

10/25/66

Memorandum 66-66

Subject: Annual Report for 1966

Attached (pink pages) is a draft of a proposed Annual Report for the year 1966.

The following matters are noted for your attention:

1. We propose to insert the names of the Commission members and staff on the inside of the blue cover of the pamphlet. See the second page of the draft of the Annual Report. We plan to delete the names of the staff members from the letter of transmittal. When the Annual Report is included in Volume 8, the blue cover will not be included.

2. The statement of the Function and Procedure of the Commission on pages 7-9 of the attached draft is the same as in the last Annual Report except that it has been brought up to date.

3. The statement of the studies on which the Commission expects to submit a recommendation to the 1967 Legislature (page 12) will list the topics as they are described on the cover of each recommendation. The topic as authorized or directed to be studied by the Legislature is listed in full on pages 13-14.

4. We formerly separated the topics listed under Calendar of Topics for Study (pages 13-15) to indicate whether the topic was one requested for study by the Commission or was one designated for study by the Legislature on its own initiative. When the last Annual Report was prepared, the Commission determined that a more meaningful designation would be one that would indicate those topics under active consideration and those topics not under active consideration. The Concurrent Resolution introduced at the last session was drafted to make this distinction. We did not, however,

make this distinction in the last Annual Report because it was already set in type, but the Commission directed that the next Annual Report be prepared in the form set out in the attached draft.

We have listed the Resolutions authorizing particular topics and other pertinent information in the text (after the topic) rather than in footnotes in order to avoid resetting all of the material under Calendar of Topics for Study each time we publish an Annual Report.

5. The discussion of Support After an Ex Parte Divorce on page 16 follows the exact language previously approved by the Commission when the Commission determined to drop this topic from our Agenda.

6. We found three cases holding statutes of this state unconstitutional. We request approval of this portion of the report (pages 17-18) with the understanding that we will revise the report if the United States Supreme Court determines that it will consider the constitutionality of Proposition 13. If the United States Supreme Court grants certiorari to review the constitutionality of Proposition 13, we suggest that the Recommendations portion of the Annual Report (page 19) be revised to state in substance: "The Commission does not recommend the repeal of Section 26 of Article I of the California Constitution at this time because the United States Supreme Court has granted a writ of certiorari to review the decision of the California Supreme Court in Mulkey v. Reitman."

7. If we prepare a recommendation on Discovery in Eminent Domain for the 1967 session, we suggest that the recommendation be included as an appendix to the Annual Report.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Cover (title page same)

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Annual Report

December 1966

**CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California**

Inside cover

THE CALIFORNIA LAW REVISION COMMISSION

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Chairman

SHO SATO
Vice Chairman

JAMES A. COBEY
Member of the Senate

ALFRED H. SONG
Member of the Assembly

JOSEPH A. BALL
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THOMAS E. STANTON, JR.
Member

GEORGE H. MURPHY
Ex Officio

COMMISSION STAFF

Legal

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Executive Secretary

JOSEPH B. HARVEY
Assistant Executive Secretary

CLARENCE B. TAYLOR
Special Condemnation Counsel

Administrative-Secretarial

ANNE SCHMIDT-WEYLAND
Administrative Assistant

LINDA E. BERRY
Supervising Secretary

VIOLET S. HARJU
Secretary

NOTE

This pamphlet begins on page 1. The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volumes in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 8 of the Commission's **REPORTS, RECOMMENDATIONS, AND STUDIES**.

STATE OF CALIFORNIA

EDMUND G. BROWN, Governor

CALIFORNIA LAW REVISION COMMISSION

~~STANFORD UNIVERSITY~~ **LAW SCHOOL**

STANFORD UNIVERSITY
STANFORD, CALIFORNIA 94305

COMMISSION MEMBERS

RICHARD H. KRATINGER
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SHO SATO
Vice Chairman
SENATOR JAMES A. COSEY
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THOMAS E. STANTON, JR.
GEORGE H. MURPHY
Ex Officio



December 31, 1961

To HIS EXCELLENCY, EDMUND G. BROWN
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission herewith submit
report of its activities during the year 1961

Respectfully submitted,
RICHARD H. KRATINGER
Chairman

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REPORT OF THE CALIFORNIA LAW REVISION COMMISSION FOR THE YEAR 1966

FUNCTION AND PROCEDURE OF COMMISSION

The California Law Revision Commission consists of one Member of the Senate, one Member of the Assembly, seven members appointed by the Governor with the advice and consent of the Senate, and the Legislative Counsel who is ex officio a nonvoting member.¹

The principal duties of the Law Revision Commission are to:

- (1) Examine the common law and statutes of the State for the purpose of discovering defects and anachronisms therein.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, bar associations, and other learned bodies; judges, public officials, lawyers, and the public generally.
- (3) Recommend such changes in the law as it deems necessary to bring the law of this State into harmony with modern conditions.

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. The Commission may study only topics which the Legislature, by concurrent resolution, authorizes it to study.²

Each of the Commission's recommendations is based on a research study of the subject matter concerned. Many of these studies are undertaken by specialists in the fields of law involved who are retained as research consultants to the Commission. This procedure not only provides the Commission with invaluable expert assistance but is economical as well because the attorneys and law professors who serve as research consultants have already acquired the considerable background necessary to understand the specific problems under consideration.

The consultant submits a detailed research study that is given careful consideration by the Commission. After making its preliminary decisions on the subject, the Commission distributes a tentative recommendation to the State Bar and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what report and recommendation it will make to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation to the Legislature, including a draft of any legislation necessary to effectuate its recommendation, is published in a printed pamphlet.³ If the research study has not been previously published, it also is included in this pamphlet.

¹ See CAL. GOV'T. CODE §§ 10330-10340.

² See CAL. GOV'T. CODE § 10330. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States. CAL. GOV'T. CODE § 10331.

³ See CAL. GOV'T. CODE § 10335.

⁴ Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.

The pamphlets are distributed to the Governor, Members of the Legislature, heads of state departments, and a substantial number of judges, district attorneys, lawyers, law professors, and law libraries throughout the State.⁵ Thus, a large and representative number of interested persons are given an opportunity to study and comment upon the Commission's work before it is submitted to the Legislature. The annual reports and the recommendations and studies of the Commission are bound in a set of volumes that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the State.

A total of 57 bills and two proposed constitutional amendments have been drafted by the Commission to effectuate its recommendations.⁶ Thirty-seven of these bills were enacted at the first session to which they were presented; ten bills were enacted at subsequent sessions or their substance was incorporated into other legislation that was enacted. Thus, of the 57 bills recommended, 47 eventually became law.⁷

⁵ See CAL. GOV'T. CODE § 10333.

⁶ The number of bills actually introduced was in excess of 57 since, in some cases, the substance of the same bill was introduced at a subsequent session. In the case of the Evidence Code, the same bill was introduced in both the Senate and the Assembly.

⁷ Cal. Stats. 1955, Ch. 799, p. 1400 and Ch. 877, p. 1494. (Revision of various sections of the Education Code relating to the Public School System.)

Cal. Stats. 1955, Ch. 1182, p. 2193. (Revision of Probate Code Sections 640 to 646—setting aside of estates.)

Cal. Stats. 1957, Ch. 102, p. 678. (Elimination of obsolete provisions in Penal Code Sections 1277 and 1278.)

Cal. Stats. 1957, Ch. 139, p. 732. (Maximum period of confinement in a county jail.)

Cal. Stats. 1957, Ch. 249, p. 902. (Judicial notice of the law of foreign countries.)

Cal. Stats. 1957, Ch. 456, p. 1208. (Recodification of Fish and Game Code.)

Cal. Stats. 1957, Ch. 490, p. 1520. (Rights of surviving spouse in property acquired by decedent while domiciled elsewhere.)

Cal. Stats. 1957, Ch. 540, p. 1589. (Notice of application for attorney's fees and costs in domestic relations actions.)

Cal. Stats. 1957, Ch. 1498, p. 2824. (Bringing new parties into civil actions.)

Cal. Stats. 1959, Ch. 122, p. 2095. (Doctrine of worthier title.)

Cal. Stats. 1959, Ch. 408, p. 2406. (Effective date of an order ruling on motion for new trial.)

Cal. Stats. 1959, Ch. 483, p. 2444. (Time within which motion for new trial may be made.)

Cal. Stats. 1959, Ch. 470, p. 2405. (Suspension of absolute power of alienation.)

Cal. Stats. 1959, Ch. 500, p. 2441. (Procedure for appointing guardians.)

Cal. Stats. 1959, Ch. 501, p. 2443. (Codification of laws relating to grand juries.)

Cal. Stats. 1959, Ch. 528, p. 2494. (Mortgages to secure future advances.)

