

9/11/68

Memorandum 68-90

Subject: Annual Report--1968

Attached is a staff draft of the Annual Report for the year 1968. Most of the report is routine. Other portions will need to be revised to reflect the actual 1969 Legislative Program and the new topics that the Commission determines it will request it be authorized to study.

You will note that we plan to publish the Recommendation Relating to Powers of Appointment and the Recommendation Relating to Mutuality of Remedies in Suits for Specific Performance as separate pamphlets since we have a background research study on each of these topics that will be published as a part of our report. We plan to publish the other four recommendations (listed under the 1969 Legislative Program in the Annual Report) as Appendices to the Annual Report. This follows our past practice.

The following matters are noted for special attention.

Major Studies in Progress

Note that we have revised our discussion of Inverse Condemnation to indicate that we tentatively plan to submit a recommendation on this subject to the 1973 Legislature (rather than the 1970 Legislature as stated in the previous annual report). We believe that the remainder of the discussion should present no problems. The material will be revised if the Commission determines not to submit a recommendation on a particular topic to the 1969 Legislature.

Studies for Future Consideration

Please note the preliminary portion of the discussion of new topics. The discussion that will follow this portion is the statement

concerning the particular topic that is contained in the staff memorandum relating to that topic.

Report on Statutes Repealed by Implication or Held Unconstitutional

The discussion of People v. Johnson was considered and approved at the last meeting. The discussion of Silver v. Reagan is new but seems to present no problem. Note that neither decision requires any legislative action.

Following past practice, we have noted Vogel v. County of Los Angeles (loyalty oath required of public employees) in a footnote since this case involves a constitutional provision rather than a statute.

Approval for Printing

The Commission should approve the Annual Report for printing at the September meeting. The staff will make any revisions needed to reflect conforming changes in the 1969 Legislative Program, etc., before the report is finally printed.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Annual Report

December 1968

**CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305**

— / —

THE CALIFORNIA LAW REVISION COMMISSION

COMMISSION MEMBERS

SHO SATO <i>Chairman</i>	THOMAS E. STANTON, JR. <i>Member</i>
JOSEPH A. BALL <i>Vice Chairman</i>	LEWIS K. UHLER <i>Member</i>
ALFRED H. SONG <i>Member of the Senate</i>	RICHARD H. WOLFORD <i>Member</i>
F. JAMES BEAR <i>Member of the Assembly</i>	WILLIAM A. YALE <i>Member</i>
ROGER ARNEBERGH <i>Member</i>	GEORGE H. MURPHY <i>Ex Officio</i>

COMMISSION STAFF

Legal

JOHN H. DEMOULLY <i>Executive Secretary</i>	JOHN I. HORTON <i>Junior Counsel</i>
CLARENCE B. TAYLOR <i>Assistant Executive Secretary</i>	JOHN L. COOK <i>Junior Counsel</i>

Administrative-Secretarial

ANNE JOHNSTON <i>Administrative Assistant</i>	VIOLET S. HARJU <i>Secretary</i>
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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 volume 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 9 of the Commission's REPORTS, RECOMMENDATIONS, AND STUDIES.

STATE OF CALIFORNIA

RONALD REAGAN, Governor

CALIFORNIA LAW REVISION COMMISSION

SCHOOL OF LAW
STANFORD UNIVERSITY
STANFORD, CALIFORNIA 94305

SHO SATO

Chairman

JOHN A. BALL

RAY C. CLARK

WILLIAM JAMES H. JONES

ARTHUR JAMES J. JAMES JR.

JOHN J. JAMES

THOMAS E. JAMES, JR.

JOHN E. JAMES

EDWARD H. JAMES

WILLIAM A. JAMES

JOHN E. JAMES

December 31, 1968

To HIS EXCELLENCY, RONALD REAGAN
Governor of California and
THE LEGISLATURE OF CALIFORNIA

In conformity with Government Code Section 10035, the California Law Revision Commission herewith submits this report of its activities during 1968.

Respectfully submitted,

SHO SATO
Chairman

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REPORT OF THE CALIFORNIA LAW REVISION COMMISSION FOR THE YEAR 1968

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.²

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.³

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.⁴ If the research study has not been previously published, it usually is published in the pamphlet containing the recommendation.

¹ See CAL. GOV. CODE §§ 10300-10340.

² See CAL. GOV. 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. CODE § 10331.

³ See CAL. GOV. 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 71 bills and two proposed constitutional amendments have been drafted by the Commission to effectuate its recommendations.⁶ Forty-seven of these bills were enacted at the first session to which they were presented; fourteen bills were enacted at subsequent sessions or their substance was incorporated into other legislation that was enacted. Thus, of the 71 bills recommended, 61 eventually became law.⁷

⁵ See CAL. GOV. CODE § 10333.

⁶ The number of bills actually introduced was in excess of 67 since, in some cases, the substance of the same bill was introduced at a subsequent session and, in the case of the Evidence Code, the same bill was introduced in both the Senate and the Assembly.

⁷ Cal. Stats. 1955, Ch. 199, p. 1406 and Ch. 877, p. 1494. (Revision of various sections of the Education Code relating to the Public School System.)

Cal. Stats. 1955, Ch. 1153, p. 2192. (Revision of Probate Code Sections 540 to 548—setting aside of estates.)

Cal. Stats. 1957, Ch. 101, p. 478. (Elimination of obsolete provisions in Penal Code Sections 1377 and 1378.)

