#39.70 2/8/73

Memorandum 73-20

Subject: Study 39.70 - Prejudgment Attachment (Nonresident Attachment)

At the January 1973 meeting, the Commission directed the staff to consider further nonresident attachment alternatives and to examine the desirability of attachment in tort cases. Since there may be some confusion regarding the posture of nonresident and tort attachment under the 1972 amendments to the attachment provisions (Marsh bill, Cal. Stats. 1972, Ch. 550, effective March 7, 1973), Part I of this memorandum attempts to explain the recently enacted provisions. Part II considers alternative methods and degrees of nonresident attachment. Part III discusses tort attachment. Exhibit I includes a list of four major attachment schemes and a list of possible factors concerning nonresident and tort attachment.

I. Nonresident Attachment Under the 1972 Amendments (Marsh bill, Cal. Stats. 1972, Ch. 550)

In an exceedingly indirect manner, the 1972 amendments to the attachment provisions maintain the distinction between resident and nonresident defendants for purposes of attachment. (See especially §§ 537.1, 537.2(d), and 538.5. The attachment provisions after the 1972 amendments are the Appendix to the tentative recommendation on attachment.)

Defendants are divided into four groups: (a) Corporations (wherever organized)(§ 537.2(a)), (b) partnerships (wherever organized)(§ 537.2(b)), (c) individuals engaged in a trade or business (§ 537.2(c)), and (d) a group composed of any persons [individuals?] not residing in the state, or who cannot be found in state, or who conceal themselves, ... or foreign corporations and partnerships not registered to do business in the state (§ 537.2(d)). For purposes of issuing writs of attachment, groups (a) through (c)(all corporations,

partnerships, and individuals engaged in trade or business) are treated similarly, and group (d) is given separate treatment. It should be noted that a defendant may be in both the first category and the second--e.g., an unqualified foreign corporation fits in both subdivisions (a) and (d), and a nonresident individual engaged in trade or business fits in both (c) and (d).

If a defendant is a corporation or partnership qualified to do business in California, or a resident individual engaged in a trade or business who can be found and does not hide, then an attachment can be had only in an action for an unsecured, liquidated sum of money where the claim is based on money loaned (§ 537.1(a)(1)), a negotiable instrument (§ 537.1(a)(2)), the sale, lease, license of real or personal property (§ 537.1(a)(3)), or services rendered (§ 537.1(a)(4)).

However, if a defendant is one of those in group (d)--a nonresident individual [?], a foreign corporation or partnership not qualified to do business in the state, or an individual who cannot be found or who hides--attachment is available in any action for the recovery of money (§§ 537.1(b), 537.2(d)).

Normally, upon the filing of the application and affidavit (§ 538), if the plaintiff has established a prima facie case and the action is one where an attachment will issue (§ 538.1), the court issues without notice a temporary restraining order and a notice of hearing. At the noticed hearing, the court determines, on the basis of evidence given by the plaintiff and the defendant, whether the case is one in which an attachment will issue, whether the plaintiff's claim is probably valid, and whether it is reasonably probable that the defendant can establish a defense to the plaintiff's claim, whereupon the writ is issued (§ 538.4).

However, in certain cases, a writ will issue in the first instance without any notice or hearing. These cases include those where a bulk sales notice has been recorded (§ 538.5(a)); where an escrow has been opened regarding the sale of a liquor license (§ 538.5(a)); where the plaintiff establishes that there is a substantial danger that the defendant will transfer, remove, or conceal the property (§ 538.5(b)); where the notice of hearing cannot be served because the defendant has departed or concealed himself (§ 538.5(c)); and where the defendant is one of those in group (d)--nonresident individual, nonresident corporation or partnership not qualified to do business, or an individual who cannot be found or who hides (§ 538.5(d)). It is this last instance that is of concern to this discussion.

