

Memorandum 64-75

Subject: Study No. 34(L) - Uniform Rules of Evidence (Preprint Senate Bill No. 1 - Division 3)

We received no comments pertinent to Division 3 (General Provisions).

The following are staff suggestions for revision of this division:

Substitution of "court" for "judge." The Commission previously determined to substitute the word "court" for "judge" in the Evidence Code. We find that this substitution is routine and will create no problems in this division.

Section 300.

We suggest the comma after "Supreme Court" in line 25, page 18, be deleted and the word "or" inserted.

Section 353.

Consideration should be given to deleting this section. Although we received no comments on the section, the Chairman of the State Bar Committee, Judge Kongsgaard, and Mr. Witkin think that the section is unnecessary and that the phrase "no bona fide dispute" will create unnecessary appeals. They believe that the section will give too much power to a trial judge who may not exercise the power using good judgment.

Section 403.

A comma should be inserted after the word "fact" in line 45 on page 20.

Subdivision (c) should be revised to read:

(c) If the judge court admits the proffered evidence under this section, the court:

(1) He ~~May~~, and on request shall, instruct the jury to determine ~~the-existence-of~~ whether the preliminary fact exists and to disregard the proffered evidence unless the jury finds that the preliminary fact exists does exist.

(2) He ~~shall~~ instruct the jury to disregard the proffered evidence if he the court subsequently determines that a jury could not reasonably find that the preliminary fact exists.

Respectfully submitted,

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Executive Secretary