforming revisions)
- SB 624 - Nonprofit Corporations (comprehensive statute)

Nonprofit Corporation Study

The Commission considered Memorandum 77-46. After considerable discussion, the staff was directed to compose a letter to be sent to the Chairman of the State Bar Subcommittee on Nonprofit Corporations, under the signature of the Vice Chairman of the Commission, and to send the draft to each member of the Commission for review and suggestions for revision before it is sent by the Vice Chairman to the Chairman of the State Bar Subcommittee.

Amendment of Statute Governing Commission

The Commission considered Memorandum 77-45. The Commission decided that the following amendment to Government Code Section 10335 would be desirable for the reasons stated in Memorandum 77-45:

10335. (a) The commission shall file a report at each regular session of the Legislature which shall contain a calendar of topics selected by it for study, including a list of studies in progress and a list of topics intended for future consideration. After the filing of its first report Except as provided in subdivisions (b) and (c), the commission shall confine its studies to those topics set forth in the calendar contained in its last preceding report which are thereafter approved for its study by concurrent resolution of the Legislature.

(b) The commission shall also study any topic which the Legislature, by concurrent resolution, refers to it for such study.

(c) The report filed by the commission at each regular session of the Legislature shall contain a list of legislation enacted upon recommendation of the commission, and the commission may continue its study of the legislation so listed with a view to recommending such amendments, repeals, or additions as are necessary to correct defects in such legislation or to deal with new developments relevant to such legislation.

The staff was directed to check with the Commission's legislative members, judiciary committee chairmen, and the Department of Finance to determine whether there would be any political problems if such an amendment were proposed for enactment in 1978. If there are no objections, one of the Commission's legislative members will be asked to introduce the necessary legislation in 1978.

It was also suggested that the Executive Secretary discuss with the legislative members and the Department of Finance the possibility of increasing the \$20 per diem for Commissioners. It was noted that this amount has not been increased since 1953 when it was established.

Background Study on Retroactive Application of Exemptions

The Commission noted the staff report contained in Memorandum 77-47 concerning the progress on obtaining a background study on the retroactive application of exemptions and the recent decision attached thereto, Daylin Medical & Surgical Supply, Inc. v. Thomas, 69 Cal. App.3d Supp. 37 (April 19, 1977).

Background Study on Homestead Exemption

The Executive Secretary reported that the State Personnel Board still had under consideration the contract with Charles W. Adams for the background study on the homestead exemption. At the meeting, the Executive Secretary handed out a letter from Mr. Adams forwarding the following outline with a schedule of dates by which he intends to complete the respective sections of the study:

OUTLINE

I. Introduction

October

- A. Constitutional Mandate for Homestead Protection
- B. Purposes of Homestead Legislation
- C. Brief Statement of Present Statutory Scheme

I. Declared Homesteads

October

- A. Historical Background - Declaration Requirement
- B. Property Protected
- C. Amount of Exemption
 - 1. Head of Household
 - 2. Married Person's Separate Homestead
- D. Debts for Which Homestead Subject to Forced Sale
- E. Procedure to Reach Excess; Order of Payment of Liens
- F. Reinvestment of Proceeds after Sale

- G. Restriction on Conveyancing
- H. Descent of Homestead on Death; Effect of Marital Dissolution
- I. Bankruptcy Issues

III. Probate Homestead

December

- A. Designation of Probate Homestead
- B. Duration of Probate Homestead
- C. Persons Protected and Their Rights
- D. Creditors' Rights Against the Probate Homestead

IV. Exemption of Dwellings From Execution

February

- A. Purpose of Legislation
- B. Extent of Exemption
- C. When Property is Exempt
- D. No Protection from Judgment Liens
- E. Protection of Proceeds After Sale
- F. Procedure for Claiming Exemption
- G. Notice Requirements to Debtor
- H. Bankruptcy Problems

V. Criticisms of Present Scheme and Proposals for Change

April

- A. Should Declared Homestead be Replaced by an Automatic or Claimed Homestead Exemption? Recording Problems
- B. Need to Harmonize Homestead and Probate Homestead Laws - Eliminate Unnecessary Distinctions
- C. **Clarify that Homestead is Exempt before Claim and Eliminate Judgment Lien**
- D. Provide for Jointly Owned Property - See Schoenfeld v Norberg
- E. Restriction on Conveyancing
- F. Payment of Encumbrances on Homestead or Probate Homestead from Estate
- G. Transition Provisions - Eliminate New Declarations but Allow Old Declarations to Continue in Effect

Minutes
July 7 and 8, 1977

The Commission members at the meeting were requested to review the outline and forward any suggestions for revisions to the Commission's office at Stanford. Members not present at the meeting should be sent a copy of the letter and outline with a request that they review it and send in any suggested revisions.