If the defendant is one in group (d), an ex parte writ will issue. The question is then under what circumstances the writ will continue. There are two considerations. The first depends on the characterization of the defendant. If the defendant is in group (d) but not in groups (a)-(c), then the writ is discharged upon his general appearance. Since all corporations or partnerships in group (d) are also in either group (a) or (b) (§ 537.2(a), (b) and (d)), this situation arises only when a defendant is in group (d) but not in group (c). This occurs when the defendant is an individual not engaged in a trade or business (§ 537.2(c)) and is either a nonresident or a person who cannot be found or has concealed himself to avoid service (§ 537.2(d)). The second consideration depends upon the cause of action. If the ex parte writ has been issued against a defendant in group (d) based on a claim which is not described in Section 537.1(a)--that is, if the claim is secured or is not one for a liquidated sum of money based on money loaned, negotiable instruments, sale, lease or license of real or personal property, or services

rendered--then the writ is discharged on motion of the defendant if he appears generally in the action. Hence, for example, if a writ has been issued ex parte against a nonresident individual who is engaged in a trade or business where the case involves a tort or a secured contract claim, the writ is dis-' charged upon the defendant's general appearance and motion.

If neither the defendant nor the cause of action meets the criteria just explained, the ex parte writ under Section 538.5(d) is not automatically dismissed. Instead, after levy, the defendant may upon seven days' notice request a hearing at which time the court must find that the case is one in which an attachment is properly issuable, that the plaintiff's claim is probably valid, and that there is no reasonable probability that the defendant can establish a successful defense (§§ 538.5(d), 538.4). (Note that among the cases in which a writ of attachment is properly issuable is the case where the defendant is a nonresident and so forth. Surely this circularity was not intended.) Hence, if the defendant is a corporation not registered to do business in the state and the cause of action is an unsecured claim for a liquidated sum based on money loaned, the attachment will be discharged and the levy released only after a hearing at which the court finds that the plaintiff's claim is not probably valid or that the defendant has a reasonably probable defense.

In sum, if the defendant is an individual who is a nonresident, who conceals himself, or who cannot be found, or is a foreign corporation or partnership not qualified to do business in the state, an ex parte writ of attachment may issue in any case claiming money damages. However, upon the defendant's general appearance and motion, the writ is discharged as a matter of course if the defendant is a nonresident, concealing, or unfound individual not engaged in a trade or business or if the claim is in tort or is secured. Where the

defendant is an unqualified foreign corporation or partnership or is a nonresident individual engaged in a trade or business, the ex parte writ and levy can only be discharged and released after a hearing. If the plaintiff shows a substantial danger that any defendant will transfer or conceal his assets, an ex parte writ will issue and no provision is made for a hearing to test its issuance nor is such a writ discharged upon the defendant's general appearance in the action (§ 538.5(b)). This seems to be an unintended omission in the present law.

II. Nonresident Attachment

The general problem is whether nonresidents should be treated differently for purposes of issuing a writ of attachment and, if so, to what extent, by what procedures, and in which cases.

A. Nonresidency as an Extraordinary Circumstance

Assuming that the assets of some sort of nonresidents in some sort of cases are subject to attachment, the first question is by what procedure a writ of attachment will be issued. Under provisions both before and after the 1972 amendments, the mere fact of nonresidency is sufficient grounds for issuance of an ex parte writ. (See § 537(2) and (3)(current law); § 538.5(d) effective March 7, 1973.) The staff thinks that mere nonresidency should not be an extraordinary circumstance justifying the issuance of an ex parte writ of attachment. There is no evidence that nonresidency necessarily or in most cases is an indication that the defendant will transfer or conceal assets. Instead, the plaintiff should have to show that his claim is probably valid and that there is a substantial danger that the defendant will transfer or hide his assets. If a writ is issued, then the defendant should have the

opportunity to quash the writ and also to claim any exemptions. The plaintiff should also have the option of seeking a writ under the noticed hearing procedure. This alternative would not require any changes in the procedures of the existing tentative recommendation.

