

#34(L)

10/29/64

First Supplement to Memorandum 64-89

Subject: Study No. 34(L) - Uniform Rules of Evidence (Preprint Senate Bill No. 1 - Division 10 Hearsay Evidence)

A possible defect in the hearsay division has been drawn to our attention.

Section 1300 provides that a final judgment of "a felony" is not inadmissible under the hearsay rule. The problem called to our attention involves the meaning of "felony" in this context.

Under California law, a crime that is punishable as either a felony or a misdemeanor is treated as a felony for all purposes until judgment; but if the sentence imposed is a misdemeanor sentence, the crime is then regarded thereafter as a misdemeanor for all purposes. PENAL CODE § 17; Doble v. Superior Court, 197 Cal. 556, 576-577, 241 Pac. 852 (1925).

Section 1300, then, would make admissible only those judgments where a felony sentence was imposed. The admissibility of the evidence is based on (1) the fact that the seriousness of the charge guarantees that the case was seriously litigated and (2) the fact that guilt had to be established beyond a reasonable doubt. These considerations apply to all crimes tried as felonies whether the actual sentence imposed was a misdemeanor sentence or a felony sentence. We suggest, therefore, that Section 1300 be modified to read:

1300. Evidence of a final judgment adjudging a person guilty of a crime punishable as a felony is not made inadmissible by the hearsay rule when offered in a civil action to prove any fact essential to the judgment unless the judgment was based on a plea of nolo contendere.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary