

Date of Meeting: September 5-6, 1958

Date of Memo: August 19, 1958

Memorandum No. 1

Subject: 1959 Report of Law Revision Commission.

Attached is a draft of the Commission's 1959 report. I have three comments:

- (1) The section on Personnel will probably have to be revised somewhat before publication.
- (2) The section describing new topics selected for study will have to be written after the topics are selected.
- (3) The research on statutes held unconstitutional or repealed by implication has not been completed and some changes may be necessary in this part of the report.

Respectfully submitted,

John R. McDonough, Jr.  
Executive Secretary

STATE OF CALIFORNIA

REPORT OF THE  
CALIFORNIA LAW  
REVISION COMMISSION

To the Governor and the Legislature of the  
State of California at the Legislative  
Session of 1959

January 1, 1959

LETTER OF TRANSMITTAL

To HIS EXCELLENCY  
Governor of California  
and to the Members of the Legislature

The California Law Revision Commission, created in 1953 to examine the common law and statutes of the State and to recommend such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law and to bring the law of this State into harmony with modern conditions (Government Code Sections 10300 to 10340), herewith submits this report of its transactions during the year 1958.

THOMAS E. STANTON, Jr., Chairman  
JOHN D. BABBAGE, Vice Chairman  
JAMES A. COBEY, Member of the Senate  
CLARK L. BRADLEY, Member of the Assembly  
ROY A. GUSTAFSON  
BERT W. LEVIT  
CHARLES H. MATTHEWS  
STANFORD C. SHAW  
SAMUEL D. THURMAN  
RALPH N. KLEPS, Legislative Counsel, ex officio

JOHN R. McDONOUGH, Jr.  
Executive Secretary

January 1, 1959

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REPORT OF THE CALIFORNIA LAW REVISION  
COMMISSION FOR THE YEAR 1958

1. FUNCTION AND PROCEDURE OF COMMISSION

The California Law Revision Commission was created by Chapter 1445 of the Statutes of 1953. The Commission consists of one Member of the Senate, one Member of the Assembly, seven members appointed by the Governor with the advice and consent of the Senate, and the Legislative Counsel who is an ex officio nonvoting member.

The principal duties of the Law Revision Commission are set forth in Section 10330 of the Government Code which provides that the Commission shall, within the limitations imposed by Section 10335 of the Government Code:

- (a) Examine the common law and statutes of the State and judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.
- (b) Receive and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.
- (c) Receive and consider suggestions from judges, justices, public officials, lawyers and the public generally as to defects and anachronisms in the law.
- (d) Recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this State into harmony with modern conditions.<sup>1</sup>

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<sup>1</sup> The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States. Cal. Govt. Code § 10331.

The Commission's program is fixed in accordance with Section 10335 of the Government Code which provides:

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 the studies in progress and a list of topics intended for future consideration. After the filing of its first report 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. The commission shall also study any topic which the Legislature, by concurrent resolution, refers to it for such study.

Each of the Commission's recommendations is based on a research study of the subject matter concerned. Most of these studies are undertaken by specialists in the fields of law involved who are retained as research consultants to the Commission. This procedure not only provides the Commission with invaluable expert assistance but is economical as well because the attorneys and law professors who serve as research consultants have already acquired the considerable background necessary to understand the specific problems under consideration.

When a study is undertaken the Commission meets with the research consultant to discuss the problem with him. The consultant subsequently submits a detailed research study which is given careful consideration by the Commission in determining what report and recommendation it will make to the Legislature. When the Commission has reached a conclusion on the matter, the research study and the Commission's

proposed recommendation are referred to the State Bar for comment. After the views of the State Bar have been received and acted upon by the Commission, a printed pamphlet is published which contains the official report and recommendation of the Commission, a draft of any legislation necessary to effectuate the recommendation, and the research study upon which the recommendation is based. This pamphlet is distributed to the Governor, Members of the Legislature, heads of state departments, and a substantial number of judges, district attorneys, lawyers, law professors and law libraries throughout the State. Thus, a large and representative number of interested persons is given an opportunity to study and comment upon the Commission's work before it is submitted to the Legislature. The annual reports and the recommendations and studies of the Commission are bound in a set of volumes which are both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the State.

