12/5/62

Memorandum No. 83(1962)

Subject: Program for 1965 Legislative Session

The staff believes that this is an appropriate time to determine the topics that we will work on during the next two year period. This memorandum contains the staff's suggestions on this subject.

Attached as Exhibit I (yellow sheets) is a description of each topic on our current agenda. Exhibit II (green sheets) attached indicates the status of each such topic.

We obviously cannot cover all the topics on our current agenda by 1965. It is desirable to eliminate some topics now from further consideration during 1963-64. It would also be helpful to the staff if the Commission could tentatively establish some sort of priority for the various topics that we plan to consider if time permits during 1963-64. We do not recommend that we devote the major portion of our time to the subject of sovereign immunity.

Listed below are the topics that the staff recommends we consider for study during 1963-64. Any topic not listed would not be given further consideration during this period (except, perhaps, to drop the study from our current agenda of topics). The topics are listed in the order that we were authorized to study them by the Legislature. We suggest that we begin our study of the Privileges Article of the Uniform Rules of Evidence at the January meeting.

STUDY NO. 52(L) - SOVEREIGN IMMUNITY

(1) Adjustments and Repeals of Special Statutes. We plan to present

a tentative recommendation on this subject as soon as we can prepare it. We hope that it will be possible to take care of these adjustments and repeals in 1963. If not, it should be a top priority for 1965.

(2) Dissolved Local Public Entities. The staff and the Commission have devoted considerable time to a tentative recommendation on this subject. We had to abandon our efforts to prepare it in time for the 1963 session. The staff would do the necessary additional research on this subject.

(3) Whose Employee? The research consultant's study points up the necessity of having statutory provisions that indicate how one can determine the public entity charged with the torts of certain employees -- for example, superior court judges. The staff would do the necessary additional research on this subject.

(4) Additional portions. We plan to have three additional research studies prepared on the portions of this subject that are most in need of study. We have discussed possible studies with our research consultant, Professor Van Alstyne. He will hand out material at the meeting indicating a number of areas that are in need of study.

STUDY NO. 53(L) - PERSONAL INJURY DAMAGES AS SEPARATE PROPERTY AND STUDY NO. 62 - IMPUTED CONTRIBUTORY NEGLIGENCE UNDER VEHICLE CODE SECTION 17150

The Commission determined that this is a matter that should receive a top priority for the 1965 session. The State Bar is interested in seeing that this matter is studied.

STUDY NO. 57(L) - LAW RELATING TO BAIL

We have what appears to be a good research study on this subject. We would like to make a recommendation to the 1965 legislative session if possible. We would not give this a high priority, but we believe that this is an area of the law that should be studied.

STUDY NO. 34(L) - UNIFORM RULES OF EVIDENCE

(1) Privileges Article. We have the research study for this portion set in type. The staff and the Commission have already devoted considerable time to consideration of this portion of the study.

(2) Rules 67-72 -- Authentication and Content of Writings. We have the research study for this portion set in type. This portion would be almost essential if we are to make a recommendation relating to the hearsay article to the 1965 Legislature.

(3) Additional portions. The portions of the Uniform Rules not listed above (excluding the hearsay article) include:

Article I. General Provisions (5 pages)

Article II. Judicial Notice (3 pages)

Article III. Presumptions (2 pages)

Article IV. Witnesses (2 pages)

Article VI. Extrinsic Policies Affecting Admissibility (5 pages)

Article VII. Expert and Other Opinion Testimony (3 pages)

(By pages, we mean the number of pages devoted to the particular article in the pamphlet containing the Uniform Rules of Evidence). We are not suggesting that we attempt to cover all the matters

above listed. Some of the Articles -- like Presumptions -- would be very difficult. It is interesting to note, however, that the Hearsay Article covers 15 pages, the Privileges Article covers 12 pages and the Authentication Article covers 4 pages.

The staff suggests we defer making any decision on what additional portions of the Uniform Rules, if any, we will study during 1963-64 until we have completed a tentative recommendation on the Privileges Article and the Authentication Article.

STUDY NO. 36(L) - CONDEMNATION LAW AND PROCEDURE

(1) Evidence. We submitted a recommendation on this in 1961. The bill passed the Legislature but was pocket vetoed by the Governor. Our consultant advises us that this is probably the most important area of study on this topic. There are only two disputed matters in the proposed legislation.

(2) Moving Expenses. We submitted a recommendation on this in 1961. The bill was referred to interim study to determine how much it would cost public entities. Recent federal legislation permits federal funds to be used for this purpose by States. There is no dispute on the legislation except for the basic policy. However, the legislation will need to be made consistent with the federal legislation.

(3) One new study. We will submit a recommendation as to the particular new aspect of this subject that should be studied after consulting with our consultant and with the Department of Public Works.

STUDY NO. 42 - TRESPASSING IMPROVERS

We have a research study set in type on this subject. From time to time in the past the Commission has considered this subject but has never been able to agree on a basic approach to the problem. We would like to dispose of this subject.

STUDY NO. 46 - ARSON

We have a research study set in type on this subject. The staff and the Commission have already devoted considerable time to the study of the subject.

Respectfully submitted,

John H. DeMoully
Executive Secretary

Memo 83(1962)

EXHIBIT I

The following is an explanation of the scope of each topic now on the current agenda of the Commission. If the topic is one assigned to the Commission upon request of the Commission, the explanation is taken (with a few exceptions) from the annual report of the Commission where the particular topic was described.

Study No. 12: A study to determine whether the jury should be authorized to take a written copy of the court's instructions into the jury room in civil as well as criminal cases.

Penal Code Section 1137 authorizes a written copy of the court's instructions to be taken into the jury room in criminal cases. It has been held, however, that Sections 612 and 614 of the Code of Civil Procedure preclude permitting a jury in a civil case to take a written copy of the instructions into the jury room. There seems to be no reason why the rule on this matter should not be the same in both civil and criminal cases.

The Commission made a recommendation on this topic to the 1957 Legislature. However, following circulation by the Commission to interested persons throughout the State of its printed pamphlet containing the recommendation and study on this matter, a number of questions were raised by members of the bench and bar relating to practical problems involved in making a copy of the court's instructions available to the jury in the jury room. Since there would not have been an adequate opportunity to study these problems and amend the bill during the 1957 Session, the Commission determined not to seek enactment of the bill but to hold the matter for further study.

Study No. 21: A study relating to partition sales.

This is a study to determine whether the provisions of the Code of Civil Procedure relating to 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 the confirmation of private judicial partition sales. (As expanded in 1959 - Res.ch. 218).

Study No. 26: A study to determine whether the law relating to escheat of personal property should be revised.

In the recent case of Estate of Nolan the California District Court of Appeal held that two savings bank accounts in California totaling $16,000, owned by the estate of a decedent who had died without heirs while domiciled in Montana, escheated to Montana rather than California. The Supreme Court denied the Attorney General's petition for hearing.

There is little case authority as to which state, as between the domicile of the decedent and any other, is entitled to escheat personal property. In some cases involving bank accounts it has been held that they escheat to the domiciliary state; in others, that they escheat to the state in which the bank is located. The Restatement of Conflict of Laws takes the position that personal property should escheat to the state in which the particular property is administered.

In two recent cases California's claim as the domicile of the decedent to escheat personal property has been rejected by sister states where the property was being administered, both states applying rules favorable to themselves. The combination of these decisions with that of the California court in Estate of Nolan suggests that California will lose out all around as the law now stands.

Study No. 27: A study to determine whether the law relating to the rights of a putative spouse should be revised.

The concept of "putative spouse" has been developed by the courts of this State to give certain property rights to a man or a woman who has lived with another as man and wife in the good faith belief that they were married when in fact they were not legally married or their marriage was voidable and has been annulled. The essential requirement of the status of putative spouse is a good faith belief that a valid marriage exists. The typical situation in which putative status is recognized is one where a marriage was properly solemnized but one or both of the parties were not free to marry, as when a prior marriage had not been dissolved or a legal impediment making the marriage void or voidable existed.

The question of the property rights of the parties to an invalid marriage generally arises when one of the parties dies or when the parties separate. It is now well settled that upon death or separation a putative spouse has the same rights as a legal spouse in property which would have been community property had the couple been legally married. This rule has been developed by the courts without the aid of legislation. The underlying reason for the rule apparently is the desire to secure for a person meeting the good faith requirement the benefits which he or she believed would flow from the attempted marriage.

The courts have held that a putative spouse is not entitled to an award of alimony. They have also held, however, that a putative wife

has a quasi-contractual right to recover from the putative husband (or his estate), the value of the services rendered to him during marriage less the value of support received from him. While in all of the cases in which this right has been recognized there was no quasi community property, it is not clear whether the existence of such property would preclude recovery in quasi contract. The earlier cases recognizing the quasi-contractual right all involved situations where one spouse had fraudulently misrepresented to the other that they were free to marry; the theory on which recovery was allowed was that the defendant had been unjustly enriched by services rendered in reliance upon his misrepresentation. But this rationale has apparently been abandoned in two recent cases. In one, the defendant's misrepresentation was innocent but recovery was nonetheless allowed. In the other, there was no misrepresentation but the court permitted recovery on the ground that the defendant had been guilty of misconduct which would have constituted grounds for divorce had the parties been married.

The Commission believes that several questions relating to the position of the putative spouse warrant study:

1. Is the theory of recovery in quasi contract either theoretically proper or practically adequate for the solution of the problem presented? The theory seems to have been abandoned recently by the courts, at least in part. Moreover, it will not justify recovery by one who has not been able, because of illness or other incapacity, to perform services which exceed in value the support received; yet, in most circumstances, such a claimant has the greater practical need for a recovery.

2. Should the existence of conduct which would be grounds for divorce justify recovery without regard to misrepresentations? If so, should it not be recognized that what is really involved is quasi alimony rather than recovery on the ground of unjust enrichment?

3. Should a putative spouse be able to recover both quasi community property and quasi alimony?

4. Where one of the spouses has died should the other spouse be given substantially the same rights which he or she would have had if the parties had been validly married?

Study No. 29: A study to determine whether the law respecting post-conviction sanity hearings should be revised.

Section 1367 of the Penal Code provides that a person cannot be punished for a public offense while he is insane. The Penal Code contains two sets of provisions apparently designed to implement this general rule. One set pertains to persons sentenced to death and the other set to persons sentenced to imprisonment.

Persons Sentenced to Death. Sections 3700 to 3704 of the Penal Code provide for a hearing to determine whether a person sentenced to death is insane and thus immune from execution. The hearing procedure is initiated by the warden's certification that there is good reason to believe that the prisoner has become insane. The

question of the prisoner's sanity is then tried to a jury. If he is found to be insane he must be taken to a state hospital until his reason is restored. If the superintendent of the hospital later certifies that the prisoner has recovered his sanity, this question is determined by a judge sitting without a jury. If the prisoner is found to be sane he is returned to the prison and may subsequently be executed.

The Commission believes that a number of important questions exist concerning the procedure provided for in Penal Code Sections 3700 to 3704. For example, why should the issue of the prisoner's sanity be determined by a jury in the initial hearing but not in a later hearing to determine whether his reason has been restored? Why should the statute explicitly state that the prisoner is entitled to counsel on a hearing to determine whether he has been restored to sanity and make no provision on this matter in the case of the initial hearing? Does this mean that the prisoner is not entitled to counsel at the initial hearing under the rule expressio unius est exclusio alterius? If so, is this desirable? Who has the burden of proof as to the issue of the prisoner's sanity and does this differ as between the initial and later hearings? What standard of sanity is to be applied? Shall the court call expert witnesses? May the parties do so? Does the prisoner have the right to introduce evidence and cross-examine witnesses? In People v. Riley, the court held that (1) a prisoner found to be insane has no right of appeal and (2) a unanimous verdict is not necessary because the hearing is not a criminal proceeding. Are these rules desirable?

Persons Sentenced to Imprisonment. Penal Code Section 2684 provides that any person confined to a state prison who is mentally ill, mentally deficient, or insane may be transferred to a state hospital upon the certification of the Director of Corrections that in his opinion the rehabilitation of the prisoner would be expedited by treatment in the hospital and upon the authorization of the Director of Mental Hygiene. The code contains no provision for a hearing of any kind and the decision of the Director of Corrections and the Director of Mental Hygiene is final. If the superintendent of the state hospital later notifies the Director of Corrections that the prisoner "will not benefit by further care and treatment in the state hospital," the Director of Corrections must send for the prisoner and return him to the state prison. The prisoner has no right to a hearing before he is returned to prison. Section 2685 of the Penal Code provides that the time spent at the state hospital shall count as time served under the prisoner's sentence.

