#44 2/15/66

Memorandum 66-3

Subject: Study 44 - Suit in Common Name

Attached to this memorandum is a research study (prepared by the staff) dealing with suit against a partnership or other unincorporated association in common name. Time did not permit us to complete work on the portion of the study relating to suits by unincorporated associations in common name.

Our legislative authorization might be construed as not broad enough to authorize us to study suit against unincorporated associations in common name. However, we believe that the law is in need of revision and that these revisions are so closely related to the authorized topic that they should be accomplished in the same recommendation. We requested in Memorandum 66-10 that our authority be expanded to cover all aspects of this general subject.

The following are the policy questions presented by the attached research study:

1. Definition of "unincorporated association." See study, pages 2-4. The statutory definition recommended in the study is found at the bottom of page 4.

2. Permitting suit in common name against unincorporated associations. The existing statutory scheme is outlined on pages 5 and 6 of the study. On pages 6-7, the study recommends that suit in common name against unincorporated associations should be permitted (as it is under existing law).

3. The "transacting business" requirement. See study, pages 7-10. The study recommends that the "transacting business" requirement be eliminated. The statutory language recommended to effectuate this recommendation is set out at the bottom of page 10.

4. Substantive liability of unincorporated associations. See study, pages 11-21. The recommendation and proposed statutory language are set out on page 17. It is important that you read pages 11-21 since the changes we propose to make in existing law are important and basic.

5. Substantive liability of members of unincorporated associations. See study, pages 21-25. The recommendation and proposed statutory language are set out on page 24. Again, we recommend that you read pages 21-25 since the changes we propose to make in existing law are important and basic.

6. Enforcement of judgment. See study, pages 26-29. The recommendation and proposed statutory language are set out on pages 26-27.

7. Service of process. See study, pages 29-33. The recommendation is set out on page 30 and the recommended statutory language is set out on pages 32-33.

8. Venue. See study, pages 33-36. The recommendation is set out on page 34 and the proposed statutory language is set out in the middle of page 35.

Respectfully submitted,

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#44 2/14/66

SUIT BY OR AGAINST A PARTNERSHIP OR OTHER UNINCORPORATED ASSOCIATION IN ITS COMMON NAME*

*This study was prepared for the California Law Revision Commission by the staff of the Commission. No part of this study may be published without prior written consent of the Commission.

The Commission assumes no responsibility for any statement made in this study and no statement in this study is to be attibuted to the Commission. The Commission's action will be reflected in its own recommendation which will be separate and distinct from this study. The Commission should not be considered as having made a recommendation on a particular subject until the final recommendation of the Commission on that subject has been submitted to the Legislature.

Copies of this study are furnished to interested persons solely for the purpose of giving the Commission the benefit of the views of such persons and the study should not be used for any other purpose at this time.

SUIT BY OR AGAINST A PARTNERSHIP OR OTHER UNINCORPORATED ASSOCIATION IN ITS COMMON NAME

INTRODUCTION

A common name is one that is used by two or more persons for the conduct of their mutual affairs. Although there are some significant exceptions, the general rule in California is that a suit may not be brought by a partnership or other unincorporated association in its common name; all of the persons who conduct their mutual affairs under the common name must be named individually as parties. However, Code of Civil Procedure Section 388 permits such an association to be sued in its common name under certain circumstances.

This study is divided into three parts. The first part discusses what types of organizations are included within the term "unincorporated association" and includes a recommended definition of this term. The second part examines the problems that arise under existing law when an unincorporated association is sued in its common name. This part includes recommendations for changes in existing law to deal with some of these problems. The third part considers the advantages and disadvantages that would result from permitting an unincorporated association to sue in its common name and concludes that suit by such an association in its common name should be permitted. This part includes recommendations for statutory provisions designed to meet the problems that would arise if suit by such an association in its common name were permitted.

MEANING OF THE TERM "UNINCORPORATED ASSOCIATION"

It has been suggested that unincorporated associations can be classified into two types:

> (1) Those which are partnerships and to which the Uniform Partnership Act applies and controls. The requirements of CAL. CORP. CODE §§ 15006, 15007 must be fulfilled. The question whether parties have created a partnership is ordinarily one for determination by the trial court, from facts advanced and inferences to be drawn therefrom. Spier v. Lang, 4 Cal.2d 711, 53 P.2d 138 (1935).
>
> (2) Those which are not treated as partnerships for any purposes and to which agency law applies in all respects. The nonprofit unincorporated association is a prime example, but this class would also include the common law joint stock company and the Massachusetts business trust, each of which are nonpartnership associations. See In Re Agriculturist Cattle Insurance Co., L.R. 5 Ch. App. Cas. 725 (1870)(common law joint stock company); State Street Trust Co. v. Hall, 311 Mass. 299, 41 N.E.2d 30, 156 A.L.R. 13 (1942)(Massachusetts trust).[1]

In California, Section 388 of the Code of Civil Procedure provides that when "two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name." Although Section 388 might be construed to apply only to partnerships and other forms of unincorporated business associations engaged in activity for the pecuniary profit of its members, the section has not been given this restrictive interpretation. The section applies equally to persons associated together in a nonprofit association, organized for charitable or other purposes, who transact any business within the objects of the association.[2]

Section 388 does not use the term "unincorporated association" in describing the type of organizations that may be sued in common name. A few other states have statutes that are substantially the same as California.[3] The great majority of the common name statutes, however, apply by their terms to "unincorporated associations."[4]

A few of the common name statutes that apply to "unincorporated associations" specifically exclude partnerships from the coverage of the statute,[5] probably because a separate statute governs suits by and against partnerships.[6] However, the California statute applies to partnerships[7] and no reason is apparent why there should be two separate suit in common name statutes, one applying to unincorporated associations generally and the other applying only to partnerships.

A few of the common name statutes use the word "voluntary" in connection with the term "association."[8] A "voluntary organization" is one in which one may seek, or be accepted into, membership as a matter of choice.[9] This limitation on the scope of a common name statute is not recommended; the addition of "voluntary" might, for example, exclude a labor union having a "union shop" or "closed shop" contract from the coverage of the statute. Moreover, in view of the protection that can be afforded individual members of unincorporated associations from having to pay personally a liability of the association,[10] there is no necessity to limit the coverage of a common name statute to "voluntary" associations.

The common name statutes in the various states are not uniform. A substantial number use "unincorporated association" or a similar phrase without further definition to prescribe the scope of the coverage of the statute.[11] Some of the statutes contain a more detailed description of the types of organizations covered by the statute. The following are illustrative of the definitional type of statute:

> MINN. STAT. § 540.151 -- "two or more persons [who] associate or act, whether for profit or not, under the common name, including associating and acting as a labor organization or employer organization, whether such common name comprises the names of such persons or not."

NEB. REV. STAT. § 25-313 -- "any company or association of persons formed for the purpose of (1) carrying on any trade or business, (2) holding any species of property in this state, or (3) representing employees in collective bargaining with employers, and not incorporated."

PA. RULES CIV. PROC., Rule 2151 -- "any unincorporated association conducting any business or engaging in any activity of any nature whether for profit or otherwise under a common name," excluding "an incorporated association, general partnership, limited partnership, registered partnership, partnership association, joint stock company or similar association."

It is suggested that a definition of the term "unincorporated association" would be desirable. The definition would provide a clear indication of the types of organizations included within the scope of the common name statute and would eliminate unnecessary repetition in the various provisions of the statute. Such a definition would be available for use both in a statute providing for suit against an unincorporated association in its common name and in a statute providing for suit by such an association in its common name.

The definition should be broad enough to include all types of unincorporated organizations. If a particular provision of the common name statute should not apply to specific types of unincorporated organizations, limiting language can be inserted in that provision.

The following definition is recommended:

> "Unincorporated association" means any unincorporated organization engaging in any activity of any nature, whether for profit or not, under a common name, and includes, by way of illustration but not by way of limitation, a joint stock company, labor union, partnership, church, fraternal order, or club unless such organization is incorporated.

UNINCORPORATED ASSOCIATIONS AS DEFENDANTS

The Existing Statutory Scheme

At common law, suit against a partnership or other unincorporated association in its common name was not permitted; all of the individual members comprising the association had to be named as parties defendant.[1] This rule has been changed in California by Code of Civil Procedure Section 388 which permits an action to be brought against an unincorporated association in its common name.

Section 388, which was enacted as part of the 1872 Code of Civil Procedure, provides:

> 388. When two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates, and the individual property of the party or parties served with process, in the same manner as if all had been named defendants and had been sued upon their joint liability.

A suit brought under Section 388 is one against the association and is not one brought against the associates in their individual capacities.[2] Thus, for example, an action against a partnership under Section 388 must be brought against the partnership itself in its firm name;[3] the firm must be specifically designated as a party defendant.[4] If the individual partners are named as parties defendant and only inferentially described as doing business under a designated firm name, the partnership itself is not a party defendant under the statute;[5] hence, a purported answer filed on behalf of the partnership in its firm name is improper since it is equivalent to a pleading entered by a stranger to the action.[6] By the same token, a judgment entered in such a case may not run against the firm itself.[7] Conversely,

when a suit is filed against the partnership itself in its firm name, the action is one against the firm only and not the members thereof individually. Accordingly, individual partners are precluded from interposing a defense to such an action in their own right because they are considered to be strangers to the action.[8] However, when an unincorporated association is sued in its common name under Section 388, nothing in the section precludes the joinder of individual members of the association as additional defendants.

Section 388 does not affect the rules of substantive liability; the plaintiff who sues an unincorporated association under Section 388 must establish the liability of the association under the applicable rules of substantive law.[9] While the law is not entirely clear, it appears that an unincorporated association is probably liable for its negligent or wrongful acts or omissions and for the negligent or wrongful acts or omissions of its officers, agents, or employees.[10]

If the plaintiff obtains a judgment against the unincorporated association, Section 388 provides that he can satisfy his judgment by execution against the joint assets of the association and the individual assets of the associates who were served in the action against the association. It has been held that Section 388 requires only that the associate be served in order that the judgment may be satisfied by execution against his individual assets; it does not require that he be made an additional defendant in the action against the association.[11]

Analysis and Recommendations

Permitting suit in common name against unincorporated associations

Section 388 made a desirable change in the common law rule that did not permit suit to be brought against an unincorporated association in its common

name. The desirability of this change is so generally recognized that extended discussion is not necessary. The change eliminates need for an extended caption to name the individual members that constitute the association. Moreover, it permits the plaintiff to avoid the time and expense that would be required to determine each and every member of the association. Consider the injustice that would result if persons injured by a powerful unincorporated association were required to bring suit against 450,000 members as individuals.[12] To avoid this result, the common law rule has been changed not only in California[13] but also in the federal courts and in a substantial number of states.[14] Suit in common name also is permitted in England.[15]

The effect of Section 388 is to save the plaintiff a good deal of inconvenience, time, and expense without affecting the substantive rights of the members of the association. Although the enactment of Section 388 made a substantial improvement in the law, additional substantive and procedural changes in the law relating to suit against unincorporated associations in common name are needed. These are discussed below.

The "transacting business" requirement

Existing law. Section 388 is not an unqualified exception to the general common law rule that precludes suit against unincorporated associations, nor is there any statutory exception that is broader than Section 388. By its terms, Section 388 is limited to suit against "two or more persons, associated in any business, [who] transact such business under a common name whether it comprises the names of such persons or not." [Emphasis added.]

Obviously, if an unincorporated association is in business for the purpose of realizing a profit, it will be "transacting business" within the meaning of Section 388. However, the association need not be in business for profit; it may be merely philanthropic or charitable and still be subject to suit under Section 388.[16] "Transacting business" is construed so broadly that apparently all that is necessary is that the acts on which the plaintiff's claim of liability is based be acts intended to effectuate a specific object of the association.[17]

In Camm v. Justice's Court,[18] the "Sonoma County Good Roads Club,"--an association "engaged in instilling, promoting, furthering, and advancing the interests of the public of the state of California in repairing, maintaining, and improving the streets, roads, and byways of and in the County of Sonoma"--was held to be "transacting business" so as to be subject to suit under Section 388. The club defended on the ground that it was a "nontrading, unincorporated association". The district court of appeal said:

> [N]or is it important whether it was a voluntary association and not organized and conducted for pecuniary profit to its projectors or members. [Citation omitted.] By this we mean to say that section 388 has reference to an association of two or more persons who thus band together for the purpose of transacting as a single body any kind of business, whether for profit to themselves or for charitable or philanthropic purposes, and that, where persons so associated, to effectuate the specific objects of their association and for the benefit thereof, create liabilities against themselves as such associates, such persons, as such associates, may be proceeded against by their common name in any action to enforce the liabilities so created.[19]

In Herald v. Glendale Lodge,[20] it was held that an Elks Lodge could be sued in its common name under Section 388. The plaintiff was trying to enjoin the selling of liquor in the club in violation of a city ordinance. The court stated that it made no difference whether a service was being provided to the members of the club or to outsiders as far as determining

whether the club was "transacting business" for the purpose of Section 388. The district court of appeal stated by way of dictum:

> If the word "business" in this connection, means an actual commercial business, carried on for profit, the defendant here cannot qualify. As alleged in the complaint its purposes are purely social and benevolent. . . . It clearly is not a business concern, in any mercantile or commercial sense. On the other hand, if the word is used with the more general and very common meaning of any occupation, employment, or interest in which persons may engage, it would include this defendant. . . . We see no reason for restricting section 388 of the Code of Civil Procedure to associations formed for commercial business. . . . When a number of persons are associated under a common name in an undertaking in which the associates incur obligations for which they are legally liable, why should they not be sued in the common name which they have adopted, whether it is a money-making concern or otherwise? . . . Why should a different rule of liability exist because the associates happen to contract their liabilities in an enterprise in which they are catering to themselves? The word "business" in its broad sense, embraces everything about which one can be employed . . .[21]

The reasoning of these two cases was adopted by the California Supreme Court in Jardine v. Superior Court[22] which held the Los Angeles Stock Exchange to be "transacting business" so that it could be sued in its common name. Two recent California cases have upheld suit in common name against a labor union.[22a]

Recommendation: The "transacting business" requirement should be eliminated.

An analysis of the reasoning of the three cases discussed above indicates that any acts in furtherance of the objectives or purposes of an association probably will constitute "transacting business" so as to subject the association to suit in its common name for any liabilities arising out of such acts. Therefore, the requirement that an association be "transacting business" is no longer a significant limitation. However, to the extent that this requirement limits the right to bring an action against an

unincorporated association, it is an undesirable limitation. If the liability arises out of an associational activity, the plaintiff should have a right to bring his action against the association in its common name and a technical objection that the association is not "transacting business" should not be permitted to defeat the action. In this connection, it should be noted that the pertinent provision governing suits to enforce substantive federal rights against unincorporated associations has no "transacting business" requirement.[23] In addition, many of the common name statutes in other states have no "transacting business" requirement.[24]

The definition of "unincorporated association," previously recommended,[25] would include all unincorporated associations, not just those engaged in transacting business. Since the "transacting business" requirement is an undesirable limitation on the right to bring an action against an unincorporated association, the broad definition of "unincorporated association" should be used in the statute governing the right to bring suit in common name against an unincorporated association.

The following statutory language is recommended to effectuate this recommendation:

> An unincorporated association may [sue and] be sued in its common name.

The desirability of inserting the words in brackets is discussed in part 3 of this study.

Substantive liability of unincorporated associations

Existing law. An incorporated association is liable on its contracts and for its own negligent or wrongful acts or omissions and for the negligent or wrongful acts or omissions of its officers, agents, or employees committed while they are acting in the scope of their employment.[26] But an unincorporated association was not liable on this basis at common law since it was not recognized as a legal entity.[27] The assets of an unincorporated association are regarded as those of the membership in common, and under the common law rule could be reached only to satisfy a personal liability of all of the members of the association.[28]

Since the common law required that each member of an unincorporated association be personally liable before the plaintiff could reach the association's assets, the rules that determined the liability of members of various types of unincorporated associations were decisive in determining the liability of the association. The development of these rules has been described as follows:

> Because the actual wrongdoers often are without funds, persons injured have frequently sued some or all of the members. As late as one hundred years ago such actions had a fair chance of success since until then clubs and other unincorporated associations were treated very much like partnerships. Each member was considered a general agent of the others, and all were chargeable with harm caused by a member in the course of association business. By the end of the nineteenth century, however, many jurisdictions had drawn a sharp line between partnerships and nonprofit associations, and held association members liable only if they had actually authorized, ratified, or participated in the act. Moreover, authorization normally was not inferred from mere membership; a good measure of authority might have been drawn from the association's rules or its purposes, but, with some exceptions in early union cases, courts were very hesitant to bind members on that basis alone. . . . Practice was sometimes more liberal than theory, however, and as associations grew larger, made more contracts, and caused greater injury, the desire to find authority or ratification also increased.

[See Lawlor v. Loewe, 235 U.S. 522 (1915); Security-First National Bank v. Cooper, 62 Cal. App. 2d 653, 145 P.2d 722 (Dist. Ct. App. 1943).] But this very growth in size made membership control unrealistic and membership liability seem unfair; courts expanding the liability of the members sometimes found themselves overruled by statute. [Compare 47 Stat. 71 (1932), as amended, 29 U.S.C. § 106 (1958), and CAL. CORP. CODE §§ 21100-03, with cases cited supra.][29]

Tort Liability

There is little California law on the liability of an unincorporated association for injuries resulting from its tort or the tort of its officer, agent, or employee. The general rule elsewhere now apparently is that such associations are liable to persons (other than members) to the same extent as legal entities:

> With respect to their torts, unincorporated associations or clubs are under the same duties and liabilities as any other group of individuals, whether corporate or noncorporate, and the general rule is that an unincorporated association is liable for a tort committed by its agents or servants in the course of their service or employment. Organizations called into being by the voluntary action of the individuals forming them for their own advantage, convenience, or pleasure, being but aggregations of natural persons associated together by their free consent for the better accomplishment of their purposes, are bound to the same care, in the use of their property and the conduct of their affairs, to avoid injury to others, as are natural persons, and a disregard of neglect of this duty involves a like liability. Under this rule, unincorporated associations and societies are responsible for injuries sustained by reason of their failure to use ordinary care in the erection or maintenance of buildings, structures, or premises fit for the purposes of their organization. A club, committee, or other organization, and the actively participating members, which organizes or promotes a free public entertainment or celebration, may be charged with liability for damages for personal injuries to spectators caused by negligence in conducting or managing such celebration or entertainment. . . . An unincorporated association may be held liable in an action for wrongful death, or may be liable for personal injury to the wife of one of its members.[30]

A distinction must be made between an action by a third person for injury caused by the activities of an unincorporated association and an action by a member against the association:

> The general rule deducible from the cases which have passed on the question is that the members of an unincorporated association are engaged in a joint enterprise, and the negligence or fault of each member in the prosecution of that enterprise is imputable to each and every other member, so that the member who has suffered damages to his person, property, or reputation through the tortious conduct of another member of the association may not recover from the association for such damage, although he may recover individually from the member actually guilty of the tort.[31]

Although no California decision has been found which imposes tort liability on an entity theory in a case where a third person brings an action against the association, California has been a leader in imposing liability on the common funds of an unincorporated association on an entity theory for an injury negligently or intentionally inflicted on a member of the association. In Marshall v. International Longshoremen's & Warehousemen's Union,[32] the California Supreme Court held that a labor union is to be treated as an entity for the purpose of determining liability. In this case, a member of the union sued the union for injuries resulting from negligent maintenance of the union parking lot. The court held "It is our conclusion that a member of a labor union is entitled to sue the union for negligent acts which he neither participated in nor authorized, and that any judgment he may recover against the union can be satisfied from the funds and property of the union alone."[33]

In Inglis v. Operating Engineers Local Union No. 12,[34] the California Supreme Court applied the same rule to intentional torts. The court held that a member of a labor union could recover against the union for an intentional tort committed on him by members and officers of the union during the course of a union meeting.