Cal. Stats. 1957, Ch. 139, p. 722. (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. 458, p. 1308. (Recodification of Fish and Game Code.)

Cal. Stats. 1957, Ch. 450, p. 1520. (Rights of surviving spouse in property acquired by decedent while domiciled elsewhere.)

Cal. Stats. 1957, Ch. 540, p. 1539. (Notice of application for attorney's fees and costs in domestic relations actions.)

Cal. Stats. 1957, Ch. 1488, p. 2824. (Bringing new parties into civil actions.)

Cal. Stats. 1959, Ch. 122, p. 2085. (Doctrine of worthier title.)

Cal. Stats. 1959, Ch. 468, p. 2402. (Effective date of an order ruling on motion for new trial.)

Cal. Stats. 1959, Ch. 469, p. 2404. (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. 2442. (Codification of laws relating to grand juries.)

Cal. Stats. 1959, Ch. 528, p. 2498. (Mortgages to secure future advances.)

Cal. Stats. 1959, Ch. 1716, p. 4115 and Chs. 1724-1725, pp. 4121-4155. (Presentation of claims against public entities.)

Cal. Stats. 1961, Ch. 461, p. 1548. (Arbitration.)

Cal. Stats. 1961, Ch. 539, p. 1732. (Rescission of contracts.)

Cal. Stats. 1961, Ch. 635, p. 1828. (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. 3439. (Tax apportionment in eminent domain proceedings.)

Cal. Stats. 1961, Ch. 1613, p. 3442. (Taking possession and passage of title in eminent domain proceedings.)

Cal. Stats. 1961, Ch. 1618, p. 3459. (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. 1651. (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. 1654. (Sovereign immunity—workmen's compensation benefits for persons assisting law enforcement or fire control officers.)

Cal. Stats. 1963, Ch. 1655. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

Cal. Stats. 1963, Ch. 1656. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

Cal. Stats. 1963, Ch. 3029. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

Cal. Stats. 1965, Ch. 329. (Evidence Code.)

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

Commission recommendations have resulted in the enactment of legislation affecting 1,982 sections of the California statutes: 978 sections have been added, 463 sections amended, and 491 sections repealed.

- Cal. Stats. 1965, Ch. 852. (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. 1537. (Sovereign immunity—liability of public entities for ownership and operation of motor vehicles.)
- Cal. Stats. 1965, Chs. 1649, 1650. (Reimbursement for moving expenses.)
- Cal. Stats. 1967, Ch. 72. (Additur.)
- Cal. Stats. 1967, Ch. 282. (Evidence Code—Agricultural Code revisions.)
- Cal. Stats. 1967, Ch. 850. (Evidence Code—Evidence Code revisions.)
- Cal. Stats. 1967, Ch. 702. (Vehicle Code Section 17150 and related sections.)
- Cal. Stats. 1967, Ch. 793. (Evidence Code—Commercial Code revisions.)
- Cal. Stats. 1967, Ch. 1104. (Exchange of valuation data in eminent domain proceedings.)
- Cal. Stats. 1967, Ch. 1324. (Suit by or against an unincorporated association.)
- Cal. Stats. 1968, Ch. 132. (Unincorporated associations.)
- Cal. Stats. 1968, Ch. 123. (Fees on abandonment of eminent domain proceeding.)
- Cal. Stats. 1968, Ch. 150. (Good faith improvers.)
- Cal. Stats. 1968, Ch. 247. (Escheat of decedent's estate.)
- Cal. Stats. 1968, Ch. 365. (Unclaimed property act.)
- Cal. Stats. 1968, Ch. 457. (Personal injury damages.)
- Cal. Stats. 1968, Ch. 458. (Personal injury damages.)
- * CAL. CONVER., Art. XI, § 10 (1960). (Power of Legislature to prescribe procedures governing claims against chartered cities and counties and employees thereof.)

PERSONNEL OF COMMISSION

In January 1968, Messrs. Roger Arnebergh, Lewis K. Uhler, Richard H. Wolford, and William A. Yale were appointed by the Governor to succeed Messrs. James R. Edwards, Richard H. Keatinge, John R. McDonough, and Herman F. Selvin, whose terms had expired or who had resigned.

As of December 31, 1968, the membership of the Law Revision Commission is:

	Term expires
Sho Sato, Berkeley, <i>Chairman</i>	October 1, 1969
Joseph A. Ball, Long Beach, <i>Vice Chairman</i>	October 1, 1969
Hon. Alfred H. Song, Monterey Park, <i>Senate Member</i>	*
Hon. F. James Bear, San Diego, <i>Assembly Member</i>	*
Roger Arnebergh, Los Angeles, <i>Member</i>	October 1, 1971
Thomas E. Stanton, Jr., San Francisco, <i>Member</i>	October 1, 1969
Lewis K. Uhler, Covina, <i>Member</i>	October 1, 1971
Richard H. Wolford, Beverly Hills, <i>Member</i>	October 1, 1971
William A. Yale, San Diego, <i>Member</i>	October 1, 1971
George H. Murphy, Sacramento, <i>ex officio Member</i>	†

In June 1968, Mr. John L. Cook was appointed to the Commission's staff to fill the vacancy created when Mr. Gordon E. McClintock resigned to enter private law practice.

In July 1968, Mr. John I. Horton was appointed to the Commission's staff to fill the vacancy created when Mr. Ted W. Isles resigned 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.