Sections 2684 and 2685 appear to present a number of important questions. Does the standard provided for removal of a prisoner to the state hospital or for returning him to the state prison--whether his rehabilitation would be expedited by treatment at the hospital and whether he would not benefit by further treatment there--conflict with the general mandate of Section 1367 that a person may not be punished while he is insane? If so, should a

different standard and a different procedure be established to avoid the punishment of insane prisoners? Should the time spent in the state hospital by a prisoner adjudged insane for purposes of punishment be counted as part of time served under his sentence?

Study No. 30: A study to determine whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised.

There are in this State various kinds of statutory proceedings relating to the custody of children. Civil Code Section 138 provides that in actions for divorce or separate maintenance the court may make an order for the custody of minor children during the proceeding or at any time thereafter and may at any time modify or vacate the order. Civil Code Section 199 provides that, without application for divorce, a husband or wife may bring an action for the exclusive control of the children; and Civil Code Section 214 provides that when a husband and wife live in a state of separation, without being divorced, either of them may apply to any court of competent jurisdiction for custody of the children. Furthermore, anyone may bring an action under Probate Code Section 1440 to be appointed guardian of a child.

These various provisions relating to the custody of children present a number of problems relating to the jurisdiction of courts; for example: (1) Do they grant the courts jurisdiction to afford an adequate remedy in all possible situations? (2) When a proceeding has been brought under one of the several statutes does the court thereafter have exclusive jurisdiction of all litigation relating to the custody of the child? (3) Do the several statutes conflict or are they inconsistent as to whether the court awarding custody under them has continuing jurisdiction to modify its award?

(1) There appear to be at least two situations in which the only remedy of a parent seeking custody of a child is through a guardianship proceeding under Probate Code Section 1440. One is when a party to a marriage obtains an ex parte divorce in California against the other party who has custody over the children and resides with them in another state. If the second party later brings the children to California and becomes a resident of a county other than the county in which the divorce was obtained, the only procedure by which the first party can raise the question of custody would seem to be a guardianship proceeding under Probate Code Section 1440 in the county where the children reside. Although the divorce action remains pending as a custody proceeding under Civil Code Section 138, the court cannot enter a custody order because the children are residents of another county. A custody proceeding cannot be brought under either Section 199 or Section 214 of the Civil Code because the parents are no longer husband and wife. Another situation in which a guardianship proceeding may be the only available remedy is

when a foreign divorce decree is silent as to who shall have custody of the children. If the parties later come within the jurisdiction of the California courts, it is not clear whether the courts can modify the foreign decree to provide for custody and, if so, in what type of proceeding this can be done. It would appear desirable that some type of custody proceeding other than guardianship be authorized by statute for these and any other situations in which a guardianship proceeding is now the only available remedy to a parent seeking custody of his child.

(2) The various kinds of statutory proceedings relating to custody also create the problem whether, after one of these proceedings has been brought in one court, another proceeding under the same statute or under a different statute may be brought in a different court or whether the first court's jurisdiction is exclusive. This question can be presented in various ways, such as the following: (a) If a divorce court has entered a custody order pursuant to Civil Code Section 138, may a court in another county modify that order or entertain a guardianship proceeding under Probate Code Section 1440 or--assuming the divorce was denied but jurisdiction of the action retained--entertain a custody proceeding under Civil Code Sections 199 or 214? (b) If a court has awarded custody under Civil Code Sections 199 or 214 while the parties are still married, may another court later reconsider the question in a divorce proceeding under Civil Code Section 138 or a guardianship proceeding under Probate Code Section 1440? (c) If a guardian has been appointed under Probate Code Section 1440, may a divorce court or a court acting pursuant to Civil Code Sections 199 or 214 later award custody to the parent who is not the guardian?

A few of these matters were clarified by the decision of the California Supreme Court in Greene v. Superior Court, holding that a divorce court which had awarded custody pursuant to Civil Code Section 138 has continuing jurisdiction and a court in another county has no jurisdiction to appoint a guardian of the children under Probate Code Section 1440. The Supreme Court stated that the general objective should be to avoid "unseemly conflict between courts" and indicated that a proper procedure would be to apply to the divorce court for a change of venue to the county where the children reside.

It is not clear whether the exclusive jurisdiction principle of the Greene case either will or should be applied in all of the situations in which the question may arise. An exception should perhaps be provided at least in the case where a divorce action is brought after a custody or guardianship award has been made pursuant to Civil Code Sections 199 or 214 or Probate Code Section 1440, on the ground that it may be desirable to allow the divorce court to consider and decide all matters of domestic relations incidental to the divorce.

(3) There appear to be at least two additional problems of jurisdiction arising under the statutory provisions relating to

custody of children. One is whether a court awarding custody under Civil Code Section 214 has continuing jurisdiction to modify its order. Although both Sections 138 and 199 provide that the court may later modify or amend a custody order made thereunder, Section 214 contains no such provisions. Another problem is the apparent conflict between Section 199 and Section 214 in cases where the parents are separated. Section 199 presumably can be used to obtain custody by any married person, whether separated or not, while Section 214 is limited to those persons living "in a state of separation." The two sections differ with respect to the power of the court to modify its order and also with respect to whether someone other than a parent may be awarded custody.

Study No. 34(L): A study to determine whether the law of evidence should be revised to confirm 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.

This is a legislative assignment (not authorized by the Legislature upon the recommendation of the Commission).

Study No. 35(L): A study to determine 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.

This is a legislative assignment (not authorized by the Legislature upon the recommendation of the Commission).

Study No. 36(L): A study to determine whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens.

This is a legislative assignment (not authorized by the Legislature upon the recommendation of the Commission).

Study No. 39: A study to determine whether the law relating to attachment, garnishment, and property exempt from execution should be revised.

The Commission has received several communications bringing to its attention anachronisms, ambiguities, and other defects in the law of this State relating to attachment, garnishment, and property exempt from execution. These communications have raised such questions as: (1) whether the law with respect to farmers' property exempt from execution should be modernized; (2) whether a procedure should be established to determine disputes as to whether particular earnings of judgment debtors are exempt from execution; (3) whether Code of Civil Procedure Section 690.26 should be amended to conform to the

1955 amendments of Sections 682, 688 and 690.11, thus making it clear that one-half, rather than only one-quarter, of a judgment debtor's earnings are subject to execution; (4) whether an attaching officer should be required or empowered to release an attachment when the plaintiff appeals but does not put up a bond to continue the attachment in effect; and (5) whether a provision should be enacted empowering a defendant against whom a writ of attachment may be issued or has been issued to prevent service of the writ by depositing in court the amount demanded in the complaint plus 10% or 15% to cover possible costs.