Other alternatives are possible. Nonresidency itself could be considered a basis for issuance of a writ of attachment, and the writ could be dismissed upon the defendant's general appearance. Or the writ's continuation could be reviewable on motion of the defendant. (The 1972 amendments dismiss the writ in tort cases, secured contract cases, and where the defendant is an individual not engaged in a trade or business but maintain the writ subject to a hearing on motion of the defendant in other cases involving other nonresidents (§ 538.5(d)).) If the Commission is interested in securing assets of nonresidents for eventual collection, then procedures will need to be supplied which maintain the writ until judgment, and the writ must be issuable in a manner which does not allow a defendant to transfer or hide assets before levy, in proper cases. However, this should be limited to cases where it is shown that a danger exists that the defendant will transfer or conceal assets. If the Commission is interested exclusively in jurisdiction over nonresidents, then there would be no point in maintaining the levy once the nonresident had appeared. The policy sought to be achieved may differ depending upon which type of defendant is involved (e.g., corporation or individual, engaged in business or not) and in which type of action the writ is sought (e.g., tort, contract).

B. Types of Persons in Nonresident Class

Neither the 1972 amendments nor the tentative recommendation allows general consumer attachment against residents. The staff thinks the same

policies should apply in the case of nonresidents, particularly in view of the harshness of allowing garnishment of nonresident wages in the hands of California employers in a consumer case. Whether the policy is achieved through definition of nonresident defendants against whom an attachment may be issued or through the definition of the types of cases in which attachment is allowed, the result should be that nonresident consumers are not subject to writs of attachment.

Prior to the 1972 amendments, the nonresidency of corporations was determined by place of incorporation, regardless of how much business was done in California or how many offices were maintained in this state. Property Research Financial Corp. v. Superior Court, 23 Cal. App. 413, 421, 100 Cal. Rptr. 233, ___ (1972). The staff thinks that the 1972 amendments change this artificial rule. Section 537.2(d) refers to "any person not residing in this state" which normally would include all foreign corporations; but that phrase is followed immediately by these words in parenthesis: "(including any foreign corporation not qualified to do business in this state under the provisions of Chapter 3 (commencing with Section 6403) of Part 11 of Division 1 of Title 1 of the Corporations Code, and any foreign partnership which has not filed a designation pursuant to Section 15700 of the Corporations Code)." The staff interprets the parenthetical phrase as a limitation on the general word "person" so that foreign corporations and partnerships which are qualified to do business in the state are not classed with nonresident persons for purposes of issuance of an ex parte writ under Section 538.5(d). This is a sensible change which recognizes that place of incorporation has little to do with the need for attachment or with a need for quasi in rem jurisdiction. The staff recommends that this principle be continued if the Commission decides to maintain discriminations against nonresident defendants.

C. Types of Assets Subject to Attachment

Under the 1972 amendments, all assets of nonresidents (including those of nonresident individuals not engaged in a trade or business) are subject to attachment (§ 537.3(c)), whereas, in the case of individuals engaged in a trade or business, assets subject to attachment are limited, and there is an opportunity for claiming exemption of necessities (§ 537.3(b)). However, the staff recommends that the fact of nonresidency should not be a ground for attaching a broader range of assets, nor should nonresident necessities be subject to attachment, whether for security or for jurisdictional purposes.

D. Types of Cases in Which Attachment Is Allowed

There are three major types of cases in which attachment may be thought to be needed: consumer, commercial, and tort. The 1972 amendments allow attachment against residents and foreign corporations and partnerships qualified to do business in the state generally only in commercial situations. (§§ 537.1(a) and 537.2(a)-(c).) However, the statute permits attachment in a consumer type case if the defendant is an individual engaged in trade or business. (§§ 537.1(a) and 537.2(c).) But attachment is allowed against nonresident individuals and foreign corporations and partnerships not qualified to do business in the state in commercial, consumer, and tort cases. (§§ 537.1(b) and 537.2(d).) The question of tort attachment is discussed at length below. The staff recommends that attachment not be allowed in any consumer case. The tentative recommendation reflects the Commission's decision not to permit consumer attachment against residents. Basically, the staff thinks that attachment should be available only in commercial situations, whether the defendant is a resident or nonresident.