Cal. Stats. 1959, Ch. 1716, p. 4114 and Chs. 1724-1725, pp. 4122-4155. (Presentation of claims against public entities.)

Cal. Stats. 1961, Ch. 461, p. 1640. (Arbitration.)

Cal. Stats. 1961, Ch. 589, p. 1732. (Rescission of contracts.)

Cal. Stats. 1961, Ch. 636, p. 1831. (Inter vivos marital property rights in property acquired while domiciled elsewhere.)

Cal. Stats. 1961, Ch. 657, p. 1867. (Survival of actions.)

Cal. Stats. 1961, Ch. 1612, p. 2489. (Tax apportionment in eminent domain proceedings.)

Cal. Stats. 1961, Ch. 1612, p. 2442. (Taking possession and passage of title in eminent domain proceedings.)

Cal. Stats. 1961, Ch. 1616, p. 2469. (Revision of Juvenile Court Law adopting the substance of two bills drafted by the Commission to effectuate its recommendations on this subject.)

Cal. Stats. 1963, Ch. 1681. (Sovereign immunity—tort liability of public entities and public employees.)

Cal. Stats. 1963, Ch. 1715. (Sovereign immunity—claims, actions and judgments against public entities and public employees.)

Cal. Stats. 1963, Ch. 1682. (Sovereign immunity)—insurance coverage for public entities and public employees.)

Cal. Stats. 1963, Ch. 1683. (Sovereign immunity—defense of public employees.)

Cal. Stats. 1963, Ch. 1684. (Sovereign immunity—workmen's compensation benefits for persons assisting law enforcement or fire control officers.)

Cal. Stats. 1963, Ch. 1685. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

Cal. Stats. 1963, Ch. 1686. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

Cal. Stats. 1963, Ch. 2029. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

Cal. Stats. 1965, Ch. 239. (Evidence Code.)

One of the proposed constitutional amendments was approved and ratified by the people;* the other was not approved by the Legislature.

A total of 1,764 sections of the California statutes has been affected by Commission recommended legislation that was enacted by the Legislature: 923 sections were added, 365 sections were amended, and 476 sections were repealed.

Cal. Stats. 1965, Ch. 653. (Sovereign immunity—claims and actions against public entities and public employees.)

Cal. Stats. 1965, Ch. 1151. (Evidence in eminent domain proceedings.)

Cal. Stats. 1965, Ch. 1527. (Sovereign immunity—liability of public entities for ownership and operation of motor vehicles.)

Cal. Stats. 1965, Chs. 1649, 1650. (Reimbursement for moving expenses.)

*CAL. CONST., Art. XI, § 10 (1960). (Power of Legislature to prescribe procedures governing claims against chartered cities and counties and employees thereof.)

PERSONNEL OF COMMISSION

As of December 31, 1966, the membership of the Law Revision Commission is:

	Term expires
Richard H. Keatinge, Los Angeles, <i>Chairman</i>	October 1, 1967
Sho Sato, Berkeley, <i>Vice Chairman</i>	October 1, 1969
Hon. James A. Cobey, Merced, <i>Senate Member</i>	*
Hon. Alfred H. Song, Monterey Park, <i>Assembly Member</i>	*
Joseph A. Ball, Long Beach, <i>Member</i>	October 1, 1969
James R. Edwards, San Bernardino, <i>Member</i>	October 1, 1967
John R. McDonough, Stanford, <i>Member</i>	October 1, 1967
Herman F. Selvin, Los Angeles, <i>Member</i>	October 1, 1967
Thomas E. Stanton, Jr., San Francisco, <i>Member</i>	October 1, 1969
George H. Murphy, Sacramento, <i>ex officio Member</i>	†

In February 1966, Mr. Clarence B. Taylor was appointed to the staff of the Commission as Special Condemnation Counsel. Mr. Taylor had previously served as a special consultant on condemnation law and procedure.

In October 1966, Mr. John L. Reeve resigned from the staff of the Commission to enter private law practice.

* The legislative members of the Commission serve at the pleasure of the appointing power.
 † The Legislative Counsel is *ex officio* a nonvoting member of the Commission.

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SUMMARY OF WORK OF COMMISSION

two

During 1965, the Law Revision Commission was engaged in ~~the~~ principal tasks:

(1) ~~the presentation of its 1965 legislative program to the Legislature~~

(2) (1) Work on various assignments given to the Commission by the Legislature. ↓

(2) (2) A study, made pursuant to Section 10331 of the Government Code, to determine whether any statutes of the State have been held by the Supreme Court of the United States or by the Supreme Court of California to be unconstitutional or to have been impliedly repealed. →

The Commission held ~~the~~ two-day meetings and ~~the~~ three-day meetings in 1965. 6

* See this report, supra at 13-16.