The State Bar has had various related problems under consideration from time to time. In a report to the Board of Governors of the State Bar on 1955 Conference Resolution No. 28, the Bankruptcy Committee of the State Bar recommended that a complete study be made of attachment, garnishment, and property exempt from execution, preferably by the Law Revision Commission. In a communication to the Commission dated June 4, 1956 the Board of Governors reported that it approved this recommendation and requested the Commission to include this subject on its calendar of topics selected for study.

Study No. 41: A study to determine whether the Small Claims Court Law should be revised.

In 1955 the Commission reported to the Legislature that it had received communications from several judges in various parts of the State relating to defects and gaps in the Small Claims Court Law. These suggestions concerned such matters as whether fees and mileage may be charged in connection with the service of various papers, whether witnesses may be subpoenaed and are entitled to fees and mileage, whether the monetary jurisdiction of the small claims courts should be increased, whether sureties on appeal bonds should be required to justify in all cases, and whether the plaintiff should have the right to appeal from an adverse judgment. The Commission stated that the number and variety of these communications suggested that the Small Claims Court Law merited study.

The 1955 Session of the Legislature declined to authorize the Commission to study the Small Claims Court Law at that time. No comprehensive study of the Small Claims Court Law has since been made. Meanwhile, the Commission has received communications making additional suggestions for revision of the Small Claims Court Law: e.g., that the small claims court should be empowered to set aside the judgment and reopen the case when it is just to do so; that the plaintiff should be permitted to appeal when the defendant prevails on a counterclaim; and that the small claims form should be amended to (1) advise the defendant that he has a right to counterclaim and that failure to do so on a claim arising out of the same transaction will bar his right to sue on the claim later and (2) require a statement as to where the act occurred in a negligence case.

This continued interest in revision of the Small Claims Court Law induced the Commission again to request authority to make a study of it.

Study No. 42: A study to determine whether the law relating to the rights of a good faith improver of property belonging to another should be revised.

The common law rule, codified in Civil Code Section 1013, is that when a person affixes improvements to the land of another in the good faith belief that the land is his, the thing affixed belongs to the owner of the land in the absence of an agreement to the contrary. The common law denies the innocent improver any compensation for the improvement he has constructed except that when the owner has knowingly permitted or encouraged the improver to spend money on the land without revealing his claim of title the improver can recover the value of the improvement, and when the owner sues for damages for the improver's use and occupation of the land the improver can set off the value of the improvement.

About three-fourths of the states have ameliorated the common law rule by the enactment of "betterment statutes" which make payment of compensation for the full value of the improvement a condition of the owner's ability to recover the land. The owner generally is given the option either to pay for the improvement and recover possession or to sell the land to the improver at its value excluding improvements. Usually no independent action is given the improver in possession, although in some states he may sue directly if he first gives up the land.

California, on the other hand, grants the improver only the limited relief of set-off when the owner sues for damages and the right to remove the improvement when this can be done. It would seem to be unjust to take a valuable improvement from one who built it in the good faith belief that the land was his and give it to the owner as a complete windfall. Provision should be made for a more equitable adjustment between the two innocent parties.

Study No. 43: A study to determine whether the separate trial on the issue of insanity in criminal cases should be abolished or 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.

Section 1026 of the Penal Code provides that when a defendant pleads not guilty by reason of insanity and also enters another plea or pleas he shall be tried first on the other plea or pleas and in such trial shall be conclusively presumed to have been sane at the time the crime was committed. This provision was originally interpreted by the Supreme Court to require exclusion of all evidence of mental condition in the first trial, even though offered to show that the defendant lacked the mental capacity to form the specific intent required for the crime charged--e.g., first degree murder. This interpretation was criticized on the ground that a defendant might be so mentally defective as to be unable to form the specific

intent required in certain crimes and yet not be so insane as to prevail in the second trial on the defense of insanity. In 1949 the Supreme Court purported to modify somewhat its view of the matter in People v. Wells. The court's opinion states that evidence of the defendant's mental condition at the time of the crime may be introduced in the first trial to show that the defendant did not have the specific intent required for the crime charged but not to show that he could not have had such intent. This distinction does not seem to be a very meaningful or workable one or to meet adequately the criticisms made of the earlier interpretation adopted by the court. A study should now be made to determine (1) whether the separate trial on the defense of insanity should be abolished, with all issues in the case being tried in a single proceeding or (2) if separate trials are to be continued, whether Section 1026 should be revised to provide that any competent evidence of the defendant's mental condition shall be admissible on the first trial, the jury being instructed to consider it only on the issue of criminal intent.

Study No. 44: A study to determine 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.

Code of Civil Procedure Section 388 provides that when two or more persons associated in any business transact such business under a common name they may be sued by such common name. However, such associates may not bring suit in the common name. In the case of a partnership or association composed of many individuals this results in an inordinately long caption on the complaint and in extra expense in filing fees, neither of which appears to be necessary or justified.

Sections 2466 to 2471 of the Civil Code also have a bearing on the right of partnerships and unincorporated associations to sue. These sections provide, inter alia, that a partnership doing business under a fictitious name cannot maintain suit on certain causes of action unless it has filed a certificate naming the members of the partnership, and that a new certificate must be filed when there is a change in the membership. These provisions, which have been held to be applicable to unincorporated associations, impose a burden on partnerships and associations.

Study No. 45: A study to determine whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised.

Civil Code Section 3386 provides:

> § 3386. Neither party to an obligation can be compelled specifically to perform it, unless the

other party thereto has performed, or is compellable specifically to perform, everything to which the former is entitled under the same obligation, either completely or nearly so, together with full compensation for any want of entire performance.

Section 3386 states substantially the doctrine of mutuality of remedy in suits for specific performance as it was originally developed by the Court of Chancery. The doctrine has been considerably modified in most American jurisdictions in more recent times. Today it is not generally necessary, to obtain a decree of specific performance, to show that the plaintiff's obligation is specifically enforceable, so long as there is reasonable assurance that plaintiff's performance will be forthcoming when due. Such assurance may be provided by the plaintiff's past conduct, or his economic interest in performing, or by granting a conditional decree or requiring the plaintiff to give security for his performance.

Civil Code Section 3386 states a much more rigid rule. It is true that Section 3386 is considerably ameliorated by Civil Code Sections 3388, 3392, 3394 and 3423(5) and by court decisions granting specific performance in cases which would fall within a strict application of the doctrine of mutuality of remedy. On the other hand, the mutuality requirement has in some cases been applied strictly, with harsh results.