The California Supreme Court has not had occasion to determine whether the entity theory should be applied to actions brought by members of other types of unincorporated associations. In the Marshall case, the court said: "We limit our holding to labor unions only, leaving to future development the rules to be applied in the case of other types of unincorporated associations."[35] However, the reasoning in the Marshall case would seem to call for the application of the entity theory of liability in case of other unincorporated associations that are not partnerships. In Marshall, the court noted that the rules governing the liability of unincorporated nonprofit associations for injuries to members have been arrived at by applying the rules of law developed in the field of business partnerships and stated:

> Under traditional legal concepts the partnership is regarded as an aggregate of individuals with each partner acting as agent for all the other partners in the transaction of partnership business, and the agents of the partnership acting as agents for all of the partners. When these concepts are transferred bodily to other forms of voluntary associations such as fraternal organizations, clubs and labor unions, which act normally through elected officers and in which the individual members have little or no authority in the day-to-day operations of the association's affairs, reality is apt to be sacrificed to theoretical formalism. The courts, in recognition of this fact, have from case to case gradually evolved new theories in approaching the problems of such associations, and there is now a respectable body of judicial decision, especially in the field of labor-union law, with which we are here directly concerned, which recognizes the existence of unincorporated labor unions as separate entities for a variety of purposes, and which recognizes as well that the individual members of such unions are not in any true sense principals of the officers of the union or of its agents and employees so as to be bound personally by their acts under the strict application of the doctrine of respondeat superior.[36]

Various writers have suggested that the California Supreme Court should and probably will extend the rule of the Marshall case to other types of unincorporated associations, but probably not to partnerships. One writer states:

> Similarly, Marshall might be extended to apply to other unincorporated associations. The court indicated that, if an unincorporated association acts through elected officers, leaving no management control to its individual members, the application

> of partnership law to govern the relationship between them is apt to lack realism. These criteria might exclude some fraternal orders that break down into small, voluntary units in which each member does have some voice in the management of the organization's affairs. Nevertheless, Marshall does state that the other nonunion unincorporated associations may be accorded entity status--"leaving to future development the rules to be applied in the case of nonunion unincorporated associations." At the least, it seems that such organizations would be held liable for torts against their members. At the most, such associations might be treated as entities whenever partnership law would fail to yield an equitable result.
>
> It appears that the court in Marshall has reached an equitable result. It erased the vestige of common law that resulted in union immunity from tort suits by its members. It allowed the injured member to pursue his only effective remedy. It also pointed the way to the abrogation of similar immunity in other unincorporated associations. In doing so the court has met its responsibility of replacing the outmoded doctrine with its only fair alternative--one that recognizes and applies the characteristics of a modern labor union in establishing the relationship between the organization and its membership.[37]

The basic hurdle to be overcome in imposing liability on unincorporated nonprofit associations for tortious injuries to persons other than members is that the common law did not recognize such associations as separate entities and limited associational liability to cases where the liability of each and every member of the association was established. Although no California cases have used an entity theory to hold an unincorporated association liable for a tortious injury to a third person who is not a member of the association, it seems likely that the California Supreme Court would treat the association as a separate entity in such a case. In the Marshall case, the court showed a willingness to recognize an unincorporated association as a separate entity for tort liability purposes. Moreover, the California Supreme Court has shown no reluctance to change common law rules which provided immunity that could not be justified under modern conditions. For example, common law rules of sovereign immunity[38] and charitable immunity[39] have been changed. So, too, has the common law rule which prevented a married person from bringing

an action for personal injury against his spouse.[40] Hence, although no case in point has been found, it seems safe to predict that the rule in California will be that an unincorporated association is to be treated like a legal entity for the purposes of tort liability to persons other than members.

Contract Liability

With respect to contract liability, California appears to be in accord with the general rule in the United States[41] that an unincorporated association cannot make a contract unless by statute it is directly or indirectly authorized to do so or is made a legal entity for this purpose.[42] A contract entered into on behalf of the association without such authorization is merely the contract of the individual associates who authorized or ratified it.[43]

There are a number of California statutes which authorize unincorporated associations to make contracts. For example, fraternal benefit societies can enter into benefit contracts with their members which will be payable only out of the funds of the society.[44] Collective bargaining agreements are enforceable at law or equity.[45] Corporations Code Section 21200[46] grants certain powers respecting real estate and other property to unincorporated benevolent or fraternal organizations and labor unions which would seem necessarily to include the power to enter into contracts necessary to effectuate these powers. In addition, Sections 21100-21102 of the Corporations Code provide that a member of an unincorporated association is not liable on certain real estate obligations unless he has assumed the obligation in writing.[47] The necessary implication of this provision would be that the association can make such contracts and will be liable as an entity on them.

Recommendation: An unincorporated association should be treated as an entity not only for the purpose of bringing an action against it in its common name, but also for the purpose of determining the liability of the association. Specifically, the plaintiff should be able to obtain a judgment enforceable against the joint assets of the association merely by proving facts that would result in liability if the association were considered as a legal entity, i.e., by proving a negligent or wrongful act or omission of the association or of its officer, agent, or employee acting within the scope of his agency, office, or employment or by proving that a contract was entered into by the association which would have resulted in liability if the association were a legal entity.

The following statutory language is suggested to effectuate this recommendation:

> Section ____. An unincorporated association is liable for its negligent or wrongful act or omission, and for the negligent or wrongful act or omission of its officer, agent, or employee acting within the scope of his office, agency, or employment, to the same extent as if the association were a legal entity. Nothing in this section affects the liability between partners or the liability between a partnership and the partners therein.
>
> Section ____. An unincorporated association is liable on any contract executed in the name of and on behalf of the association by a person authorized by the association to do so.

The proposed statutory provisions treat an unincorporated association as a kind of legal entity for the purpose of imposing liability based on contract or tort to the extent of the joint assets of the association. It is 47a possible that when Section 388 was adopted it was intended to have this effect, 47b but it has not been given this construction by the California courts.

Until recently the common law rules denying associational liability retained considerable vitality, but a growing number of courts have altered

the common law rules to allow recovery from the association's funds by an injured person. The reasons have been stated as follows:

> The endurance of the common law rules seems due partly to judicial inertia but also to several difficulties inherent in change. First, there may be some feeling that a recasting of group liability is properly the task of the legislatures; this attitude held sway in association cases with respect to the related problem of procedural reform. Second, a conscientious judge is faced with analytic difficulties in attempting to create new theories which will adequately explain access to the common funds without personal liability of the members, embrace large and small associations, and suggest standards for imposing liability. Nevertheless, the proliferation of large private associations makes desirable a concept of group liability which is primarily limited to the common fund. The common law concept of personal liability or no liability at all has too often meant the latter, a result out of harmony with the accepted policies which sustain liability under respondeat superior: the policy of suppressing undesirable behavior by encouraging the selection of responsible officers and agents and the creation of other safeguards, and the policy of transferring the impact of the harm from the individual to the enterprise likely to bear it more easily as a cost of operations. Conversely, extension of recovery beyond the group funds by holding members personally liable is usually undesirable since the members often lack the knowledge and individual control which make justifiable the imposition of personal responsibility for the acts of others; nor will membership liability normally be necessary to compensate the harm.[48]

One writer has analyzed the effect of treating an unincorporated association like a legal entity as follows:

> The association is considered much like a corporation, with property, agents, and liability quite distinct from that of the membership. This approach has the immediate merit of conforming theory both to the actual behavior of many courts and to the usual conception of large associations. In addition, the corporate analogy provides a rich store of examples and criteria for determining substantive liability and procedural matters as well. However, some difficulties are posed by extension of the entity theory to other organizations. Particularly with smaller associations, which are unlikely to possess substantial assets of their own, personal liability of the individual members will continue to be desirable and sometimes proper. Courts will then face the task of coordinating two distinct systems of liability--one to reach group property and the other, with standards less conducive to recovery, to impose liability on the members.[48a]

The recommended statutory provisions merely make unincorporated associations legal entities for the purpose of tort and contract liability; they have no effect on the liability of the individual members of the association.[49]

The recommended statutory provisions will not make any great change in existing law. Labor unions already are treated as legal entities by the courts for tort liability purposes[50] and collective bargaining agreements are enforceable at law or equity.[51] Partnerships are now treated, in substance, as entities; a judgment enforceable against the joint assets of a partnership may be obtained merely upon proof of the negligent or wrongful act or omission of one partner acting within the scope of the partnership business.[52] Hence, the recommended statutory provisions merely extend to other unincorporated nonprofit associations the treatment already afforded partnerships and labor unions. The recognition of labor unions as legal entities in Daniels v. Sanitarium Ass'n, Inc.,[53] and in Marshall v. International Longshoremen's & Warehousemen's Union[54] and the reasoning in those cases appears to justify a prediction that the recommended statutory provisions --insofar as they relate to tort liability--merely state rules that will eventually be stated by the California Supreme Court if and when the appropriate cases are presented. So far as contract liability is concerned, it is apparent that to a considerable extent unincorporated associations now have express or implied authority to make many kinds of contracts;[55] thus, the recommended statutory provisions merely will make clear that all types of unincorporated associations--not just partnerships and labor unions--can make contracts and can be held liable for breaching them.