Minutes
July 7 and 8, 1977

POWERS OF APPOINTMENT

The Commission considered Memorandum 77-44 which presented for Commission consideration two possible technical defects in the powers of appointment statute (Civil Code Sections 1380.1-1392.1), enacted upon Commission recommendation in 1969.

The Commission determined to suggest to its legislative members that a legislative measure be introduced to make the following changes in the powers of appointment statute.

Civil Code Section 1388.1

Section 1388.1 should be amended to read in substance as follows:

1388.1. (a) The donee of a power of appointment that is presently exercisable, whether general or special, can contract to make an appointment to the same extent that he the donee could make an effective appointment.

(b) The donee of a power of appointment cannot contract to make an appointment while the power of appointment is not presently exercisable. If a promise to make an appointment under such a power is not performed, the promisee cannot obtain either specific performance or damages, but he the promisee is not prevented from obtaining restitution of the value given by ~~him~~ the promisee for the promise.

(c) Unless the creating instrument expressly provides that the donee may not contract to make an appointment while the power of appointment is not presently exercisable, subdivision (b) does not apply to the case where the donor and the donee are the same person. In such case, the donee can contract to make an appointment to the same extent that the donee could make an effective appointment if the power of appointment were presently exercisable.

The Comment to amended Section 1388.1 would read:

Comment. Subdivision (c) is added to Section 1388.1 to avoid a construction of subdivision (b) that would apply that subdivision where the donor and the donee are the same person. The purpose of subdivision (b) is to prevent the donor's intent from being defeated by the donee contracting to appoint under a power of appointment that is not presently exercisable. By giving a testamentary or postponed power to the donee, the donor expresses his desire that the donee's discretion be retained until the donee's death or such other time as is stipulated. However, where the donor and the donee are the same person, his or her intent is better protected by an exception allowing the ability to deal with

Minutes

July 7 and 8, 1977

the power during the donor-donee's lifetime. Subdivision (c) reflects a policy consistent with Section 1390.4 (unexercised general power of appointment created by the donor in favor of himself, whether or not presently exercisable, subject to the claims of creditors of the donor or of his estate and to the expenses of the administration of his estate). A similar policy is reflected in subdivision (a) of Section 1392.1 (donor permitted to revoke the creation of a power of appointment when the power is created in connection with a trust which is revocable under Section 2280). A New York provision similar to subdivision (b) was held to apply to a case where the donor and donee are one and the same person in Matter of Brown, 33 N.Y.2d 211 (____), but the New York Law Revision Commission thereupon recommended a revision of the New York statute to restrict the prohibition against contracting away the power to cases where the donor and donee are different persons. See Memorandum of Law Revision Commission Relating to the Ability of a Donee of a Testamentary Power of Appointment to Contract to Appoint and to the Donee's Release of the Power, Under the Estates, Powers and Trusts Law (N.Y. Leg. Doc. (1977) No. 65 (C)).

Civil Code Section 1384.1

Section 1384.1 should be amended to read in substance as follows:

1384.1. (a) A power of appointment can be exercised only by a donee having the capacity to transfer the interest in property to which the power relates.

(b) Unless the creating instrument otherwise provides, a donee who is a minor may not exercise the power of appointment during minority .

Comment. The amendment of subdivision (b) of Section 1384.1 restores the original policy stated in that subdivision prior to its amendment in the 1972 legislative measure conforming various statutes to the statute making 18 the age of majority. The amendment to restore the original policy of the subdivision reflects what would be most likely the intent of the donor that the power can be exercised only after the donee has reached the age of majority. Note, however, that the power may be exercised by a minor if the creating instrument specifically so provides.

Minutes
July 7 and 8, 1977

STUDY 30.300 - GUARDIANSHIP-CONSERVATORSHIP

The Commission first considered the First Supplement to Memorandum 77-43 prepared by the Commission's consultant, Garrett Elmore. The Commission approved Mr. Elmore's recommendation that the guardianship and conservatorship provisions be consolidated in one division of the Probate Code. Provisions unique to guardianship would be compiled in one part, provisions unique to conservatorship would be compiled in another part, and provisions common to both would be compiled in a third part. The staff was requested to contact the Executive Committee of the State Bar Section on Probate and Trust Law to obtain a preliminary reaction to this approach.

The Commission approved the practice of drafting short sections where practicable. The Commission suggested that the staff send the chapter on transactions involving community and homestead property of incompetent persons, as redrafted with short sections, to the California Land Title Association for review and comment.