On the whole, the California decisions in terms of results may not be far out of line with the more modern and enlightened view as to mutuality of remedy. But insofar as they have reached sensible results it has often been with difficulty and the result has been inconsistent with a literal reading of Section 3386. And not infrequently poor decisions have resulted. A study of the requirement of mutuality of remedy in suits for specific performance would, therefore, appear to be desirable.

Study No. 46: A study to determine whether the provisions of the Penal Code relating to arson should be revised.

Definition of Arson. Chapter 1 of Title 13 of the Penal Code (Sections 447a to 451a) is entitled "Arson." Section 447a makes the burning of a dwelling-house or a related building punishable by a prison sentence of two to twenty years. Section 448a makes the burning of any other building punishable by a prison sentence of one to ten years. Section 449a makes the burning of personal property, including a streetcar, railway car, ship, boat or other water craft, automobile or other motor vehicle, punishable by a sentence of one to three years. Thus, in general, California follows the historical approach in defining arson, in which the burning of a dwelling-house was made the most serious offense, presumably because a greater risk to human life was thought to be involved. Yet in modern times the burning of other buildings, such as a school, a theatre, or a church, or the burning of such

personal property as a ship or a railway car often constitutes a far graver threat to human life than the burning of a dwelling-house. Some other states have, therefore, revised their arson laws to correlate the penalty not with the type of building or property burned but with the risk to human life and with the amount of property damage involved in a burning. A study should be made to determine whether California should similarly revise Chapter 1 of Title 13 of the Penal Code.

Use of Term "Arson" in Statutes. When the term "arson" is used in a penal or other statute, the question arises whether that term includes only a violation of Penal Code Section 447a, which alone labels the conduct which it proscribes as "arson," or whether it is also applicable to violations of Penal Code Sections 448a, 449a, 450a and 451a, which define other felonies related to the burning of property. For example, Penal Code Section 189, defining degrees of murder, states that murder committed during the perpetration of arson, or during attempted arson, is murder in the first degree. There is nothing in that section which makes it clear what is meant by "arson." On the other hand, Penal Code Section 644, concerning habitual criminals, refers specifically to "arson as defined in Section 447a of this code." On the basis of these enactments it could be argued that "arson" is only that conduct which is proscribed by Section 447a. Yet in In re Bramble the court held that a violation of Section 448a was "arson." Thus, there is considerable doubt as to the exact meaning of the term "arson" in relation to the conduct proscribed by Penal Code Sections 448a, 449a, 450a, and 451a.

Study No. 47: A study to determine whether Civil Code Section 1698 should be repealed or revised (modification of contracts).

Section 1698 of the Civil Code, which provides that a contract in writing may be altered by a contract in writing or by an executed oral agreement and not otherwise, might be repealed. It frequently frustrates contractual intent. Moreover, two avoidance techniques have been developed by the courts which considerably limit its effectiveness. One technique is to hold that a subsequent oral agreement modifying a written contract is effective because it is executed, and performance by one party only has been held sufficient to render the agreement executed. The second technique is to hold that the subsequent oral agreement rescinded the original obligations and substituted a new contract, that this is not an "alteration" of the written contract and, therefore, that Section 1698 is not applicable. These techniques are not a satisfactory method of ameliorating the rule, however, because it is necessary to have a lawsuit to determine whether Section 1698 applies in a particular case.

If Section 1698 is to be retained, the question arises whether it should apply to all contracts in writing, whether or not required to be written by the statute of frauds or some other statute. It

is presently held to apply to all contracts in writing and is thus contrary to the common law rule and probably contrary to the rule in all other states. This interpretation has been criticized by both Williston and Corbin who suggest that the language is the result of an inaccurate attempt to codify the common law rule that contracts required to be in writing can only be modified by a writing.

Study No. 49: A study to determine 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.

Section 7031 of the Business and Professions Code provides:

> § 7031. No person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action in any court of this State for the collection of compensation for the performance of any act or contract for which a license is required by this chapter without alleging and proving that he was a duly licensed contractor at all times during the performance of such act or contract.

The effect of Section 7031 is to bar the affirmative assertion of any right to compensation by an unlicensed contractor, whether in an action on the illegal contract, for restitution, to foreclose a mechanics' lien, or to enforce an arbitration award unless he can show that he was duly licensed.

The courts have generally taken the position that Section 7031 requires a forfeiture and should be strictly construed. In fact, in the majority of reported cases forfeiture appears to have been avoided. One technique has been to find that the artisan is not a "contractor" within the statute, but is merely an "employee." But this device is restricted by detailed regulations of the Contractor's State License Board governing qualifications for licenses and the scope of the statutory requirements. Another way around the statute has been to say that there was "substantial" compliance with its requirements. In addition, Section 7031 has been held not to apply to a suit by an unlicensed subcontractor against an unlicensed general contractor on the ground that the act is aimed at the protection of the public, not of one contractor against a subcontractor. Similarly, the statute does not bar a suit by an unlicensed contractor against a supplier of construction material. And the statute has been held not to apply when the contractor is the defendant in the action.

But with all of these qualifications Section 7031 has a wide area of application in which it operates to visit a forfeiture upon the contractor and to give the other party a windfall.

Many jurisdictions, taking into account such factors as moral turpitude on both sides, statutory policy, public importance, subservience of economic position, and the possible forfeiture involved, allow restitution to an unlicensed person. But in California, Section 7031 expressly forbids "any action" and this prohibition of course includes restitution. The court can weigh equities in the contractor's favor only where the contractor is the defendant. If the contractor is asserting a claim, equities generally recognized in other jurisdictions cannot be recognized because of Section 7031.

Study No. 50: A study to determine whether the law respecting the rights of a lessor of property when it is abandoned by the lessee should be revised.

Under the older common law, a lessor was regarded as having conveyed away the entire term of years, and his only remedy upon the lessee's abandonment of the premises was to leave the property vacant and sue for the rent as it became due or to re-enter for the limited purpose of preventing waste. If the lessor repossessed the premises, the lease and the lessor's rights against the lessee thereunder were held to be terminated on the theory that the tenant had offered to surrender the premises and the lessor had accepted.

In California the landlord can leave the premises vacant upon abandonment and hold the lessee for the rent. The older rule in California was, however, that if he repossessed the premises, there was a surrender by operation of law and the landlord lost any right to rent or damages against the lessee. More recently it has been held by our courts that if the lessor re-enters or re-lets, he can sue at the end of the term for damages measured by the difference between the rent due under the original lease and the amount recouped under the new lease.