The recommended statutory provisions apply to all cases involving the liability of a partnership or other unincorporated association to a person who is not a member of the association. The provisions also apply to an action by a member of an unincorporated nonprofit association against the association. However, the provisions do not change the existing law relating to a suit by a partner against the partnership or to suits by one partner against another. One reason for leaving the development of the law in this area to the courts is that the relationship between partners is such that they each control the business and are co-principals. Hence, the doctrine of imputed contributory negligence may be justified in partnership cases. In fact, the California Supreme Court in the Marshall case stated:

> The concepts herein discussed [coprincipals and imputed contributory negligence] are proper enough when applied to business partnerships for which they were originally developed. 56

Permitting a plaintiff to recover from the joint assets of an unincorporated association on the basis of treating the association as a legal entity will tend to discourage plaintiffs from seeking to recover from the individual members of an association for injury or damage based on contract or tort. This will tend to distribute the financial risks involved in joining an association among the members. At the same time, the recommended provisions will make it easier for the plaintiff to reach the joint assets of the association to satisfy contractual or tort liability.

Since treating unincorporated associations as entities for liability purposes is fairer to plaintiffs and associates alike and is more in harmony with business realities than the rule requiring the plaintiff to establish the personal liability of each member of the association, there appears to be no reason why frank legislative recognition should not be given to the entity nature of unincorporated associations. The only obstacle to reform

in this area of the law is the common law concept that an unincorporated association is not a legal entity. The California Supreme Court in the Marshall case overcame this obstacle and held that a labor union is a legal entity for liability purposes, commenting:

> Justice Cardozo once remarked: "A fruitful parent of injustice is the tyranny of concepts. They are tyrants rather than servants when treated as real existences and developed with merciless disregard of consequences to the limit of their logic." [57]

Substantive liability of members of unincorporated associations

Existing law. A distinction must be made between the rules that determine the liability of partners and the rules that determine the liability of members of unincorporated nonprofit associations.

Each partner is the agent for all the other partners when he transacts business on behalf of the partnership in the manner in which such business usually is transacted, and his acts bind all the partners.[58] Thus, each partner is individually liable to the injured person for the tortious act of a partner in carrying out the partnership business. And each partner is liable for debts contracted in the name of the partnership by other partners.[59] If an unincorporated association is organized for profit, the cases seem to support the proposition that the members will be treated as partners for liability purposes.[60]

The liability of members of an unincorporated nonprofit association is determined by agency law rather than partnership law.[61] As a result, the acts of one associate do not bind the other associates. To establish the liability of an associate, it is necessary to prove that he participated in the act in question, authorized it, or subsequently ratified it. The member's authorization or subsequent ratification may be either express or implied. Affirmatively voting for an action or merely accepting the benefits

of the action may be enough to enable the court or jury to find the requisite consent or ratification.[62]

There is apparently only one California case dealing with the liability of the members of an unincorporated nonprofit association. In Security-First National Bank v. Cooper,[63] a bank was attempting to recover moneys owing to it from the Santa Monica Elks Lodge, an unincorporated association which had become incorporated during the course of the transactions involved in the suit. The obligation arose from the lease of a building to be used as a lodge building by the defendant Elks Lodge. Suit was brought against the lodge and 1188 members thereof. The questions raised on appeal did not concern the liability of the association but were limited to determining the individual liabilities of certain members of the lodge.

The defendant members raised the objection that they were not bound by by the actions of the officers of the association. The court rejected this contention. Quoting from Corpus Juris Secundum, the court said: "If, however, a member, as such, directly incurs a debt, or expressly or impliedly authorizes or ratifies the transaction in which it is incurred, he is liable as a principal. So a member is liable for any debt that is necessarily contracted to carry out the objects of the association."[64] (The court recited language from an earlier California case, Leake v. City of Venice,[65] in support of this proposition. However, in that case the court treated the association as if it were a partnership; thus, the case does not seem to support the proposition for which it was cited.)

The court pointed out that the officers had been authorized to execute the lease by a vote of the lodge at a regular meeting. However, the plaintiff was unable to show that any of the individual defendants had attended this meeting; apparently the defendants had voted neither for nor against the execution of the lease. Nevertheless, the court held that the defendants who were members of the lodge at the time of the execution of the lease were liable on the lease since they had signed the lodge's by-laws which authorized the lodge to obtain and maintain a club or home for the members. The court held that this act was sufficient to make these members ones who "impliedly consented" or "constructively assent[ed] to" the execution of the lease. Alternatively, the court held that, since the establishment and maintenance of a club was an object of the association and the lease was executed as an appropriate means of achieving this end, the members of the association were liable thereon simply through joining and belonging to the association.

Thereafter, in response to this decision, Corporations Code Sections 21100-21102[66] were enacted. These sections provide (1) that members of nonprofit unincorporated associations are not liable on real estate contracts entered into on behalf of the association unless they have assented thereto in writing, and (2) that the consent of a member of an association to an act of the association cannot be presumed or inferred merely from his joining or belonging to the organization or signing its by-laws.

The California Supreme Court, like the California Legislature which enacted Corporations Code Sections 21100-21102 mentioned above, has shown concern that the cost of liability arising out of activities of unincorporated nonprofit associations be paid from the funds and property of the association, rather than from the assets of individual members. This concern is reflected

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in the holding in the Marshall case that a member of a labor union is entitled to sue the union for injuries caused by negligence but that any judgment he may recover against the union can be satisfied only from the funds and property of the union.

Recommendations: No change should be made in the rules governing the liability of members of partnerships. Members of unincorporated nonprofit associations should be liable for tortious conduct only if they participated in the conduct, authorized it, or subsequently ratified it and should be liable on contracts entered into on behalf of the association only if they have assented to such liability in writing.

The following statutory language is suggested to effectuate these recommendations:

> A member of a nonprofit association is not individually or personally liable on any contract entered into in the name of and on behalf of the association unless such member assumes such liability by contract and the contract or some note or memorandum thereof, specifically identifying the contract which is assumed, is in writing and signed by the party to be charged or his agent.
>
> A member of a nonprofit association is not liable for the negligent or wrongful act or omission of an officer, agent, or employee of the association acting within the scope of his office, agency, or employment unless such member participated in, authorized, or subsequently ratified the negligent or wrongful act or omission. Authorization or ratification of a negligent or wrongful act or omission may not be inferred merely from the fact of joining or being a member of the association or signing its by-laws.

The first provision, relating to contract liability, would extend the limited immunity from liability provided by Corporations Code Sections 21100 and 21102 for debts incurred in acquiring realty to all contracts made by

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an unincorporated nonprofit association. The recommended provisions would be included in Chapter 2 (commencing with Section 21100) of Part 1 of Title 3 of the Corporations Code. Hence the definition of "nonprofit

association" in Section 21000 would be applicable.

The second provision, relating to tort liability, would codify what probably is existing California law.

Since, in many instances, an unincorporated association's treasury will be the largest and most certain source of funds, the practical effect of these recommendations will be to encourage the plaintiff to sue the association in its common name and to collect from its joint assets. Consequently, these recommendations will tend to accomplish the desirable objective of reducing the number of instances in which a plaintiff will satisfy an associational liability out of the individual assets of the members of an unincorporated association. Of course, an associate's contribution to the joint assets of the association will be subject to execution even though he effectively withholds his consent to the transaction on which the liability is based. But no reasonable objection can be made to this because the associate's contribution to the joint fund could have been used to pay the obligation voluntarily despite his objections. In addition, an associate has no right to withdraw his contributions from the joint fund when he withdraws from the association. Any additional burden that these recommendations might impose on a plaintiff seeking to recover from an individual member of a nonprofit unincorporated association on an associational liability will be offset by the recommendations made previously which will make it possible for the plaintiff to recover a judgment that may be enforced against the joint assets of the association. If it appears that a particular association does not have sufficient assets to meet its contractual obligations, the person negotiating the contract with the association can require that additional security be provided to insure payment.

Enforcement of judgment

Existing law. Section 388 of the Code of Civil Procedure provides that a judgment against an unincorporated association sued in its common name binds the joint assets of all the associates and the personal assets of any "party" who has been served with process in the action. It has been held that a partner who was served with process in an action against the partnership was bound by the judgment against the partnership even though he was not made a party to the action.[70] This procedure is designed to avoid multiplicity of suits.[71] The constitutionality of the provision permitting an individual's personal assets to be bound by a judgment rendered in an action in which he was served but not made a party has been raised in California but not decided.[72]

Recommendation. A judgment against an unincorporated nonprofit association should bind only the funds and property of the association. A plaintiff should be permitted to join members of such association in the action against the association but if the plaintiff obtains a judgment against the association he should not be permitted to satisfy the judgment obtained against a member of the association for the same injury or damage until the judgment against the association is returned wholly or partially unsatisfied.

The following statutory language is suggested to effectuate this recommendation:

> Section ____. A judgment against an unincorporated association binds only the property of the association and does not bind the individual property of a member of the association.
>
> Section ____. (a) Any person who it is alleged is liable for the injury or damages, including a member of the association, may be joined as a defendant in any action against an unincorporated association to recover for such injury or damage.

(b) If a judgment is rendered against the association and also against a member of the association for the same injury or damage, execution shall not issue against the individual property of the member unless and until execution against the property of the association has been returned wholly or partially unsatisfied.