* See this report, supra at 17-18.

**STUDIES ON WHICH THE COMMISSION EXPECTS
TO SUBMIT A RECOMMENDATION TO
THE 1967 LEGISLATURE**

The Commission expects to submit a recommendation on the following topics to the 1967 Legislature:

- (1) Whether Damages for Personal Injury to a Married Person Should Be Separate or Community Property
- (2) Additur
- (3) Condemnation Law and Procedure
Possession Prior to Final Judgment and Related Problems
Discovery
- (4) Vehicle Code Section 17150 and Related Statutes
- (5) ~~Right of First Refusal~~ Abandonment or Termination of a Lease ~~on Real Property~~
- (6) The Evidence Code
Number 1—Evidence Code Revisions
Number 2—Agricultural Code Revisions
Number 3—Commercial Code Revisions
- (7) The Good Faith Improver of Land Owned by Another
- (8) Suit by and Against Unincorporated Associations
- (9) Escheat

CALENDAR OF TOPICS FOR STUDY

STUDIES IN PROGRESS

During the year covered by this report, the Commission had on its agenda the topics listed below, each of which it had been authorized and directed by the Legislature to study. The Commission proposes to continue its study of these topics.✓

Studies Under Active Consideration

1. Whether an award of damages made to a married person in a personal injury action should be the separate property of such married person (Cal. Stats. 1957, Res. Ch. 202, p. 4589).
2. Whether the law relating to additur and remittitur should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats. 1957, Res. Ch. 202, p. 4589).
3. Whether the law and procedure relating to condemnation should be revised with a view to recommending a comprehensive statute that will safeguard the rights of all parties to such proceedings (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats. 1956, Res. Ch. 42, p. 263; 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1963 Report at 115 (1963)).²
4. Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised (Cal. Stats. 1957 Res. Ch. 202, p. 4589).³
5. Whether the decisional, statutory, and constitutional rule governing the liability of public entities for inverse condemnation should

²Section 10235 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topic which the Legislature by concurrent resolution refers to it for such study.

The legislative directives to make these studies are listed after each topic.

³See *Recommendation and Study Relating to Evidence in Eminent Domain Proceedings*; *Recommendation and Study Relating to Taking Possession and Passage of Title in Eminent Domain Proceedings*; *Recommendation and Study Relating to the Reimbursement for Moving Expenses When Property is Acquired for Public Use*, 3 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, Recommendations and Studies at A-1, B-1, and C-1 (1961). For a legislative history of these recommendations, see 3 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 1-5 (1961). The substance of two of these recommendations was incorporated in legislation enacted in 1965, Cal. Stats. 1965, Ch. 1151, p. 2300 (evidence in eminent domain proceedings); Ch. 1649, p. 3744, and Ch. 1650, p. 3746 (reimbursement for moving expenses). See also *Recommendation and Study Relating to Condemnation Law and Procedure: Number 4—Discovery in Eminent Domain Proceedings*, 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 701 (1963). For a legislative history of this recommendation, see 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 213 (1963).

⁴See *Recommendations Relating to Sovereign Immunity: Number 1—Tort Liability of Public Entities and Public Employees; Number 2—Claims, Actions and Judgments Against Public Entities and Public Employees; Number 3—Insurance Coverage for Public Entities and Public Employees; Number 4—Defense of Public Employees; Number 5—Liability of Public Entities for Ownership and Operation of Motor Vehicles; Number 6—Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officers; Number 7—Amendments and Repeals of Inconsistent Special Statutes*, 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 801, 1001, 1201, 1301, 1401, 1501, and 1601 (1963). For a legislative history of these recommendations, see 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 211-213 (1963). See also *A Study Relating to Sovereign Immunity*, 5 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 1 (1963).

See also *Recommendation Relating to Sovereign Immunity: Number 8—Revisions of the Governmental Liability Act*, 7 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 401 (1965). For a legislative history of this recommendation, see 7 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 914 (1965).

