

10/11/65

## First Supplement to Memorandum 65-54

Subject: Study No. 62(L) - Vehicle Code Section 17150 and related statutes

Accompanying this memorandum, on buff paper, is a proposed section to be added to the suggested legislation that you received with the basic memorandum.

Since the basic memorandum was prepared, we learned that two measures were enacted at the 1965 session relating to Section 17150 and vehicles registered in the names of married couples. These acts seem inconsistent, yet both seem to have flowed from the decision in Cooke v. Tsipouroglou, 59 Cal.2d 660 (1963). The Cooke case held that the vehicle registration is an "instrument in writing" within the meaning of Civil Code Section 164. A registration in the name of the husband "or" his wife, or the husband "and/or" his wife, invokes the presumption in Section 164 that the wife "takes the part acquired by her as tenant in common." CIV. CODE § 164. The general rule on co-owners is that if one is riding with the other, the passenger is deemed to have consented to the use of the car by the driver. Hence, imputed liability and imputed contributory negligence attach under Section 17150 of the Vehicle Code. If the co-owner is not riding, vicarious liability is based on actual consent to the use of the vehicle, and such actual consent is a question of fact and is not necessarily established by proof of the co-ownership. 59 Cal.2d 660, 663 (1963). Under Civil Code Section 164, if the instrument in writing describes the married couple as "husband and wife", the presumption is that the property acquired by the instrument is community property. Prior to 1965, however, the Motor Vehicle Department would not register a vehicle in the names of a married couple as "husband and wife". Under the regulations of the department, if both

the husband and wife were registered as owners, they had to be designated in such a manner as to give rise to the presumption that the wife's interest was held as a tenant in common and not as community property.

Section 17150.5 of the Vehicle Code was added in 1965 to make the community property presumption applicable to cars registered in the names of both the husband and wife. At the same session, however, Sections 4150.5 and 5600.5 were added to the Vehicle Code. Under these sections, the nature of the ownership can be determined precisely. When a vehicle is registered now, the registrants may designate whether it is joint tenancy, community property, or tenancy in common. Failure to designate results in ownership in joint tenancy (if the co-owners' names are joined by "or") or tenancy in common (if the co-owners' names are joined by the conjunction "and"). Either conjunction, "and" or "or", apparently may be used with the co-owners' names whether the vehicle is registered as community property, joint tenancy, or tenancy in common. In such cases, the effect of using "and" or "or" is to designate whether either co-owner or both co-owners are permitted to transfer the interest in the vehicle.

In view of this comprehensive legislation relating to title, Section 17150.5 appears unnecessary. Therefore, we recommend that it be repealed. The attachment contains a section repealing Section 17150.5 and a proposed comment to the repealer.

Respectfully submitted,

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Assistant Executive Secretary

SEC. 2. Section 17150.5 of the Vehicle Code is repealed.

~~17150.5: The presumptions created by Section 164 of the Civil Code as to the acquisition of property by a married woman by an instrument in writing shall not apply in an action based on Section 17150 with respect to the acquisition of a motor vehicle by a married woman and her husband.~~

Comment. Section 17150.5 is designed to make the presumption that property acquired during marriage is community property applicable to cases based on Section 17150 that involve vehicles owned by married couples. Cf. Cooke v. Tsipouroglou, 59 Cal.2d 660, 31 Cal. Rptr. 60, 381 P.2d 940 (1963). Section 17150.5 was enacted at the 1965 session of the Legislature. Cal. Stats. 1965, Ch. 1598, § 1. Other legislation enacted at the same session has made Section 17150.5 ineffective to accomplish its purpose. Under Vehicle Code Sections 4150.5 and 5600.5 (added by Cal. Stats. 1965, Ch. 891, §§ 1, 2), the nature of the ownership interests of married persons in vehicles will be determined by the manner in which the vehicle is registered and not by resort to presumptions. Section 17150.5, therefore, is repealed as unnecessary.