Should the landlord not be given, however, the right to re-enter and sue for damages at the time of abandonment? In some states this has been allowed, with certain restrictions, even in the absence of a clause in the lease. And it has been held in many states that the landlord may enter as agent of the tenant and re-lease for a period not longer than the original lease at the best rent available. In this case, the courts have said, the landlord has not accepted a surrender and may therefore sue for damages. But this doctrine was repudiated in California and it is doubtful that it can be made available to the lessor without legislative enactment.

Civil Code Section 3308 provides that the parties to a lease may provide therein that if the lessee breaches any term of the lease,

the lessor shall thereupon be entitled to recover from the lessee the worth at the time of such termination, of the excess, if any, of the amount of rent and charges equivalent to rent reserved in the lease for the balance of the stated term or any shorter period of time over the then reasonable rental value of the premises for the same period.

The rights of the lessor under such agreement shall be cumulative to all other rights or remedies. . . .

Thus the landlord is well protected in California if the lease so provides. The question is whether he should be similarly protected by statute when the lease does not so provide.

Study No. 51: A study to determine 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.

The California Supreme Court, after this study was authorized, held that an ex parte divorce does not terminate the husband's obligation to support his former wife. Hence, this study now primarily involves the question of the procedure to be followed to maintain an action for support after an ex parte divorce.

Study No. 52(L): A study to determine whether the doctrine of sovereign immunity should be modified.

This is a legislative assignment (not authorized by the Legislature on recommendation of the Commission).

The doctrine of governmental immunity--that a governmental entity is not liable for injuries inflicted on other persons--has long been generally accepted in this State. The constitutional provision that suits may be brought against the State "as shall be directed by law," does not authorize suit against the State save where the Legislature has expressly so provided. Moreover, a statute permitting suit against the State merely waives immunity from suit; it will not be construed to admit liability nor waive any legal defense which the State may have unless it contains express language to that effect.

The general rule in this State is that a governmental entity is liable for damages resulting from negligence in its "proprietary" activities. But such an entity is not liable for damages resulting from negligence in its "governmental" activities unless a statute assumes liability. An example of a statute assuming liability for damages for "governmental" as well as "proprietary" activities is the Vehicle Code which imposes liability for negligent operation of motor vehicles on governmental units.

The doctrine of sovereign immunity has been widely criticized.

The distinction between "proprietary" and "governmental" functions is uncertain as to its application in particular cases with the consequence that it is productive of much litigation.

At the 1953 Conference of State Bar Delegates a resolution was adopted favoring the abrogation of the doctrine of sovereign immunity and appointing a committee to study the problem. The committee's report, dated August 5, 1954, presents an excellent preliminary analysis of the problem and recommends that the study be carried forward.

Study No. 53(L): A study to determine whether personal injury damages should be separate property.

This is a legislative assignment (not authorized by the Legislature on recommendation of the Commission).

The study involves a consideration of Civil Code Section 163.5, enacted in 1957. This statute contains a number of defects. The general problem will require a consideration of the rule imputing the negligence of one spouse to the other.

In this State the negligence of one spouse is imputed to the other in any action when the judgment would be community property. A judgment recovered by a spouse in a personal injury action until the enactment of C.C. § 163.5 in 1957 was community property. Thus, when one spouse sued for an injury caused by the combined negligence of a third party and the other spouse, the contributory negligence of the latter was imputed to the plaintiff, barring recovery. The reason for the rule was said to be that it prevented the negligent spouse from profiting, through his community interest in the judgment, from his own wrong.

The State Bar has considered a number of proposals to change or modify the former rule. These have included proposals that a recovery for personal injury be made separate property (this was the solution adopted in 1957 in C.C. § 163.5); that the recovery not include damages for the loss of services by the negligent spouse nor for expenses that would ordinarily be payable out of community property; and that the elements of damage considered personal to each spouse be made separate property.

Study No. 55(L): A study as to whether a trial court should have the power to require, as a condition for denying a motion for a 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.

This is a legislative assignment (not authorized by the Legislature upon the recommendation of the Commission).

Study No. 57(L): A study to determine whether the laws relating to bail should be revised.

This is a legislative assignment (not authorized by the Legislature upon recommendation of the Commission).

Study No. 59: A study to determine whether California statutes relating to service of process by publication should be revised in light of recent decisions of the United States Supreme Court.

Two recent decisions by the United States Supreme Court have placed new and substantial constitutional limitations on service of process by publication in judicial proceedings. Theretofore, it had generally been assumed that, at least in the case of proceedings relating to real property, service by publication meets the minimum standards of procedural due process prescribed by the Fourteenth Amendment to the United States Constitution. However, in Mullane v. Central Hanover Bank & Trust Co., decided in 1950, the Supreme Court held unconstitutional a New York statute which authorized service on interested parties by publication in connection with an accounting by the trustee of a common trust fund under a procedure established by Section 100-c(12) of the New York Banking Law. The Court stated that there is no justification for a statute authorizing resort to means less likely than the mails to apprise persons whose names and addresses are known of a pending action. Any doubt whether the rationale of the Mullane decision would be applied by the Supreme Court to cases involving real property was settled by Walker v. City of Hutchinson, decided in 1956, which held that notice by publication of an eminent domain proceeding to a land owner whose name was known to the condemning city was a violation of due process.

The practical consequence of the Mullane and Walker decisions is that every state must now review its statutory provisions for notice by publication to determine whether any of them fail to measure up to the requirements of the Fourteenth Amendment. A preliminary study indicates that few, if any, California statutes are questionable under these decisions, inasmuch as our statutes generally provide for notice by mail to persons whose interests and whereabouts are known. However, a comprehensive and detailed study should be undertaken to be certain that all California statutory provisions which may be affected by the Mullane and Walker decisions are brought to light and that recommendations are made to the Legislature for such changes, if any, as may be necessary to bring the law of this State into conformity with the requirements of the United States Constitution.

Study No. 60: A study to determine whether Section 1974 of the Code of Civil Procedure should be repealed or revised.

Section 1974 of the Code of Civil Procedure, enacted in 1872, provides that no evidence is admissible to charge a person upon a representation as to the credit of a third person unless the representation, or some memorandum thereof, be in writing and either subscribed by or in the handwriting of the party to be charged. Section 1974 is open to the criticism commonly leveled at statutes of frauds, that they shelter more frauds than they

prevent. This result has been avoided by the courts to a considerable extent with respect to the original Statute of Frauds by liberal construction of the Statute and by creating numerous exceptions to it. However, Section 1974 has been applied strictly in California. For example, in Baron v. Lange an action in deceit failed for want of a memorandum against a father who had deliberately misrepresented that his son was the beneficiary of a large trust and that part of the principal would be paid to him, thus inducing the plaintiff to transfer a one-third interest in his business on the son's note.

Only a few states have statutes similar to Section 1974. The courts of some of these states have been more restrictive in applying the statute than has California. Thus, some courts have held or said that the statute does not apply to misrepresentations made with intention to defraud but fraudulent intent will not avoid Section 1974. Again, some states hold the statute inapplicable when the defendant had an interest in the action induced, but this interpretation was rejected in Bank of America v. Western Constructors, Inc. And in Carr v. Tatum the California court failed to apply two limitations to Section 1974 which have been applied to similar statutes elsewhere: (1) construing a particular statement to be a misrepresentation concerning the value of property rather than one as to the credit of a third person; (2) refusing to apply the statute where there is a confidential relationship imposing a duty of disclosure on the defendant. Indeed, the only reported case in which Section 1974 has been held inapplicable was one where the defendant had made the representation about a corporation which was his alter ego, the court holding that the representation was not one concerning a third person.

Section 1974 was repealed as a part of an omnibus revision of the Code of Civil Procedure in 1901 but this act was held void for unconstitutional defects in form.

Study No. 61: A study to determine whether the doctrine of election of remedies should be abolished in cases where relief is sought against different defendants.

Under the common law doctrine of election of remedies the choice of one among two or more inconsistent remedies bars recourse to the others. The doctrine is an aspect of the principle of res judicata, its purpose being to effect economy of litigation and to prevent harassment of a defendant through a series of actions, based on different theories of liability, to obtain relief for a single wrong. The common law doctrine has been applied in cases where the injured party seeks relief first against one person and then against another, although one of its principal justifications, avoidance of successive actions against a single defendant, is inapplicable to such a situation.

The doctrine of election of remedies has frequently been criticized. In 1939 New York abolished the doctrine as applied to cases involving different defendants, on the recommendation of its Law Revision Commission.

The law of California with respect to the application of the doctrine of election of remedies to different defendants is not clear. Our courts have tended, in general, to apply the doctrine only in estoppel situations--i.e., where the person asserting it as a defense can show that he has been prejudiced by the way in which the plaintiff has proceeded--and this limitation has been recently applied in cases involving different defendants. In other cases, application of the doctrine has been avoided by holding that the remedies pursued against the different defendants were not inconsistent. In still other cases which do no appear to be distinguishable, however, the doctrine has been applied to preclude a plaintiff from suing one person merely because he had previously sued another. Since it is difficult to predict the outcome of any particular case in this State today, legislation to clarify and modernize our law on this subject would appear to be desirable.

Study No. 62: A study to determine whether Vehicle Code Section 17150 should be revised or repealed insofar as it imputes the the contributory negligence of the driver of a vehicle to its owner.

The 1957 Legislature directed the Commission to undertake a study "to determine whether an award of damages made to a married person in a personal injury action should be the separate property of such married person." [Study No. 53(L)] A study of this subject involves more than a determination of the nature of property interests in damages recovered by a married person in a personal injury action; it also involves the question of the extent to which the contributory negligence of one spouse may be imputed to the other.

Prior to the enactment in 1957 of Section 163.5 of the Civil Code, damages recovered by a married person in a personal injury action were community property. Hence, the courts imputed the contributory negligence of one spouse to the other because the negligent spouse otherwise would share in the compensation paid for an injury for which he was partially responsible. The result was that a nonnegligent spouse was in many instances totally deprived of compensation for injuries negligently caused by others. Section 163.5 prevents such imputation, but it has created many other problems that need legislative solution.

The Commission's preliminary study of these problems has revealed another problem which cuts across any recommendation which the Commission might make in regard to the property nature of a married person 's personal injury damages. Many, if not most, actions for the recovery of damages for personal injury in which the contributory negligence of a spouse is a factor arise out of vehicle accidents. Because contributory negligence is imputed to vehicle owners under Vehicle Code Section 17150, the potential results in terms of liability are quite varied and complex when an automobile

carrying a married couple is involved in an accident with a vehicle driven by a third party and both the driver spouse and the third party are negligent. Whether the innocent spouse may recover damages from a negligent third party depends in large part upon such factors--not germane to the question of culpability--as whether the automobile was held as community property or as joint tenancy property and whether a husband or a wife was driving when the innocent spouse was injured. In many situations, it is impossible to predict with certainty what the result would be.

It is clear that if a vehicle is community property registered in the name of the husband or in the names of both spouses, the contributory negligence of the husband will not be imputed to the wife, but the contributory negligence of the wife will be imputed to the husband. These results flow from the fact that the husband, as manager of the community property, is the only spouse who can consent (within the meaning of Section 17150) to the other's use of the vehicle. On the other hand, if the vehicle is community property registered in the wife's name, the contributory negligence of the wife will probably be imputed to the husband and the husband's contributory negligence may possibly be imputed to the wife, but these results are not predictable with certainty. It is also clear that if the vehicle is held in joint tenancy, the negligence of one spouse is imputed to the other in all cases because each joint owner may consent (within the meaning of Section 17150) to the use of the vehicle. However, if the vehicle is community property but is registered in the names of both spouses jointly, it is not clear whether the true nature of the property can be shown to prevent imputing the contributory negligence of the husband driver to the wife.

The problems arising out of Vehicle Code Section 17150 are not confined to cases in which married persons are involved. If, for example, an automobile owner is a passenger in his own automobile and is injured by the concurring negligence of the driver and a third person, he cannot recover damages from the third person, for the driver's contributory negligence is imputed to him. He could formerly recover from the driver on established principles but Section 17158 of the Vehicle Code, originally enacted to protect against fraudulent claims and collusive suits, was amended in 1961 to provide that the owner can no longer recover from the driver. Hence, an innocent vehicle owner, injured by the concurring negligence of his driver and another, can now recover damages from no one.

A primary purpose of Section 17150 would appear to be to protect innocent third parties from the careless use of vehicles by financially irresponsible drivers. This protection is achieved by its provision that a vehicle owner is liable to an innocent third party for its negligent operation. This policy is not, of course, furthered by depriving innocent vehicle owners of all rights of action against negligent third parties. However, another purpose of Section 17150 may be to discourage vehicle owners from lending them to careless drivers. This policy might be furthered by denying the owner the right to recover against negligent third parties.