III. Attachment in Tort Cases

From statehood until 1905, California did not allow attachment in tort actions. (See Riesenfeld, Background Study Relating to Attachment and Garnishment, prepared for the Commission, October 13, 1970, revised October 22, 1970, at 1-7.) In 1905, foreign attachment was expanded to cover actions for damages arising from an injury to property in the state caused by negligence, fraud, or other wrongful act. In 1957, foreign attachment was expanded to include personal injury claims, and in 1963 it was extended to actions for wrongful death. Hence, prior to the 1972 amendments, attachment was allowed

> in an action against a defendant, not residing in this state, or who has departed from the state, or who cannot after due diligence be found within the state, or who conceals himself to avoid service of summons, to recover a sum of money as damages, arising from an injury to or death of a person, or damage to property in this state, in consequence of negligence, fraud, or other wrongful act. [Code Civ. Proc. § 537(3)--This subsection was held constitutional in Damazo v. MacIntyre, 26 Cal. App.3d 18, 102 Cal. Rptr. 609 (1972), but it was repealed by Cal. Stats. 1972, Ch. 550.]

As indicated above, under the 1972 amendments (Marsh bill, Cal. Stats. 1972, Ch. 550, effective March 7, 1973), a writ of attachment may be issued in a tort case when the defendant is a nonresident individual, an individual who cannot be found or who conceals himself, or a foreign corporation or partnership not registered to do business in California. (§§ 537.1(b) and 537.2(d).) If an ex parte writ is obtained on the basis of nonresiedency, it is discharged on the defendant's general appearance and motion. (§ 538.5(d).) In addition, an ex parte writ will issue in any case where a writ is allowed (including tort actions against any nonresident individual or a foreign corporation or partnership not qualified to do business in California) if the plaintiff shows the court that there is a "substantial danger that the defendant will transfer, other than in the ordinary course of business, remove or conceal the property sought to be attached." (§ 538.5(b).) A writ issued under this provision

apparently is not released upon the defendant's appearance nor is there any provision for a hearing to test the ex parte statements of the plaintiff. Furthermore, the present statute contains nothing which prevents the plaintiff from obtaining either his first or a second writ (after the discharge of an ex parte writ) by means of the temporary restraining order, noticed hearing procedure. (§§ 538-538.4.) However, the staff tends to think that the ex parte procedure was intended to be an exclusive alternative to the noticed hearing procedure, and that, in tort cases or cases against nonresident individuals not engaged in a trade or business, the attachment is intended only to compel the appearance of the defendant. If this interpretation is correct, then except where there is a substantial danger that the defendant will remove or conceal the property (in which case there is no provision for release or hearing), attachments in tort cases or against consumers have only a jurisdictional and not a security function.

The tentative recommendation does not allow attachment in tort cases against any defendant. (§ 483.010(a).)

The Commission should consider as a general matter whether it thinks attachment in tort cases is desirable. Tort attachment may serve at least three purposes--security for collection of a judgment, leverage on the defendant, and coercion to submit to personal jurisdiction.

The arguments for security and leverage in tort cases apply to both nonresident and resident defendants. Although there is some talk in court decisions of a greater need for security when the defendant is a nonresident, a resident may hide, dissipate, or make exempt his assets as readily as a nonresident who has substantial assets in the state. However, in California,

attachment has never been allowed in tort actions against residents despite the security and leverage interests. There are several reasons for not allowing attachment as a security device in tort cases. Since most motorists and businesses are insured, in the bulk of tort cases, there is a much diminished need for any sort of security for eventual collection of the judgment. The issuance of writs of attachment in tort cases would be difficult to control, since, because of their variety and complexity, it would be a complicated and time-consuming task to determine the probable validity of a plaintiff's claim. It would also be difficult to determine the probable validity of the defenses of the tort defendant. Furthermore, tort attachment can be quite harsh because the claims are completely unliquidated and the amount of the claim is a function of the imagination of the plaintiff. To allow attachment in the amounts of speculative tort claims may unjustly injure the interests of either resident or nonresident defendants. (See Wolf, Foreign Attachment in Tort Cases, 32 Pa. Bar Ass'n. Q. 217, 226 (1961).)

While the existence of insurance does not eliminate the leverage interest, it may diminish it somewhat. But the objections regarding the harshness of tort attachment and the difficulty of proving probable validity and the lack of reasonably valid defenses applies equally to the leverage interest as to the interest in security. The possibilities for abuse by making extravagant, or even by making arguably reasonable but high, claims makes tort attachment for leverage purposes undesirable.

Attachment in tort cases may still be desired for jurisdictional purposes. It seems to be the thrust of the 1972 amendments to generally restrict tort attachment to this function. If tort attachment is eliminated, it should be noted that quasi in rem jurisdiction in tort cases probably would be eliminated.

"Probably" because,under California decisions and generally accepted traditional principles, seizure of property is a necessary precondition to quasi in rem jurisdiction. However, it should be noted that, prior to Pennoyer v. Neff in 1877, "a number of states" rendered personal judgments against nonresidents without seizure. And, since then, Wisconsin has continued to treat seizure as unnecessary for quasi in rem jurisdiction. (See Note, The Requirement of Seizure in the Exercise of Quasi in Rem Jurisdiction: Pennoyer v. Neff Re-Examined, 63 Harv. L. Rev. 657, 661 (1950).)

The staff recommends that attachment not be allowed in tort cases against either residents or nonresidents. Apparently under the 1972 amendments (Cal. Stats. 1972, Ch. 550), tort attachment was restricted from what it was under prior law. As discussed above, tort attachment is apparently available only for jurisdictional purposes (except when a substantial danger of transfer is shown) since the attachment is released in tort cases on the defendant's general appearance. (§ 538.5(d).) Furthermore, ex parte attachment in tort cases is normally possible only when the defendant is a nonresident, concealing, or unfound individual, or is a foreign corporation or partnership not qualified to do business in California. (§§ 537.1(b) and 537.2(d).) Hence, attachment is not even available in tort cases against foreign corporations or partnerships qualified to do business in the state. This represents a change from former law which allowed attachment in tort cases against all nonresident corporations and partnerships where the nonresidency of a corporation was determined by its place of incorporation. Property Research Financial Corp. v. Superior Court, 23 Cal. App.3d 413, 421, 100 Cal. Rptr. 233, ___ (1972). As noted above, Section 537.2(d) refers to "any person not residing in this state" which normally would include all foreign corporations under former law;

but that phrase is followed immediately by these words in parenthesis: "(including any foreign corporation not qualified to do business in this state under the provisions of Chapter 3 (commencing with Section 6403) of Part 11 of Division 1 of Title 1 of the Corporations Code, and any foreign partnership which has not filed a designation pursuant to Section 15700 of the Corporations Code)." The staff interprets the parenthetical as a limitation on the general word "person." Therefore, when the 1972 amendments go into effect, there will be no quasi in rem jurisdiction in tort cases over foreign corporations and partnerships qualified to do business in California (unless nonresidency itself is deemed to be a showing of substantial danger that assets will be concealed, which would be unwarranted).

If the Commission feels that tort attachment should be continued, it must decide to what extent. Tort attachment may be limited in any of a variety of ways: by types of torts, by types of defendants, by residence of plaintiff, by activities from which the tort arose, or by the state in which the tort took place.