The Commission decided that the transition provision (presently drafted as an uncodified section) be codified. The Commission requested that the transition provision which continues existing guardianships of incompetent adults as conservatorships and deems such adults to have been judicially determined to lack legal capacity be supplemented by a hortatory provision requiring amendment of letters of guardianship at the time of the court's biennial review to reflect the limitation on the adult's power to contract. No penalty should be provided for noncompliance.

The Commission requested that attention be drawn in the preliminary part to the proposed change which would eliminate a minor's right to nominate his or her own guardian as now provided in Section 1406 of the Probate Code.

The Commission then considered Memorandum 77-43 and the attached staff draft of a tentative recommendation relating to guardianship and conservatorship law. The Commission made the following decisions concerning the sections in the staff draft.

Civil Code § 4600

The proposed provision concerning the weight to be given to a testamentary designation of a guardian of the person of a minor should

be taken out of the statutory order of preference and put into a separate subdivision with the existing language concerning the weight to be given to the child's wishes. The proposed language should be redrafted so that the court will consider and give due weight to the wishes of the child's parent or parents, whether expressed in a will or otherwise.

Probate Code

§ 1400. Definitions

The term "guardian" should be defined to make clear that it is a generic term, with "general guardian," "special guardian," and "temporary guardian" defined in numbered paragraphs under the term "guardian."

The Commission approved deletion of the reference to the ward's estate "within this state" from the definition of "general guardian" as set forth in existing Section 1401 of the Probate Code. However, the following language should be deleted from the Comment to proposed Section 1400:

A general guardian may deal with personal property of the ward even though it is located out of state. In re Estate of Boutz, 24 Cal. App.2d 644, 648, 76 P.2d 154, ____ (1938).

The language deleted from the Comment should be considered for inclusion in the Comment to one of the sections concerning the guardian's powers but should be revised to read substantially as follows:

Under certain circumstances, a guardian may deal with property of the ward which is located out of state. See In re Estate of Boutz, 24 Cal. App.2d 644, 648, 76 P.2d 154, ____ (1938) (personal property).

If the language is included in the Comment to a powers section, a cross-reference to the language should be put in the Comment to Section 1400.

§ 1436. Appointment of general guardian by parent by will or deed

The staff draft of Section 1436 should be revised as follows:

1436. Subject to confirmation pursuant to Section 1451 or 1452, either parent of a minor child living or likely to be born may appoint, by ~~will or~~ will, by deed, or by signed writing, a guardian of the person, general guardian of the estate, or both, for such child to take effect on the death of the parent appointing. Written consent of the other parent is required if such consent would be required for an adoption of the child and such parent is living and capable of consent.

The Comment to Section 1436 should be revised accordingly.

§ 1437. Appointment of special guardian of the estate by will or by deed

The staff draft of section 1437 should be revised as follows:

1437. Subject to confirmation pursuant to Section 1452, a person may by will or by deed appoint a special guardian of the estate for the property of a minor, living or likely to be born, which the minor may take from the person by the will.

The Comment to Section 1437 should be revised accordingly.

§ 1443 (amended)

In Section 1443, the words "such officer" should be substituted for the word "he" in the third line.

§ 1450. No guardian for married minor

The Commission had reservations about the provision that no guardian shall be appointed or confirmed for a minor who has been married but where the marriage has been dissolved or annulled. The Commission requested that the staff do further research on the effect of dissolution or annulment of marriage on the minor's emancipated status and on the ability of the minor to make contracts.

§ 1452. Appointment or confirmation of guardian of the estate

The staff draft of Section 1452 should be revised substantially as follows:

1452. (a) Upon petition as provided in this chapter, the court:

(a) ~~shall~~ shall confirm the appointment of a special guardian of the estate made pursuant to Section 1437 unless the court determines that the appointee is unsuitable.

(b) ~~May~~, Upon petition as provided in this chapter, the court may, when it appears necessary or convenient, appoint a general or special guardian of the estate, or may confirm the appointment of a general guardian of the estate made pursuant to Section 1436. In appointing or confirming the guardian, the court is to be guided by what appears to be for the best interest of the minor and, if minor, taking into account the proposed guardian's ability to manage property and to preserve the estate as well as the proposed guardian's concern for and interest in the welfare of the minor. If the minor is of sufficient age to form an intelligent preference, the court may consider that preference in determining the question. Of persons equally entitled in other respects to the guardianship of the estate of a minor, preference is to be given as follows:

~~(1) To the person appointed or confirmed as guardian of the person of the minor.~~

~~(2) To a parent of the minor. As between parents claiming the guardianship adversely to each other, neither is entitled to priority.~~

~~(3) To the person appointed pursuant to Section 1436.~~

~~(4) To a trustee of a fund to be applied to the minor's support.~~

~~(5) To a relative of the minor.~~

~~(6) To the nominee of a person specified in paragraph (1), (2), or (5).~~

The second sentence of the fourth paragraph of the Comment and the entire fifth paragraph of the Comment should be deleted.