## II. PERSONNEL OF COMMISSION

As of the date of this report there had been no change in the membership of the Commission in 1958. The membership of the Law Revision Commission is:

Thomas E. Stanton, Jr.,	San Francisco	Chairman	October 1, 1961
John D. Babbage,	Riverside	Vice Chairman	October 1, 1959
Hon. James A. Cobey,	Merced	Senate Member	*
Hon. Clark L. Bradley,	San Jose	Assembly Member	*
Hon. Roy A. Gustafson,	Ventura	Member	October 1, 1961
Bert W. Levit,	San Francisco	Member	October 1, 1961
Charles H. Matthews,	Los Angeles	Member	October 1, 1959
Stanford C. Shaw,	Ontario	Member	October 1, 1959
Ralph N. Kleps,	Sacramento	Ex Officio Member	**

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\* The legislative members of the Commission serve at the pleasure of the appointing power.

\*\* The Legislative Counsel is an ex officio nonvoting member of the Law Revision Commission.



### III. SUMMARY OF WORK OF COMMISSION

During 1958 the Law Revision Commission was engaged in three principal tasks:

1. Work on various assignments given to the Commission by the Legislature;<sup>2</sup>

2. Preparation of a calendar of topics selected for study to be submitted to the Legislature for its approval at the 1959 Session, pursuant to Section 10335 of the Government Code;<sup>3</sup>

3. A study, made pursuant to Section 10331 of the Government Code, to determine whether any statutes of the State have been held by the Supreme Court of the United States or by the Supreme Court of California to be unconstitutional or to have been impliedly repealed.<sup>4</sup>

In 1958 the Commission met on January 24 and 25 in Los Angeles, on March 20 and 21 in Sacramento, on April 18 and 19 in San Francisco, on May 16 and 17 in Ventura, on June 13 and 14 in Los Angeles, on July 18 and 19 at Stanford, on September 5 and 6 in San Francisco and on October 7, 8 and 9 in Coronado; the Commission plans to meet also on November 7 and 8 at Yosemite and on December 5 and 6 at Los Angeles.

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2 See Part IV A of this report, p. 9 infra.

3 See Part IV B of this report, p. 16 infra.

4 See Part V of this report, p. 18 infra.

#### IV. CALENDAR OF TOPICS SELECTED FOR STUDY

##### A. STUDIES IN PROGRESS

During 1958 the Commission worked on the topics listed below, each of which it had been authorized and directed by the Legislature to study.<sup>5</sup> Most of these topics were recommended for study by the Commission pursuant to Government Code Section 10335; as is indicated in the footnotes, these topics are described in the 1955, 1956, 1957 and 1958 reports of the Commission to the Legislature.

1. Whether Sections 2201 and 3901 of the Corporations Code should be made uniform with respect to notice to stockholders relating to the sale of all or substantially all of the assets of a corporation.<sup>6</sup>
2. Whether there is need for clarification of the law respecting the duties of city and county legislative bodies in connection with planning procedures and the enactment of zoning ordinances when there is no planning commission.<sup>7</sup>

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5 The legislative authority for the studies listed is as follows:

Nos. 1 and 2: Cal. Stat. 1955, res. c. 207, p. 4207.

Nos. 3 through 19: Cal. Stat. 1956, res. c. 42, p. 263.

No. 20: Cal. Stat. 1956, res. c. 35, p. 256.

Nos. 21 through 38: Cal. Stat. 1957, res. c. 202, p. 4589.

No. 39: Cal. Stat. 1957, res. c. 222, p. 4618.

No. 40: Cal. Stat. 1957, res. c. 287, p. 4744.

No. 41: Cal. Stat. 1957, res. c. 266, p. 4660.

Nos. 42 through 44: Cal. Stat. 1958, res. c. \_\_\_\_\_, p. \_\_\_\_\_.

6 For a description of this topic, see 1955 Rep. Cal. Law Revision Comm'n.

7 Id. at 32.

3. Whether the Penal Code and the Vehicle Code should be revised to eliminate certain overlapping provisions relating to the unlawful taking of a motor vehicle and the driving of a motor vehicle while intoxicated.<sup>8</sup>
4. Whether the procedures for appointing guardians for nonresident incompetents and nonresident minors should be clarified.<sup>9</sup>
5. Whether the provisions of the Code of Civil Procedure relating to the confirmation of partition sales and the provisions of the Probate Code relating to the confirmation of sales of real property of estates of deceased persons should be made uniform and, if not, whether there is need for clarification as to which of them governs confirmation of private judicial sales.<sup>10</sup>
6. Whether the law relating to motions for new trial in cases where notice of entry of judgment has not been given should be revised.<sup>11</sup>
7. Whether the provisions of the Civil Code relating to rescission of contracts should be revised to provide a single procedure for rescinding contracts and achieving the return of the consideration given.<sup>12</sup>

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8 See 1956 Rep. Cal. Law Revision Comm'n. 19.