The staff thinks that, at a minimum, tort attachment should not be allowed against residents (although the staff also thinks tort attachment against nonresidents is unjustified and harsh), that any tort attachment should be released on the defendant's appearance, that tort attachment should be permitted only in cases where the tort arises out of the conduct of a trade, business, or profession. Hence, tort attachment would be available in the same types of cases as attachment in contract cases (§ 483.010(a)), but it would be restricted to the extent that it would not be allowed against residents, and the attachment would not be maintained as security for collection of the judgment as in commercial contract attachment. This scheme would be similar

to the 1972 amendments except that the staff suggests that tort attachment be limited to commercial situations. Furthermore, the staff approves of the use of the class of foreign corporations and partnerships not qualified to do business in the state, instead of foreign corporations and partnerships in general. The use of this class recognizes the availability of personal jurisdiction over foreign corporations and partnerships doing business in the state and avoids the artificiality of focussing on the place of incorporation.

Respectfully submitted,

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Legal Assistant

EXHIBIT I

PRIMARY ALTERNATIVES CONCERNING NONRESIDENT
AND TORT ATTACHMENT

Working with the factors listed on the last page, it is possible to develop hundreds of different attachment schemes. Obviously, many of these would be absurd, and the differences between many alternatives would be minor. Because of the large number of possible alternatives, it is impossible to give them all adequate discussion. Hence, the staff has selected four major schemes which we feel it would be useful to discuss at the March meeting.

1. Attachment allowed against all business defendants in claims based on unsecured contracts. Ex parte issuance available on showing probable validity of plaintiff's claim and substantial danger that the defendant will transfer or conceal assets. Discharge of ex parte writ available on noticed motion and hearing testing probable validity. (Note: The staff recommends this alternative; it is the scheme existing under the present tentative recommendation.)

2. Attachment allowed against all business defendants in claims based on unsecured contracts. Ex-parte issuance available on showing of probable validity and nonresidency of defendant where nonresidency of corporation or partnership is defined as foreign corporations not qualified to do business in California. Discharge of ex parte writ on noticed motion and hearing testing probable validity. (Note: The staff finds this alternative acceptable; it differs from number 1 in allowing ex parte attachment on basis of nonresidency instead of showing substantial danger.)

3. Attachment generally as in tentative recommendation. Attachment against nonresident business defendants (individuals and unqualified

corporations and partnerships) in all actions arising out of defendant's business. Ex parte issuance available on showing of probable validity and nonresidence of defendant. Discharge of ex parte writ on motion and appearance except where attachment generally authorized (in which case attachment tested on motion). Attachable property limited to that otherwise subject to levy. (Note: The staff finds this alternative less acceptable; it is roughly similar to the 1972 amendments (Marsh bill). It permits tort attachment against business defendants.)

4. Attachment generally as in tentative recommendation. Attachment against nonresident individuals and unqualified foreign corporations and partnerships in all actions. Ex parte issuance available on showing of probable validity and nonresidence of defendant. Discharge of ex parte writ on motion and appearance except where attachment otherwise authorized (in which case attachment tested on motion). All nonresident property subject to levy. (Note: The staff finds this alternative undesirable; it is basically the same as the 1972 amendments (Marsh bill). It permits tort and consumer attachment against nonresident individuals and against potential necessities.)

POSSIBLE FACTORS CONCERNING NONRESIDENT AND TORT ATTACHMENT

Types of Defendants	Type of Case	Issuance and Discharge of Writ of Attachment	Attachable Property
All persons A. Corporations and partnerships 1. Foreign 2. Foreign, not qualified to do business in state 3. Domestic B. Individuals 1. Nonresidents a. Engaged in trade or business b. Not engaged in trade or business 2. Residents a. Engaged in trade or business b. Not engaged in trade or business C. Additional factors 1. Cannot be found 2. Conceals himself 3. Conceals assets	Claims for money A. Contract, arising from defendant's trade or business (commercial) 1. Secured 2. Unsecured B. Contract, not arising from defendant's trade or business (consumer) 1. Secured 2. Unsecured C. Tort 1. Arising from defendant's trade or business 2. Not arising from defendant's trade or business	Issuance of writ A. Ex parte issuance when: 1. Mere nonresidency of defendant 2. Probable validity of plaintiff claim plus mere nonresidency 3. substantial danger of transfer plus probable validity B. Noticed hearing issuance - - - - - - - - - - - - - - - Discharge of ex parte writ: A. Upon appearance and motion B. After noticed motion and hearing testing: 1. Probable validity 2. Substantial danger	All property Business property Nonbusiness property Exemption of necessities Other exemptions