§ 1455. Who may be appointed guardian

The Comment to Section 1455 should note that there are statutory provisions in other codes authorizing various persons to serve as guardian, such as the Director of Health (see Health & Saf. Code § 416), the public guardian (see Welf. & Inst. Code § 8006), and the Veterans' Home of California (see Mil. & Vet. Code § 1046).

§ 1502 (amended)

The staff should research and give further consideration to the extent to which a California guardian is now required, and should be required under the draft statute, to initiate action in another jurisdiction to protect assets of the ward located there. Consideration should be given to a provision which would protect the guardian against inaction when to take action would be more costly than the value of such assets would warrant.

§§ 1537, 1537.5, 1554, 1554.1 (amended)

The term "ward" (which is defined in Section 1400 to mean a minor) should be substituted for "minor ward" in the five places where it appears in these four sections and wherever else it may appear in the revised guardianship law.

§ 1561 (repealed)

The Commission approved the repeal of Section 1561 (giving adult ward control over wages) and the staff recommendation not to extend the provision to minors.

§ 1590 (amended)

The Commission had reservations about the provision in subdivision (a) of Section 1590 for automatic termination of a guardianship of the estate upon the minor's marriage. The staff should give further consideration to this provision in connection with the research on the question of the effect of emancipation (see Section 1450, above).

Subdivision (b) should be revised so that the language which refers to termination of guardianship by the court "whenever the guardianship is no longer necessary or convenient" will refer instead to the best interests of the minor, and possibly also to the interest in conserving the minor's estate in the case of a guardianship of the estate. No comparable revision to the "necessary or convenient" language of the appointment sections (§§ 1451, 1452) should be made.

§ 1591 (amended)

The term "relation" should be changed to "relationship" in the section and in the Comment.

Minutes

July 7 and 8, 1977

STUDY 36.800 - CONDEMNATION LAW AND PROCEDURE (REVIEW OF
RESOLUTION OF NECESSITY BY WRIT OF MANDATE)

The Commission considered Memorandum 77-41 and the attached copy of the tentative recommendation relating to attack on the resolution of necessity by writ of mandate. The Commission added the following language to the Comment to Section 1245.255:

It should be noted that Section 1245.255 may be subject to statutory exceptions. See, e.g., Health & Saf. Code §§ 33368 and 33500 (conclusive effect of adoption of redevelopment plan).

The Commission also added the substance of the following language to Section 1245.255:

Upon commencement of the eminent domain proceeding, the court in which the writ of mandate action is pending, upon motion of either party, shall dismiss without prejudice the writ of mandate action unless the court determines that to do so will not be in the interest of justice.

This language is subject to staff research concerning the procedure for review by a higher court of denial of mandate and subject to further Commission review. The Commission also requested that the staff expand the preliminary part of the recommendation to note the function of the writ of mandate to clear title prior to the time an eminent domain proceeding is filed.

Minutes
July 7 and 8, 1977

STUDY 39.200 - ENFORCEMENT OF JUDGMENTS (COMPREHENSIVE
STATUTE--EXEMPTIONS)

The Commission considered Memorandum 77-37 and the staff draft of Chapter 7 (Exemptions From Enforcement of Money Judgments) of the Enforcement of Judgments Law attached thereto. Sections 707.110 through 707.400 were approved subject to the following revisions:

§ 707.190. Exemption rights of nondebtor spouse

The Commission approved the policy of affording a nondebtor spouse of a judgment debtor the right to claim all applicable exemptions to protect his or her interests in the community property and any separate property just as if he or she were a judgment debtor. The staff draft of a provision to accomplish this purpose, set forth on page 3 of Memorandum 77-37, should be redrafted so that it is easier to understand.

§ 707.180. Conversion of lump sum benefits to periodic payments

The Commission disapproved proposed Section 707.180, permitting a judgment debtor to convert certain lump sum payments (life insurance benefits, private disability and health insurance benefits, personal injury and wrongful death awards, and retirement benefits) into a plan of periodic payments in order to take advantage of the tentatively approved exemption of such payments to the same extent that wages would be exempt.

§ 707.220. Claim of exemption

Subdivision (a) should be revised to provide that the time within which an exemption must be claimed runs from the date of mailing the notice of levy or from personal service of notice and not from the date of levy.

