

Memorandum 76-88

Subject: Topics on Agenda

At the last meeting, the Commission discussed the topics on its agenda. This memorandum is a followup on matters raised at that time and also presents some additional matters for Commission consideration.

Continuing Topics on Agenda After Recommended Legislation Enacted

At the last meeting, concern was expressed that a number of topics have been continued on the Commission's agenda for a number of years to permit continuing study of topics upon which legislation has been enacted upon Commission recommendation. For example, the study of the Evidence Code was authorized in 1965 to permit continuing study of the Evidence Code which was enacted in 1965 upon Commission recommendation. Pursuant to this authority, the Commission submitted recommendations in 1967, 1969, 1971, 1973, 1974, and 1975. The Commission also plans to make an overall study of the Evidence Code in the next few years.

The concern expressed by the Commission was that the inclusion of topics upon which work has been completed adds a number of topics to our agenda, some of which are continued on the agenda for many years without any additional recommendations. The arbitration topic, discussed below, is an example of such a topic.

The staff has given some thought to this problem. The problem could be cured by adding a provision to our enabling statute that would permit the Commission to submit recommendations for the modification or supplementation of legislation previously enacted upon Commission recommendation without the requirement that the topic continue to be listed in our Annual Report under "Calendar of Topics for Study." However, the staff does not believe this is the time to submit such legislation to the Legislature. If the Commission desires, the staff could discuss this matter with Assemblyman McAlister and determine whether he is of the contrary view.

Modification of Contracts

There are several other matters in connection with the calendar of topics that should be considered by the Commission. The topics are listed in the portion of the Annual Report attached as Exhibit I. At

the suggestion of the staff, the Commission decided to drop the topic "whether the law relating to modification of contracts should be revised." I have seen a preliminary draft of the write-up of our 1976 statute on this subject. The write-up suggests that the Commission did not adequately deal with the problem of whether new consideration is needed for an oral modification of a contract. (The Commission decided not to follow the Commercial Code provision with respect to the requirement of new consideration.) The new statute does not remove the former uncertainty whether new consideration is needed for an oral modification of an oral contract. If the Commission wishes to review this question again, the topic should be retained on our agenda.

Dropping Three Topics Included in Tort Liability Topic

We are informed that the Assembly Concurrent Resolution authorizing the Commission to study the subject of tort liability was adopted. A copy of the resolution is attached as Exhibit III. See page 8 for the provision authorizing the Commission to study tort liability. In light of this authorization, the Commission may wish to recommend that the following topics be dropped from its agenda on the ground that they are within the broad authorization to study tort liability. The topics that might be dropped are:

- Prejudgment interest
- Offers of compromise
- Sovereign or governmental immunity

Although the first two topics are broader than just tort actions, the problems with respect to the two topics exist primarily in tort cases. The staff believes that sovereign or governmental immunity is included with the topic tort liability; we also are authorized to study inverse condemnation and eminent domain and do not propose to drop those topics.

The Executive Secretary has received one letter and a number of telephone calls requesting information as to the Commission's plans with respect to the study of tort liability. I called Assemblyman McAlister to ask how I should respond to these inquiries. He said that the study will be conducted by the Joint Legislative Committee on Tort Liability and that there are no present plans to involve the Law Revision Commission in the study. The Law Revision Commission would be involved in the study only if at some future time the Joint Legislative Committee and

the Commission jointly agree that the Commission could be of assistance to the Joint Legislative Committee with respect to some specific aspect of the study. The staff suggests that the Commission include a notation of this understanding in our Annual Report so that interested persons will know the reason we are not actively studying the topic of tort liability.

Arbitration

At the last meeting, the Commission requested a report on what the State Bar and Judicial Council were doing with respect to arbitration. The staff had reported that both groups had been working in this area.

The State Bar, through the State Bar Special Committee on Arbitration, and the Judicial Council have for a number of years been actively studying the use of arbitration in superior court cases with the view to developing special court rules to govern arbitration of such cases. Chapter 1006 of the Statutes of 1975 enacted Code of Civil Procedure Section 1141.10 which directs the Judicial Council to provide by rule for a uniform system of arbitration of certain cases in superior courts. The rules developed pursuant to this mandate are discussed in an article in the September/October 1976 California State Bar Journal beginning on page 472. It is reported on page 558 of the same issue of the California State Bar Journal that the rules as finally adopted incorporate many suggestions of the State Bar Special Committee on Arbitration. The rules are substantially different than the rules that apply in contractual arbitration under the statute enacted upon Commission recommendation. Since the arbitration under the rules takes place in a superior court action, the staff assumes that attachment and other provisional remedies will be available as in other civil actions. The new court rules do not deal with the availability of provisional remedies in contractual arbitration. In this connection, see Exhibit II attached.

We are advised that the State Bar Special Committee on Arbitration will be continued as a committee of the Business Law Section. This committee is studying a number of aspects of arbitration law now, and we have called to the attention of the committee the problem of provisional remedies in arbitration. In addition, the State Bar Committee on the Administration of Justice is studying arbitration of attorney's fees.

It is possible that the Commission will want to work with the special State Bar Committee in developing a procedure for attachment in an arbitration proceeding. Accordingly, the staff recommends that this topic be retained on our agenda.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

CALENDAR OF TOPICS FOR STUDY

Topics Authorized for Study

The Commission has on its calendar of topics the topics listed below.¹ Each of these topics has been authorized for Commission study by the Legislature.²

Topics Under Active Consideration

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

Nonprofit corporations. Whether the law relating to nonprofit corporations should be revised.

The Commission plans to submit a recommendation to the 1977 Legislature for a new comprehensive statute relating to nonprofit corporations. This recommendation is being developed in cooperation with the State Bar Committee on Corporations and a Special Subcommittee on Nonprofit Corporations of the Taxation Section of the State Bar. G. Ger-vaise Davis III, a Monterey lawyer, has served as the chief consultant to the Commission on this study. Peter A. Whitman, a Palo Alto lawyer, also has served as a consultant. Numerous other persons and organizations have cooperated in the study; they are listed in the acknowledgments in the Commission's recommendation. See Recommendation Relating to Non-profit Corporation Law (January 1977), to be reprinted in 14 Cal. L. Revision Comm'n Reports 1 (1978).

Creditors' remedies. Whether the law relating to creditors' remedies including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code repossession of property provisions), civil arrest, confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, and related matters should be revised.

¹ For information concerning prior Commission recommendations and studies concerning these topics and the legislative history of legislation introduced to effectuate such recommendations, see "Current Topics—Prior Publications and Legislative Action," *infra*.

² 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 Commission, working with a State Bar committee, is now engaged in drafting a comprehensive statute governing enforcement of judgments. Professor Stefan A. Riesenfeld of the Boalt Hall Law School, University of California at Berkeley, is serving as the consultant to the Commission.

The Commission published a recommendation relating to wage garnishment procedure in April 1975, but no bill was introduced in 1975 to effectuate this recommendation. See Recommendation Relating to Wage Garnishment Procedure, 13 Cal. L. Revision Comm'n Reports 601 (1976). The Commission has received comments on the 1975 recommendation from various persons and organizations, including the State Bar Committee on Relations of Debtor and Creditor, and plans to have a bill introduced in 1977 relating to this subject.

The Commission plans to submit a recommendation to the 1977 Legislature proposing several technical revisions in the statute relating to enforcement of sister state money judgments. See Recommendation Relating to Sister State Money Judgments (April 1976), published as Appendix IV to this Report.

Condemnation law and procedure. 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.

The Commission is engaged in a study of the provisions of the Evidence

Code relating to evidence in eminent domain and inverse condemnation actions and is making a study to determine whether any additional changes in other statutes are needed to conform to the new Eminent Domain Law.

Evidence. Whether the Evidence Code should be revised.

The Commission has undertaken a study of the differences between the newly adopted Federal Rules of Evidence and the California Evidence Code. Professor Jack Friedenthal of the Stanford Law School is the Commission's consultant on this study. The Commission also is making a study of the experience under the Evidence Code to determine whether any revisions are needed.

Child custody and related matters. Whether the law relating to custody of children, adoption, guardianship, freedom from parental custody and control, and related matters should be revised.

Professor Brigitte M. Bodenheimer of the Law School, University of California at Davis, has been retained as a consultant on this topic.

She has prepared two background studies--one

relating to child custody and the other to adoption. See Bodenheimer, *The Multiplicity of Child Custody Proceedings--Problems of California Law*, 23 Stan. L. Rev. 703 (1971); *New Trends and Requirements in Adoption Law and Proposals for Legislative Change*, 49 So. Cal. L. Rev. 10 (1975).

The background studies do not necessarily represent the views of the Commission; the Commission's action will be reflected in its own recommendation. Mr. Garrett H. Elmore has been retained as a consultant on one aspect of the topic--a project to eliminate the overlap between the guardianship and conservatorship statutes.

Lease law. Whether the law relating to the rights and duties attendant upon termination or abandonment of a lease should be revised.

The Commission plans to submit a recommendation on one aspect of this topic to the 1977 Legislature. See Recommendation Relating to Damages in Action for Breach of Lease (May 1976), published as Appendix V to this Report.

Inverse condemnation. Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised (including but not limited to liability for damages resulting from flood control projects) and whether the law relating to the liability of private persons under similar circumstances should be revised.

The Commission plans to study one or more aspects of this topic during 1977.

Other Topics Authorized for Study

The Commission has not yet begun the preparation of a recommendation on the topics listed below.

Parol evidence rule. Whether the parol evidence rule should be revised.

Prejudgment interest. Whether the law relating to the award of prejudgment interest in civil actions and related matters should be revised.

Class actions. Whether the law relating to class actions should be revised.

Offers of compromise. Whether the law relating to offers of compromise should be revised.

Discovery in civil cases. Whether the law relating to discovery in civil cases should be revised.

Possibilities of reverter and powers of termination. Whether the law relating to possibilities of reverter and powers of termination should be revised.

Marketable Title Act and related matters. Whether a Marketable Title Act should be enacted in California and whether the law relating to covenants and servitudes relating to land, and the law relating to nominal, remote, and obsolete covenants, conditions, and restrictions on land use should be revised.

Tort liability. Whether the law relating to tort liability should be revised, including the rules governing liability for and the amount of compensation or damages to be paid on account of injury to or death of persons or damages to or destruction of property and the manner and method of determination and payment thereof and related matters, including a study of liability arising from defective products, whether based on contract or tort.

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.

Arbitration. Whether the law relating to arbitration should be revised.

Escheat; unclaimed property. Whether the law relating to the escheat of property and the disposition of unclaimed or abandoned property should be revised.

Unincorporated associations. 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.

Partition procedures. 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.

Liquidated damages. Whether the law relating to liquidated damages in contracts generally, and particularly in leases, should be revised.

Governmental liability. Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.

Topics to Be Removed From Calendar of Topics

A recommendation has been made on the following topics, and the recommended legislation has been enacted. Because of their nature, these topics do not need to be continued on the Commission's calendar for further study.³

Modification of contracts. Whether the law relating to modification of contracts should be revised.

Transfer of out-of-state trusts to California. Whether the law relating to transfer of out-of-state trusts to California should be revised.

Topics for Future Consideration

The Commission now has a number of major studies on its calendar. During the next year, studies under active consideration will include nonprofit corporations; inverse condemnation; creditors' remedies; child custody, adoption, and guardianship; and evidence. Because of the substantial and numerous topics already on its calendar (six of which were added by the 1975 Legislature and one by the 1976 Legislature), the Commission does not at this time recommend any additional topics for inclusion on its calendar of topics.

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3. A number of the topics upon which studies and recommendations have been made are nevertheless retained 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. See this Report supra.

STUDIES FOR FUTURE CONSIDERATION

The Commission now has an agenda consisting of 27 studies which will require substantially all of its energies for several years. For this reason the Commission will not request authority at the 1968 legislative session to undertake any new studies. The Commission recommends, however, that it be authorized to make a study of a problem that has arisen under legislation enacted on recommendation of the Commission.

A study to determine whether the law relating to arbitration should be revised.

Code of Civil Procedure Sections 1280 to 1294.2, relating to arbitration, were enacted in 1961¹ upon recommendation of the Law Revision Commission.² Although experience under the 1961 statute has been generally satisfactory, the effect of an arbitration clause upon the right of a party to file a mechanic's lien or obtain provisional relief such as attachment is unclear.

Commentators generally agree that provisional remedies should be available for the preservation of property and to secure the satisfaction of the award to the same extent it would be available if the dispute were in litigation rather than arbitration.³ This rule has been established by statute in some jurisdictions⁴ and by judicial decision in others.⁵ The law in California, however, is unclear because of three recent Court of Appeal decisions.

In *Homestead Sav. & Loan Ass'n v. Superior Court*,⁶ the plaintiff filed a mechanic's lien claim for money due on a construction contract. Shortly thereafter, he filed a complaint for breach of contract which contained a recital of the arbitration clause and a prayer for an order to arbitrate. The defendant brought mandamus to set aside the arbitration order on the ground that the filing of the mechanic's lien and the filing of the complaint, which was in the form of a foreclosure action, constituted a repudiation and waiver of the arbitration agreement. Citing the statutory law in New York, the court held that the filing of

¹ Cal. Stats. 1961, Ch. 461, p. 1640.

² See *Recommendation and Study Relating to Arbitration*, 3 CAL. L. REVISION COMMISSION REPORTS at G-1 (1961).

³ STURGES, COMMERCIAL ARBITRATION AND AWARDS § 142. See 1954 HANDBOOK, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 119-123; Sturges, *Common-law and Statutory Arbitration: Problems Arising From Their Coexistence*, 46 MINN. L. REV. 819, 831 (1962); Note, 17 N.Y.U.L.Q. 686 (1940).

⁴ The first Uniform Arbitration Act was adopted in 1924. That act provided, in Section 12, that an arbitration clause would not bar provisional remedies. It was enacted in four states: NEV. REV. STAT. § 38.180; N.C. GEN. STAT. § 1-160; UTAH CODE ANN. § 78-31-12; Wyoming Laws of 1927, Ch. 96, § 12 (repealed 1959). Connecticut also has such a statute. CONN. GEN. STAT. ANN. § 52-122. New York has a statute which only applies to mechanic's liens. N.Y. LIEN LAW § 35. Provisional remedies are preserved in actions otherwise justifiable in admiralty by the Federal Arbitration Act, 9 U.S.C. § 8.

The 1955 Uniform Arbitration Act originally provided for provisional remedies. 1955 HANDBOOK, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 203. The section was deleted, apparently because of a fear of excess labor injunctions. For discussion, see *Salvucci v. Sheehan*, 349 Mass. 659, 663-664, 212 N.E.2d 243, 245 (1965).

⁵ *Salvucci v. Sheehan*, 349 Mass. 659, 212 N.E.2d 243 (1965); *Auerbach v. Grand Nat'l Pictures, Ltd.*, 170 Misc. 1031, 20 N.Y.S.2d 747, aff'd 263 App. Div. 712, 31 N.Y.S.2d 679, appeal denied 263 App. Div. 807, 32 N.Y.S.2d 120 (1941).

⁶ 186 Cal. App.2d 997, 10 Cal. Rptr. 121 (1961).

a mechanic's lien is not inconsistent with arbitration because it merely preserves the status quo. Therefore, the plaintiff was allowed to compel arbitration despite his earlier assertion of a mechanic's lien.

In *Palm Springs Homes, Inc. v. Western Desert, Inc.*,⁷ the court reached an apparently inconsistent result on similar facts. In that case, the appellant had submitted to arbitration under an arbitration clause after filing a mechanic's lien and starting foreclosure proceedings. The court held, on an unclear record, that the arbiters apparently found that the filing of the lien under the facts was inconsistent with the agreement to submit all controversies to arbitration and therefore affirmed the award in favor of respondent for breach of contract. The alleged breach appears to have been the filing of the lien.

In the more recent case of *Ross v. Blanchard*,⁸ the plaintiff filed suit on a building contract and attached the property of the defendant. The defendant's answer alleged an arbitration clause and the trial court ordered the action stayed until the disposition of arbitration proceedings. An award was made for the plaintiff two years later and, after a confirmation of that award, defendant moved to discharge plaintiff's attachment on the ground that plaintiff had been bound to arbitrate and his filing of the suit at law had resulted in a wrongful attachment. The court first held that a party to an arbitration agreement may initially resort to the courts because a later arbitration order merely stays initial court proceedings. It then held that the attachment should not be dissolved because the plaintiff would be entitled to attachment to satisfy the award and defendant had not moved to dissolve it during the two-year interim. The court avoided deciding whether or not the defendant could have dissolved the attachment during the interim, but relied heavily on a Massachusetts case⁹ which held that the trial court had no power to discharge an attachment when an action has been stayed pending arbitration.

Sections 1280 to 1294.2 do not deal with the three problems posed by the above cases:

1. When a party to an arbitration clause seeks a provisional remedy or files a mechanic's lien, may the other party assert that this action constitutes a waiver of the arbitration clause which will preclude the plaintiff from seeking an order to arbitrate?¹⁰

2. When a party to an arbitration agreement levies an attachment or files a mechanic's lien and his opponent obtains a stay of the proceedings and an order to arbitrate, should the attachment or lien be dissolved?

3. Does the filing of a mechanic's lien or the attempt to obtain provisional relief constitute a breach of the arbitration clause such that the other party may obtain damages?

In view of the importance of these questions and the necessity to clarify California law on this point, the Commission believes that a study should be made to determine whether or not provisional remedies should be available where a plaintiff is bound by an arbitration clause. At the same time, the experience under the 1961 statute should be reviewed to determine whether any other revisions are necessary.

⁷ 215 Cal. App.2d 370, 30 Cal. Rptr. 84 (1963).

⁸ 251 A.C.A. 663, 50 Cal. Rptr. 783 (1967).

⁹ *Belucci v. Shaskan*, 340 Mass. 650, 212 N.E.2d 243 (1965).

¹⁰ An arbitration clause can be waived by a party. CAL. CODE CIV. PROC. § 1281. Such a waiver may be effected by initiating an action at law on the contract. *Berman v. Renner Sportswear Corp.*, 222 Cal. App.2d 346, 35 Cal. Rptr. 218 (1963).

Assembly Concurrent Resolution No. 170

Adopted in Assembly August 31, 1976

Chief Clerk of the Assembly

Adopted in Senate August 31, 1976

Secretary of the Senate

This resolution was received by the Secretary of
State this _____ day of _____, 1976,
at _____ o'clock _____ M.

Deputy Secretary of State

RESOLUTION CHAPTER

Assembly Concurrent Resolution No. 170—Relative to a study of the law relating to tort liability.

LEGISLATIVE COUNSEL'S DIGEST

ACR 170, McAlister. Tort liability study.

This measure would create a Joint Legislative Committee on Tort Liability to study the need for revision of the law relating to tort liability and would also authorize the California Law Revision Commission to undertake a study of tort liability and related matters.

WHEREAS, The Legislature finds all of the following:

(1) That physicians, hospitals, and other health care providers have extreme difficulty in procuring liability insurance covering negligent acts occurring within the scope of their method of operation.

(2) That cities and other entities and organizations of local government are experiencing difficulty in locating markets which provide liability insurance for willful and negligent acts of themselves and their employees in their official capacities, whether governmental or proprietary.

(3) That manufacturers and others within the products distribution system are experiencing massive price increases for liability insurance covering defects in, and uses of, goods manufactured for personal and business consumption.

(4) That lawyers and other professionals are experiencing substantial price increases for liability insurance covering negligent acts occurring within the scope of their authorized operations.

(5) That it is alleged that in other jurisdictions accountants, architects and others dealing with substantial business enterprises are experiencing increasing difficulty in locating markets for such insurance.

(6) That the populace in general is experiencing substantial price increases for liability insurance covering the negligent operation of motor vehicles.

(7) That some of the victims of incapacitating physical injuries are not always compensated by necessary and adequate damages.

(8) That it appears that, in connection with all such liability insurance, a pattern is emerging which commences with steadily increasing insurance prices and culminates in the virtual unavailability of the affected insurance coverages.

(9) That the law of liability had its genesis some 400 years past, has continued to develop upon essentially the same base of individual responsibility, has attempted to adapt itself to the technological progress and the mechanization of society, and has evolved a system of rules likewise as applicable to the individual as the large, complex and legally recognizable but artificial entities utilized by society to minister to the needs and desires of the citizen.

(10) That it is now apparent that it is essential that a comprehensive study and evaluation of the law of liability, whether founded in negligence, strict liability, willfulness, or other similar concepts, be conducted to determine its continued efficacy as a loss-allocating and loss-compensating system, with a view toward the doing of substantial justice to all parties directly affected thereby and the fiscal stability and efficiency thereof; and

WHEREAS, The California Law Revision Commission has not previously been authorized to study the topic of tort liability and related matters; and

WHEREAS, There is a need for a comprehensive study of this topic; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Joint Legislative Committee on Tort Liability is hereby created with the following composition, powers, and duties:

(1) The joint committee shall consist of five Members of the Senate appointed by the Committee on Rules thereof and five Members of the Assembly appointed by the speaker thereof. Five members of the committee shall be members who are not lawyers. The Joint Committee on Rules shall designate the chairman of the committee. The members shall serve at the pleasure of

utilized by said committee in the performance of its duties to the citizen.

(2) That it is the sense of the Assembly, ACH 170 30, 21
comprehensive study and evaluation of the law of liability, whether founded in negligence, strict liability, willfulness, or other similar concepts, with a view toward the doing of substantial justice to all parties directly affected thereby and the fiscal stability and efficiency thereof; and

WHEREAS, The California Law Revision Commission has not previously been authorized to study the topic of tort liability and related matters; and

WHEREAS, There is a need for a comprehensive study of this topic; now, therefore, be it

the appointing power and vacancies shall be filled by the appointing power.

(2) The joint committee shall make a study to determine the need for revision of the law relating to tort liability, including the rules governing liability for, and the amount of compensation or damages to be paid on account of, injury to, or death of, persons or damage to, or destruction of, property, the manner and method of determination and payment thereof, and related matters. The study may include a study of liability arising from defective products, whether the liability is based upon contract or tort, governmental liability, malpractice liability, third party liability arising from the working conditions of industrial employees, and liability for vehicle accidents. It is not intended that such joint committee shall concern itself with such matters as the law of libel, business torts, privacy invasion, or like matters unrelated to the consequences of personal injury-producing activities of society.

(3) The study shall include all of the following:

(a) An evaluation of the viability of individual responsibility as a basis for allocating the risk of, compensating the victims of, and designating the financing of losses of the injured victims of, injury-producing activities of California society.

(b) An evaluation of other alternative bases for allocating such risks, compensating such victims, and designating such financing.

(c) A critical examination of the rules of the law of liability whether procedural, substantive, or evidentiary, in light of their propensity to achieve the following objectives:

(i) Substantial justice to all parties individually involved in the liability-fixing mechanism.

(ii) Cost-minimizing systems for allocating risk and financing losses.

(iii) Necessary and adequate, but not excessive or speculative, compensation to victims.

(iv) Relative certainty in establishment of liability and consequent compensation.

(v) Critical evaluation of alternative approaches to

accomplish the objectives of substantial justice, cost of minimizing risk-allocating and loss-financing systems, adequate compensation and certainty in predicting the fact and amount of loss, including an evaluation of the awarding of punitive damages, exemplary damages, or other penalties in addition to compensation for actual provable loss.

(vi) Recommendations for an appropriate basis for a system of risk allocation, loss financing, and a victim compensation system to relieve and cure the effects of injury-producing activities of society.

(vii) Recommendations for the proper implementation of such appropriate basis, together with language for specific statutory enactment thereof.

(viii) An actuarial and financial analysis of such recommended system, including an analysis of the long- and short-term anticipated performance thereof and the anticipated comparison of and improvement over the existing mechanism.

(ix) An evaluation of whether insurance premium increases have been justified.

(x) Other recommendations, analyses, and conclusions that the joint committee deems relevant to its charge hereunder.

(4) The committee and its members shall have and exercise all of the rights, duties, and powers conferred upon investigating committees and their members by the provisions of the Joint Rules of the Assembly and Senate as they are adopted and amended from time to time at this session, which provisions are incorporated herein and made applicable to the committee and its members.

(5) (a) The joint committee shall publish a comprehensive background study relating to tort liability. The background study shall include an analysis of the major policy issues relevant to revision of the law relating to tort liability, with a discussion of the legal and practical considerations relevant to the resolution of those policy issues. The background study may also contain such economic and statistical data as is considered relevant to the matters discussed in the study.

(b) The Joint Legislative Committee on Tort Liability

shall hold hearings on the revision of the law relating to tort liability.

(c) The joint committee shall submit a report to the Governor and the Legislature. The report shall include an analysis of the major policy issues relevant to revision of the law relating to tort liability, with a discussion of the legal and practical considerations relevant to the resolution of those policy issues. The report shall contain the joint committee's recommendations with respect to those issues and relating to revision of the law relating to tort liability. To the extent the joint committee considers it to be feasible, the report shall include the full text or a summary of comments and recommendations submitted by various interested organizations with respect to the joint committee's recommendations.

(d) Nothing in this foregoing paragraph is intended to preclude the joint committee from submitting recommendations on specific aspects of the subject of tort liability to the Governor and Legislature at any time prior to the completion of the comprehensive study if the joint committee concludes that there is an urgent need for legislative action with respect to the specific recommendation submitted. In preparing such specific recommendations, the joint committee may solicit the views of all interested persons and organizations, including any legislative committees concerned with the subject matter of the recommendation.

(6) The Joint Legislative Committee on Tort Liability may establish one or more advisory committees to provide advice and input to the joint committee on the tort liability study. Advisory committees may be established on specific aspects of the subject matter of tort liability. Advisory committees may be established to represent each of the following groups or interests: liability insurance companies; licensed health facilities; the medical profession; consumers; health care insurers; manufacturers and other businesses; state and local governmental entities; judges; trial lawyers; worker compensation attorneys; and the State Bar of California. Members of advisory committees shall serve at the pleasure of the joint committee.

The joint committee shall designate a chairperson for each advisory committee. In making such designation, the joint committee shall give consideration to the persons suggested by the advisory committee.

Members of the advisory committees shall receive no compensation nor reimbursement for travel or other expenses, except as otherwise provided. Travel expenses may be paid for travel approved in advance by the joint committee through its chairman, at a rate comparable to that paid to state employees, for chairpersons attending joint committee meetings. Claims for such travel expenses shall be paid only if approved by the chairman of the joint committee and the Joint Rules Committee.

The chairperson of each advisory committee shall, to the extent such chairperson finds it convenient to do so, upon the request of the joint committee, attend each meeting of the joint committee when the tort liability study is under consideration.

(7) Every person authorized to transact insurance in this state or providing health care services in this state is requested to cooperate with the joint committee by providing, or making available the opportunity to obtain, information reasonably related to the study authorized by this act. Unless such person otherwise agrees, such information shall be made available only on a confidential basis to expert consultants retained by the joint committee.

(8) The Joint Rules Committee may make funds available from the Contingent Funds of the Assembly and Senate or from funds received from grants pursuant to paragraph (9), below, for the expenses of the joint committee and its members and for any charges, expenses, or claims it may incur under this resolution; provided that, in accordance with Joint Rule 36.8, any expenditure of funds shall be made in compliance with policies set forth by the Joint Rules Committee and shall be subject to the approval of the Joint Rules Committee.

(9) The Joint Rules Committee may accept grants on behalf of the Joint Legislative Committee on Tort Liability from federal, state, or local agencies, or from private sources, to be used exclusively in order to assist

the Joint Legislative Committee on Tort Liability in carrying out its duties, functions, and powers under this resolution.

(10) The Joint Legislative Committee on Tort Liability shall continue to function until January 1, 1978, and on such date shall cease to exist; and be it further

Resolved, That the Legislature hereby authorizes the California Law Revision Commission to study whether the law relating to tort liability should be revised, including the rules governing liability for and the amount of compensation or damages to be paid on account of injury to or death of persons or damages to or destruction of property and the manner and method of determination and payment thereof and related matters, including a study of liability arising from defective products, whether based on contract or tort; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the California Law Revision Commission.