

1/22/69

## First Supplement to Memorandum 69-29

Subject: Study 50 - Leases

Attached is a copy of the Commission's printed recommendation on Real Property Leases.

You will recall that Mr. Golden pointed out a technical defect in the lease bill at the last meeting. The Commission requested that he send us a letter indicating exactly what the defect is. His letter is attached as Exhibit I.

The staff believes that Mr. Golden has pointed out what clearly is a defect in the recommended legislation. To eliminate the defect, we recommend that the following be substituted for subdivision (c) of recommended Section 1952 (page 420 of the printed recommendation):

(c) After the lessor becomes entitled to enforcement of a judgment pursuant to Section 117<sup>4</sup> of the Code of Civil Procedure that he have possession of the premises, he is no longer entitled to the remedy provided under Section 1951.4.

The staff further recommends that the last paragraph of the Comment to Section 1952 be revised to read (changes in Comment as printed shown by strikeout and underscore):

Under subdivision (c), however, when the lessor ~~has evicted the lessee~~ becomes entitled to enforcement of a judgment under the unlawful detainer provisions giving him possession of the property, he cannot proceed under the provisions of Section 1951.4; i.e., a lessor cannot evict the tenant and refuse to mitigate damages. In effect, the lessor is put to an election of remedies in such a case. Under some circumstances, the court may order that execution upon the judgment in an unlawful detainer proceeding not be issued until five days after the entry of the judgment; if the lessor is paid the amount to which he is found to be entitled within such time, the judgment is satisfied and the tenant is restored to his estate. In such case, since the lessor never becomes entitled to enforcement of a judgment giving him possession of the property, the lessor's right to the remedy provided by Section 1951.4 is not affected by the proceeding.

Respectfully submitted,

John H. DeMouly  
Executive Secretary

EXHIBIT I

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January 17, 1969

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
School of Law  
Stanford University  
Stanford, California 94305

Re: Real Property Leases

Dear Mr. DeMouilly:

As I mentioned to you at the meeting on January 9, 1969, there might exist some unintentional ambiguity in the wording of Subparagraph (C) of Section 1952.

The use of the words "after the entry of such judgment" do have a different meaning than the use of the words in the recommendation of October 1, 1968, where the language is used "after the lessor evicts the lessee".

As you know, entry of judgment in an unlawful detainer action is not equivalent to eviction, and where a forfeiture is not declared Section 1174 of the Code of Civil Procedure provides that execution upon judgment shall not be issued until the expiration of five days after entry of judgment within which time the tenant may pay in the amount of money and be restored to the premises. If the tenant does pay the amount of the judgment and then abandons the premises, there might be a question as to whether or not the landlord is still entitled to the remedy provided under Section 1951.4.

It was also suggested to me that there are times when because of a technical failure to comply with the requirements of C.C.P. Section 1161 and 1162 that a judgment might be entered against the lessor and for the tenant on the narrow issue of possession, and if such were the case, there would seem to be a question as to whether or not the lessor could then continue to utilize the remedy under Section 1951.4.

Your explanatory notes following Section 1952 seem to be predicated on the concept that the lessor must "evict" the lessee in order to be denied the provisions of Section 1951.4.

Mr. John H. DeMcully  
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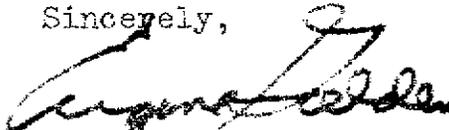
I would think that the Section 1952 (c) would only require that the words "after the entry of such judgment" be deleted and the words "after eviction of the lessee" be inserted in lieu thereof.

As I stated to you at the meeting, I feel that the draftsmanship of the proposed legislation appears to have incorporated all of the revisions suggested by the Commission.

In the event there are any proposed changes by the Commission or later by the Legislature, I would be grateful if you would let me know of any such changes.

I want to thank you again for your very kind courtesies in this matter and exceptional demonstration of patience.

Sincerely,



EUGENE GOLDEN

EG/mu