9 Id. at 21.

10 Ibid.

11 Id. at 22.

12 Ibid.

8. Whether the law respecting mortgages to secure future advances should be revised.<sup>13</sup>
9. Whether Probate Code Sections 259, 259.1 and 259.2, pertaining to the rights of nonresident aliens to inherit property in this State, should be revised.<sup>14</sup>
10. Whether the law relating to escheat of personal property should be revised.<sup>15</sup>
11. Whether the law relating to the rights of a putative spouse should be revised.<sup>16</sup>
12. Whether the law respecting post-conviction sanity hearings should be revised.<sup>17</sup>
13. Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised.<sup>18</sup>
14. Whether the doctrine of worthier title should be abolished in California.<sup>19</sup>
15. Whether the Arbitration Statute should be revised.<sup>20</sup>
16. Whether the law in respect of survivability of tort actions should be revised.<sup>21</sup>

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13 Id. at 24.  
14 Ibid.  
15 Id. at 25.  
16 Id. at 26.  
17 Id. at 28.  
18 Id. at 29.  
19 Id. at 31.  
20 Id. at 33.  
21 Ibid.

17. Whether the law of evidence should be revised to conform to the Uniform Rules of Evidence drafted by the National Conference of Commissioners on Uniform State Laws and approved by it at its 1953 annual conference.
18. Whether the law respecting habeas corpus proceedings, in the trial and appellate courts should, for the purpose of simplification of procedure to the end of more expeditious and final determination of the legal questions presented, be revised.
19. Whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens.
20. Whether the various provisions of law relating to the filing of claims against public bodies and public employees should be made uniform and otherwise revised.
21. Whether the law relating to the inter vivos rights of one spouse in property acquired by the other spouse during marriage while domiciled outside California should be revised.<sup>22</sup>
22. Whether the law relating to attachment, garnishment, and property exempt from execution should be revised.<sup>23</sup>

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<sup>22</sup> See 1957 Rep. Cal. Law Revision Comm'n. 14.

<sup>23</sup> Id. at 15.

23. Whether a defendant in a criminal action should be required to give notice to the prosecution of his intention to rely upon the defense of alibi.<sup>24</sup>
24. Whether the Small Claims Court Law should be revised.<sup>25</sup>
25. Whether the law relating to the rights of a good faith improver of property belonging to another should be revised.<sup>26</sup>
26. Whether the separate trial on the issue of insanity in criminal cases should be abolished and whether, if it is retained, evidence of the defendant's mental condition should be admissible on the issue of specific intent in the trial on the other pleas.<sup>27</sup>
27. Whether partnerships and unincorporated associations should be permitted to sue in their common names and whether the law relating to the use of fictitious names should be revised.<sup>28</sup>
28. Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised.<sup>29</sup>
29. Whether the provisions of the Penal Code relating to arson should be revised.<sup>30</sup>

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24 Id. at 16.  
25 Ibid.  
26 Id. at 17.  
27 Id. at 18  
28 Ibid.  
29 Id. at 19  
30 Id. at 20

30. Whether Civil Code Section 1698 should be repealed or revised.<sup>31</sup>
31. Whether minors should have a right to counsel in juvenile court proceedings.<sup>32</sup>
32. Whether Section 7031 of the Business and Professions Code, which precludes an unlicensed contractor from bringing an action to recover for work done, should be revised.<sup>33</sup>
33. Whether the law respecting the rights of a lessor of property when it is abandoned by the lessee should be revised.<sup>34</sup>
34. Whether a former wife, divorced in an action in which the court did not have personal jurisdiction over both parties, should be permitted to maintain an action for support.<sup>35</sup>
35. Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.
36. Whether an award of damages made to a married person in a personal injury action should be the separate property of such married person.
37. Whether changes in the Juvenile Court Law or in existing procedures should be made so that the term "ward of the juvenile court" would be inapplicable to nondelinquent minors.

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31 Id. at 21.