SUMMARY OF WORK OF COMMISSION

During the past year, the Law Revision Commission was engaged in three principal tasks:

- (1) Presentation of its legislative program to the Legislature.¹
- (2) Work on various assignments given to the Commission by the Legislature.²
- (3) 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.³

8/ The Commission held four one-day meetings and five two-day meetings in 1984.

¹ See pages 1315-1319, *infra*.

² See page 1320, *infra*.

³ See page 1327, *infra*.

three-day

five two-day

1969
LEGISLATIVE PROGRAM

The Commission plans to submit six recommendations to the 1969 Legislature:

- (1) Recommendation Relating to Powers of Appointment (January 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 301 (1969).
- (2) Recommendation Relating to Mutuality of Remedies in Suits for Specific Performance (January 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 401 (1969).
- (3) Recommendation Relating to Leases. See Appendix VII to this Report.
- (4) Recommendation Relating to Sovereign Immunity: Number 9--Statute of Limitations in Actions Against Public Entities and Public Employees. See Appendix VIII to this Report.
- (5) Recommendation Relating to the Evidence Code: Number 4--Revisions of Privileges Article. See Appendix IX to this Report.
- (6) Recommendation Relating to Additur and Remittitur. See Appendix X to this Report.

The Commission also recommends that it be authorized to study ? additional topics (see page ??, infra).

MAJOR STUDIES IN PROGRESS

INVERSE CONDEMNATION

Resolution Chapter 130 of the Statutes of 1965 directed the Commission to study "whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised, including but not limited to the liability for inverse condemnation resulting from flood control projects." The Commission intends to devote a substantial portion of its time during the next two years to the study of inverse condemnation and tentatively plans to submit a recommendation on this subject to the 1974 Legislature.

five

3/

Prior to 1973, the Commission may submit recommendations concerning inverse condemnation problems that appear to be in need of immediate attention.

Professor Arvo Van Alstyne of the College of Law, University of Utah, has been retained as the Commission's research consultant on this topic. The first three portions of his research study have been completed and published. See Van Alstyne, *Statutory Modification of Inverse Condemnation: The Scope of Legislative Power*, 19 STAN. L. REV. 727 (1967); *Modernizing Inverse Condemnation: A Legislative Prospectus*, 8 SANTA CLARA LAWYER 1 (1967); and *Statutory Modification of Inverse Condemnation: Deliberately Inflicted Injury or Destruction*, 20 STAN. L. REV. 617 (1968). Additional portions of the study are in preparation.

CSC

The fourth portion of the research study will be published in the Hastings Law Journal early in 1969.

CONDEMNATION LAW AND PROCEDURE

The Commission is now engaged in the study of condemnation law and procedure and tentatively plans to submit a recommendation for a comprehensive statute on this subject to the 1972 Legislature.

As it did in connection with the Evidence Code study, the Commission will publish a series of reports containing tentative recommendations and research studies covering various aspects of condemnation law and procedure. The comments and criticisms received from interested persons and organizations on these tentative recommendations will be considered before the comprehensive statute is drafted. The first report in this series has been published. See *Tentative Recommendation and a Study Relating to Condemnation Law and Procedure: Number 1—Possession Prior to Final Judgment and Related Problems*, 8 CAL. L. REVISION COMM'N REPORTS 1101 (1967). The second research study in this series, dealing with the right to take, is available in mimeographed form and arrangements are being made for its publication in a law review. The Commission's staff has begun work on the third study which will deal with compensation and the measure of damages. The Commission also has retained Professor Douglas Ayer of the Stanford Law School to prepare a research study on the procedural aspects of condemnation.

Prior to 1972, the Commission will submit recommendations concerning eminent domain problems that appear to be in need of immediate attention. The Commission submitted the first such recommendation, relating to the exchange of valuation data, to the 1967 Legislature,¹ and submitted a second recommendation to the 1968 Legislature

¹ See *Recommendation Relating to Discovery in Eminent Domain Proceedings*, 8 CAL. L. REVISION COMM'N REPORTS 19 (1967). For a legislative history of this recommendation, see page 1318, *infra*. See also Cal. Stats. 1967, Ch. 1104, relating to the recovery of the condemnee's expenses on abandonment of an eminent domain proceeding.²

² See *Recommendation Relating to Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding*, 8 CAL. L. REVISION COMM'N REPORTS 1361 (1967). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 00 (1969). See also Cal. Stats. 1968, Ch. 123.

EVIDENCE

The Evidence Code was enacted in 1965 upon recommendation of the Commission. Resolution Chapter 130 of the Statutes of 1965 directs the Commission to continue its study of the Evidence Code. Pursuant to this directive, the Commission has undertaken two projects.

The first is a continuing study to determine whether any substantive, technical, or clarifying changes are needed in the Evidence Code. In this connection, the Commission is continuously reviewing texts, law review articles, and communications from judges, lawyers, and others concerning the Evidence Code. As a result of this review, the Commission recommended to the 1967 Legislature that various changes be made in the Evidence Code,³

and will submit a recommendation to the 1969 Legislature that certain revisions be made in the Privileges Article of the Evidence Code.⁴

³ See *Recommendation Relating to the Evidence Code: Number 1—Evidence Code Revisions* (October 1966). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS at 1315 (1967).