The provisions for the contents of the claim of exemption in subdivision (b) and for the notice of opposition in Section 707.240(b) should be consistently worded. Paragraph (5) of subdivision (b) should provide for a statement of the address of the judgment debtor's attorney where the attorney is to receive the notice of opposition.

§§ 707.240, 707.250. Notice of opposition; notice of motion for hearing

These sections should be reorganized so that, if the judgment creditor wants to contest the exemption claim, it is clear that the notice of opposition must be served on the levying officer and the notice of motion must be filed with the court within the same 10-day period after the mailing of the notice of claim of exemption. The contents of the notice of opposition and the notice of motion could then be stated in separate sections.

§ 707.270. Pleadings; conduct of hearing

The references to jury trials of exemption claims in subdivisions (c) and (f) should be deleted since it is highly doubtful that the constitution provides a right to a jury trial in such matters.

§ 707.295. Property exempt without making a claim; claim of exemption

The bracketed phrase at the end of this section should be added, the effect being that the judgment debtor may claim an exemption for property which is "exempt without making a claim" at any time prior to the sale or other disposition of the property.

§ 707.330. Motor vehicle; proceeds of sale

Consideration of this section was postponed until the final disposition of a bill to amend the existing motor vehicle exemption which is currently pending in the Legislature.

§ 707.340. Household furnishings, wearing apparel, personal effects

The bracketed language which would limit the property exempt under this section to that "reasonably necessary for one household" should be added.

§ 707.410. Life insurance and death benefits

The Commission approved the exemption for benefits paid periodically in the amount of the wage garnishment exemptions provided in subdivision (c). The meeting was adjourned before the discussion of this section was completed.

Minutes
July 7 and 8, 1977

STUDY 63.70 - EVIDENCE (EXCLUSION OF EVIDENCE OF SALES TO
CONDEMNING AGENCIES)

The Commission considered Memorandum 77-33 and the attached draft of a letter and questionnaire. The letter and questionnaire were approved for mailing out after question 3 of the questionnaire was revised to read in substance as follows:

3. Please elaborate on your answer to question 2.

If you answered question 2 "No," please state your reasons for your answer below. Also, assuming that sales to condemnors are to be made admissible, state any limitations to such admissibility you recommend and the supporting reasons for your recommendations in that regard.

If you answered question 2 "Yes," please state below the specific change you recommend and the reasons you recommend such change. If your recommended change includes limitations on the admissibility of sales to condemnors, state the supporting reasons for your recommendations in that regard.

You may use the back of this sheet and additional sheets for your answer if necessary.

Minutes
July 7 and 8, 1977

STUDY 79 - PAROL EVIDENCE RULE

The Commission considered Memorandum 77-42 and the attached staff draft of a tentative recommendation relating to the parol evidence rule along with a redrafted version of Code of Civil Procedure Section 1856 distributed at the meeting and attached as an exhibit hereto. The Commission approved the tentative recommendation for distribution for comment, using the redrafted version of Section 1856 with such conforming changes in the text of the draft as may be necessary. The order of paragraphs (1)-(3) of Section 1856(b) should be reversed to conform to the structure of UCC Section 2202, and the Comment might note recent consumer legislation requiring terms of agreements to be in writing. Before sending the tentative recommendation out for comment, the staff will incorporate such editorial suggestions as may be supplied by Commissioner Stanton unless the staff determines that Commissioner Stanton's suggestions are so substantial that the matter requires further Commission review.

APPROVED

Date

Chairman

Executive Secretary

Code of Civil Procedure § 1856 (amended)

1856. When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be between the parties and their representatives, or successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases: (a) Terms set forth in a writing which the court determines was intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement.

(b) The terms set forth in the writing described in subdivision (a) may be explained or supplemented by evidence of any of the following:

(1) Consistent additional terms, unless the court determines either that the writing is intended as a complete and exclusive statement of the terms of the agreement or that the additional terms are such that, if agreed upon, they would certainly have been included in the writing.

(2) Course of dealing or usage of trade (as provided in Section 1205 of the Commercial Code).

(3) Course of performance (as provided in Section 2208 of the Commercial Code).

→ (c) Where a mistake or imperfection of the writing is put in issue by the pleadings → , this section does not exclude evidence relevant to that issue.

→ (d) Where the validity of the agreement is the fact in dispute → , this section does not exclude evidence relevant to that issue .

(e) ~~But this~~ This section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined in Section 1860, or to explain an extrinsic ambiguity or otherwise interpret the terms of the agreement , or to establish illegality or fraud.

(f) The ~~As~~ used in this section, the term agreement includes deeds and wills, as well as contracts between parties.