The recommended legislation is consistent with the other recommendations treating an unincorporated association as a legal entity for liability purposes. This is consistent with Marshall v. International Longshoremen's & Warehousemen's Union,[73] where the California Supreme Court held that a member of a labor union was entitled to sue the union for its negligence, but that "any judgment he may recover from the union can be satisfied from the funds and property of the union alone."[74] The court stated: "We limit our holding to labor unions only, leaving to future development the rules to be applied in the case of other types of unincorporated associations."[75]

The recommended legislation will have no effect on the liability of the individual members of an unincorporated association. (For a discussion of the rules governing individual liability see the text supra at pages 20-25.) Nor will the recommended legislation prevent the plaintiff from proceeding against one or more of the associates in a separate action. Sections 414 and 989-994 of the Code of Civil Procedure provide a procedure for suing one or more persons on their joint obligations. Hence, the plaintiff may still proceed against partners under the procedure provided by those sections. However, when he chooses to proceed under the suit in common name statute against the association as an entity, the plaintiff is required to first exhaust the assets of the association before he may resort to the individual assets of its members who have been adjudged to be personally liable for the same injury or damage.

The most important effect of the recommended rules is that they will guarantee that a member will be personally afforded an opportunity to litigate

the question of his personal liability before he can be required to pay for an injury or damage arising out of the association's activities. Under existing law, the member of an association can be required to pay a judgment when he had no opportunity to defend the action which resulted in his liability.[76] Under the recommended rules, the action against the association will no longer bind the individual assets of a member of the association unless he is made a party to the action and a personal judgment is rendered against him or a separate action is brought against him.

There is ample precedent in other jurisdictions to justify the recommended rules. A number of jurisdictions provide that the judgment against the association will bind in the first instance only the property of the association or property owned jointly or in common by the associates.[77] However, these statutes provide that if the judgment against the association is returned unsatisfied, usually either wholly or in part, the judgment will not preclude a second action either in law or equity to enforce the personal liability of one or more of the associates. It appears from the wording of these sections that a second action is contemplated against an associate rather than merely delaying execution on an individual judgment obtained against him in the action against the association; New York and Rhode Island clearly prohibit an action against the associates until the return of an unsatisfied execution against the association.[78]

The proposed rule is based on the Texas common name provisions for joint stock companies or associations.[79] This statute provides for the joinder of actions against the association and its members individually but permits execution on the judgments against the individuals only after execution against the joint property of the association has been returned unsatisfied. The pertinent provisions provide:

Art. 6135. In suits by or against such unincorporated companies, whatever judgment shall be rendered shall be as conclusive on the individual stockholders and members thereof as if they were individually parties to such suits.

Art. 6136. Where suit shall be brought against such company or association, and the only service had shall be upon the president, secretary, treasurer or general agent of such company or association, and judgment shall be rendered against the defendant company, such judgment shall be binding on the joint property of all the stockholders or members thereof, and may be enforced by execution against the joint property; but such judgment shall not be binding on the individual property of the stockholders or members, nor authorize execution against it.

Art. 6137. In a suit against such company or association, in addition to service on the president, secretary, treasurer or general agent of such companies or association, service of citation may also be had on any and all of the stockholders or members of such companies or associations; and, in the event judgment shall be against such unincorporated company or association, it shall be equally binding upon the individual property of the stockholders or members so served, and executions may issue against the property of the individual stockholders or members, as well as against the joint property; but executions shall not issue against the individual property of the stockholders or members until execution against the joint property has been returned without satisfaction.

The recommended rule seems to be preferable to having two separate actions since it discourages multiplicity of suits as well as protecting the associates.

Service of Process

Existing law. Section 388 now provides that, when two or more persons are sued in their common name, service may be made on "one or more of the associates." This gives the court jurisdiction over the association so that any resulting judgment will bind the joint assets of all the associates. This provision, which seems to be based on the partnership concept that each partner is bound by the acts of the other partners, applies to all associations without regard to size or the applicable rules of liability.

In the case of a partnership, the existing law creates no serious problems since the acts of one partner do bind all the other partners. In addition,

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the relationship that normally exists between partners is such that one partner who is served will notify the other partners of the action that is pending against the partnership. Hence, it is extremely unlikely that a default judgment will result in such a case.

However, in the case of an unincorporated nonprofit association (which may have thousands of members), serious problems may arise under the existing law. The likelihood that a default judgment will be entered against such an association is much greater than in the case of a partnership. Under Section 388, for example, service of process on a single member of an unincorporated nonprofit association is sufficient to acquire jurisdiction over the entire association. Particularly where the association is a large one, the member served often may have neither the authority nor the inclination to defend the action on behalf of the association. Moreover, under the recommendations previously made concerning unincorporated nonprofit associations, the default judgment would not bind the individual assets of the member served. Hence, he could safely disregard the service and not notify anyone of the action pending against the association.

Recommendation: Service of process on an unincorporated association should be made on the agent of such association designated for the purpose of service of process if a statement designating the agent of such association for the purpose of service of process has been filed with the Secretary of State. If no agent has been so designated, service should be sufficient if made by serving any one or more of the members of the association and by mailing a copy to the last known mailing address, if any, of the principal office or place of business of the association.

The various states which permit suit in common name provide for a number of different methods of serving process in such suits. A number of states have provisions similar to California and permit service to be made on any member of the association.[81] Another group of states permits service only on an officer, agent or other person in a position of management in an association.[82] Two states, Alabama[83] and Georgia,[84] provide for service on any officer or member of an association unless the association files with the Secretary of State a designation of a particular officer or agent to receive service in which case service may be made only on such officer or agent.[85]

The proposed rule adopts the approach taken by Alabama and Georgia. The designation of an agent would remove the danger of a default judgment that exists under the present rule. Even if no agent were designated, the mailing of a copy of the process to the association's last known mailing address would tend to greatly reduce the danger of default judgments. The recommendation also appears to be superior to providing for service on the officers or representatives of the association for three reasons. First, one rule will apply to all unincorporated associations. The recommended rule would be appropriate for partnerships which normally do not have officers or representatives as well as for associations which often do. Second, under this approach, the plaintiff automatically will know whom to serve and will not have to resort to discovery techniques to learn the identity of the association's officers or representatives so that he may serve them.[86] Third, the recommended rule would cover those situations where an unincorporated association does not have any officers or official representatives.

Designation of an agent for service of process on the association should be permissive rather than mandatory. This would afford an opportunity to all associations to protect themselves against default judgments. At the same time, if an association does not wish to subject itself to the additional expense and inconvenience of designating an agent, it will be in no worse position than it now is. Government Code Section 12185 fixes the fee for filing a statement designating an agent for service of process at five dollars.

The following sections are suggested to effectuate this recommendation:

> Section ____. As used in the following sections, "process" includes all summonses, pleadings, orders and other notices in actions, cross-actions, or proceedings related thereto brought by or against an unincorporated association in its common name.
>
> Section ____. (a) Process may be served upon an unincorporated association only as provided in this section.
>
> (b) If the unincorporated association has designated an agent for the purpose of service as provided in Section ____ [set out below] prior to the commencement of the action, service of process on the association may be made only on such agent unless he cannot with reasonable diligence be found within the state.
>
> (c) If the person designated as agent for the service of process cannot with reasonable diligence be found within the state or if the unincorporated association has not filed a designation of agent for the service of process with the Secretary of State as authorized by Section ____ [set out below], service of process on the association may be made by serving any one or more of its members and by mailing a copy thereof to the last known mailing address, if any, of the principal office or place of business of the association.
>
> Section ____. (a) Any unincorporated association may file with the Secretary of State on a form prescribed by him a statement designating, as the agent of such unincorporated association for the purpose of service of process, any natural person residing in this state, setting forth his complete business or residence address. The association may at any time file a new statement which designates a different agent for the service of process and such filing shall be deemed to revoke the prior designation.

(b) Any unincorporated association may file with the Secretary of State on a form prescribed by him a certificate listing the location and mailing address of the association's principal office or place of business in this state. The association may at any time file a new certificate showing a new location or mailing address of its principal office or place of business in this state.

(c) The Secretary of State shall prescribe a form that will permit the statement referred to in subdivision (a) and the certificate referred to in subdivision (b) to be combined in one document.

(d) For filing the statement referred to in subdivision (a) or the certificate referred to in subdivision (b) or the combined document referred to in subdivision (c), the Secretary of State shall charge and collect the fee prescribed in the Government Code for designation of an agent for the purpose of service of process.

The certificate listing the principal office or place of business of the unincorporated association in this state is discussed infra in connection with venue.

Venue

Existing law. At least some aspects of venue in actions against unincorporated associations are governed by Article XII, Section 16, of the California Constitution which provides that "a corporation or association" may be sued in the county in which a contract is made or is to be performed or where the obligation or liability arises or the breach occurs; it concludes by providing that venue may lie "in the county where the principal place of business of such corporation is situated" (emphasis added). It is clear that the designation of the first four places for trial of an action applies equally to a corporation or to an unincorporated association. However, it appears that the word "association" was deliberately omitted from the last clause, and, since an unincorporated association--unlike a corporation--is not required to designate and maintain a principal place of business, Juneau Spruce Corp. v. Int'l Longshoremen held that the last clause is

inapplicable to an unincorporated association. As a result, when a large association such as a labor union is sued alone in its common name, venue is proper in any county in which any member of the defendant association resides.[88]

Recommendation: An unincorporated association should be treated as if it were a corporation for venue purposes if the association has filed a certificate with the Secretary of State listing its principal office or place of business in this state.

This recommendation will accomplish two desirable objectives. First, it will authorize the plaintiff to bring the action against the association in the county in which the principal office or place of business of the association is located. Second, it will prevent the plaintiff from bringing an action against the association in a particular county merely because a member of the association resides in that county.

The recommendation will change the rule in Juneau Spruce Corp. v. Int'l Longshoremen,[89] and replace it with the general federal rule[90] applicable to venue in suits against unincorporated associations.