Since the publication of its last Annual Report, the Commission has reviewed the following: Alexander, *California's New Evidence Code: Changes in the Law of Privileged Communications Relating to Psychotherapy*, 1 U. SAN FERNANDO VALLEY L. REV. 56 (1967); Harvey, *Evidence Code Section 122½—Are an Employee's Admissions Admissible Against His Employer?*, 8 SANTA CLARA LAWYER 39 (1967); Note, *Impeaching the Accused by His Prior Crimes: A New Approach to an Old Problem*, 19 HASTINGS L. J. 919 (1968); Note, *Admissibility of an Agent's Declarations Against His Employer Under Evidence Code Section 122½*, 19 HASTINGS L. J. 1305 (1968); Note, *Marklew v. Beale: Rewriting the New Evidence Code*, 4 CAL. WESTERN L. REV. 210 (1968). The Commission also considered the decisions of the California Supreme Court and Courts of Appeal interpreting and applying the Evidence Code, and letters from judges and attorneys.

See also Cal.
Stats. 1967,
Ch. 650.

and

4. See Recommendation Relating to the Evidence Code: Number 4—Revisions of Privileges Article (January 1969).

The second project is a study of the other California codes to determine what changes, if any, are needed in view of the enactment of the Evidence Code. The Commission submitted recommendations relating to the Agricultural Code⁵ and the Commercial Code⁶ to the 1967 leg-

⁵ See *Recommendation Relating to the Evidence Code: Number 2—Agricultural Code Revisions* (October 1966). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMMISSION REPORTS at 1816 (1967). See also Cal. Stats. 1967, Ch. 262.

⁶ See *Recommendation Relating to the Evidence Code: Number 3—Commercial Code Revisions* (October 1966). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMMISSION REPORTS at 1816 (1967). See also Cal. Stats. 1967, Ch. 703.

islative session. Mr. Jon D. Smock, a former member of the Commission's legal staff and now a member of the staff of the Judicial Council, has been retained as a research consultant to prepare research studies on the changes needed in the evidence provisions contained in the Business and Professions Code and the Code of Civil Procedure. To the extent that its work schedule permits, the Commission will submit recommendations relating to these and additional codes to future sessions of the Legislature.

SOVEREIGN IMMUNITY

Sovereign immunity legislation was enacted in 1963 and 1965 upon recommendation of the Commission. The Commission is continuing to study this subject⁷ and, as a result of this review, may submit recommendations to future sessions of the Legislature.

plans to submit a recommendation to the 1969 Legislature relating to the statute of limitations in actions against public entities and public employees and

⁷ Since the publication of its last Annual Report, the Commission has reviewed the following: Chotiner, *California Government Tort Liability*, 43 CAL. S.R.J. 233 (1968); Notes on the California Tort Claims Act, 19 HASTINGS L. J. at 561 (1968); Notes on the California Tort Claims Act, 573 (California Public Entity Immunity Doctrine in California), and 584 (Sovereign Liability Immunity From Tort Claims by Prisoners), and 584 (Sovereign Liability for Defective or Dangerous Plan or Design—California Government Code Section 830.6) (1968); Note, *Liability of California Municipalities for Damages Caused by Riots*, 3 LINCOLN L. REV. 62 (1967); Note, *California Tort Claims Act: Discretionary Immunity*, 39 SO. CAL. L. REV. 470 (1966). The Commission has also considered the decisions of the California Supreme Court and Courts of Appeal interpreting and applying the sovereign immunity legislation.

8. See Recommendation Relating to Sovereign Immunity: Number 9--Statute of Limitations in Actions Against Public Entities and Public Employees (January 1969).

LEGISLATIVE HISTORY OF RECOMMENDATIONS SUBMITTED TO 1968 LEGISLATIVE SESSION

Eight bills and two concurrent resolutions were introduced to effectuate the Commission's recommendations to the 1968 session of the Legislature. The Commission withdrew its recommendation that one of the bills be enacted; the seven remaining bills were enacted. The concurrent resolutions were adopted.

With respect to each bill, at least one special report was adopted by a legislative committee that considered the bill. Each report, which was printed in the legislative journal, accomplished three things: First, it declared that the Committee presented the report to indicate more fully its intent with respect to the particular bill; second, where appropriate, it stated that the comments under the various sections of the bill contained in the Commission's recommendation reflected the intent of the Committee in approving the bill except to the extent that new or revised comments were set out in the Committee report itself; third, the report set out one or more new or revised comments to various sections of the bill in its amended form, stating that such comments also reflected the intent of the Committee in approving the bill. The reports relating to the bills that were enacted are included in the appendices to this Report. The following legislative history also includes a reference to the report or reports that relate to each bill.

Resolutions Approving Topics for Study

Senate Concurrent Resolution No. 3, introduced by Senator Alfred H. Song and Assemblyman F. James Bear and adopted as Resolution Chapter 92 of the Statutes of 1968, authorizes the Commission to continue its study of topics previously authorized for study, ~~to remove from its calendar one topic (pour-over trusts) on which~~ ~~no additional legislation was needed, and to remove from its calendar two other topics (division of property on divorce or separate maintenance; rights of a putative spouse) to avoid duplicating the work of the Governor's Commission on the Family.~~

Senate Concurrent Resolution No. 2, introduced by Senator Song and Assemblyman Bear and adopted as Resolution Chapter 110 of the Statutes of 1968, authorizes the Commission to make a study to determine whether the law relating to arbitration should be revised.

Escheat

Senate Bill No. 61, which became Chapter 247 of the Statutes of 1968, and Senate Bill No. 63, which in amended form became Chapter 356 of the Statutes of 1968, were introduced by Senator Song and Assemblyman Bear to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Escheat*, 8 CAL. L. REVISION COMM'N REPORTS 1001 (1967); *Report of Senate Committee on Judiciary on Senate Bills Nos. 61 and 63*, SENATE J. (March 11, 1968) at 595, reprinted as Appendix I to this Report; *Report of Assembly Committee on Judiciary on Senate Bill No. 63*, ASSEMBLY J. (May 1, 1968) at 2586, reprinted as Appendix II to this Report.