- be revised, including but not limited to the liability for inverse condemnation resulting from flood control projects (Cal. Stats. 1965, Res. Ch. 130, p. 5289).
6. Whether Vehicle Code Section 17150 and related statutes should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats. 1962, Res. Ch. 23, p. 94; 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1962 Report at 20 (1963)).
 7. Whether the law relating to the rights and duties attendant upon termination or abandonment of a lease should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats. 1957, Res. Ch. 202, p. 4589).
 8. Whether the Evidence Code should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289).⁴
 9. Whether the law relating to the rights of a good faith improver of property belonging to another should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1957 Report at 17 (1957)).
 10. Whether the law relating to the use of fictitious names should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1957 Report at 18 (1957)).
 11. Whether the law relating to suit by and against partners and other unincorporated associations should be revised and whether the law relating to the liability of such associations and their members should be revised (Cal. Stats. 1966, Res. Ch. 9; see also Cal. Stats. 1957, Res. Ch. 202, p. 4589; 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1957 Report at 18 (1957)).
 12. Whether the law relating to the escheat of property and the disposition of unclaimed or abandoned property should be revised (Cal. Stats. 1966, Res. Ch. 9); see also Cal. Stats. 1956, Res. Ch. 42, p. 263; 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1956 Report at 25 (1957).

Other Studies in Progress

1. Whether the law relating to devises and bequests to a trustee under, or in accordance with, terms of an existing inter vivos trust should be revised and whether the law relating to a power of appointment should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289).
2. Whether the jury should be authorized to take a written copy of the court's instructions into the jury room in civil as well as criminal cases (Cal. Stats. 1955, Res. Ch. 207, p. 4207; see also 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1955 Report at 28 (1957) (description); 2 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1958 Report at 13 (1959) (legislative history)).
3. Whether the law relating to the allocation or division of property on divorce or separate maintenance should be revised (Cal. Stats. 1966, Res. Ch. 9).
4. Whether the law relating to the rights of a putative spouse should be revised (Cal. Stats. 1956, Res. Ch. 42, p. 263; see also 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1956 Report at 26 (1957)).
5. Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised (Cal. Stats. 1956, Res. Ch. 42, p. 263; see also 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1956 Report at 29 (1957)).
6. Whether the law relating to attachment, garnishment, and property exempt from execution should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1957 Report at 15 (1957)).

⁴ See *Recommendation Proposing an Evidence Code*, 7 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 1 (1965). A series of tentative recommendations and research studies relating to the Uniform Rules of Evidence was published and distributed for comment prior to the preparation of the recommendation proposing the Evidence Code. See 6 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES at 1, 101, 201, 301, 701, 801, 901, 1001, and Appendix (1964). For legislative history of this recommendation, see 7 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 912-914 (1965).

See also Evidence Code With Official Comments, 7 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 1001 (1965).

7. Whether the Small Claims Court Law should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. LAW COMM'N, REP., REC. & STUDIES, 1957 Report at 16 (1957)).
 8. Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1957 Report at 19 (1957)).
 9. Whether Civil Code Section 1698 should be repealed or revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1957 Report at 21 (1957)).
 10. Whether Section 7031 of the Business and Professions Code, which precludes an unlicensed contractor from bringing an action to recover for work done, should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1957 Report at 23 (1957)).
 11. Whether California statutes relating to service of process by publication should be revised in light of recent decisions of the United States Supreme Court (Cal. Stats. 1958, Res. Ch. 61, p. 135; see also 2 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1958 Report at 18 (1959)).
 12. Whether Section 1974 of the Code of Civil Procedure should be repealed or revised (Cal. Stats. 1958, Res. Ch. 61, p. 135; see also 2 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1958 Report at 20 (1959)).
 13. Whether the various sections of the Code of Civil Procedure relating to partition should be revised and whether the provisions of the Code of Civil Procedure relating to the confirmation of partition sales and the provisions of the Probate Code relating to the confirmation of sales of real property of estates of deceased persons should be made uniform and, if not, whether there is need for clarification as to which of them governs confirmation of private judicial partition sales (Cal. Stats. 1959, Res. Ch. 218, p. 5792; see also Cal. Stats. 1956, Res. Ch. 42, p. 463; 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1956 Report at 21 (1957)).
14. Whether the law relating to quasi-community property and property described in Section 201.5 of the Probate Code should be revised (Cal. Stats. 1966, Res. Ch. 9-).³

³ This topic is a continuation of an earlier topic. See 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, *Recommendation and Study Relating to Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere* at E-1 (1957); for a legislative history of this recommendation, see 2 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1958 Report at 18 (1959); 3 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, *Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere* at I-1 (1961); for a legislative history of this recommendation, see 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1962 Report at 15 (1963).