Although the primary policy consideration underlying venue is convenience to the defendant, the rule developed in the Juneau Spruce case works a substantial hardship on many unincorporated associations. Since many unincorporated associations maintain a principal office or place of business, they should not be compelled to defend an action in an outlying county which some plaintiff deems to be a favorable county merely because one or more of the association's members reside there.[91] The court in the Juneau Spruce case[92] recognized the persuasive reasons that justify this change:

> In Sperry Products v. Association of American R.R., 132 F.2d 408, 411 [145 A.L.R. 694], the court said: "Thus, for most purposes the law still looks at such associations as mere aggregations of individuals. Since, however, for the purpose of suit it has come to regard them as jural entities, we can see

> no reason why that doctrine should not be applied consistently to other procedural incidents than service of process, and venue is one of such incidents. Certainly that promotes simplicity. . . ." The discussion in the Sperry case, as argued by the I.L.W.U. is persuasive, but persuasive only for legislative or constitutional change. Contrary to the existing law in California, the Federal Rules of Civil Procedure permit a partnership or unincorporated association to sue as well as be sued in its common name (rule 17b), and process may be served in the same manner as upon a corporation (rule 4d, 3). Under section 388 of the Code of Civil Procedure process in an action against an association sued in its common name must be served on "one or more of the associates." The different procedures in the two jurisdictions are too great to regard the Sperry case as being other than a rational argument for a change in the existing law embodied in our statutes and Constitution.[93]

Adoption of the recommended provision on service of process, combined with the following language, would effectuate this recommendation:

> If an unincorporated association has filed a certificate with the Secretary of State listing its principal office or place of business in this state, the unincorporated association shall be treated as if it were a corporation for venue purposes.

These two recommendations adopt the substance of the proposal made in a Stanford Law Review comment concerning the problem of venue in suits against unincorporated associations.[94]

This recommendation would limit to some extent the plaintiff's present right to "forum shop." However, the rules governing venue in suits against corporations often will permit suit to be brought in one of several counties;[95] therefore, a plaintiff would still have a reasonable opportunity to choose among counties in which to bring his suit. In addition, the recommendation is consistent with the recommendations previously made that an unincorporated association be treated as an entity for the purpose of suit and liability.

The objection that the plaintiff will be unable to learn what county constitutes an association's principal office or place of business is obviated by the recommended provision which permits an unincorporated association to file a certificate with the Secretary of State designating its principal office or

place of business.[96] Only those associations which file such a certificate would be treated as if they were corporations for venue purposes. Such a permissive filing requirement would permit those associations which feel they would be benefitted by the new rule to comply with the requirement without imposing any additional expense or inconvenience on other unincorporated associations.

No case has been found indicating whether this recommendation can be effectuated by statute or only by constitutional amendment. It has been said of Article XII, Section 16, of the California Constitution that:

> This section is in the nature of a code provision in regard to procedure, and is obviously self-executing, and differs from a statutory code provision only in that it cannot be repealed, nor can its scope and operation be limited by statute. So far as it conflicts with a statute, the statute must give way.[97]

However, providing an additional place for venue in actions against unincorporated associations would not seem to be limiting the scope and operation of the constitutional provision. Instead, it would seem to be expanding the scope of the provision; hence, providing an additional place for venue would not conflict with the constitutional provision. The constitutionally provided places for laying venue would still be available and the only effect of the new provision would be to supply another alternative. Therefore, it appears that this recommendation can be effectuated by statute rather than a constitutional amendment.

FOOTNOTES

MEANING OF TERM "UNINCORPORATED ASSOCIATION"--footnotes

1. Comment, 42 CAL. L. REV. 812, 818 n.31 (1954). But on the treatment of joint stock companies and Massachusetts business trusts as partnerships, see Goldwater v. Oltman, 210 Cal. 408, 292 Pac. 624 (1930); Old River Farms Co. v. Roscoe Haegelin Co., 98 Cal. App. 331, 276 Pac. 1047 (1929).

2. See the text, infra at 7-10.

3. E.g., IDAHO CODE ANN. § 5-323; MONT. REV. CODE ANN. § 93-2827. See also UTAH RULES CIV. PROC., Rule 17(d); OKLA. STAT. ANN. Tit. 12, § 182.

4. See note 11 infra. A few states apparently apply their common name statute only to partnerships. E.g., ILL. STAT. ANN., Ch. 110, § 27.1; IOWA RULES CIV. PROC., Rule 2; N.M. STAT. ANN. § 21-6-5; OHIO REV. CODE ANN., Tit. 23, § 2307.04. See also FLA. STAT. § 47.15 (partnership), § 447.11 (labor organizations).

5. E.g., PA. RULES CIV. PROC., Rule 2151.

6. E.g., PA. RULES CIV. PROC., Rules 2127, 2128, 2129.

7. CAL. CODE CIV. PROC. § 388.

8. E.g., CONN. GEN. STAT. ANN. § 52-76; MICH. STAT. ANN. § 27A.2051.

9. 6 AM. JUR.2d Associations and Clubs § 1 (1963).

10. See the recommendations set out in the text, infra at 24.

11. E.g., ALA. CODE, Tit. 7, §§ 142-145 ("unincorporated organization or association"); COLO. REV. STAT. § 76-1-6 ("partnership or other unincorporated association"); CONN. GEN. STAT. ANN. § 52-76 ("voluntary association, not having corporate powers, but known by some distinguishing name"); DEL. CODE ANN., Tit. 10, § 3904 ("unincorporated association of

persons using a common name, ordinary partnerships excepted, [which transacts business]"); GA. CODE ANN. §§ 3-117 to 3-121 ("unincorporated organization or association"); LA. CODE CIV. PROC. ANN., Arts. 687, 738 ("unincorporated association"); MAINE REV. STAT. ANN., Tit. 14, § 2 ("organized unincorporated society or association"); MD. ANN. CODE, Art. 23, § 138 ("unincorporated association or joint stock company"); MICH. STAT. ANN. § 27A.2051 ("partnership, partnership association, or any unincorporated voluntary association having a distinguishing name"); NEV. REV. STAT. § 12.110(?); N.J. STAT. ANN. § 2A:64-1 ("unincorporated organization or association, consisting of 7 or more persons and having a recognized name"); N.Y. GEN. ASS'NS LAW §§ 12, 13 ("unincorporated association"); N.C. GEN. STAT. § 1-69-1 ("all unincorporated associations, organizations or societies, foreign or domestic, whether organized for profit or not" excluding "partnerships or co-partnerships which are organized to engage in any business, trade or profession"); PA. RULES CIV. PROC., Rule 2151 ("any unincorporated association conducting any business or engaging in any activity of any nature whether for profit or otherwise under a common name," excluding "an incorporated association, general partnership, limited partnership, registered partnership, partnership association, joint stock company or similar association"); R.I. GEN. LAWS § 9-2-10 ("any unincorporated organization of persons, except a copartnership"); S.C. CODE ANN. § 10-215 ("all unincorporated associations"); TEXAS RULES CIV. PROC., Rule 28 ("partnership or other unincorporated association"); TEXAS REV. CIVIL STAT. ANN., Art. 6133 ("any unincorporated joint stock company or association"); VT. STAT. ANN., Tit. 12, § 814 ("partnership or an

unincorporated association or joint stock company"); VA. CODE ANN. § 8-66 ("an unincorporated association or order"); WIS. STAT. § 262.06(7)("unincorporated association"). See also FLA. STAT. § 447.11 ("labor organization").

FOOTNOTES

UNINCORPORATED ASSOCIATIONS AS DEFENDANTS -- footnotes

1. See Jardine v. Superior Court, 213 Cal. 301, 2 P.2d 756 (1931).

2. Ibid.

3. Artana v. San Jose Scavenger Co., 181 Cal. 627, 185 Pac. 850 (1919); Potts v. Whitson, 52 Cal. App.2d 199, 125 P.2d 947 (1942).

4. Maclay Co. v. Meads, 14 Cal. App. 363, 112 Pac. 195 (1910).

5. Davidson v. Knox, 67 Cal. 143, 7 Pac. 413 (1885). See 1 CHADBOURN, GROSSMAN & VAN ALSTYNE, CALIFORNIA PLEADING § 692 (1961).

6. Potts v. Whitson, 52 Cal. App.2d 199, 125 P.2d 947 (1942).

7. Maclay Co. v. Meads, 14 Cal. App. 363, 112 Pac. 195 (1910); Poswa v. Jones, 21 Cal. App. 664, 132 Pac. 629 (1913).

8. Artana v. San Jose Scavenger Co., 181 Cal. 627, 185 Pac. 850 (1919).

9. Compare Comment, 42 CAL. L. REV. 812, 817 (1954) with Note, 50 CAL. L. REV. 909 (1962), Note, 37 SO. CAL. L. REV. 130 (1964), Comment, 36 SO. CAL. L. REV. 445 (1963). See also Sturges, Unincorporated Associations as Parties to Actions, 33 YALE L.J. 383, 401 (1924).

10. Inglis v. Operating Engineers Local Union No. 12, 58 Cal.2d 269, 23 Cal. Rptr. 403, 373 P.2d 467 (1962); Marshall v. International Longshoremen's & Warehousemen's Union, 57 Cal.2d 781, 22 Cal. Rptr. 211, 371 P.2d 987 (1962). See discussion in the text, infra at 11-21.