Senate Bill No. 62 was also introduced by Senator Song and Assemblyman Bear, but the Commission withdrew its recommendation that ~~the bill be enacted.~~

before the bill
was set for
hearing,

Senate Bill No. 61 was enacted as introduced. The following significant amendments were made to Senate Bill No. 63:

(1) Paragraphs (3) and (4) were added to subdivision (a) of Section 1502 (former Section 1526) of the Code of Civil Procedure. Subdivision (b) of that section was amended to read: "Except for sums payable on telegraphic money orders, this chapter does not apply to any property held by a utility which is of a type that the Public Utilities Commission of this state or a similar public agency of another state or of the United States directly or indirectly takes into consideration for the benefit of the ratepayers in determining the rates to be charged by the utility."

(2) In subdivision (c) of Code of Civil Procedure Section 1503, the following clause was inserted: "or any property that was not required to be reported under the old act."

(3) Subdivision (d) of Code of Civil Procedure Section 1510 was deleted entirely, and former subdivision (e) was renumbered (d).

(4) In the first sentence of subdivision (b) of Code of Civil Procedure Section 1516 (former Section 1504), the following words were inserted: "escheats to this state if (1) the interest in the association is owned by a person who for more than 20 years has neither claimed a dividend or other sum referred to in subdivision (a) nor corresponded in writing with the association or otherwise indicated an interest as evidenced by a memorandum or other record on file with the association, and (2) the association does not know the location of the owner at the end of such 20-year period." This replaced the words "owned by a person who has not claimed a dividend or other sum escheated under subdivision (a), and who has not corresponded in writing with the business association concerning such interest for 15 years following the time such dividend or other sum escheated, escheats to this state."

(5) In subdivision (a) of Code of Civil Procedure Section 1518 (former Section 1506), the following words were inserted: "All tangible personal property located in this state and, subject to Section 1510, all intangible personal property, and the income or increment on such tangible or intangible property,"; this replaced the words: "Subject to Section 1510, any intangible personal property, and the income or increment thereon." In subdivision (b) of this section, the words "intangible personal" were deleted preceding the word "property."

(6) In paragraph (1) of subdivision (b) of Code of Civil Procedure Section 1580 (former Section 1510), the phrase "twenty-five dollars (\$25) or more" was substituted for the phrase "more than ten dollars (\$10)." In paragraph (3) of this section, the word "the" was inserted after "In." In paragraph (4) of this section, the phrase "under twenty-five dollars (\$25)" was substituted for the phrase "of ten dollars (\$10) or less."

(7) In Code of Civil Procedure Section 1564 (former Section 1517), paragraph (9) was added to subdivision (b).

(8) In Code of Civil Procedure Section 1580 (former Section 1525), paragraph (2) was deleted entirely from subdivision (b), and paragraph (1) was combined with the introductory phrase of subdivision (b).

(9) In Code of Civil Procedure Section 1581, the last sentence was added to subdivision (b).

Other technical amendments were made.

Personal Injury Damages

Senate Bill No. 19, which in amended form became Chapter 457 of the Statutes of 1968, and Senate Bill No. 71, which in amended form became Chapter 458 of the Statutes of 1968, were introduced by Senator Song and Assemblyman Bear to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Damages for Personal Injuries to a Married Person as Separate or Community Property*, 8 CAL. L. REVISION COMM'N REPORTS 1885 (1967); *Report of Senate Committee on Judiciary on Senate Bills 19 and 71*, SENATE J. (April 22, 1968) at 1317, reprinted as Appendix III to this Report.

Senate Bill No. 19. The following significant amendments were made to Senate Bill No. 19:

Subdivision (c) of Section 146 of the Civil Code was amended as follows: The clause "but in no event shall more than one-half of the community property personal injury damages be assigned to the spouse of the party who suffered the injuries" was added to the first sentence. The clause "unless such money or other property has been commingled with other community property" was added to the second sentence.

Senate Bill No. 71. The following significant amendments were made to Senate Bill No. 71:

Section 168 of the Civil Code, which was not included in the bill as introduced, was amended as follows: The phrase "and community property personal injury damages" was added following the words "The earnings." The words "and damages" were added after the words "such earnings." The second sentence was added.

Unincorporated Associations

Assembly Bill No. 39, which in amended form became Chapter 132 of the Statutes of 1968, was introduced by Assemblyman Bear and Senator Song to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Service of Process on Unincorporated Associations*, 8 CAL. L. REVISION COMM'N REPORTS 1403 (1967); *Report of Senate Committee on Judiciary on Assembly Bill 39*, SENATE J. (April 22, 1968) at 1318, reprinted as Appendix IV to this Report.

The following significant amendments were made to Assembly Bill No. 39:

Subdivision 2.1 of Section 411 of the Code of Civil Procedure was amended twice, the first version to take effect immediately and the other to take effect on the 61st day after the adjournment of the 1968 Regular Session of the Legislature, the normal effective date.

Subdivision 2.1 was amended to take effect immediately by deleting everything following the colon and adding paragraphs (a), (b), and (c).

Subdivision 2.1 was also amended to take effect on the normal effective date to provide in paragraph (c) that service should be made in the manner provided in Section 24007 of the Corporations Code.