STUDIES TO BE DROPPED FROM CALENDAR OF TOPICS FOR STUDY

Study Relating to Support After an Ex Parte Divorce

7

In 1957, the Commission was authorized to make a study to determine whether a former wife, divorced in an action in which the court did not have personal jurisdiction over both parties, should be permitted to maintain an action for support.¹

The Commission requested authority to make this study because the California Supreme Court had held in *Dimon v. Dimon*,² that a former wife whose marriage had been terminated by an ex parte divorce granted by a Connecticut court could not subsequently maintain an action for support against her former husband in California.³ After the Commission had commenced its study, the California Supreme Court decided *Hudson v. Hudson*,⁴ which overruled the *Dimon* case. Accordingly, the Commission recommends that this topic be dropped from its calendar of topics.

STUDIES FOR FUTURE CONSIDERATION

The Commission now has an agenda consisting of 26 studies in progress, some of substantial magnitude, that will require all of its energies for a number of years. For this reason, the Commission is not at this time requesting authority to undertake additional studies.

¹ Cal. Stats. 1957, Res. Ch. 202, p. 4589.

² 40 Cal.2d 518, 254 P.2d 528 (1953) (Traynor, J., dissenting).

³ See 1 CAL. REVISION COMM'N. REP., RUC. & STUDIES, 1957 Report at 25 (1957).

⁴ 62 Cal.2d 735, 344 P.2d 295 (1959). The *Hudson* case held that an ex parte divorce obtained by the husband in another state did not prevent the wife from maintaining an action for support in California.

Law

REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL

Section 10331 of the Government Code provides:

The Commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.

Pursuant to this directive the Commission has made a study of the decisions of the Supreme Court of the United States and of the Supreme Court of California handed down since the Commission's last Annual Report was prepared.¹ It has the following to report:

(1) No decision of the Supreme Court of the United States holds a statute of this state repealed by implication has been found.

~~(2) Two decisions of the Supreme Court of the United States hold~~
~~ing statutes of this state unconstitutional have been found.~~

unconstitutional

¹This study has been carried through 65 Adv. Cal. 344 (1965) and 384 U.S. 244 (1966).

(2) No decision of the Supreme Court of California holding a statute of this state repealed by implication has been found.

(3) Three decisions of the Supreme Court of California holding statutes of this state unconstitutional have been found.

²
In Weaver v. Jordan, the California Supreme Court held the Free Television Act (submitted by the initiative and approved by the electors, November 3, 1964--commonly known as Proposition 15), which undertook to ban the business of home subscription television, unconstitutional.

³
In Mulkey v. Reitman, the Supreme Court of California held Article I, Section 26 of the California Constitution (submitted by the initiative and approved by the electors, November 3, 1964--commonly known as Proposition 13), which provided that neither the state nor any of its subdivisions could deny, limit, or abridge the right of any owner to rent or sell his property to any person as he in his absolute discretion saw fit, unconstitutional.

⁴
In In re Perez, the Supreme Court of California held Penal Code Section 1203.2a unconstitutional insofar as that section formerly purported to permit sentence in the absence of and without notice to a probationer committed to a state prison. Section 1203.2a was amended by Chapter 2079 of the Statutes of 1963 to make the section consistent with constitutional requirements.

² 64 Adv. Cal. 243, 49 Cal. Rptr. 537, 411 P.2d 289 (1966).

³ 64 Adv. Cal. 557, 50 Cal. Rptr. 881, 413 P.2d 825 (1966).

⁴ 65 Adv. Cal. 223, Cal. Rptr. P.2d (1966).

RECOMMENDATIONS

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics listed as studies in progress on pages 13-15 of this report.

Pursuant to the mandate imposed by Section 10331 of the Government Code, the Commission recommends that the Legislature take appropriate action to submit to the people:

(1) An amendment to repeal Section 26 of Article I of the California Constitution.

(2) The repeal of the Free Television Act (submitted by the initiative and approved by the electors, November 3, 1964).

APPENDIX

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

Relating to

DISCOVERY IN EMINENT DOMAIN PROCEEDINGS

[If a recommendation on this subject is to be made to the 1967 legislative session, it would be included as an appendix to the Annual Report. We recommend this because we have already published a report on this subject which includes both a recommendation and a research study. The Commission has included recommendations in its annual report on a number of occasions in the past.]