The Commission believes that a study should be made to determine what policies Section 17150 should seek to accomplish. It may be that better ways can be found to control the lending of vehicles and to allocate the risk of injury to the owner of a vehicle by another than to impose the entire risk on the one person involved who is not negligent. Accordingly, the Commission recommends that it be authorized to study whether Vehicle Code Section 17150 should be revised or repealed insofar as it imputes the contributory negligence of the driver of a vehicle to its owner.

EXHIBIT II

STATUS

Study No.	Subject	Year Authorized	Completed Research Report Received?	Comments
12	Taking Instructions to Jury Room	1955	Need a new study-have not retained a research consultant	Commission made recommendation in 1957. Bill not pushed by Commission because of various mechanical problems involved in getting a copy of the instructions to jury which were not taken care of in bill or considered in previous study. Commission determined in 1958 to carry this study forward and has reaffirmed that decision several times since then. However, pressure of other work has not permitted staff or Commission to devote any attention to this study.
21	Confirmation of Partition Sales	1956-study expanded in 1959	Need a new study-have not retained a research consultant	Staff study was prepared on this topic. It was submitted to several practitioners and at their suggestion the topic was broadened in 1959 (by legislative action) to include the entire subject of partition actions.
26	Escheat -- What Law Governs	1956	Need a new study-have not retained a research consultant	This topic involves a rather narrow point and perhaps the staff could prepare the necessary study if time permits.
27	Putative Spouse	1956	Research consultant has not completed study	Professor J. Keith Mann of Stanford Law School is our research consultant on this study. Because of other work, he has

Study No.	Subject	Year Authorized	STATUS: Completed Research Report Received?	Comments
27	Putative Spouse (Continued)			not been working on the study. He does not plan to work on it in the near future. He is unable to give us any specific date when it will be completed. He does not believe that he will recommend any legislative action in this field. If he decides not to prepare the study, we will need to get another research consultant.
29	Post-Conviction Sanity Hearings	1956	Yes	We have encumbered funds in a prior year to print the recommendation on this topic. We decided to defer action on this study because the Governor's Commission on Problems of Insanity Relating to Criminal Offenders will consider this matter.
30	Custody Jurisdiction	1956	We have an inadequate study	We paid for the study on this topic because the funds would no longer have been available for payment in the ordinary course after June 30, 1959. Payment was made with the understanding that the research consultant, Dean Kingsley of U.S.C. Law School, would continue to work with the Commission on the study.
34(L)	Uniform Rules of Evidence	1956-A legislative assignment	Study complete except for few minor matters. We will need, however, to bring study up to date.	Commission has published a tentative recommendation on the article on hearsay. We have the following additional portions of this study set in type: Privileges Article; Rules 67-72.

Study No.	Subject	Year Authorized	STATUS: Completed Research Report Received?	Comments
35(L)	Post-Conviction Procedure	1956-A legislative assignment	We have retained a consultant but do not have his study	The Commission received a study from Mr. Paul Selvin recommending that the Uniform Post-Conviction Procedures Act not be adopted in California. The Commission concurred in that recommendation and is now awaiting a study concerning improvements in the details of the existing California law. Professor Herbert L. Packer of Stanford is our consultant on the second study. However, there has been a misunderstanding as to the scope of the study he was to make and we will have to retain another consultant to prepare this research study.
36(L)	Condemnation Law and Procedure	1956-A Legislative assignment	Substantially completed	We have made four recommendations on this subject.
39	Attachment, Garnishment and Property Exempt from Execution	1957	Research consultant retained	

Study No.	Subject	Year Authorized	STATUS: Completed Research Report Received?	Comments
41	Small Claims Court Law	1957	We have a staff research study that needs some revision	When time permits the staff may be able to complete this study.
42	Trespassing Improvers	1957	We have research study set in type	The staff will need to do quite a bit of research on the rights of various persons who may have security interests in property improved by another before this study will be ready to be considered by the Commission.
43	Separate Trial on Issue of Insanity	1957	Yes	We have decided to defer this study. The Governor has appointed a special commission that will consider this matter. (See comment to Study No. 29)
44	Suit in Common Name	1957	We have an inadequate study	When time permits the staff may be able to put this study in a form that will provide a sound basis for Commission action. The study will need considerable work.
45	Mutuality re Specific Performance	1957	We have retained a research consultant	We have not yet received a research report on this topic. Our research consultant is Professor Orrin B. Evans of U.S.C. We have written to him to determine when he will submit the study, but he has not set any time for delivery of the research report. Contract required study to be submitted not later than June 30, 1962.

STATUS

Study No.	Subject	Year Authorized	Completed Research Report Received?	Comments
46	Arson	1957	Yes	We have the research study set in type.
47	Modification of Contracts	1957	We do not have a research consultant	
49	Rights of Unlicensed Contractor	1957	We have an inadequate study	This study will require considerable work by the staff before it is ready to be considered by the Commission.
50	Rights of Lessor Upon Abandonment by Lessee	1957	Yes	
51	Right of Wife to Sue for Support After Ex Parte Divorce	1957	See comment	We received a good research report on this topic but the Supreme Court subsequently reversed its prior decisions and made the research study obsolete. We should either abandon this topic or secure a new research report containing recommendations as to the procedures to be followed in obtaining support after an ex parte divorce.
52(L)	Sovereign Immunity	1957 - A Legislative assignment	Yes--but we need additional research studies	

STATUS

Study No.	Subject	Year Authorized	Completed Research Report Received?	Comments
53(L)	Whether Personal Injury Damages Should Be Separate Property	1957 - A legislative assignment	Yes	We deferred action on this study pending receipt of the study required by Topic No. 62.
55(L)	Power To Deny New Trial on Condition that Damages Be Increased	1957 - A legislative assignment	Yes	We have some concern as to the quality of this study.
57(L)	Law Relating to Bail	1957	Yes	
59	Service of Process by Publication	1958	Yes-study not yet available in mimeographed form	This study was prepared free of charge by the Harvard Student Legislative Research Bureau. It will require considerable work by the staff before it will be in a form suitable for consideration by the Commission.
60	Representation Relating to Credit of Third Person	1958	We do not have a research consultant	
61	Election of Remedies Where Different Defendants Involved	1958	We have retained a research consultant	Our research consultant plans to deliver this study in September 1963.
62	Vehicle Code Section 17150 (imputed contributory negligence)	1962	We have retained a research consultant	Our research consultant plans to deliver this study in September 1963.