Section 412 of the Code of Civil Procedure, which was not included in the bill as introduced, was amended.

Section 24007 was added to the Corporations Code. This section was not included in the bill as introduced.

Good Faith Improvers

Assembly Bill No. 40, which in amended form became Chapter 150 of the Statutes of 1968, was introduced by Assemblyman Bear and Senator Song to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Improvements Made in Good Faith Upon Land Owned by Another*, 8 CAL. L. REVISION COMM'N REPORTS 1373 (1967); *Report of Assembly Committee on Judiciary on Assembly Bill No. 40*, ASSEMBLY J. (March 20, 1968) at 1217, reprinted as Appendix V to this Report.

The following significant amendments were made to Assembly Bill No. 40:

The proposed amendment to Section 339 of the Code of Civil Procedure was deleted. Instead, Section 340 of the Code of Civil Procedure, which was not included in the bill as introduced, was amended to add subdivision 6.

Section 871.3 of the Code of Civil Procedure was amended to add the second sentence.

Section 871.4 of the Code of Civil Procedure was amended to add the second sentence.

Section 871.5 of the Code of Civil Procedure was amended to add the last two sentences.

Section 871.7 was amended to number the section as proposed subdivision (a) and to add subdivision (b).

Fees on Abandonment

Assembly Bill No. 41, which in amended form became Chapter 133 of the Statutes of 1968, was introduced by Assemblyman Bear and Senator Song to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding*, 8 CAL. L. REVISION COMM'N REPORTS 1361 (1967); *Report of Assembly Committee on Judiciary on Assembly Bill No. 41*, ASSEMBLY J. (March 20, 1968) at 1219, reprinted as Appendix VI to this Report.

The following significant amendments were made to Assembly Bill No. 41. Subdivision (c) of Section 1255a of the Code of Civil Procedure was amended as follows:

- (1) The phrase "the condemnation trial, during the trial, and in any subsequent judicial proceedings in the condemnation action" was substituted for the phrase "trial and during trial."
- (2) The phrase "in preparing for the condemnation trial, during the trial, and in any subsequent judicial proceedings in the condemnation action" was substituted for the phrase "in the proceeding."
- (3) The phrase "include only those recoverable costs and disbursements, or portions thereof, which would not have" was substituted for the phrase "not include any cost or disbursement, or portion thereof, which would have."

CALENDAR OF TOPICS FOR STUDY

STUDIES IN PROGRESS

The Commission has on its calendar of topics the topics listed below. Each of these topics has been authorized for Commission study by the Legislature.¹

¹ Section 10335 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.

Topics Under Active Consideration

During the next year, the Commission plans to devote substantially all of its time to consideration of the following topics:

1. 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. L. REVISION COMM'N REPORTS at 115 (1963)).²

² See *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. L. REVISION COMM'N REPORTS, Recommendations and Studies at A-1, B-1, and C-1 (1967). For a legislative history of these recommendations, see 3 CAL. L. REVISION COMM'N REPORTS 1-5 (1961). See also Cal. Stats. 1961, Ch. 1612 (tax apportionment) and Cal. Stats. 1961, Ch. 1613 (taking possession and passage of title). The substance of two of these recommendations was incorporated in legislation enacted in 1965. Cal. Stats. 1965, Ch. 1151, p. 2900 (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. L. REVISION COMM'N REPORTS 701 (1963). For a legislative history of this recommendation, see 4 CAL. L. REVISION COMM'N REPORTS 213 (1963). See also *Recommendation Relating to Discovery in Eminent Domain Proceedings*, 8 CAL. L. REVISION COMM'N REPORTS 19 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1818 (1967). See also Cal. Stats. 1967, Ch. 1104 (exchange of valuation data).

See also *Recommendation Relating to Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding*, 8 CAL. L. REVISION COMM'N REPORTS 1361 (1967). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 90 (1969). See also Cal. Stats. 1968, Ch. 133.

The Commission is now engaged in the study of this topic and tentatively plans to submit a recommendation for a comprehensive statute to the 1972 Legislature. See 8 CAL. L. REVISION COMM'N REPORTS 1313 (1967). See also *Tentative Recommendation and a Study Relating to Condemnation Law and Procedure: Number 1—Possession Prior to Final Judgment and Related Problems*, 8 CAL. L. REVISION COMM'N REPORTS 1101 (1967).

2. Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589).³

³ See *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. L. REVISION COMM'N REPORTS 801, 1001, 1201, 1301, 1401, 1501, and 1601 (1963). For a legislative history of these recommendations, see 4 CAL. L. REVISION COMM'N REPORTS 211-213 (1963). See also *A Study Relating to Sovereign Immunity*, 5 CAL. L. REVISION COMM'N REPORTS 1 (1963). See also Cal. Stats. 1963, Ch. 1681 (tort liability of public entities and public employees); Cal. Stats. 1963, Ch. 1715 (claims, actions and judgments against public entities and public employees); Cal. Stats. 1963, Ch. 1682 (insurance coverage for public entities and public employees); Cal. Stats. 1963, Ch. 1683 (defense of public employees); Cal. Stats. 1963, Ch. 1684 (workmen's compensation benefits for persons assisting law enforcement or fire control officers); Cal. Stats. 1963, Ch. 1685 (amendments and repeals of inconsistent special statutes); Cal. Stats. 1963, Ch. 1686 (amendments and repeals of inconsistent special statutes); Cal. Stats. 1963, Ch. 2029 (amendments and repeals of inconsistent special statutes).

