

11/29/65

Memorandum 65-82

Subject: Suggested Topics for Consideration During 1966

Listed below are topics upon which we anticipate the Commission will submit recommendations to the 1967 legislative session. In order to give you an understanding of the amount of staff work involved, we have also indicated the status of the research study that relates to each project.

1. Personal injury damages as separate property

Tentative recommendation to be considered at December meeting. Research study has been checked and is substantially ready to print. We plan to submit it to various law reviews to determine if one will publish it.

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Tentative recommendation will be considered at December meeting. Research study will have to be completely rewritten. We will probably publish it as a staff study unless our consultant is willing to approve our interpretation of the Dorsey case. We have not yet begun work on the research study. We will not have time to submit it for publication in a law review.

3. Vehicle Code Section 17150 and related statutes

Tentative recommendation will be considered at December meeting. Research study has been published as a law review article and we will use law review article as the study in our pamphlet.

4. Rights and duties upon termination or abandonment of lease

Tentative recommendation has been approved and distributed. We plan to consider the comments on the tentative recommendation at our January or February meeting. Research study is generally satisfactory, but we do not yet have it in shape to send to the printer.

5. Evidence Code revisions

Tentative recommendation will be considered at December meeting. We do not plan to publish a research study on this subject.

6. Ex parte divorce

Tentative recommendation will be considered at December meeting. We have a staff research study which we will need to put in shape for the printer.

7. Suit in common name, use of fictitious names

We have not yet considered this topic. We plan to open it up at the December meeting if time permits. We have a staff research study on this topic which we will need to work over before it is published.

8. Good faith improver of the property of another

For a number of years, the Commission has been working on this topic. We have considered it on several occasions during the past year. We plan to consider it again at the January meeting. The research study was printed as a law review article and we plan to reprint the law review article in our publication.

9. Civil Code Section 1698 ("A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise.")

This topic has not previously been considered. We plan to consider it if we receive the research study being prepared by the Harvard Student Legislative Research Bureau in time to permit preparation of a recommendation to the 1967 legislative session.

10. Code of Civil Procedure Section 1974 ("No person is liable upon a representation as to the credit of a third person, unless such representation, or some memorandum thereof, be in writing, and either subscribed by or in the handwriting of the party to be held liable.")

This topic has not previously been considered. We plan to consider it if we receive the research study being prepared by the Harvard Student Legislative Research Bureau in time to permit preparation of a recommendation to the 1967 legislative session.

We are hopeful that tentative recommendations on topics 1, 2, 3, 5, and 6 will be approved at the December meeting. This will permit distribution of the revised tentative recommendations early in January 1966. We will request that comments on the tentative recommendations be sent to us not later than July 1, 1966. We will consider the comments at our July, August, and September meetings. In order to meet our printing schedule, we hope that

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we can approve our final recommendations on these topics not later than our September meeting and that we will be in a position to have the bills preprinted and present them to the appropriate legislative interim committees prior to the 1967 general session.

It is apparent from the above that a substantial portion of our time during 1966 will necessarily be devoted to consideration of topics upon which recommendations will be submitted to the 1967 legislative session. During 1966, when time permits, we plan to consider eminent domain and inverse condemnation. The following is the priority we suggest be given to various aspects of these topics:

1. Whether a constitutional amendment is needed on inverse condemnation

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We will not be able to consider this matter until September 1966, but we believe that every effort should be made to submit any needed constitutional amendment on this topic to the 1967 legislative session. We have asked our consultant, Professor Van Alstyne, to have a study on this aspect of inverse condemnation in our hands in time to consider at our September meeting.

2. The right to possession prior to final judgment in eminent domain cases

We hope to have a staff research study on this subject ready in time for the January 1966 meeting. We believe it would be desirable, if possible, to include any needed constitutional amendment on immediate possession with the amendment contemplated by topic 1 (above) since both will involve the same section of the California Constitution. We believe that we should attempt to have the constitutional amendment and the companion legislation on possession prior to final judgment ready for the 1967 session.

3. The right to take

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We discussed the general content of a staff study on this topic at a recent meeting. We hope to have a portion of the study ready for consideration at the January meeting. Our consideration of this topic would result in the publication of a tentative recommendation, but no legislation would be submitted to the Legislature until 1969.

4. Date of valuation

We should consider this in connection with topic 2. Without regard to what action is taken on topic 2, we believe that we should begin preparation of a tentative recommendation on this topic, probably at the February meeting. We will prepare a staff study on this topic.

5. Discovery and pretrial conferences

We distributed material relating to discovery and pretrial conferences and requested comments not later than July 1, 1966. When these comments are in our hands, we will be in a position to draft a tentative recommendation on discovery and to determine what action should be taken on pretrial conferences. We do not have a research study on pretrial conferences and we do not have an up-to-date study on discovery in eminent domain.

6. Apportionment and allocation of the award

Some time during 1966, we should open up this topic so that the Commission will be aware of the problems. Some of the problems are related to those involved in just compensation and measure of damages, but there are other problems that could be considered and resolved without regard to what action is taken on just compensation and measure of damages. We have a research study on this topic. The study will need to be expanded to include such matters as tax consequences in cases where a landlord-tenant relationship exists.

7. Just compensation and measure of damages

We do not contemplate that we will consider this topic until late in 1966 or early in 1967. The various matters outlined above will require substantially all of our time prior to 1967. We need to consider this topic at the same time we consider inverse condemnation. Also involved are the subsidiary topics of moving expenses, benefits, the larger parcel, consequential damages, court costs and other expenses, good will, lost business profits, and the like.

8. Inverse condemnation

We anticipate that we will begin to consider this topic as soon as we receive portions of the research study from our consultant. See topic 1 above.

Additional staff work

Between now and the 1966 legislative session, the staff must complete work on the 1966 Annual Report and Volume 7 of our Reports, Recommendations, and Studies. Work on both projects is well along, but some staff time will be required on these projects during the next two or three months. Also the staff will, as time permits, work on the needed research studies on various topics listed above. It appears unlikely that we will be able to add another member to our staff before February 1, 1966. We are working with the budget division and the state personnel board with this date in mind.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary