

#47

8/19/74

First Supplement to Memorandum 74-43

Subject: Study 47 - Oral Modification of a Written Contract (Commercial Code Section 2209)

Attached to this supplement is a letter reporting that the State Bar Committee on the Commercial Code is divided 50-50 on whether to approve the Tentative Recommendation Relating to Oral Modification of a Written Contract--Commercial Code Section 2209.

Respectfully submitted,

Stan G. Ulrich
Legal Counsel

THE STATE BAR OF CALIFORNIA



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August 16, 1974

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

Dear Mr. DeMouilly:

The Board of Governors at its July, 1974, meeting approved the Report of the Committee on Commercial Code relative to the Law Revision Commission Tentative Proposal re Amendment of Uniform Commercial Code 2209 - Modification of Written Contracts - and directed that the Committee's Report on the matter be forwarded to the Law Revision Commission with the caveat that the Board of Governors has taken no position on the proposal.

In accordance with that directive we are enclosing a copy of the Report.

If you have any questions you may wish to contact the Chairman of the Committee, Maurice D. L. Fuller, 1900 Standard Oil Building, 225 Bush Street, San Francisco 94104.

Yours very truly,

A handwritten signature in dark ink, appearing to read "William B. Eades".
William B. Eades
Committee Coordinator

WBE:jc
Enc.

cc: Messrs. Hufstedler, Abel,
Wiener, Fuller, Malone
Miss Wailes

4. The following matters relating to the Uniform Commercial Code have also been before your Committee:

The suggestion of the California Law Revision Commission that California Code Section 2209(2) be amended by deleting the present provision "a written contract within this division may only be modified by a written agreement or by an oral agreement fully executed by both parties" and that there be substituted therefor the following language: "A signed agreement which includes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants, such a requirement on a form supplied by the merchant must be separately signed by the other party." The substituted provision is the language of the Uniform Commercial Code as in effect generally throughout the United States.

One-half of your Committee is opposed to the change for the same reasons that it was opposed to the inclusion of the uniform provisions heretofore.*

The other one-half of your Committee is willing to approve the change primarily upon the basis of the desirability of uniformity with the law of other states.

*See Sixth Progress Report to the Legislature by the Senate Fact Finding Committee on Judiciary (1959-61) pp.340,452.