See also *Recommendation Relating to Sovereign Immunity: Number 8—Revisions of the Governmental Liability Act*, 7 CAL. L. REVISION COMM'N REPORTS 401 (1965). For a legislative history of this recommendation, see 7 CAL. L. REVISION COMM'N REPORTS 914 (1965). See also Cal. Stats. 1965, Ch. 653 (claims and actions against public entities and public employees); Cal. Stats. 1965, Ch. 1527 (liability of public entities for ownership and operation of motor vehicles).

This topic will be considered in connection with the Commission's study of topic 3 (inverse condemnation).

3. Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should 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).

4. Whether the Evidence Code should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289).⁴

⁴ See *Recommendation Proposing an Evidence Code*, 7 CAL. L. REVISION COMM'N REPORTS 1 (1963). 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 8 CAL. L. REVISION COMM'N REPORTS at 1, 101, 201, 301, 701, 801, 901, 1001, and Appendix (1964). For a legislative history of this recommendation, see 7 CAL. L. REVISION COMM'N REPORTS 912-914 (1965). See also *Evidence Code With Official Comments*, 7 CAL. L. REVISION COMM'N REPORTS 1001 (1965). See also Cal. Stats. 1965, Ch. 209 (Evidence Code).

See also *Recommendations Relating to the Evidence Code: Number 1—Evidence Code Revisions; Number 2—Agricultural Code Revisions; Number 3—Commercial Code Revisions*, 8 CAL. L. REVISION COMM'N REPORTS 101, 201, 301 (1967). For a legislative history of these recommendations, see 8 CAL. L. REVISION COMM'N REPORTS 1315 (1967). See also Cal. Stats. 1967, Ch. 659 (Evidence Code revisions); Cal. Stats. 1967, Ch. 202 (Agricultural Code revisions); Cal. Stats. 1967, Ch. 708 (Commercial Code revisions).

This topic is under continuing study to determine whether any substantive, technical, or clarifying changes are needed in the Evidence Code and whether changes are needed in other codes to conform them to the Evidence Code. See 8 CAL. L. REVISION COMM'N REPORTS 1314 (1967).

5. 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. L. REVISION COMM'N REPORTS, 1957 Report at 18 (1957)).

6. 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).⁵

⁵ See *Recommendation and Study Relating to Abandonment or Termination of a Lease*, 8 CAL. L. REVISION COMM'N REPORTS 701 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1319 (1967).

7. 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).⁶

⁶ See *Recommendation and Study Relating to Additur*, 8 CAL. L. REVISION COMM'N REPORTS 601 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1317 (1967). See also Cal. Stats. 1967, Ch. 72.

Topics Continued on Calendar for Further Study

On the following topics, studies and recommendations relating to the topic, or one or more aspects of the topic, have been made. The topics are continued on the Commission's Calendar for further study of recommendations not enacted or for the study of additional aspects of the topic or new developments.

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).⁷

⁷ See *Recommendation and Study Relating to Whether Damages for Personal Injury to a Married Person Should be Separate or Community Property*, 8 CAL. L. REVISION COMM'N REPORTS 401 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1318 (1967).

See also *Recommendation Relating to Damages for Personal Injuries to a Married Person as Separate or Community Property*, 8 CAL. L. REVISION COMM'N REPORTS at 1385 (1967). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS at 00 (1969). See also Cal. Stats. 1968, Chs. 457 and 458.

2. 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. L. REVISION COMM'N REPORTS, 1957 Report at 19 (1957)).

3. 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).²

² See *Recommendation and Study Relating to Vehicle Code Section 17150 and Related Sections*, 8 CAL. L. REVISION COMM'N REPORTS 501 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1317 (1967). See also Cal. Stats. 1967, Ch. 702.

4. 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).³

³ See *Recommendation and Study Relating to The Good Faith Improver of Land Owned by Another*, 8 CAL. L. REVISION COMM'N REPORTS 601 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1319 (1967).

See also *Recommendation Relating to Improvements Made in Good Faith Upon Land Owned by Another*, 8 CAL. L. REVISION COMM'N REPORTS at 1373 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS at 90 (1969). See also Cal. Stats. 1969, Ch. 150.

5. Whether the law relating to suit by and against partnerships 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).⁴

⁴ See *Recommendation and Study Relating to Suit By or Against an Unincorporated Association*, 8 CAL. L. REVISION COMM'N REPORTS 901 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1317 (1967). See also Cal. Stats. 1967, Ch. 1324.

See also *Recommendation Relating to Service of Process on Unincorporated Associations*, 8 CAL. L. REVISION COMM'N REPORTS at 1403 (1967). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS at 90 (1969). See also Cal. Stats. 1969, Ch. 132.

6. Whether the law relating to the escheat of property and the disposition of unclaimed or abandoned property should be revised (Cal. Stats. 1967, Res. Ch. 81; see also Cal. Stats. 1956, Res. Ch. 42, p. 263).⁵

⁵ See *Recommendation Relating to Escheat*, 8 CAL. L. REVISION COMM'N REPORTS 1001 (1967). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS at 90 (1969). See also Cal. Stats. 1968, Ch. 247 (escheat of decedent's estate) and Ch. 356 (unclaimed property act).

7. 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).⁶
8. 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).⁸
9. Whether the law relating to a power of appointment should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289).

Other Topics Authorized for Study

The Commission has not yet begun the preparation of a recommendation on the topics listed below. In a few cases, however, the research study is in preparation.

1. 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. L. REVISION COMM'N REPORTS, 1956 Report at 29 (1957)).

2. 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. L. REVISION COMM'N REPORTS, 1957 Report at 15 (1957)).
 3. 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. 263; 1 CAL. L. REVISION COMM'N REPORTS, 1956 Report at 21 (1957)).
 4. Whether the Small Claims Court Law should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 16 (1957)).
 5. Whether the law relating to arbitration should be revised (Cal. Stats. 1968, Res. Ch. 110).⁹
 6. Whether Civil Code Section 1698 should be repealed or revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 21 (1957)).
 7. 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. L. REVISION COMM'N REPORTS, 1958 Report at 20 (1959)).
- ⁹ See *Recommendation and Study Relating to Taking Instructions to the Jury Room*, 1 CAL. L. REVISION COMM'N REPORTS at C-1 (1957). For a legislative history of this recommendation, see 2 CAL. L. REVISION COMM'N REPORTS, 1958 Report at 18 (1959).
- ¹⁰ See *Recommendation and Study Relating to Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere*, 1 CAL. L. REVISION COMM'N REPORTS at E-1 (1957). For a legislative history of this recommendation, see 2 CAL. L. REVISION COMM'N REPORTS, 1958 Report at 13 (1959). See also Cal. Stats. 1957, Ch. 490. See *Recommendation and Study Relating to Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere*, 3 CAL. L. REVISION COMM'N REPORTS at I-1 (1961). For a legislative history of this recommendation, see 4 CAL. L. REVISION COMM'N REPORTS 15 (1963). See also Cal. Stats. 1961, Ch. 636.
- ¹¹ This is a supplemental study; the present California arbitration law was enacted in 1961 upon Commission recommendation. See *Recommendation and Study Relating to Arbitration*, 3 CAL. L. REVISION COMM'N REPORTS at G-1 (1961). For a legislative history of this recommendation, see 4 CAL. L. REVISION COMM'N REPORTS 15 (1963). See also Cal. Stats. 1961, Ch. 461.
8. 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. L. REVISION COMM'N REPORTS, 1957 Report at 23 (1957)).
 9. 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. L. REVISION COMM'N REPORTS, 1958 Report at 18 (1959)).

STUDIES TO BE DROPPED FROM CALENDAR OF TOPICS

[Note: This heading will be contained in the Annual Report if any topics are to be dropped.]

STUDIES FOR FUTURE CONSIDERATION

During the next few years, the Commission plans to devote its attention primarily to condemnation law and procedure and inverse condemnation. Legislative committees have indicated that they wish these topics to be given priority. Nevertheless, the Commission believes that it may have time to consider a few topics that are relatively narrow in scope. During recent years, the Commission has submitted recommendations to the Legislature on most of the topics it was authorized to study that were narrow in scope. Work on the remaining narrow topics is in progress. So that the Commission's agenda will include a reasonable balance of broad and narrow topics, the Commission recommends that it be authorized to study the following new topics.

[Note: This portion of the Report will be completed after the additional topics have been determined.]

REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL

Section 10831 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 or of the Supreme Court of California holding a statute of this state repealed by implication has been found.

(2) No decision of the Supreme Court of the United States holding a statute of this state unconstitutional has been found.

(3) Two decisions of the Supreme Court of California holding a statute of this state unconstitutional have been found.²

³
In People v. Johnson, Evidence Code Section 1235, which provides a hearsay exception for prior inconsistent statements of a witness, was held to violate the Sixth Amendment's guarantee of the right of confrontation when the prior inconsistent statement is sought to be used as substantive evidence against the defendant in a criminal prosecution. Since Evidence Code Section 1204⁴ specifically recognizes that the hearsay exceptions provided in the code are subject to any restrictions on the admission of evidence imposed by the state and federal constitutions, the Commission has concluded that no revision is needed in the Evidence Code to reflect the decision in the Johnson case.

⁵
In Silver v. Reagan, it was held not constitutionally permissible to defer reapportionment of the state's congressional districts (established by Elections Code Section 30000)⁶ until after the 1970 census. Legislation was enacted in 1967 that constitutionally redistricted the state's congressional districts.⁷

1. This study has been carried through ____ Adv. Cal. ____ (1968) and ____ U.S. ____ (1968).
2. Government Code Section 10331 refers only to statutes that have been held unconstitutional. It is noted however that, in Vogel v. County of Los Angeles, 68 Adv. Cal. 12, 64 Cal. Rptr. 409, 434 P.2d 961 (1968), the California Supreme Court held unconstitutional the second paragraph of Section 3 of Article XX of the California Constitution relating to the loyalty oath required of public employees.
3. 68 Adv. Cal. 674, ____ Cal. Rptr. ____, ____ P.2d ____ (1968).
4. Section 1204 provides: "A statement that is otherwise admissible as hearsay evidence is inadmissible against the defendant in a criminal action if the statement was made, either by the defendant or by another, under such circumstances that it is inadmissible against the defendant under the Constitution of the United States or the State of California."
5. 67 Adv. Cal. 455, 62 Cal. Rptr. 424, 432 P.2d 26 (1967).
6. Cal. Stats. 1967, 2d Ex. Sess., Ch. 2, § 2. Errors in the description of the districts given in the 1967 act were corrected in 1968. Cal. Stats. 1968, Ch. 1.
7. Silver v. Reagan, 67 Adv. Cal. 953, 64 Cal. Rptr. 325, 434 P.2d 621 (1967).

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 00-00 of this report and to study the new topics listed on page 00 of this report.