11. Calimpco, Inc. v. Warden, 100 Cal. App.2d 429, 444, 224 P.2d 421, 432 (1950).

12. See United Mine Workers of America v. Coronado Coal Co., 259 U.S. 344 (1922).

13. FED. RULES CIV. PROC. Rule 17(b).

14. ALA. CODE, Tit. 7, §§ 141-145; ARIZ. RULES OF CIV. PROC., Rule 4(d)(6) (by implication); COLO. REV. STAT. § 76-1-6; CONN. GEN. STAT. ANN. § 52-76; DEL. CODE ANN., Tit. 10, § 3904; FLA. STAT. § 47.15 (partnership), § 447.11 (labor organization); IDAHO CODE ANN. § 5-323; ILL. STAT. ANN., Ch. 110, § 27.1; IOWA RULES CIV. PROC., Rule 4 (see Tuttle v. Nichols Poultry & Egg Co., 240 Iowa 208, 35 N.W.2d 875 (1949)); LA. CODE CIV. PROC. ANN., Arts. 688, 689, 737, 738; MAINE REV. STAT. ANN., Tit. 14, § 2; MD. ANN. CODE, Art. 23 §§ 138, 356(g); MICH. STAT. ANN. § 27A.2051(a); MINN. STAT. ANN. § 540.151; MONT. REV. CODE ANN. § 93-2827; NEB. REV. STAT. § 25-313; NEV. REV. STAT. § 12.110; N.J. REV. STAT. § 2A:64-1 to 64-6; N.M. STAT. ANN., § 21-6-5; N.Y. CIV. PROC. LAW & RULES § 1025; see also N.Y. GEN. ASS'NS LAW §§ 12-17; N.C. GEN. STAT. § 1-69.1; OHIO REV. CODE ANN., Tit. 23, § 2307.24; OKLA. STAT. ANN., Tit. 12, § 182; PA. RULES CIV. PROC., Rule 2153(a); R.I. GEN. LAWS § 9-2-10; S.C. CODE ANN. § 10-215; TEXAS RULES CIV. PROC., Rule 28 (see also TEXAS REV. CIVIL STAT. ANN., Arts. 6133-6138); UTAH RULES CIV. PROC., Rule 17(d); VT. STAT. ANN., Tit. 12, § 814 (Supp. 1965); VA. CODE ANN. § 8-66; WIS. STAT. § 262.06(7).

15. Rules of the Supreme Court [of Great Britain], Order 48a, Rule 1.

16. Jardine v. Superior Court, 213 Cal. 301, 2 P.2d 756 (1931)(dicta). See also Daniels v. Sanitarium Ass'n, Inc., 59 Cal.2d 602, 30 Cal. Rptr. 828, 381 P.2d 652 (1963); Inglis v. Operating Engineers Local Union No. 12, 58 Cal.2d 269, 23 Cal. Rptr. 403, 373 P.2d 467 (1962); Marshall v. International Longshoremen's & Warehousemen's Union, 57 Cal.2d 781, 22 Cal. Rptr. 211, 371 P.2d 987 (1962).

17. Ibid.

18. 35 Cal. App. 293, 170 Pac. 409 (1917).

19. Id. at 299, 170 Pac. at 411. (Emphasis added.)

20. 46 Cal. App. 325, 189 Pac. 329 (1920).

21. Id. at 328-330, 189 Pac. at 330-331.

22. 213 Cal. 301, 2 P.2d 756 (1931).

22a. Inglis v. Operating Engineers Local Union No. 12, 58 Cal.2d 269, 23 Cal. Rptr. 403, 373 P.2d 467 (1962)(intentional tort); Marshall v. International Longshoremen's & Warehousemen's Union, 57 Cal.2d 781, 22 Cal. Rptr. 211, 371 P.2d 987 (1962)(negligent tort).

23. FED. RULES CIV. PROC., Rule 17(b).

24. E.g., ALA. CODE, Tit. 7, § 142; COLO. REV. STAT. § 76-1-6; CONN. GEN. STAT. ANN. § 52-76; GA. CODE ANN. §§ 3-117 to 3-118; LA. CODE CIV. PROC. ANN., Art. 689; MAINE REV. STAT. ANN., Tit. 14, § 2; MD. ANN. CODE, Art. 23, §§ 138, 356(g); MICH. STAT. ANN. § 27A.2051(a); MINN. STAT. ANN. § 540.151 (Supp. 1965); NEB. REV. STAT. § 25-313 ("doing business" is one alternative under this section); N.J. REV. STAT. § 2A:64-1; N.Y. GEN. ASS'NS LAW § 13; N.C. GEN. STAT. § 1-69.1 ("doing business" is one alternative under this section); PA. RULES CIV. PROC., Rules 2151, 2153(a); R.I. GEN. LAWS § 9-2-10; S.C. CODE ANN. § 10-215; VT. STAT. ANN., Tit. 12, § 814 (Supp. 1965); VA. CODE ANN. § 8-66 ("doing business" is one alternative under this section).

25. See the text, supra at 4.

26. E.g., Wukaloff v. Malibu Lake Mt. Club, 96 Cal. App.2d 147, 214 P.2d 832 (1950)(incorporated club).

27. Comment, 42 CAL. L. REV. 812, 813 (1954).

28. Comment, 76 HARV. L. REV. 983, 1089 (1963).

29. Id. at 1088. (Some footnotes omitted.)

30. 6 AM. JUR.2d Associations and Clubs § 47.

31. Id. at § 31.

32. 57 Cal.2d 781, 22 Cal. Rptr. 211, 371 P.2d 987 (1962).

33. Id. at 787, 22 Cal. Rptr. at 215, 371 P.2d at 991 (1962).

34. 58 Cal.2d 269, 23 Cal. Rptr. 403, 373 P.2d 467 (1962).

35. Marshall v. International Longshoremen's & Warehousemen's Union, 57 Cal.2d 781, 787 n.1, 22 Cal. Rptr. 211, 215 n.1, 371 P.2d 987, 991 n.1 (1962).

36. Id. at 783-784, 22 Cal. Rptr. at 213, 371 P.2d at 989.

37. Note, 50 CAL. L. REV. 909, 914 (1962).

38. Muskopf v. Corning Hospital District, 55 Cal.2d 211, 11 Cal. Rptr. 89, 359 P.2d 457 (1961).

39. Silva v. Providence Hospital, 14 Cal.2d 762, 97 P.2d 798 (1939); Malloy v. Fong, 37 Cal.2d 356, 232 P.2d 241 (1951).

40. Self v. Self, 58 Cal.2d 683, 26 Cal. Rptr. 97, 376 P.2d 65 (1962); Klein v. Klein, 58 Cal.2d 692, 26 Cal. Rptr. 102, 376 P.2d 70 (1962). It also has been held in California, contrary to the common law rule, that a child may sue his parent for an intentional tort. Emery v. Emery, 45 Cal.2d 421, 289 P.2d 218 (1955).

41. 6 AM. JUR.2d Associations and Clubs § 44.

42. Most Worshipful Lodge v. Sons of Light, 118 Cal. App.2d 78, 257 P.2d 464 (1953); Comment, 42 CAL. L. REV. 812 (1954).

43. Comment, 42 CAL. L. REV. 812, 816 (1954).

44. CAL. INS. CODE §§ 11040-11041.

45. CAL. LABOR CODE § 1126.

46. CAL. CORP. CODE § 21200 provides:

> 21200. Any unincorporated benevolent or fraternal society or association, and every lodge or branch of any such society or association, and any labor organization, may, without incorporation, purchase, receive, own, hold, lease, mortgage, pledge, or encumber, by deed of trust or otherwise, manage, and sell all such real estate and other property as may be necessary for the business purposes and objects of the society, association, lodge, branch or labor organization, subject to the laws and regulations of the society, association, lodge, or branch and of the grand lodge thereof, or labor organization; and also may take and receive by will or deed all property not so necessary, and hold it until disposed of within a period of ten years from the acquisition thereof.

47. CAL. CORP. CODE §§ 21100-21102 provide:

> 21100. Members of a nonprofit association are not individually or personally liable for debts or liabilities contracted or incurred by the association in the acquisition of lands or leases or the purchase, leasing, designing, planning, architectural supervision, erection, construction, repair, or furnishing of buildings or other structures, to be used for the purposes of the association.
>
> 21101. Any contract by which a member of a nonprofit association assumes any such debt or liability is invalid unless the contract or some note or memorandum thereof, specifically identifying the contract which is assumed, is in writing and signed by the party to be charged or by his agent.
>
> 21102. No presumption or inference existed prior to September 15, 1945, or exists after that date, that a member of a nonprofit association has consented or agreed to the incurring of any obligation by the association, from the fact of joining or being a member of the association, or signing its by-laws.

47a. Comment, 42 CAL. L. REV. 812, 816 (1954).

47b. Jardine v. Superior Court, 213 Cal. 301, 321, 2 P.2d 756, 764 (1931).

48. Comment, 76 HARV. L. REV. 983,.1090 (1963). (Footnotes omitted.)

48a. Id. at 1092. (Footnote omitted.)

49. See the text, infra at 21-25 for discussion of the standards for liability of individual members of unincorporated associations.

50. See the text, supra at 13-16.

51. CAL. LABOR CODE § 1126.

52. CAL. CORP. CODE § 15009(1).

53. 59 Cal.2d 602, 30 Cal. Rptr. 828, 381 P.2d 652 (1963).

54. 57 Cal.2d 781, 22 Cal. Rptr. 211, 371 P.2d 987 (1962).

55. See the text, supra at 16.

56. Marshall v. International Longshoremen's & Warehousemen's Union, 57 Cal.2d 781, 787, 22 Cal. Rptr. 211, 215, 371 P.2d 987, 991 (1962).

57. Ibid.

58. CAL. CORP. CODE § 15009(1).

59. Goodlett v. St. Elmo Inv. Co., 94 Cal. 297, 29 Pac. 505 (1892).

60. Webster v. San Joaquin Fruit Etc. Ass'n, 32 Cal. App. 264, 162 Pac. 654 (1916).

61. Security-First Nat'l Bank v. Cooper, 62 Cal. App.2d 653, 145 P.2d 722 (1944).

62. Comment, 42 CAL. L. REV. 812, 822 (1954).

63. 62 Cal. App.2d 653, 145 P.2d 722 (1944).

64. Id. at 667, 145 P.2d at 730.

65. 50 Cal. App. 462, 195 Pac. 440 (1920).