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February 21, 1973

To: Members of the California Law Revision Commission

From: Stefan A. Riesenfeld

Re: Comments on First Supplement to Memorandum 73.5

A.

At the January meeting of the Commission I called attention to the fact that the Tentative Recommendation Relating to Prejudgment Attachment (Dec. 21, 1972) failed to provide for levy on certain categories of debts which at present are subject to levy by garnishment. This omission creates certain difficulties with respect to executions because of the interrelation between execution levies (CCP §688) and attachment levies. Tentative Recommendation §§488.310 to 488.430.

A levy is now provided for real property, tangible property of various types and a) accounts receivable, b) choses in action, c) chattel paper, d) deposit accounts, e) negotiable instruments, negotiable documents and money, f) securities, g) judgments, h) interest in personal property of the estate of a decedent. There are, however, residual categories of debts which are neither accounts receivable, choses in action, judgments or any other class of nontangible personal property for which no levy is provided. The gap stems essentially from the limited scope of the definition of chose in action in §481.050. Section 481.050 defines chose in action as any right to payment which arises out of the conduct of any trade, business, or profession and which a) is not conditioned upon further performance by the defendant or upon any event other than the passage of time, b) is not an account receivable, c) is not a deposit account, and d) is not evidenced by a negotiable instrument, security, chattel paper, or judgment.

While it is sensible to limit attachment against defendants who are not corporations or partnerships to "business-oriented debts," it is not advisable to retain such limitation with respect to execution levies. Otherwise, execution would not be available with respect to debts owed to defendants not engaged in any trade, business, or profession, with the result that the rather clumsy enforcement of a judgment by means of supplementary proceedings would be the only available remedy. See Boyle v. Hawkins, 71 C.2d 229. An unfortunate gap may also arise with respect to certain debts owed to corporations. The first supplement to Memorandum 73.5 proposes a revision of section 487.010 which limits attachment to "all corporate property for which a method of levy is provided." While most debts owed to corporations will result from a conduct of trade, business, or profession, there might be debts which are not of this type. For instance, a corporation may have made a loan

to a corporate manager. It may be observed in this connection that the present definition of chose in action includes claims under an insurance policy regardless of whether or not the insurance was taken out in the conduct of a trade or business.

This defect could be remedied in one of two ways:

1) By adding the words "or other debt" after "a chose in action" in §488.370 and eliminating the word "or" prior to the words "a chose in action"; or

2) By striking the words "which arises out of the conduct of any trade, business or profession" from the definition of chose in action in §481.050 and transferring the limitation to §487.010 (c-1) which would then read: "accounts receivable, chattel paper and choses in action arising out of the conduct of any trade, business or profession including an interest in or a claim under an insurance policy, except any such individual claim with a principal of less than one hundred and fifty dollars ($150.00).

If the second recommendation is followed, a chose in action would include any noncontingent right to payment which corresponds to the present generic concept of debt. I recommend the second alternative for the reason that we are faced with too many similar concepts such as things in action, CCP §17(3), choses in action, causes of action, CCP §688 and §688.1, and debt, which might be confusing to the bar.

B.

There is another problem relating to the levy on judgments. Former §542(5), as amended in 1970, reinstated attachment of judgments without reference to the finality of such judgments. This question had been discussed by the Supreme Court of California prior to the amendment in P G & E Co. v. Nakano, 12 C.2d 711 (1939); Washington v. Washington, 47 C.2d 249, 254 (1956).

I recommend that a suitable qualification of judgment is inserted in §488.420.