32 Ibid.

33 Id. at 23.

34 Id. at 24.

35 Id. at 25.

38. Whether a trial court should have the power to require, as a condition of denying a motion for new trial, that the party opposing the motion stipulate to the entry of judgment for damages in excess of the damages awarded by the jury.
39. Whether there should be a separate code for all laws relating to narcotics.
40. Whether the laws relating to bail should be revised.
41. Whether it would be feasible to codify and clarify, without substantive change, provisions of law and other legal aspects relating to grand juries into one title, part, division, or chapter of one code.
42. Whether California statutes relating to service of process by publication should be revised in light of recent decisions of the United States Supreme Court.<sup>36</sup>
43. Whether Section 1974 of the Code of Civil Procedure should be repealed or revised.<sup>37</sup>
44. Whether the doctrine of election of remedies should be abolished in cases where relief is sought against different defendants.<sup>38</sup>

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36 See 1958 Rep. Cal. Law Revision Comm'n 18.

37 Id. at 20.

38 Id. at 21.



## B. TOPICS INTENDED FOR FUTURE CONSIDERATION

Section 10335 of the Government Code provides:

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 the studies in progress and a list of topics intended for future consideration. After the filing of its first report 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. The Commission shall also study any topic which the Legislature, by concurrent resolution, refers to it for such study.

Pursuant to this section the Commission reported 23 topics which it had selected for study to the 1955 Session of the Legislature; 16 of these topics were approved. The Commission reported 15 additional topics which it had selected for study to the 1956 Session, all of which were approved. The 1956 Session of the Legislature also referred four other topics to the Commission for study. The Commission reported 14 additional topics which it had selected for study to the 1957 Session, all of which were approved. The 1957 Session of the Legislature also referred seven additional topics to the Commission for study. The Commission reported five additional topics which it had selected for study to the 1958 Session of the Legislature; three of these topics were approved.

The Commission now has a heavy work load which will require the major portion of its energies to complete during the current fiscal year and during the fiscal year 1959-60.

It is anticipated, however, that the Commission will be able to undertake a limited number of additional assignments after January 1, 1960. Accordingly, the legislative members of the Commission will introduce at the 1959 Session of the Legislature a concurrent resolution authorizing the Commission to study the following new topics:

V. REPORT ON STATUTES REPEALED BY IMPLICATION  
OR HELD UNCONSTITUTIONAL

Section 10331 of the Government Code provides:

The Commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.

No decision of the Supreme Court of the United States or of the Supreme Court of California holding a statute of the State unconstitutional or repealed by implication has been found.<sup>39</sup>

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39 This study has been carried through 00 Advance California Reports 000, 00 Supreme Court Reporter 000.

## VI. RECOMMENDATION

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics listed in Part IV A and to study the topics listed and described in Part IV B of this report.

Respectfully submitted,

THOMAS E. STANTON, Jr., Chairman  
JOHN D. BABBAGE, Vice Chairman  
JAMES A. COBEY, Member of the Senate  
CLARK L. BRADLEY, Member of the Assembly  
ROY A. GUSTAFSON  
BERT W. LEVIT  
CHARLES H. MATTHEWS  
STANFORD C. SHAW  
SAMUEL D. THURMAN  
RALPH N. KLEPS, Legislative Counsel, ex officio

JOHN R. McDONOUGH, Jr.  
Executive Secretary

V. REPORT ON STATUTES REPEALED BY IMPLICATION  
OR HELD UNCONSTITUTIONAL

Section 10331 of the Government Code provides:

The Commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.

Pursuant to this directive the Commission has made a study of the decisions of the Supreme Court of the United States and of the Supreme Court of California handed down since the Commission's 1958 Report was prepared.<sup>39</sup> It has the following to report:

1. Three decisions of the Supreme Court of the United States holding two statutes of the State unconstitutional have been found:

In Public Utilities Commission of California v. United States, 356 U.S., 78 S. Ct. 446 (1958), the Supreme Court held Section 530 of the Public Utilities Code invalid under the Supremacy Clause of the Constitution of the United States insofar as it prohibits common carriers from transporting property of the federal government at rates other than those approved by the California Public Utilities Commission.

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39 This study has been carried through OO Advance California Reports 000, OO Supreme Court Reporter 000.

In Speiser v. Randall, 356 U.S., 78 S. Ct. 1332 (1958), and First Unitarian Church v. County of Los Angeles, 356 U.S., 78 S. Ct. 1350 (1958), the court held Section 32 of the Revenue and Taxation Code invalid under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States because it places on applicants for tax exemptions the burden of proof as to whether they are persons or organizations which advocate the overthrow of the Government of the United States or the State by force or violence or other unlawful means or advocate the support of a foreign government against the United States in the event of hostilities.

2. No decision of the Supreme Court of the United States holding a statute of the State repealed by implication has been found.

3. No decision of the Supreme Court of California holding a statute of the State unconstitutional or repealed by implication has been found.