66. See note 47, supra for text of statutes.

67. 57 Cal.2d 781, 22 Cal. Rptr. 211, 371 P.2d 987 (1962).

68. This amendment would seem to remove any constitutional problem that now exists in the sections. See Code Commission Notes in CAL. CORP. CODE § 21103 (West 1955).

69. Most Worshipful Lodge v. Sons of Light, 118 Cal. App.2d 78, 257 P.2d 464 (1953).

70. Calimpco, Inc. v. Warden, 100 Cal. App.2d 429, 444, 224 P.2d 421, 432 (1950)(partnership). Although Section 388 is not entirely clear, it could be argued that a judgment binding the individual assets of an associate could be obtained only if the associate was made a party to the action against the association. Section 388 provides in part that "the judgment in the action shall bind the joint property of all the associates, and the individual property of the party or parties served with process." (Emphasis added.) Giving "party" its technical legal meaning would result in a construction of Section 388 that would achieve the desirable result of giving the associate a right to participate in the defense of the action.

71. The Code Commission's Note to Section 388 states: "The words 'and the individual property of the party or parties served with process' have been added [by the 1907 amendment to Section 388], thus avoiding multiplicity of suits."

72. The question has been raised at least twice but the court has not decided the question on either occasion. Jardine v. Superior Court, 213 Cal. 301, 2 P.2d 756 (1931); The John Bollman Co. v. S. Bachman & Co., 16 Cal. App. 589, 117 P.2d 690 (1911)(rehearing denied, 16 Cal. App. at 593, 122 Pac. 835).

73. 57 Cal.2d 781, 22 Cal. Rptr. 211, 371 P.2d 987 (1962).

74. Id. at 787, 22 Cal. Rptr. at 215, 371 P.2d at 991.

75. Id. at 787 n.1, 22 Cal. Rptr. at 215 n.1, 371 P.2d at 991 n.1.

76. Calimpco, Inc. v. Warden, 100 Cal. App.2d 429, 444, 224 P.2d 421, 432 (1950).

77. Typical statutes are:

ILL. STAT. ANN. Ch. 77, § 1 and Ch. 110, § 27.1, which provide:

> 1b. A judgment rendered against a partnership in its firm name shall support execution only against property of the partnership and shall not constitute a lien upon real estate other than that held in the firm name.
>
> 27.1. (1) A partnership may be sued in the names of the partners as individuals doing business as the partnership, or in the firm name, or both.
>
> (2) An unsatisfied judgment against a partnership in its firm name does not bar an action to enforce the individual liability of any partner.

NEB. REV. STAT. §§ 25-314 and 25-316, which provide in part:

> 25-314. . . . Executions issued on any judgments rendered in such proceedings [against an unincorporated association] shall be levied only on the property of the company, firm, partnership, or unincorporated association.
>
> 25-316. If the plaintiff, in any judgment so rendered against any company or partnership, shall seek to charge the individual property of the persons comprising such company or firm, it shall be lawful for him to file a bill in equity against the several members thereof, setting forth his judgment and the insufficiency of the partnership property to satisfy the same, and to have a decree for the debt, and an award of execution against all such persons, or any of them as may appear to have been members of such company, association, or firm.

N.Y. GEN. ASS'NS LAW §§ 15 and 16, which provide:

> 15. In such an action [against an unincorporated association] the officer against whom it is brought cannot be arrested; and a judgment against him does not authorize an execution to be issued against his property, or his person; nor does the docketing thereof bind his real property, or chattels real. Where such a judgment is for a sum of money, an execution issued thereupon must require the sheriff to satisfy the same, out of any personal or real property belonging to the association, or owned jointly or in common, by all the members thereof.
>
> 16. Where an action has been brought against an officer, or a counterclaim has been made, in an action brought by an officer, as described in this article, another action, for the same cause, shall not be brought against the

members of the association, or any of them, until after final judgment in the first action, and the return, wholly or partly unsatisfied or unexecuted, of an execution issued thereupon. After such a return, the party in whose favor the execution was issued, may maintain an action, as follows:

1. Where he was the plaintiff, or a defendant recovering upon a counterclaim, he may maintain an action against the members of the association, or, in a proper case, against any of them, as if the first action had not been brought, or the counterclaim had not been made, as the case requires; and he may recover therein, as part of his damages, the costs of the first action, or so much thereof, as the sum, collected by virtue of the execution, was insufficient to satisfy.

2. Where he was a defendant, and the case is not within subdivision first of this section, he may maintain an action, to recover the sum remaining uncollected, against the persons who composed the association, when the action against him was commenced, or the survivors of them.

But this section does not affect the right of the person, in whose favor the judgment in the first action was rendered, to enforce a bond or undertaking, given in the course of the proceedings therein. Section eleven of this chapter applies to an action brought, as prescribed in this section against the members of any association, which keeps a book for the entry of changes in the membership of the association, or the ownership of its property; and to each book so kept.

R.I. GEN. LAWS §§ 9-2-14 and 9-2-15, which provide:

9-2-14. In such action or proceeding [against an unincorporated association] the officers or members against whom it is brought shall not be arrested; and a judgment against them shall not authorize an execution to be issued against their property or person. When such judgment is for a sum of money, an execution issued thereon must require the officer serving the same to satisfy such execution out of any personal or real property belonging to the association or owned jointly or in common by all members thereof.

9-2-15. When any action or proceeding at law is brought to recover any property, or upon any cause of action for or upon which the plaintiff may maintain such an action or proceeding at law against all the associates by reason of their interest or ownership or claim of ownership therein as heretofore provided in §§ 9-2-10 to 9-2-14, inclusive, no action or other proceeding at law for the same cause of action shall be brought to recover a personal judgment against the members of such association or any of them until

after final judgment in such first action or proceeding, and the return of any execution issued thereon wholly or partially unsatisfied.

See also, CONN. GEN. STAT. ANN. § 52-76 ("Civil actions may be brought, both in contract and tort, against such association and its members, but no such action, except on contract, shall be brought against such members without joining such association as a party thereto, if such association is located or has property subject to attachment in this state."); GA. CODE ANN. § 3-121 ("No such judgment [against an unincorporated association] shall be enforced against the individual property of any member of an unincorporated association unless such member has personally participated in the transaction for which said action was instituted."); MINN. STAT. ANN. § 540.151 (1965 Supp.) ("Any money judgment against a labor organization or employer organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."); MD. ANN. CODE, Art. 23, § 138 ("Any money judgment against such association or joint stock company shall be enforceable only against such association or joint stock company as an entity and against its assets, and shall not be enforceable against any individual member or his assets.").

78. See the text of these sections, supra note 77.

79. TEXAS CIV. STAT. §§ 6135-6137.

80. CAL. CORP. CODE § 15009(1).

81. See, e.g., IDAHO CODE ANN. § 5-323; MONT. REV. CODE ANN. § 93-2827; N.M. STAT. ANN. § 21-6-5; OKLA. STAT. ANN., Tit. 12, § 182; VT. STAT. ANN., Tit. 12, § 814 (Supp. 1965).

82. See, e.g., MINN. STAT. ANN. § 540.151 (Supp. 1965); NEB. REV. STAT. § 25-314; N.J. REV. STAT. § 2A:64-2; N.M. STAT. ANN. § 21-1-1(4); S.C. CODE ANN. § 10-429; UTAH RULES CIV. PROC., Rule 4(e)(4); VT. STAT. ANN., Tit. 12 § 814; VA. CODE ANN. § 8-66.1 (Supp. 1964).

83. ALA. CODE ANN., Tit. 7, § 144 provides:

> 144. Service of process in such action against such organization or association shall be had by service upon any officer or official member of such organization or association or upon any officer or official member of any branch or local of such organization or association, provided that any such organization or association may file with the secretary of state a designated officer or agent upon whom service shall be had and his residence within the state, and if such designation is so made and filed, service of process shall be had only on the officer or agent so designated if he can be found within the state.

84. GA. CODE ANN. § 3-119. This section is the same in substance as the Alabama statute set out in note 83.

85. See also, LA. REV. STAT. ANN., Art. 1264, which provides:

> Service on an unincorporated association is made by personal service on the agent appointed, if any, or in his absence, upon a managing official, at any place where the business of the association is regularly conducted. In the absence of all officials from the place where the business of the association is regularly conducted, service of citation or other process may be made by personal service upon any member of the association.

86. It may not be possible to use California discovery procedures to discover this information. See LOUISELL, MODERN CALIFORNIA DISCOVERY § 9.06 (1963).

87. 37 Cal.2d 760, 235 P.2d 607 (1951).

88. Ibid.

89. 37 Cal.2d 760, 235 P.2d 607 (1951).

90. 28 U.S.C. § 1391; for discussion see 1 MOORE'S FEDERAL PRACTICE ¶ 0.142 [5.-4] (1964).

91. See generally Comment, 4 STAN. L. REV. 160 (1951).

92. 37 Cal.2d 760, 235 P.2d 607 (1951).

93. Id. at 764, 235 P.2d at 609.

94. Comment, 4 STAN. L. REV. 160, 162 (1951).

95. See CAL. CONST., Art. XII, § 16; cf., PA. RULES CIV. PROC., Rule 2156, which provides:

> Rule 2156. (a) Except as otherwise provided by subdivision (b) of this rule, an action against an association may be brought in and only in a county where the association regularly conducts business or any association activity, or in the county where the cause of action arose or in a county where a transaction or occurrence took place out of which the cause of action arose.
>
> (b) Subdivision (a) of this rule shall not restrict or affect the venue of an action against an association commenced by or for the attachment, seizure, garnishment, sequestration or condemnation of real or personal property or an action for the recovery of the possession of or the determination of the title to real or personal property.

96. See the text, supra at 33.

97. Miller & Lux v. Kern County Land Co., 134 Cal. 586, 587, 66 Pac. 856, 857 (1901). (Emphasis added.)